



department for
**culture, media
and sport**

Implementing the revised EU Electronic Communications Framework - Appeals

HMG proposals on reform of the Telecommunications Appeals Framework

August 2011

improving
the quality
of life for all

Our aim is to improve the quality of life for all through cultural and sporting activities, support the pursuit of excellence, and champion the tourism, creative and leisure industries.

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Ministerial Foreword



Foreword from the Minister for Culture, Communications and Creative Industries

In autumn 2010, the Government published its proposals for implementing revisions to the EU Electronic Communications Framework. This included our proposals for changes to the Telecom appeals framework.

In our formal response to that consultation exercise published in April this year, we set out our final proposals for Framework implementation. We also said that we would consult again on our proposals for reform of the appeals framework. This was in response to the call by stakeholders for greater detail on the need for changes and our specific proposal. These are addressed in this document.

We also received a number of suggestions for alternative approaches to reform of the appeals framework and these too are considered here. I am grateful to all who contributed so far to this complex issue.

This document sets out our preferred legislative approach. It also takes account of the other alternative approaches to reform of telecoms appeals suggested by stakeholders.

We are absolutely committed to having a fair, open and accessible route to appeal against Ofcom decisions that takes the merits duly into account. That is required by the Directive and we believe that it is right that it should be. Our proposals ensure that this continues to be the case.

We are also committed to ensuring that the UK does not gold-plate European legislation. The changes that are proposed in this document, will correct the previous over implementation of the original 2002 Framework and lead to speedier and more efficient appeals from Ofcom decisions.

The changes to the EU Electronic Communications Framework have brought our regulatory framework up to date and will help to ensure that there is a level playing field in regulation across Europe. The changes that we have proposed to the appeals Framework complete that process.

I look forward to your views.

A handwritten signature in black ink, appearing to read 'Ed Vaizey', with a stylized flourish at the end.

Ed Vaizey

Minister for Culture, Communications and Creative Industries

1. Introduction

1. In September 2010 the Government published its proposals for implementing the revised EU Electronic Communications Framework.¹
2. In that document we described the main material changes that were needed to implement the revised Framework. These included proposals for changes to the telecoms appeals framework.
3. The Government is of the view that when the original 2002 Framework was implemented in 2003, it over implemented Article 4(1) of the Framework Directive introducing an unnecessarily high standard of appeal on the merits into section 192 of the Communications Act 2003. We think it is right that we now move to correct that previous gold-plating. That intention was made clear in the Government response to the Framework implementation published in April this year.
4. In that document we set out our intention to consult on a specific set of changes to the appeals regime as soon as was practicable. However, we also recognised that stakeholders had raised legitimate concerns around the nature of the problem that we are trying to solve and the lack of detail about the precise change proposed, and, in particular, how the new system would work in practice. Here, those concerns are addressed: our preferred approach to the reform is elaborated in detail and views are sought on the proposal. For absolute clarity we have set out the proposed changes as they would look in the legislation at **Annex 1**.
5. We also explore a number of alternatives to our preferred legislative option. These have been suggested by stakeholders in both formal responses to the original Framework consultation as well as separately in

¹ The Government's original consultation document, "Implementing the Revised EU Electronics Communication framework – Overall approach and consultation on specific issues" can be found at: <http://www.culture.gov.uk/images/consultations/10-1132-implementing-revised-electronic-communications-framework-consultation.pdf>
The full text of the amending Directives is available at: http://ec.europa.eu/information_society/policy/ecomms/library/legislation/index_en.htm.
The Government response is published at: <http://www.culture.gov.uk/publications/8046>

conversation. These suggestions seem to us to be more in the nature of potential additional tools rather than alternatives. We consider them in this document and ask questions of them whilst recognising that more work would need to be done to understand how any of them might fit with the proposed new regime.

6. The Government is absolutely committed to a fair, open and transparent right to appeal against Ofcom's decisions, with the merits taken duly into account. It is the Government's firm belief that a fast moving and dynamic sector needs a robust but speedy appeals framework. However, we think that the current standard of review leads to unnecessary lengthy and expensive appeals of the regulator's decisions. These delays in the implementation of remedies and decisions are bad for market certainty and ultimately bad for consumers.
7. The proposed change is not intended to reduce the number of appeals or reduce access to justice. Rather it is to introduce greater efficiency in the system and help ensure that only appeals that are material are considered.
8. This consultation incorporates the views of stakeholders expressed to Government during the course of 2010 consultation and in meetings between stakeholders and Government since. In total we ask 11 questions of stakeholders.
9. This document also sets out the Government's response to the representations and contributions we received during the public consultation on our proposals for reform of the appeals process as part of the wider changes to the EU Electronic Communications Framework.²
10. We also ask a question of stakeholders on the economic and equality impact assessment which have been produced to support implementation. Responses to this question have been addressed in the revised impact assessments which are published at:
<http://www.culture.gov.uk/consultations/7806.aspx>

² As we went to press, the CAT delivered its findings in the 0800 numbers dispute. In its judgment, the CAT set out its view of what the current regime requires. We therefore invite consultees to give their views on these findings and their implications. The Government will provide a full response to the views of stakeholders as well as setting out its own position with regard to this case in the formal Government response.

Implementing the Change - What Happens Next?

11. The deadline for implementation of the wider Framework package was 26th May 2011. It is the view of Government that this associated change to the telecoms appeals framework is made as quickly as possible.
12. There is good reason for this. The revised Framework has introduced a more frequent process of market review as well as changes to the dispute resolution process. We think it is important the at the standard of appeals is revised as soon as is practicable to prevent any consequent increase in the number of lengthy appeals before the Competition Appeal Tribunal (CAT) as it is our view this could have detrimental impacts both on the telecoms market and consumers.³
13. As with the transposition of the changes to the Framework, we intend to use secondary legislation made under section 2(2) of the European Communities Act 1972 to implement most of the required changes if they are to go ahead.
14. It would be our intention to lay the statutory instruments which will affect the necessary change before Parliament by spring 2012 and for the amendments to the Communications Act 2003 to come into force on 6th April 2012.

What happens next?

15. This consultation will close on 14th October 2011, running for 8 weeks in total. As we consulted previously on our proposals we do not think there is need to consult for longer.
16. The Department for Culture, Media and Sport will publish all responses received (subject to confidentiality), as well as an official Government Response to the consultation.

How to respond

17. When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the

³ Similar to the 2002 package, the revised Framework has a “big bang” date from which the domestic transposition measures in each Member State must apply to ensure consistent application of the Framework across the EU, namely 26th May 2011.

appropriate interest group on the consultation response form and, where applicable, how the views of members were assembled.

