



department for  
**culture, media  
and sport**

# Equality Impact Assessment

## Implementing the revised EU Electronic Communications Framework - Appeals

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# Equality Impact Assessment

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## Equality Impact Assessment

This **Equality Impact Assessment** supports the analysis provided in the regulatory impact assessment and, in particular, examines the potential impact on individuals and constituent groups within our society, most specifically groups defined by the Equality Act 2010<sup>1</sup> as having a protected characteristic. In line with this legislation and the Public Sector Equality Duty<sup>2</sup>, we have analysed the available data, consulted representative groups and considered the impact (positive/negative) on those groups.

## Partners, decision-makers implementers

### **Implementation Team**

The Telecoms Regulation and Internet team within Information Economy at DCMS were responsible for the recent implementation of the revised EU Electronic Communications Framework. The UK was one of the few Members States to have implemented the necessary changes in full and on time.

### **Working with National Regulatory Authorities**

The Telecoms Regulation and Internet team works closely with Ofcom, the independent national regulatory authority (NRA) for electronic communications in the UK. In implementation of the Framework it also worked closely with the Information Commissioner's Office (ICO), the UK's independent authority on information rights. We shall continue to work with Ofcom as we make changes to the domestic appeals regime for electronic communications.

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<sup>1</sup> Age, Race, Sex (gender), Disability, sexual orientation, transgender, religion or belief and maternity and paternity

<sup>2</sup> The Public Sector Equality Duty came into force on 5<sup>th</sup> April 2011. It has three main aims:

- eliminate unlawful discrimination, harassment and victimisation;
- advance equality of opportunity between people who share a protected characteristic and those who do not;
- foster good relations between people who share a protected characteristic and those who do not.

**Start date**      **The Framework Review**

The original Framework on electronic communications was adopted in 2002, and contained in-built provision for review. The European Commission published proposals for review in November 2007. Where we could we have drawn on the impact assessment work carried out at the EU level. The UK originally consulted on proposals to revise the Framework in June 2008, ahead of extensive negotiations which ultimately saw adoption of the revised package in November 2009.

In September 2010, Government published its consultation on the implementation of the revised EU Electronic Communications Framework Directive<sup>3</sup>. As part of its implementation, Government proposed to reform the appeals regime in the electronic communications sector. Although the proposals were not required by the amendments to the Directive, other mandatory requirements (for example more regular market reviews) are likely to have an impact on the appeals system. Furthermore, because transposition of the original Directive in 2003 (through the Communications Act 2003) went beyond EU requirements with regards to the standard of appeals, implementing the changes to the Directive offered an opportunity to bring UK legislation more closely in line with the wording of the Framework

After the Framework consultation closed in December 2010, a number of industry stakeholders voiced concerns about the proposed changes to the appeals regime. In order to address these concerns, Government has implemented the mandatory changes to the EU Framework separately<sup>4</sup>, without making the proposed changes to appeals, instead launching a second consultation on the issue with more focus and detail. This impact assessment accompanies the second consultation and assesses the impact of the Government's proposed reforms.

**End date**      **Implementation Deadline**

The UK successfully implemented the revised Framework, in full and on time, one of the few Member States to do so. Changes were implemented by the deadline under European law (25<sup>th</sup> May 2011). Implementation was achieved through changes to the Communications Act 2003, the Wireless Telegraphy Act 2006 and the Privacy and Electronic Communications Regulations 2003. The necessary changes were implemented through negative resolution statutory instruments. The three amending SI's are The Electronic Communications and Wireless Telegraphy Regulations

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<sup>3</sup> <http://www.culture.gov.uk/consultations/7806.aspx>

<sup>4</sup> The amendments to the Framework Directive have been implemented by the Electronic Communications and Wireless Telegraphy Regulations 2011 (S.I. 2011/1210). For further detail on implementation, see <http://www.culture.gov.uk/publications/8048.aspx>

2011 (2011/1210), The Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011 (2011/1209), and The Electronic Communications (Universal Service) (Amendment) Order 2011 (2011/1208)<sup>5</sup>.

On this occasion, given the prior substantial consultation that has already taken place, and on-going dialogue between Government, regulator, the CAT and industry (who are very well informed on the policy issues), the Government has opted for a secondary consultation of eight weeks, running from end-July to end-September.

## **Policy aims**    **Rationalising Change**

The Government believes in a full, fair, open and accessible appeals Framework for the telecommunications sector. The changes required to the domestic telecommunications appeals regime by the revised EU Electronic Communications Framework, and in particular Article 4(1) of the Framework directive, were minimal. As such the original Equality Impact Assessment which accompanied implementation of the Framework continues to apply.

The Government's objective is to deliver a quicker and more focused appeal process which is less costly for the appellants, Ofcom and the appeal bodies but still ensures access to justice and an ability to challenge Ofcom decisions where a material error is identified. It is also the aim of Government to minimise the gold-plating of European Directives and therefore ensure that the appeals regime more closely reflects the requirements of the Framework Directive. This aligns with the economic objective, which is to minimise the risk of regulatory uncertainty.

The changes proposed by the Government to a standard of appeal on the basis of Judicial Review taking due accounts of the merits of the case, although not required by Framework revisions, fit with the recent revisions and are intended to improve the regulatory framework for business and where possible to remove regulation.

Specifically, the Framework seeks to enhance competition in the communications sector through furthering the liberalisation of spectrum markets (e.g. promoting spectrum trading) and making express the power of regulators to impose functional separation on dominant operators (a provision inspired by the UK's own experience of functional separation, with OpenReach). Consumers will benefit in this respect from improved competition, regulatory certainty and encouragement to invest that revisions to the Framework will deliver.

