



Department for  
Science, Innovation  
& Technology

# Powers in Relation to UK- Related Domain Name Registries

Consultation

Closing date: 31 August 2023

July 2023



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# Introduction

The Department for Science, Innovation and Technology (DSIT) will be commencing sections 19-21 of the Digital Economy Act 2010 ([DEA 2010](#)), which set out the Secretary of State's powers of intervention in relation to internet domain name registries and abuse of their domain names. Once commenced, this will insert sections 124O to 124R into the Communications Act 2003.

DSIT recognises the good work registries in scope of these powers already do to tackle abuses of their domain names. The department is bringing these provisions into force now to ensure that the UK will continue to meet international best practice on governance of country code top-level domains (ccTLDs) in line with the UK's key global trading partners and its future global trading commitments and agreements. These powers will also provide additional certainty that appropriate procedures will continue to be in place to help address the misuse and unfair use of UK-related domain names for their users.

The provisions will allow the relevant Secretary of State, which is currently the DSIT Secretary of State, to intervene in the operation of any UK-related domain registry, but only in the case of a serious relevant failure. Section Two, under 'The Proposals' heading, goes into detail on how a serious relevant failure is defined and the process involved before the Secretary of State is able to exercise these powers.

The powers cover the top-level of the UK related domain as well as the second and third levels. DSIT intends to introduce Regulations made by the Secretary of State to define the prescribed practices and requirements, following sections 19-21 of the DEA 2010 provisions coming into force.

These prescribed practices and requirements will set out the policies that the registries in scope of the powers should adhere to, to avoid the threshold being met that could trigger the potential exercise of the powers. They will include a list of misuses and unfair uses of domain names that registries in scope must take action to mitigate and deal with, and also cover the registry's arrangements for dealing with complaints in connection with the domain names in scope. The proposed list has been designed to reflect the arrangements already in place through which registries in scope ensure instances of domain name abuses are dealt with appropriately and in a way which protects the interests of UK users.

We are now seeking feedback on the design of these Regulations from those with an interest in them and those who will have to comply with them.

This is the consultation required by s124O(6) of the Communications Act 2003. The aim of this consultation is to gather views from the relevant parties on the draft list of misuses and unfair uses of domain names in scope, and proposed principles which will underpin the prescribed dispute resolution procedure. We are seeking views on our proposals for the design of these prescribed practices and requirements, to ensure they are workable, proportionate and fit for purpose.

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# General Information

## Why We Are Consulting

The Department for Science, Innovation and Technology (DSIT) will be commencing sections 19-21 of the Digital Economy Act 2010 ([DEA 2010](#)), which set out the Secretary of State's powers of intervention in relation to internet domain name registries and abuse of their domain names. Once commenced, this will insert sections 124O to 124R of the DEA 2010 into the Communications Act 2003.

We are now seeking views on the details of the Regulations which we are considering making under s124O of the Communications Act 2003, to ensure they are workable, proportionate and fit for purpose.

## Consultation Details

**Issued:** 20 July 2023

**Respond by:** 31 August 2023

**Enquiries to:**

International Regulation and Trade team  
Department for Science, Innovation and Technology  
5th Floor  
100 Parliament Street  
London  
SW1A 2BQ

Email: [ukdomainnames.consultation@dcms.gov.uk](mailto:ukdomainnames.consultation@dcms.gov.uk)

**Consultation reference:** Powers in Relation to UK-Related Domain Name Registries

**Audiences:**

UK-based registries, users of domain names, registrars, industry bodies, cybersecurity organisations, trade associations, charities, Intellectual Property Rights Holders and the general public.

**Territorial extent:**

The whole of the UK.

## How to Respond

Please send your responses in PDF or Microsoft Word formats to the email address below, including your name, or the name of your organisation, in the subject line.

**Email to:** [ukdomainnames.consultation@dcms.gov.uk](mailto:ukdomainnames.consultation@dcms.gov.uk)

**Write to:**

International Regulation and Trade team  
Department for Science, Innovation and Technology  
5th Floor  
100 Parliament Street  
London  
SW1A 2BQ

When responding, please state whether you are responding as an individual or representing the views of an organisation.