18. A copy of the Response Form to our proposed approach is available electronically at:
www.culture.gov.uk/consultations/8349.aspx
We would prefer responses to be submitted electronically.
19. The Response Form is also attached **Annex 2**. Should you respond in hard copy, the form can be submitted by post, fax or email to:
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Fourth Floor, 2-4 Cockspur Street
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Tel: 020 7211 6348
Fax: 020 7211 6339
Email: ecommsframework@culture.gsi.gov.uk
20. A list of those organisations and individuals consulted is in **Annex 3**. We would welcome suggestions of others who may wish to be involved in this consultation process.
21. This consultation exercise will run from 19th August until October 14th 2011.

2. Changes to the telecoms appeals framework

Appeals

23. In our consultation document on our preferred approach to the implementation of the European Framework on Electronic Communications, we made clear our view that an effective, open and fair appeal mechanism is an essential part of the regulation of the telecoms sector. This is provided for by Article 4 of the Framework Directive which sets out the rights of appeal against the decisions of national regulatory authorities and is implemented in law through sections 192 to 196 of the Communications Act 2003.
24. Article 4 requires that an effective appeal mechanism taking due account of the merits exists at a national level for any user or undertaking affected by the decision of a national regulatory authority.
25. The revised Framework included a number of minor textual changes to the way the appeal process is described as well as adding a new provision, Article 4(3), which places an obligation on Member States to collect data on the number, subject and duration of appeals and the number of decisions to grant interim measures and report this to BEREC and the European Commission on request.

Article 4 - Right of appeal

1. Member States shall ensure that effective mechanisms exist at national level under which any user or undertaking providing electronic communications networks and/or services who is affected by a decision of a national regulatory authority has the right of appeal against the decision to an appeal body that is independent of the parties involved. This body, which may be a court, shall have the appropriate expertise available to it to enable it to carry out its functions. Member States shall ensure that the merits of the case are duly taken into account and that there is an

effective appeal mechanism. Pending the outcome of any such **the** appeal, the decision of the national regulatory authority shall stand, unless ~~the appeal body decides otherwise~~ **interim measures are granted in accordance with national law.**

2. Where the appeal body referred to in paragraph 1 is not judicial in character, written reasons for its decision shall always be given. Furthermore, in such a case, its decision shall be subject to review by a court or tribunal within the meaning of Article 234 of the Treaty.

3. Member States shall collect information on the general subject matter of appeals, the number of requests for appeal, the duration of the appeal proceedings and the number of decisions to grant interim measures. Member States shall provide such information to the Commission and BEREC after a reasoned request from either.

26. The UK has implemented this through section 195(2) of the Communications Act 2003 which provides:

s.195(2): *“The Tribunal shall decide the appeal on the merits and by reference to the grounds of appeal set out in the notice of appeal.”*

27. Appeals brought under section 192 of the Communications Act 2003 are heard by the Competition Appeal Tribunal (CAT). Decisions which can be appealed under section 192 are set out in section 192(1). This consultation only relates to appeals under section 192 of the Communications Act 2003 and to appeals under the provisions referred to in paragraph 58-60. These changes would not apply to appeals against decisions taken by Ofcom on broadcasting matters under section 317 of the Communications Act 2003.

28. When the Government implemented Article 4 of the EC Framework Directive (the Directive) in 2003 it did so by providing an appeal on the merits.

29. The current transposition has been interpreted by some appellants as requiring a full rehearing of the case. Some contend that the UK transposition intentionally goes beyond the requirements of Article 4(1) and provides for a very high standard of appeal. In practice too, appeals before the CAT are considered by many to have become a full rehearing, with full consideration and interrogation of Ofcom's evidence, analysis and decision. This results in a lengthy appeals process, in which decisions lag behind the pace of technological change and market development.

30. The Government believes that this aspect of the current transposition goes further than what is required by the Directive and we propose to clarify the position by amending the relevant section of the Communications Act 2003. The proposed amendment is at **Annex 1**.
31. It is not the Government's intention to go beyond what the Directive requires. We believe an effective appeal should, as a minimum, consider whether the regulator acted lawfully, and followed the correct procedures, took relevant issues and evidence duly into account and generally acted in accordance with their statutory duties. It should allow, where appropriate, the interrogation and cross examination of evidence. In considering these issues, it should duly take account of the merits of the case.

Rationale for a legislative change

32. The Government's intention was not to goldplate the UK's implementation of the original 2002 Framework. At that time the Government considered that this implementation was necessary to meet the requirements of the Directive. However, the Government now considers that the current implementation of Article 4 of the Directive as an appeal "on the merits" goes beyond what is required in Article 4 in that the appeal body only needs to ensure that the merits of the case are duly taken into account.
33. The Court of Appeal in the T-Mobile case⁴ has clearly set out that what Article 4 requires is "an appeal body and no more, a body which can look into whether the regulator had got something material wrong", and not "a fully equipped duplicate regulatory body waiting in the wings just for appeals". The Court of Appeal went on to conclude that, given its flexibility, an appeal by way of judicial review was capable of meeting this requirement.
34. Under the current appeals system, Ofcom's findings of fact and analysis are routinely interrogated in significant detail. Hearings are lengthy, and considerably lengthier than is typically the case for judicial reviews. This is in our view primarily due to the treatment of alleged errors of fact and/or analysis of those facts, and the regular extensive examination and cross examination of factual and expert witnesses in relation to these matters on each and every part of Ofcom's decision.

⁴ *T-Mobile (UK) Ltd v Ofcom* [2008] EWCA Civ 1373. This case considered the question of whether judicial review of an Ofcom decision satisfied the requirements of the Framework Directive, if the CAT did not have the jurisdiction to deal with an appeal from that decision.

35. This double banking of decision making, where matters are considered in full by Ofcom and then again in full by the Competition Appeal Tribunal (CAT) and/ or the Competition Commission (CC), has led to significant time and resource costs for Ofcom and for all concerned.
36. There is some evidence that Ofcom is spending increasing amounts of time on addressing appeals. Ofcom tracks the hours devoted to addressing litigation on an ongoing basis. In the financial year 2009/10, 11,578 hours were allocated to addressing relevant litigation. In this financial year, by January 2011 8,707 hours had already been allocated to this work. These figures remain high and show no sign abating. They are explored in full in the supporting economic impact assessment at:
www.culture.gov.uk/consultations/8349.aspx
37. The resource devoted by Ofcom to addressing litigation associated with appeals must now be found within a much reduced budget. Over the current Spending Review period Ofcom must find efficiencies equivalent to 28.2% of its 2010/11 budget. In this context, the resource allocated to defending market decisions before the CAT is unsustainable.
38. In addition, changes that have been made elsewhere in the Framework, particularly in relation to market review, but also dispute resolution processes, will also have an impact on appeals. For example, the market review will become more onerous for both Ofcom and stakeholders. Ofcom will be required to carry out new market reviews on the specified markets every three years and regulatory horizons will be shortened as a result.
39. There is a real risk that these changes, combined with the current appeals process will lead to greater market uncertainty caused by overlapping appeals. We see legislative change to the telecoms appeals framework outlined in this document as the only appropriate and effective solution.

The Government's proposal for legislative change

40. Therefore, it is the Government's view that current over-implementation of the Framework Directive must be corrected, so that UK legislation more closely reflects the original intention and wording of the Directive.
41. The aim is to deliver faster, better focused appeals which are better suited to the fast paced nature of the telecoms sector. This will be less costly for appellants and Ofcom, without reducing access to justice or the ability to challenge Ofcom decisions where a material error is identified. There is no intention to reduce the

overall number of appeals or to prevent anyone from appealing a decision where an appeal would be possible currently.

42. In addition, it is hoped that streamlining the process of appeal and thereby diverting resource currently allocated to appeal, will help Ofcom deliver required efficiency savings in the current spending period without impacting on the quality of regulation across the telecoms sector.
43. The Government proposes to amend the appeals provisions in the Communications Act 2003 by removing the requirement for the case to be decided on the merits and instead requiring the CAT to decide the case by applying the same principles that would be applied by a court on an application for judicial review, ensuring that the merits of the case are duly taken into account.
44. This change will ensure that the requirements of Article 4 of the Directive are fully met but not exceeded, by importing verbatim the requirement to take due account of the merits, while also ensuring that stakeholder's rights of appeal are fully protected. The Government has considered whether a permission stage should be included (as is the case for judicial review in the High Court) and decided that it should not. This will ensure that appellants have the same rights of access to be heard as currently exists.
45. Whilst it will be a matter for the appeal bodies to decide what is necessary in any given case on its specific facts, Government anticipates that changing the standard of review to that required by Article 4 will result in appeals which are more focussed on material points, with a corresponding reduction in the need for and/ or scope of oral examination and cross examination of factual and expert witnesses, leading to shorter hearings and more focussed pleadings than is presently the case.
46. It is, of course, ultimately for the CAT and the Court of Appeal (to which appeal lies from the CAT) to develop jurisprudence,⁵ but it is likely that the scope of the review and the length of the appeal process will change as a consequence of the Government's proposal. Rather than the appeal body interrogating Ofcom's facts and analysis in as much detail as it does under the current regime, it will instead be able to focus on Ofcom's decision as a whole, with a view to identifying whether it is based on any material errors. This should result in the preparation of less extensive pleadings and shorter appeal hearings. In the long run, this is likely to lead to a more streamlined and efficient appeals regime.

⁵ See paras 61-67 below (Transition period).

47. This could potentially benefit industry. For example, in the case of Mobile Number Portability, firms would not have incurred as high a cost if Ofcom's decision was overturned more quickly.
48. We firmly believe that changing the standard of review to an enhanced form of judicial review will have a significant and beneficial impact on the costs and efficiencies of the appeals process and will result in benefits to UK citizens and consumers and to the UK economy as a whole.
49. We propose that the changed basis for appeals apply only to those appeals brought against decisions made after commencement, ie when the amendment comes into force it would not apply to appeals in the process of being heard before the tribunal at commencement, or to appeals against decisions brought after commencement in relation to decisions made before commencement.
50. However, the Government recognises that many of the responses to our first consultation did not support a change to the merits system of appeals. We are therefore now inviting views on our specific proposed changes to the system. As part of this additional consultation we are also now inviting views on alternative approaches to improve and streamline the appeals system. We are therefore now seeking responses to the following questions.

Q1. The Government welcomes views on whether the specific proposal (at Annex A) to amend the Communications Act 2003 will deliver speedier more efficient appeals, whilst still guaranteeing fair, open and accessible appeals from Ofcom decisions.

Q2 The Government also welcomes views on the proposal that the new basis for appeals should apply only to appeals against decisions made after the changes come into force.

How would the new regime be different?

51. We are proposing a change from appeal on the merits to appeal on the basis of judicial review, ensuring that the merits of the case are duly taken into account. Respondents to our original Framework consultation sought clarity on how the Government envisages judicial review duly taking account of the merits would

work in practice. This section addresses those concerns and sets out how we see this change in practice.

52. A judicial review is an appeals scrutiny procedure which, for the most part, focuses on the process by which a public authority (such as a regulator) made a decision. Traditionally, a judicial review did not tend to examine the merits of the decision being challenged (although it is sufficiently flexible to do so – see further below). It ensured that, at a minimum, the court gave due consideration to whether the regulator acted lawfully, followed the correct procedures, took relevant issues and evidence into account and generally acted in accordance with its statutory duties.
53. The Government is clear that a judicial review which only took these limited factors into account would not be appropriate for the most of the decisions that Ofcom takes with regards to the electronic communications market because those decisions are subject to Article 4 of the Framework Directive, which clearly requires the appeal body to ensure that the merits of the case are ‘duly taken into account’.
54. However, it is the view of the Government that judicial review has changed sufficiently and is no longer restricted to considering the narrow set of factors, set out above around due process. It has evolved and the courts have made it clear that it is sufficiently flexible to take the merits into account where it is necessary and appropriate to do so.⁶
55. The Government is therefore confident that judicial review is capable of duly taking into account the merits and so would be capable of fully meeting the requirements of Article 4 of the Framework Directive. Nevertheless, the Government considers that it would be necessary and desirable from the perspective of implementing Article 4 to make it clear in the legislation that the Article 4 test would apply.
56. Currently, the CAT is able to correct Ofcom decisions, although this is normally only done in cases of price control appeals, as well as direct Ofcom to reconsider its decision. It is the view of Government that a move to judicial review on the merits will retain this flexibility.
57. We acknowledge that there is no legislative precedent in the UK for having a statutory judicial review which expressly sets out that

⁶ As Lord Justice Jacob stated in the T Mobile case, “Accordingly I think there can be no doubt that just as JR was adapted because the Human Rights Act so required, so it can and must be adapted to comply with EU law and in particular Article 4 of the Directive.” A recent judicial review in relation to the Digital Economy Act 2010 also involved expert economic evidence being adduced.

it must duly take into account the merits of the case. However, the Court of Appeal made clear in the T-Mobile case that there have been situations where, for example, the operation of the Human Rights Act 1998 has required the judicial review process to be sufficiently flexible to consider the merits of a case extensively.