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

## Confidentiality and Data Protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential please tell us, but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable data protection laws. See our [privacy policy](#).

We will summarise all responses and publish this summary on [GOV.UK](#). The summary will include a list of names or organisations that responded, but not people's personal names, addresses or other contact details.

## Quality Assurance

This consultation has been carried out in accordance with the government's [consultation principles](#). If you have any complaints about the way this consultation has been conducted, please email: [beis.bru@beis.gov.uk](mailto:beis.bru@beis.gov.uk).

# The Proposals

## 1. Background

The Digital Economy Act 2010 (DEA 2010) introduced measures in a number of media policy areas, including online infringement of copyright, public service broadcasting and content, network infrastructure and internet domain name registries.

Sections 19-21 of the DEA 2010 give the relevant Secretary of State powers of intervention in relation to certain internet domain name registries. The powers were originally put in place to ensure that the UK government had powers over any UK-related domain registries where there has been a serious relevant failure. This is where the registry, or any of its registrars or end-users, engage in prescribed practices that are unfair or involve the misuse of internet domain names, or where registries fail to adequately deal with complaints.

The role of the **registry** operator within the Internet ecosystem is to keep the master database of all domain names registered in each top-level domain (TLD). They are technical providers of naming and addressing identifiers on the internet. A **registrar** is an entity that offers domain name registration services to registrants in generic top-level domains (gTLDs). A domain name **registrant/end user** is an individual or entity who registers a domain name. Upon registration of the domain name, a registrant enters into a contract with a registrar.<sup>1</sup>

The Internet, including the domain system, has evolved since the DEA 2010 powers achieved Royal Assent. For example, since 2010, there are many more gTLDs in use, including those in scope of the powers - .scot, .wales/.cymru and .london, which were created in 2012 and have been operating since 2014.

It is essential that there continue to be procedures in place to deal with the misuse and unfair use of these domains for the users of UK-related domain names that are in scope of the powers. DSIT has therefore taken the decision to commence these powers to provide further certainty that these procedures exist and are upheld to the highest standards.

This will bring the UK into line with other countries such as Canada, the US and Australia, whose governments already have a degree of control over their country code top-level domain (ccTLD) registries.

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<sup>1</sup> As defined by the Internet Corporation for Assigned Names and Numbers (ICANN)



## 2. Proposed Approach to Commencing the Digital Economy Act 2010 Powers

DSIT intends to bring sections 19-21 of the DEA 2010 into force in the coming months. Following that, we are proposing to make Regulations which would prescribe the practices and requirements for the purposes of section 124O(3) of the Communications Act 2003 (the “Regulations”).

The Regulations will list practices that are considered to be an ‘unfair use’ or a ‘misuse’ of an internet domain name. These will form the ‘prescribed practices’ that the registries in scope will have to have policies in place to deal with to avoid meeting the threshold that could trigger the potential exercise of the powers. Alongside the list of ‘unfair use’ and ‘misuse’, the ‘prescribed requirements’ will also cover the registry arrangements for handling complaints in relation to domain names against each registry's operations.

As section 124O(8) of the Communications Act 2003 specifies, an internet domain name is “UK-related” “if, in the opinion of the Secretary of State, the last element of its name is likely to cause users of the internet, or a class of such users, to believe that the domain and its subdomains are connected with the United Kingdom or a part of the United Kingdom.” Our interpretation is therefore that section 124O(8) brings country code top-level domains (.uk) and generic top level domains (gTLDs) (.scot / .wales / .cymru / .london) into the scope of these powers. Second and third level domains of those domains, .co.uk for example, are similarly in scope and any UK-related domains allocated in the future will also be in scope.

The powers are limited in scope and only apply when there is a serious relevant failure at the registries in scope to comply with the prescribed practices and requirements. Before exercising these powers, the Secretary of State will need to consider whether either of the following two events, which constitute a *relevant* failure to comply with the prescribed practices and requirements, have taken place:

- Where the registry itself or any of its registrars or end-users have been engaging in practices that allow the misuse or unfair use of domains in scope, as set out in the list of prescribed practices.
- Where the registry’s arrangements for dealing with complaints in connection with domain names in scope do not comply with the requirements prescribed in the Regulations.