58. The Government considers that the proposed change should apply to an appeal:
- I. under section 192(1)(a) of the Communications Act 2003 against a decision by Ofcom under Part 2 of the Communications Act 2003 and Parts 1 to 3 of the Wireless Telegraphy Act 2006,
 - II. under section 192(1)(b) against a decision by Ofcom to which effect is given by a direction, approval or consent relating to a condition set by Ofcom and
 - III. under section 192(1)(c) against a modification or withdrawal of a direction, approval or consent.
59. Section 192(1)(b) and (c) provide a right of appeal against a decision by Ofcom *or another person*. It would seem logical that the basis of appeal should be changed for appeals under section 192(1)(b) or (c), not only against decisions of Ofcom, but also against decisions of another person. It also seems logical that if the basis of appeal is being changed for an appeal against a decision by Ofcom to give a direction under section 132 to suspend or restrict an operator's entitlement in an emergency, the same should apply to appeals under section 192(1)(d)(iii) against a decision of the Secretary of State to direct Ofcom to give a section 132 direction.
60. There are also some rights of appeal from decisions of Ofcom which are outside the Communications Act 2003, but which are analogous to the rights of appeal under the 2003 Act. Those appeals, under the Mobile Roaming (European Communities) Regulations 2007 (SI 2007/1933) and the Authorisation of Frequency Use for the Provision of Mobile Satellite Services (European Union) Regulations 2010 (SI 2010/672), are also currently decided on a merits basis, and it would be logical to align the basis of these appeals with that of appeals under the 2003 Act.

Q3. Do consultees agree with the proposal that the changes to the basis of appeal extend to the appeals described in paragraphs 59-60?

Transition period

61. Whilst the basic principles of judicial review (including its flexible nature) are well understood, the proposed changes represent a departure from a classic judicial review and may therefore create uncertainty for an initial period until it is fully established. The precise implication of the changes will only be fully understood by industry and Ofcom once they have been clarified by the courts, which could in turn result in moderately higher levels of litigation, and in particular, in appeals of CAT/CC decisions to the Court of Appeal as the legal boundaries of the new regime are tested.
62. This was one of the key concerns raised in responses to our original September consultation. There were also concerns about the uncertainty created by a new standard which would need to be tested in the CAT and the courts and case law developed.
63. We accept that there may be some initial uncertainty around the new appeals mechanism and that a different review standard might create more uncertainty than it resolves in the short term. Inevitably, there will be some appeals which will test the boundaries of the new regime but we expect case law to be established fairly quickly (within 2-3 years at the most).
64. It will be for the case judge/ panel to decide in any particular case, on the facts and circumstances of that case, what consideration of the merits is appropriate. As the T Mobile case makes clear, consideration of the merits will be difficult in a case where "...all that is impugned is an overall value judgment based upon competing commercial considerations in the context of a public policy decision."
65. The Government considers that this is fully consistent with the practice in the High Court in claims for judicial review; the CAT will not need to undertake the same level of extensive examination in respect of each aspect of Ofcom's findings of fact and expert analysis. Rather, it will instead be able to focus more broadly on Ofcom's decision as a whole, with a view to identifying whether it is based on any material errors.
66. This will result in appeals which are more focussed on material points, with a corresponding reduction in the need for and/or scope of oral examination and cross examination. This should result in the preparation of less extensive pleadings and shorter appeal hearings. It should also enable Ofcom to make quicker decisions, without losing the important rights of appeal and the checks and balances that appeals bring to decision making.
67. However, it would also be possible for judicial review to include a full hearing on the merits of a particular case where that was

considered necessary by the CAT in order to conduct an effective appeal under the circumstances.

The views of the CAT

68. The CAT raised many of the same issues as industry in response to the consultation and in conversation. The CAT have also said that case law is moving in the right direction with the current system of appeals and so there is no need to change the system now.
69. Some stakeholders have suggested that this trend is the consequence of learning from the past seven years, by both Ofcom and communication providers and this view is shared by the CAT. They argue that appeals may soon be more efficient and concluded more quickly based on learning from previous decisions (for example on price control matters).
70. In addition, the CAT have suggested that there is little material difference between the meaning of the wording that we have proposed and the test currently applied. We understand their view is that telecoms appeals will, of necessity, be complex cases and that the EU requirement to take the merits duly into account prevents any significant change in the test to apply and the level of detail they would need to look at.
71. The view of Government is that there is clear evidence of an increase in the length of appeal proceedings (mirrored in an escalation of associated costs for Ofcom and industry) and that this is unlikely to change if the current legislative framework remains unaltered.
72. Indeed, the learning effect referred to by industry and the CAT could work in the opposite direction, with industry stakeholders bringing increasingly granular appeals given the preparedness of the CAT and the Competition Commission to engage with very detailed modelling assumptions. We believe that the costs associated with any uncertainty brought by the change will be less than those associated with increasingly granular appeals under the current system.

Effect of change on the standard of review

73. The Government does not consider that a necessary consequence of the change in the appeals regime would be “worse” decision-making, or the removal of an important discipline on Ofcom in the form of proper scrutiny of its decisions. Ofcom has statutory and

general public law duties to make decisions in a transparent manner and to give full reasons for its decisions. It will continue to have to meet those duties. Further, the revised standard of review will continue to ensure that decisions are subject to appropriate judicial scrutiny, consistent with the requirements of Article 4 that appeals should correct material errors as necessary.

Broadcasting appeals

74. The legislative change currently proposed by DCMS will not affect the appeal mechanism under section 317 of the Communications Act 2003 covering Ofcom's exercise of Broadcasting Act powers for competition purposes. This is made clear in the proposed drafting.

Communications Act 2003

75. Attached at Annex A are the proposed changes the Government would need to make to the Communications Act 2003 to implement these changes to the appeals regime.

3. Responding to points made in the Framework consultation

Consultation responses

76. A large number of stakeholders responded to the questions on appeals posed in our consultation on proposals for implementing the Framework and raised a number of issues which they thought Government should consider further. These are explored below. In our September consultation, we asked:

- Q1 The Government welcomes views on whether an enhanced form of Judicial Review (duly taking account of the merits) would: prevent the risk of regulatory gridlock under the new Framework by reducing the number and nature of appeals against Ofcom decisions; and whether there are any disadvantages in such an approach.**
- Q2 We welcome views on whether there are steps the Government could take to ensure that appeals are focussed on determining whether Ofcom has made a material error.**

Regulatory gridlock

77. Respondents argued that the number of markets which Ofcom are required to review is being reduced from 18 to 7 under the revised Framework and that the timeframe can be extended in exceptional circumstances (an appeal might constitute exceptional circumstances).
78. They argue that this, together with the wealth of evidence that Ofcom have built up over recent years in market reviews (meaning they are not starting from scratch each time but looking at what has changed in the market), will result in a decreasing burden on Ofcom. They also argue that changes to the dispute resolution power could result in fewer appeals not more because the widening of parties who may bring an appeal is offset by the removal of the power to bring a dispute where there is no existing obligation.

79. The Government does not consider that the reduction in the markets listed by the European Commission will necessarily result in any significant reduction in the number of market reviews that Ofcom will in fact carry out. Ofcom will need to continue to carry out market reviews in markets which it has previously reviewed unless and until it is satisfied that those markets are effectively competitive.
80. Equally, whilst we acknowledge that Ofcom has considerable experience of the markets that it regulates, it is compelled to carry out market analyses in accordance with the requirements laid down in law including taking the utmost account of Commission recommendations and guidelines. Furthermore, the carrying out of market analysis involves obtaining new data and other evidence to ensure that Ofcom's proposals accurately reflect technological and economic developments. Normally, significant developments have taken place in the markets since the last review. Ofcom also needs to carry out thorough consultations that allow stakeholders a sufficient opportunity to comment on its proposals including often complex economic assessments.
81. As a result, we expect Ofcom to have to undertake a thorough assessment each time it reviews a market, without simply taking its previous findings and updating them at the margins. We remain of the view that the increased three year frequency of reviews required by the new Framework will increase both the burden on Ofcom and the need for it to be able to conduct reviews in an efficient manner.
82. The Framework has introduced changes to Ofcom's dispute resolution functions: (i) Ofcom will have a power (but no longer a duty) to resolve disputes relating to network access where that access is not provided pursuant to a regulatory obligation, and (ii) the category of persons who may submit a dispute to Ofcom in relation to disputes relating to network access (which is provided pursuant to a regulatory obligation) will be widened to include persons who directly benefit from that access, but who may not themselves be communications providers.
83. It is not possible accurately to predict how these changes will affect the number of disputes which Ofcom may be required or decide to resolve, as disputes may arise for a wide variety of reasons in light of rapidly changing market circumstances. However, it is not automatically the case that there is a direct correlation between the number of disputes which Ofcom resolves and the number of appeals of Ofcom's dispute determinations, as an undertaking's decision to appeal will depend on a wide range of factors.

84. When considered together with the increased frequency of market reviews required under the new framework, we believe that the concerns around regulatory gridlock if the appeals system is not addressed are still an issue.

The number and cost of appeals in the UK

85. Respondents question the Government's suggestion that there were an unduly high number of appeals in the UK. They pointed out that the UK ranks pretty much middle table in Europe on number of appeals, where the range is from 4 (Hungary) to close to 300 (Greece). We recognise that Ofcom take many decisions and that only a very small proportion are appealed. Cost of appeals amounted to little over 1% of revenue in 2009-10. The Government accepts that the number of appeals against Ofcom's decisions is not particularly high or low in comparison with other European countries.
86. However, it remains the Government's view that the current appeals regime goes beyond that required by the European framework. We wish to pare back the system to enable swifter access to justice and resolution of appeals. This will benefit all parties. In any case it is not so much the number of appeals Ofcom has to deal with but more the scope and complexity of the cases at issue. Ofcom anticipates at least 11 appeal cases in 2011/2012.

Focus on materiality

87. Respondents asked which of the appeals against Ofcom decisions in the past seven years does the Government think were not material or would not be admissible under the new regime.
88. It is the view of Government that each and every past appeal of an Ofcom decision under the merits appeal system could have been brought under an adapted judicial review system. We expect the change to bring about a new focus on whether Ofcom made any material errors and a move away from a forensic review of Ofcom's findings of fact and analysis.

De novo hearing

89. Respondents argued that recent case law has helped clarify the boundaries of appeal on the merits. Recent rulings by the CAT and the Competition Commission have sent a clear signal to prospective appellants and appeals are likely to be fewer and more focused in future as a result.

90. Appeals pursuant to section 192 of the Communications Act have consistently involved arguments that the appeal bodies should re-examine Ofcom's factual and analytical findings in considerable detail. Consistent with the Court of Appeal's judgment in the T-Mobile case, we do not consider that Article 4 requires an appeal in which each and every element of the regulator's decision is re-examined in such granular detail; it should instead focus on material errors. We consider that the change in the standard of review should address this issue.

Regulatory Certainty

91. Respondents said that the current appeals regime, where Ofcom's decisions are subject to 'profound and rigorous scrutiny', is a key part of the UK regime and contributes to quality decision-making and regulatory certainty. Although we recognise that the supporting Impact Assessment does not quantify the cost of changing the regime where bad decisions might go unchallenged, we are of the view that any change will result in uncertainty while new case law is developed.
92. As stated above, we do not consider that the new regime would prevent any previous appeals from coming before the CAT. Ofcom's decisions could still be challenged on adapted judicial review grounds and the merits will be duly taken into account. The judicial review standard, together with merits duly being taken into account, ensure that Ofcom's decisions are subject to the appropriate level of scrutiny and material errors will be corrected where they are found.
93. A judicial review of Ofcom's decisions would of course have to meet the requirements of Article 4.
94. Whilst examination and cross examination of witnesses does take place in judicial review claims as appropriate this is the exception, not the rule. By contrast, oral cross examination of factual and expert witnesses occurs in almost every appeal under section 192 in the CAT (beyond those which raise only points of law). This in turn both leads to lengthy appeal hearings and requires significant time and resource by the witnesses concerned in preparation for those hearings.
95. Whilst it will be a matter for the appeal bodies to decide what is necessary in any given case on its specific facts, we anticipate that changing the standard of review to that required by Article 4 and no further, should result in appeals which are more focused on material points, with a corresponding reduction in the need for and/or scope of oral examination and cross examination, leading to considerably shorter hearings than is presently the case. We also consider that the reduction in cross examination will lead to a

corresponding reduction in the numbers of irrelevant points being taken. Where, under the proposed regime, if the CAT thought a point was material it is envisaged that it would, though, still require cross-examination.

96. As set out above there may well be some test cases while the new mechanism is bedding down but this is a necessary process for any new fit for purpose appeals mechanism.