If the Secretary of State is satisfied that a relevant failure has taken place, they will have to make an assessment of whether that failure is considered to be a *serious* failure. The DEA 2010 sets out that the failure is considered to be serious if it has or is likely to adversely affect the reputation or availability of electronic communication networks or electronic communication services provided in the UK or a part of the UK. Or if it has or is likely to adversely affect the interests of consumers or members of the public in the UK or part of the UK.

If the Secretary of State is satisfied that a serious relevant failure has taken place, sections 124O, 124P and 124R of the Communications Act 2003 set out the steps that the Secretary of State then has to follow in order to exercise these powers.

1. If the Secretary of State is satisfied that a serious relevant failure in relation to an internet domain registry in scope is taking place or has taken place, they first have to notify the registry specifying its failure and the period of time during which the registry has the opportunity to resolve the failure and make representations to the government.
2. If the registry doesn't take steps to remedy the failure within the specified period of time following notification, the Secretary of State has the power to place a manager into the registry, who will ensure the registry takes steps to resolve the issue. Section 124Q of the Communications Act 2003 defines the powers and the functions of the manager.
3. The final section of the powers allows the Secretary of State to apply to the appropriate court, depending on where the registry is based, to amend the constitution<sup>2</sup> of the registry to ensure that it remedies the failures specified in the notice mentioned above, under point 1.

Section 134C of the Communications Act 2003 also gives the Secretary of State the authority to request reports from Ofcom related to internet domain names when making decisions relating to the use of these powers.

This consultation seeks your views on DSIT's proposals for the design of the 'prescribed practices and requirements'. These are described in more detail in Sections Three and Four of this document.

We are also engaging with the Internet Corporation for Assigned Names and Numbers (ICANN) who coordinate the Domain Name System (DNS). This will help ensure that commencing these powers does not interfere with ICANN's responsibility for the policies of the gTLDs in scope of the powers nor the registry agreements that ICANN has with each of the gTLD registries.

### 3. Defining the Misuse and Unfair Use of Domain Names

As outlined above, as part of the 'prescribed practices and requirements', the Regulations will list names and definitions of practices which are considered to present an 'unfair use' and a 'misuse' of UK-related domains. The registries in scope will be responsible for ensuring they have the appropriate policies and procedures in place to deal with the practices set out in this list.

The following list and definitions of misuse and unfair uses of domain names in scope are the result of engaging across government including with law enforcement and other government agencies. We have also consulted with key domain name bodies such as ICANN.

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<sup>2</sup> As an example, the constitution includes the articles of association for a company (s124R(5) Communications Act 2003)

## Domain Name Misuse

**Below are our initial proposals of the types of misuse of domains in scope for which the registries should have in place adequate policies and procedures to mitigate against.**

1. Registries should have in place adequate policies and procedures to mitigate against domain names being registered, and deal with instances when they have been notified that domain names are being used, with the purpose of carrying out the below misuses. We deem misuses to include these five broad categories of harmful activity as identified by ICANN.<sup>3</sup>

- **Malware:** installing malicious software on a device without the user's consent, which disrupts the device's operations, gathers sensitive information, and/or gains access to private computer systems. Malware includes viruses, spyware, ransomware, and other unwanted software.
- **Botnets:** collections of Internet-connected computers that have been infected with malware and commanded to perform activities under the control of a remote administrator.
- **Pharming:** redirection of unknowing users to fraudulent sites or services, typically through the Domain Name System (DNS) hijacking or poisoning. DNS hijacking occurs when attackers use malware to redirect victims to the attacker's site instead of the one initially requested. DNS poisoning causes a DNS server, or resolver, to respond with a false IP address bearing malicious code.
- **Phishing:** when an attacker tricks a victim into revealing sensitive personal, corporate, or financial information (e.g. account numbers, login IDs, passwords), whether through sending fraudulent or 'look-alike' emails, or luring end users to copycat websites. Some phishing campaigns aim to persuade the user to install software, which is in fact malware. Phishing differs from pharming in that the latter involves modifying DNS entries, while the former tricks users into entering personal information.
- **Spam emails:** when used as a vehicle for at least one of the preceding 'misuses'.

2. Registries should also have in place adequate policies and procedures to combat the use of domain names administered by those registries which are registered to promote or display **Child Sexual Abuse Material**. This refers to any representation by whatever means of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child primarily for sexual purposes, as outlined in the Optional Protocol to the Convention on the Rights of the Child on the sale of Children, Child Prostitution and Child Pornography.

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<sup>3</sup> <https://www.icann.org/dns-security-threat>

### Questions on the list of misuse of domain names:

1. Do you agree we should include *all* of the types of misuses of domain names set out under the 'Domain Name Misuse' heading, in our 'prescribed practices' ? If not, which ones should be omitted and why?
2. Are the descriptions of the types of domain name misuses set out under the 'Domain Name Misuse' heading fair and appropriate for the purposes of including them in our 'prescribed practices'? If not, please explain why not and propose alternative descriptions.
3. Are there any other types of domain name misuse that should be included in the 'prescribed practices'? If so, please describe them and provide reasons as to why you think they should be included.

### Domain Name Unfair Use

**Below are our initial proposals of types of unfair uses of domains in scope for which the registries should have in place an adequate dispute resolution procedure to deal with. This dispute resolution procedure should follow the principles outlined in the 'prescribed requirements' (see Section Four) in order to address these types of domain name abuse when they occur.**

Registries should have in place an adequate dispute resolution procedure to deal with instances when they have been notified that domain names have been registered with the purpose of carrying out **unfair** practices which constitute 'cybersquatting'.

Cybersquatting refers to the pre-emptive, bad faith registration of trade marks as domain names by third parties who do not possess rights in such names. This includes 'typosquatting', when an end user takes advantage of common misspellings made by Internet users who are looking for a particular site or a particular provider of goods or services, in order to obtain some benefit.

### Questions on the list of unfair uses of domain names:

4. Do you agree with the proposal to include 'cybersquatting' (including 'typosquatting') in the list of unfair uses of domain names in our 'prescribed practices'? If not, why?
5. Is the description of 'cybersquatting' fair and appropriate for the purposes of including it in our 'prescribed practices'? If not, please explain why not and propose an alternative description.

6. Are there any other examples of unfair use of domain names that should be included in the 'prescribed practices'? If so, please describe them and provide reasons as to why you think they should be included.

## 4. Design of the Dispute Resolution Procedure

This part of the Regulations is in relation to the arrangements made by the registry for dealing with complaints in connection to internet domain names. Unlike the lists of misuses and unfair uses, this part of the Regulations is still at early stages of development and we are seeking your views on the overall principles which we want our dispute resolution procedure to follow.

We propose that the below principles, which draw upon text from binding domain name dispute provisions found in multilateral free trade agreements, underpin our prescribed dispute resolution procedure:

- Ensuring flexibility so that the rules established in existing relevant registries' dispute resolution procedures can be met.
- Ensuring that it is not overly burdensome for the domains in scope of the powers to meet.
- Ensuring it is fair and equitable in its design.
- Ensuring that it does not preclude resort to judicial proceedings.
- Ensuring that disputes are resolved expeditiously and at low cost.
- Ensuring that the procedure is clearly set out in an open and transparent way.

### Questions on the design of the Dispute Resolution Procedure:

7. What would you consider to be too burdensome in the context of resolving disputes under our prescribed dispute resolution procedure?
8. What does 'expeditiously' mean to you in the context of resolving disputes under our prescribed dispute resolution procedure?
9. What do you consider to be 'low cost' in the context of resolving disputes under our prescribed dispute resolution procedure?
10. What would you consider a 'fair' and 'equitable' dispute resolution procedure design to be?
11. Do you have any further comments on best practice or about the overall design of our dispute resolution procedure?

# Summary of Business Impact

The cost of the proposed approach to commencing the DEA 2010's provisions relating to internet registries and domain names is expected to be minimal. The introduction of these powers is to ensure that the UK continues to meet international best practice on the governance of country top-level domains (ccTLDs). Therefore, the approach focuses on continuing existing practices and is unlikely to result in material changes to the actions/steps businesses currently take.