Sectoral v. competition powers

97. Respondents also suggested that a change in the standard of review could result in either Ofcom picking and choosing which of their powers to use or people trying to game the system by raising issues with Ofcom under the Competition Act 1998 rather than Ofcom's sectoral regulation powers under the Communications Act 2003. We do not consider that such concerns are likely to arise in practice.
98. BIS has recently consulted on changes to the competition regime (where changes to some form of judicial review are an option). Please see at: <http://www.bis.gov.uk/consultations>.
99. Ofcom will investigate complaints under whichever framework the complaint is brought to them and whichever framework is most appropriate. We consider that only a relatively small number of complaints will be such that they could potentially be considered either under the Competition Act 1998 or Ofcom's sectoral powers, either using its sectoral enforcement powers, or its dispute resolution power. Moreover, where a party brings a dispute to Ofcom under section 185 of the Communications Act 2003, if that dispute meets the necessary statutory criteria, Ofcom is under a duty to accept the dispute and to resolve it within 4 months.
100. Ofcom also has no discretion to reject a dispute brought under section 185(2) and instead open a Competition Act 1998 investigation, unless it considers that doing so constitutes alternative means that would result in a prompt and satisfactory resolution of the dispute. Ofcom would have to be able to conclude its investigation under the Competition Act 1998 within 4 months, as the party who had submitted the dispute could otherwise refer it back to Ofcom to be resolved using its dispute resolution powers.
101. We consider that it is rarely likely to be the case that Ofcom could complete a Competition Act 1998 investigation in such a short period. Ofcom's decision to proceed using its regulatory powers, rather than its competition powers, could also always be challenged to the CAT. In addition the competition regime is always subject to change by Government so this will always remain a risk.

4. Alternative approaches to reform of the appeals framework

Suggestions from stakeholders

102. In both responses to our September consultation on the implementation of the Framework and in conversations with stakeholders since, a number of alternative approaches to legislative reform of the appeals framework have been suggested. Each of these would be intended to deliver faster and more efficient appeals whilst guaranteeing the current standard of appeal on the merits.
103. Although a number of ideas have been put forward by stakeholders (explored below), we do not think that, taken separately or together, they would deal with the problems that we are trying to fix. Our preferred approach is therefore a legislative change as set out in section 2 (and **Annex A**).
104. However, the other options suggested by stakeholders might well have a role to play in improving the operation of the appeals regime within the new framework. We therefore intend to work with stakeholders and the CAT to consider whether each of these ideas might have a role under the new regime, whether each of them might help to reduce the cost or complexity of the appeals process or to improve the effectiveness of the appeals process and how, if appropriate, any of them might be introduced. In the meantime, we set out here our initial views on these ideas and seek further views from stakeholders.

Tighter evidential rules

105. One idea suggested by stakeholders was a change to the current rules on the admissibility of new evidence to restrict an appellant's ability to rely on evidence not relied on before. This would take the form of a presumption that all issues should be raised before Ofcom and that new issues should not be raised during the Appeal without the explicit consent of the Tribunal.

106. However, a recent Court of Appeal ruling⁷ has made clear that it is the place of the CAT to consider new evidence where appropriate. This ruling was based on the Court's reading of the Directive and so would not, and could not, be affected by legislative change in the UK.
107. Such a change could help Ofcom address some resource concerns but it is not likely to provide the step-change to a more streamlined system that we are seeking. Indeed, it might also prove problematic to implement given this recent case law.

Q4. The Government welcomes views of stakeholders on the value of pursuing tighter evidential rules as an alternative or complement to legislative reform of the telecoms appeals framework.

More transparency/ Confidentiality ring

108. A number of stakeholders have suggested that a different approach to transparency would fundamentally alter the dynamic of telecoms appeals. They have argued that each party's non-confidential submissions should be made available to the other parties as a matter of course.
109. The Government is not aware of any evidence that appeals have been brought due to lack of transparency, and then withdrawn once disclosure has been made to a confidentiality ring set up by the court, which is the normal practise to allow reluctant parties to review the evidence.
110. Ofcom does not currently have powers under the Communications Act 2003 to set up, and importantly, enforce confidentiality rings as part of its administrative process. Even if Ofcom were to be granted such powers, we foresee potentially significant difficulties around restrictions on the identity of persons who should be permitted to be members of such rings.
111. Confidentiality rings in litigation are typically limited to the independent professional advisors of the parties to the litigation. However, stakeholders may not always employ external advisors at the administrative stage of Ofcom's process, but might feel compelled to do so if they would otherwise be excluded from access to information for confidentiality reasons. Further, there is a real danger that due to the large number of stakeholders involved

⁷ British Telecommunications plc v Ofcom [2011] EWCA 245

in Ofcom's processes, confidentiality rings could quickly become unwieldy, raising the risk that breaches of confidentiality might occur.

112. The setting up and monitoring of such rings might result in delays to Ofcom's processes. Whilst such delays might be acceptable if there was a strong prospect that subsequent litigation was less likely to occur, we foresee a real risk that parties may use the confidentiality ring process at the Ofcom stage to gather data to facilitate litigation, not reduce it.

Q5. The Government welcomes views of stakeholders on the value of pursuing confidentiality rings as an alternative or complement to legislative reform of the telecoms appeals framework.

Simplification of Ofcom duties

113. It is possible that Ofcom's duties could be simplified in future, transferring several of its functions from Ofcom when the Public Bodies Bill is passed. A further simplification of Ofcom's duties could occur as a result of the Communications Review currently being introduced by Government.

114. However, it is clear that the reduction in Ofcom's budget will leave the regulator under severe resource strain and that savings will need to be made wherever possible. A reduction in the cost of appeals, as a consequence of faster, more focused hearings is in this context desirable.

Q6. The Government welcomes views of stakeholders on the value of pursuing simplification of Ofcom duties as an alternative or complement to legislative reform of the telecoms appeals framework and welcomes suggestions as to which duties should be simplified and how such changes should be made.

Counter claims

115. Stakeholders also suggested that the appeals framework be changed to allow counter claims. In their view this would eliminate the need for parties who are supportive of Ofcom's proposed decision to appeal in anticipation of other appeals. If this change were made together with changes to the award of costs (see below), stakeholders have suggested it could also disincentivise

some appellants who currently launch strategic appeals in order to “game the system”.

116. It is the view of Government that this idea has potential to lengthen appeals and would prove very difficult to work in practice as different standards for different types of appeal (eg dispute appeals, regulatory policy decision appeals and price control appeals) would be needed, although all of them would need due consideration of the merits. We are not convinced that this idea will help a move to a faster and more efficient appeals process.

Q7. The Government welcomes views of stakeholders on the value of pursuing counter claims as an alternative or complement to legislative reform of the telecoms appeals framework.

Ofcom role in appeals of dispute determinations

117. A number of respondents to our Framework consultation raised the possibility of Ofcom not being the respondent in dispute cases between communications providers. This has been recognised by the Court of Appeal. That Court said:

“There may be cases in which Ofcom wishes to appear, for example, because the appeal gives rise to questions of wider importance which may affect Ofcom’s approach in other cases or because it is the subject of criticism to which it wishes to respond. But Ofcom should not feel under an obligation to use public resources in being represented in each and every appeal from a decision made by it.”

British Telecommunications plc v Ofcom [2011] EWCA Civ 245 at s 87.

118. Clearly, there is merit in pursuing this option further. Such a change would not require a legislative change. However, it would need to be tested in law and would relate only to appeals of dispute determinations. Government is in favour of pursuing this difference in process in conjunction with our proposed legislative change to the current implementation. We also recognise that potential resource savings, though valuable, will be limited as Ofcom will still need to allocate resource in order to contribute to the appeal if necessary.

Q8. The Government welcomes views of stakeholders on the above suggestion on Ofcom's role in appeals of dispute determinations.

Award of costs

119. Stakeholders have also suggested that a new approach to costs might also help achieve greater efficiencies in the appeals framework through the award by the CAT of more generous award of costs against losing appellants. Currently, no awards are made against the losing party. Potentially, this change could increase the risks of appealing an Ofcom decision and might also lead to appellants focusing more strongly on material points.

120. The Government is concerned that the award of costs would be asymmetrical, with costs incurred by Ofcom disproportionate to those incurred by business. Such a change would need to be affected through a change in CAT procedure and rules (this is explored below). It is the view of Government that this suggested change would conflict with the aim of reducing the costs to Ofcom associated with appeals.

Q9. The Government welcomes views of stakeholders on the value of pursuing changes to the award of costs as an alternative or complement to legislative reform of the telecoms appeals framework.

Amendment of the CAT rules

121. A number of stakeholders were of the view that reform of the appeals framework might better be achieved through amendment of the CAT rules.

122. Specifically, stakeholders have suggested a number of possibilities, including a general review of procedures, and generally making procedures more accessible. Other more specific ideas include:

- (i) More costs orders;
- (ii) Allowing/encouraging issues in the notice of appeal to be pleaded in opposite direction by interveners;
- (iii) Allowing matters to be introduced not in the notice of appeal; and
- (iv) Reduce new evidence not brought before Ofcom.

123. With appeals before the CAT, or with any other similar jurisdiction, there is a hierarchy of issues, starting at the top level:
- (i) What decisions can be appealed against, who may appeal and which tribunal (or court) the appeal is to;
 - (ii) The basis of the appeal, ie what criteria the tribunal uses to decide whether the appeal succeeds or not; and
 - (iii) The procedures which the tribunal applies in deciding appeals.
124. In general, changing the rules will not affect the substantive basis of the appeal – it might change the procedural steps which the tribunal goes through to reach a decision, but it would not affect the actual basis on which the tribunal reaches the decision.

Q10. The Government welcomes views of stakeholders on changes to CAT rules as an alternative or complement to the Government's proposed legislative change. Specifically, the Government is interested in which of the suggested rule changes, either singly or jointly, would be most effective in delivering the stated aim of a speedier and more efficient appeals process.

Other alternative approaches

125. Although we have set out our preferred approach for reform of the appeals framework and have given our views on the alternative approaches suggested already, we are open to alternative approaches for changing the appeals system to make it work more efficiently and to drive unnecessary appeals and costs out of the system.
126. Therefore, as part of this period of additional consultation we would welcome views and suggestions for alternative approaches to streamline and improve the system with the stated aim of delivering a faster more focussed appeals framework.

Impact Assessments

Q11. The Government welcomes views on the supporting economic and equalities Impact Assessments.

Summary of Questions

- Q1.** The Government welcomes views on whether the specific proposal (at Annex A) to amend the Communications Act 2003 will deliver speedier more efficient appeals, whilst still guaranteeing fair, open and accessible appeals from Ofcom decisions.
- Q2.** The Government also welcomes views on the proposal that the new basis for appeals should apply only to appeals against decisions made after the changes come into force.
- Q3.** Do consultees agree with the proposal that the changes to the basis of appeal extend to the appeals described in paragraphs 59-60?
- Q4.** The Government welcomes views of stakeholders on the value of pursuing tighter evidential rules as an alternative or complement to legislative reform of the telecoms appeals framework.
- Q5.** The Government welcomes views of stakeholders on the value of pursuing confidentiality rings as an alternative or complement or complement to legislative reform of the telecoms appeals framework.
- Q6.** The Government welcomes views of stakeholders on the value of pursuing simplification of Ofcom duties as an alternative or complement to legislative reform of the telecoms appeals framework and welcomes suggestions as to which duties should be simplified and how such changes should be made.
- Q7.** The Government welcomes views of stakeholders on the value of pursuing counter claims as an alternative or complement to legislative reform of the telecoms appeals framework.
- Q8.** The Government welcomes views of stakeholders on the above suggestion on Ofcom's role in appeals of dispute determinations.
- Q9.** The Government welcomes views of stakeholders on the value of pursuing changes to the award of costs as an alternative or complement to legislative reform of the telecoms appeals framework.

Summary of Questions Continued

Q10. The Government welcomes views of stakeholders on changes to CAT rules as an alternative or complement to the Government's proposed legislative change. Specifically, the Government is interested in which of the suggested rule changes, either singly or jointly, would be most effective in delivering the stated aim of a speedier and more efficient appeals process.

Q11. The Government welcomes views on the supporting economic and equalities Impact Assessments.

Annex 1: Proposed Draft text

Proposed amendment to the Communications Act 2003

To be inserted into Communications Act 2003, s 195 as new subsection (2A):

In deciding the appeal the Tribunal must apply the same principles as would be applied by a court on an application for judicial review, ensuring that the merits of the case are duly taken into account.

Annex 2: Consultation response form

It is for the individual to decide whether they respond using this form or not. An electronic form is available at: www.culture.gov.uk/consultations/8349.aspx
 The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.
 The closing date for this consultation is 14th October 2011. Please provide:

Name:
 Organisation (if applicable):
 Address:

Please return completed forms to:

John Sexton
 Communications Regulatory Policy Team
 Department for Culture, Media and Sport
 Fourth Floor, 2-4 Cockspur Street
 London SW1Y 5DH
 Tel: 020 7211 6348
 Fax: 020 7211 6399
 Email: ecommsframework@culture.gsi.gov.uk

To enable us to assess the impact of our proposals on different groups, please indicate the kind of organisation on behalf of whom you are responding:

	Business representative organisation/trade body
	Central government
	Charity or social enterprise
	Individual
	Large business (over 250 staff)
	Legal representative
	Local Government
	Medium business (50 to 250 staff)
	Micro business (up to 9 staff)
	Small business (10 to 49 staff)
	Trade union or staff association
	Other (please describe):

DCMS Consultation Response Form

Q1. The Government welcomes views on whether the specific proposal (at Annex A) to amend the Communications Act 2003 will deliver speedier more efficient appeals, whilst still guaranteeing fair, open and accessible appeals from Ofcom decisions.