Based on a proportionate assessment of the proposals at the consultation stage, impacts are expected to fall well below the *de minimis* threshold of +/- £5 million per year and therefore, a full impact assessment has not been prepared to support the consultation. The department will keep this under review as the policy develops or if further evidence becomes available in preparation for the final stage.

## Questions on the assessment of business impact

12. To what extent do you agree or disagree with our assessment under the 'Summary of Business Impact' section? Please provide details for your answer.
13. Are there potential positive impacts (including costs or financial implications) that the proposals outlined in this consultation may have on businesses, consumers or the public sector? Please provide any evidence or comments on what you think these positive impacts would be.
14. Are there potential negative impacts (including costs or financial implications) that the proposals outlined in this consultation may have on businesses, consumers or the public sector? Please provide any evidence or comments on what you think these negative impacts would be.
15. Please provide any other comments or evidence that relates to or is about the analysis under the 'Summary of Business Impact' section.

# Public Sector Equality Duty

The Public Sector Equality Duty (PSED) is a duty on public bodies to consider how their policies or decisions affect people who are protected under the Equality Act 2010. Protected characteristics under the Equality Act 2010 are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

## **Questions on potential impacts on individuals with protected characteristics:**

16. Do you have any comments about the potential positive and/or negative impacts that the options on the broad purposes of the commencement of the DEA 2010 powers outlined in this consultation may have on individuals with a protected characteristic under the Equality Act 2010? If so, please explain what you think these impacts (both positive and/or negative) would be.
17. If you believe there may be negative impacts, what do you think could be done to mitigate them?

## Consultation Questions

1. Do you agree we should include *all* of the types of misuses of domain names set out under the 'Domain Name Misuse' heading, in our 'prescribed practices' ? If not, which ones should be omitted and why?
2. Are the descriptions of the types of domain name misuses set out under the 'Domain Name Misuse' heading fair and appropriate for the purposes of including them in our 'prescribed practices'? If not, please explain why not and propose alternative descriptions.
3. Are there any other types of domain name misuse that should be included in the 'prescribed practices' ? If so, please describe them and provide reasons as to why you think they should be included.
4. Do you agree with the proposal to include 'cybersquatting' (including 'typosquatting') in the list of unfair uses of domain names in our 'prescribed practices'? If not, why?
5. Is the description of 'cybersquatting' fair and appropriate for the purposes of including it in our 'prescribed practices'? If not, please explain why not and propose an alternative description.
6. Are there any other examples of unfair use of domain names that should be included in the 'prescribed practices'? If so, please describe them and provide reasons as to why you think they should be included.
7. What would you consider to be too burdensome in the context of resolving disputes under our prescribed dispute resolution procedure?
8. What does 'expeditiously' mean to you in the context of resolving disputes under our prescribed dispute resolution procedure?
9. What do you consider to be 'low cost' in the context of resolving disputes under our prescribed dispute resolution procedure?
10. What would you consider a 'fair' and 'equitable' dispute resolution procedure design to be?
11. Do you have any further comments on best practice or about the overall design of our dispute resolution procedure?
12. To what extent do you agree or disagree with our assessment under the 'Summary of Business Impact' section? Please provide details for your answer.
13. Are there potential positive impacts (including costs or financial implications) that the proposals outlined in this consultation may have on businesses, consumers or the public sector? Please provide any evidence or comments on what you think these positive impacts would be.



14. Are there potential negative impacts (including costs or financial implications) that the proposals outlined in this consultation may have on businesses, consumers or the public sector? Please provide any evidence or comments on what you think these negative impacts would be.
15. Please provide any other comments or evidence that relates to or is about the analysis under the 'Summary of Business Impact' section.
16. Do you have any comments about the potential positive and/or negative impacts that the options on the broad purposes of the commencement of the DEA 2010 powers outlined in this consultation may have on individuals with a protected characteristic under the Equality Act 2010? If so, please explain what you think these impacts (both positive and/or negative) would be.
17. If you believe there may be negative impacts, what do you think could be done to mitigate them?

## Next Steps

Responses to this consultation will be reviewed and our proposals for design of the Regulations will be revised appropriately before drafting them.

This consultation is available from: [www.gov.uk/government/organisations/department-for-science-innovation-and-technology](http://www.gov.uk/government/organisations/department-for-science-innovation-and-technology)

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