Comments:

Q2 The Government also welcomes views on the proposal that the new basis for appeals should apply only to appeals against decisions made after the changes come into force.

Comments:

Q3. The Government welcomes views of stakeholders on the value of pursuing tighter evidential rules as an alternative or complement to legislative reform of the telecoms appeals framework.

Comments:

DCMS Consultation Response Form

Q3. Do consultees agree with the proposal that the changes to the basis of appeal extend to the appeals described in paragraphs 59-61?

Comments:

Q5. The Government welcomes views of stakeholders on the value of pursuing confidentiality rings as an alternative or complement to legislative reform of the telecoms appeals framework.

Comments:

Q6. The Government welcomes views of stakeholders on the value of pursuing simplification of Ofcom duties as an alternative or complement to legislative reform of the telecoms appeals framework and welcomes suggestions as to which duties should be simplified and how such changes should be made?

Comments:

DCMS Consultation Response Form

Q7. The Government welcomes views of stakeholders on the value of pursuing counter claims as an alternative or complement to legislative reform of the telecoms appeals framework.

Comments:

Q8. The Government welcomes views of stakeholders on the above suggestion on Ofcom's role in appeals of dispute determinations.

Comments:

Q9. The Government welcomes views of stakeholders on the value of pursuing changes to the award of costs as an alternative or complement to legislative reform of the telecoms appeals framework.

Comments:

DCMS Consultation Response Form

Q10. The Government welcomes views of stakeholders on changes to CAT rules as an alternative or complement to the Government's proposed legislative change. Specifically, the Government is interested in which of the suggested rule changes, either singly or jointly, would be most effective in delivering the stated aim of a speedier and more efficient appeals process.

Comments:

Q11. The Government welcomes views on the supporting economic and equalities Impact Assessments.

Comments:

Annex 3: Individuals/ organisations who responded on appeals

The following companies, organisations and individuals provided substantive responses on appeals to the Framework implementation consultation:

Respondents

BBC	TowerHouse Consulting
BSkyB	UCKTA
BT	Verizon
Cable & Wireless	Virgin Media
Citizen's Advice	Vodafone
COLT	The Number
Competition Appeals Tribunal (CAT)	Three
EverythingEverywhere	Tim Snape **
Intellect	TowerHouse Consulting
Olswang *	UCKTA
TalkTalk	Verizon
Telefonica 02 *	Virgin Media
The Number	Vodafone
Three	
Tim Snape **	

* supplied in a private capacity by

** confidential (no unclassified version provided)

Annex 4: List of Individuals/ Organisations consulted

The following organisations/individuals submitted formal responses to our consultation on proposals for implementation.

Respondents

Advertising Association	Greater Manchester Chamber of Commerce	Signhealth
AFME & BBA	Hearing Concern Link	Significan't (UK)
Amazon	Internet Advertising Bureau	Skype
Associated Newspapers	Information Commissioner's Office	Sorensens
Association of On-Line Advertisers	Interactive Media in Retail Group	South West Internet CIC
Bileta	Intellect	SSE
Bird & Bird	ITV	Symantec
BSkyB	Janet UK	TAG
BT	Joint Radio Company	TalkTalk
Cable and Wireless	MAAWG	The Number (118118)
Competition Appeals Tribunal	Mobile Broadband Group	Three
Confederation of British Industry	moneysupermarket.com	TowerHouse Consulting
Computer and	Market Research Society	Telephony Services

Communications Industry Association		Ltd
Citizen's Advice	National Deaf Children's Society	UK Council on Deafness
COLT	Net Coalition	UK Competitive Telecommunications Association
Consumer Focus	Newspaper Society	University of Edinburgh
Deaf Access to Alternative Relay in Telecommunications	Olswang	Verizon
Direct Marketing Association	PhoneAbility	Viacom
Everything, Everywhere (Orange & T –Mobile)	Payments Council	Virgin Media
Expedia	PPA	Webtrends.com
Experian	RNID	Which?
Federation on Communication Services	Sense	

The following individuals/organisations have also contributed to the implementation of the revised Framework at some stage during the negotiation, consultation or implementation stages.

Business

Acer UK Ltd	Five	Philips
Apple	FIPRA	Phorm
Ashurst	Freeview	Pioneer
Associated News	Global Crossing	Pixsan
AT&T	Google	Portset
BT Retail	Harvard plc	Post Office
Buffalo Technology	Hewlett-Packard Limited	RIM (Blackberry)
Cabot	Hitachi	Samsung
Canon Consumer Imaging	Humax Digital	Sanyo
Carphone Warehouse	IBM	Seagate Technology
Channel 4	Intel	Sharp

Cicero Strategy	JVC	Slater Electronics
CISCO	Lenovo Technology	Sony UK Ltd
Connexion	Lexmark	Thomson
Cullen International	LG Electronics	Tiscali
Dell	Microsoft	Toshiba
DigiTV	MSI Computer UK Ltd	Tvonics
Dixons store group	News International	Virgin Media
Easynet	Nortel	Vodafone
eBay	Panasonic	Yahoo!
Epson		

Interest Groups

Alliance for Inclusive Education	European Publishers Council	National Council for Voluntary Organisations
Association for Interactive Media and Entertainment (AIME)	Federation of Communication Services	Phone Pay Plus
British Screen Advisory Council	Future Inclusion	Public Utilities Access Forum
Broadcasting & Creative Industries Disability Network	Information Society Alliance	Publishers Association
Communications Consumer Panel	Internet Telephony Service Providers Association (ITSPA)	Publishers Licensing Society
Digital Inclusion Technology Group	Media Trust	Radio Regulatory Associates (RRA)
Digital Inclusion Team	Museums, Libraries and Archives Council	Telecoms Industry Forum on Disability & Ageing
Equalities National Council	National Consumer Federation	UK Digital Champion

Third Sector

AbilityNet	HumanITy	Ricability
Age Concern England	Leonard Cheshire Disability	RNIB
AgeUK	MENCAP	SCOPE
British Deaf Association	Mind	Spinal Injuries Association
Childnet International	National Blind Children's Society	The National Federation of the Blind of the United Kingdom
Deafblind UK	National Centre for Independent Living	The Royal Society for the encouragement of Arts, Manufactures and Commerce (RSA)
Disability Awareness in Action	National League for the Blind and Disabled	Wireless for the Blind
Disability Wales	People First	
Dyslexia Action	RADAR	

Other

Field Fisher Waterhouse	Luther	Pinsent Masons LLP
Kemp Little LLP	Onslow Partnership LLP	Taylor Wessing



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