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<sup>5</sup> Available at <http://www.legislation.gov.uk/uksi>

The revised Framework also strengthens consumer protection, through new provisions (mostly in the Universal Service Directive, USD) intended to ensure that consumers are better informed about supply conditions and tariffs and can more easily switch providers, all of which is intended to help promote competition in the electronic communications markets. The revised Framework also provides clarification that national regulators like Ofcom are empowered to impose obligations on all operators (not only designated universal service operator(s)) for the provision to disabled users of equivalent access to certain electronic communications services, where appropriate. There are also provisions which ensure consumers have access to emergency services and other services of social value (with specific provisions ensuring access for disabled end-users).

Changes to the USD spell out improved transparency, quality of service and access to information rights for consumers. Many of these revised provisions are also supported with specific reference to rights for disabled end-users. It is important to note that the UK compares favourably with all other Member States and internationally in the EU's benchmarked "e-Accessibility status follow up 2008", and in many of these requirements attracts the highest compounded benchmark scores in the EU in relation to provision of accessibility information by electronic communications companies, availability of text relay, and subtitles for television<sup>6</sup>.

In putting forward proposals in November 2007, the European Commission also published an impact assessment, which references the Commission's own work on e-Accessibility<sup>7</sup> "Communication on e-Accessibility of 2005". We have drawn on this wherever we can.

## Relevance

**Race, gender, disability, age, sexual orientation, transgender, religion or belief and maternity and paternity**

We have given due regard to any potential impact on each of the protected social groups within society when developing our policy proposals and as part of our overall equality assessment. It is difficult to envisage any specific, obvious and immediate, direct or indirect, impact on any groups within society,

<sup>6</sup> The "MeAC" report is a follow up to the Commission's original e-Accessibility benchmarking exercise conducted in 2007, which in turn builds upon the Commission's 2005 e-Accessibility report referenced elsewhere;

[http://ec.europa.eu/information\\_society/activities/einclusion/library/studies/meac\\_study/index\\_en.htm](http://ec.europa.eu/information_society/activities/einclusion/library/studies/meac_study/index_en.htm)

<sup>7</sup> [http://ec.europa.eu/information\\_society/activities/einclusion/library/studies/meac\\_study/index\\_en.htm](http://ec.europa.eu/information_society/activities/einclusion/library/studies/meac_study/index_en.htm)<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2007:1472:FIN:EN:PDF>

Impact Assessment - Accompanying document to the Proposal for a Directive of the European Parliament and the Council amending European Parliament and Council Directives 2002/19/EC, 2002/20/EC and 2002/21/EC

Proposal for a Directive of the European Parliament and the Council amending European Parliament and Council Directives 2002/22/EC and 2002/58/EC, and Proposal for a Directive of the European Parliament and the Council establishing the European Electronic Communications Markets Authority.

It is important to note that our proposals to revise the process of appeal to the Competition Appeals Tribunal (CAT) relate purely to the decisions of Ofcom, the independent national regulator, on intervention in the market place, on its findings of, or remedy to, the market review process (under Articles 19 and 7 Framework Directive), or on dispute resolution.

Ofcom are obliged to operate with a bias against intervention, but with a willingness to intervene firmly promptly and effectively when necessary. Under the terms of the Office of Communications Act 2002 and the Communications Act 2003, Ofcom's intervention in the market place must pass four tests in its execution and its outcome. Any intervention must be undertaken ensuring proportionality and transparency, non-discrimination, and that the decision is objectively justifiable

Consequently we firmly believe that there will not be any adverse effect in terms of race, gender, disability, age, sexual orientation, transgender, religion or belief and maternity and paternity.

The Department for Business's internal advisory and support groups (where available) assessed and evaluated the original proposals on appeals and found no evidence they would facilitate any discrimination, but rather think the changes will be beneficial to all users, including disabled consumers.

## **Available evidence**

### **Analysing Existing Evidence**

In preparing the original Equality Impact Assessment we had regard for the Digital Economy Act (DEA) Equality Impact Assessment. We have also drawn on the work of a number of groups and bodies which have been active in the area of digital inclusion in response Government initiatives. These include;

- The Digital Inclusion Action Plan published by the then Minister for Digital Inclusion on 24<sup>th</sup> October 2008, and the Government response to contributions to that Action Plan published on 16<sup>th</sup> November 2009
- The UK Digital Champion, and her Race online 2012 team who published, "The Economic Case for Digital Inclusion" report produced by *PriceWaterhouseCoopers* in October 2009 and the "Manifesto for a Networked Nation" in July 2010.
- The Consumer Expert Group's report on digital television and barriers to the internet for disabled users.
- Reports commissioned by DTI to inform the digital television switchover programme and which underpin the Switchover Help Scheme and the Digital Television Usability Action Plan (Although these reports primarily address DTV they contain some useful material on age and age related disability

## Evidence-based conclusions

### **Race, gender, disability, age, sexual orientation, transgender, religion or belief and maternity and paternity**

After initial screening the Department has reached the view that the proposed revisions to the domestic electronic communications appeals regime will not have a disproportionate effect on, or disadvantage, anyone on the basis of their race, gender, disability, age, sexual orientation, transgender, religion or belief and maternity and paternity. We have previously consulted our internal advisory group on this and we have sought the advice of the Commission for Equality and Human Rights (CEHR). Our public consultation has shown no evidence of any potential discrimination or disadvantage.

In the analysis of responses to our consultation on implementation (described, below as second round consultation) our policy proposals on appeals received the second largest share of the comments, critical analysis and feedback (behind diversity and equality issues, and specifically equal access, benefit and choice). We have reviewed this wealth of data and found no evidence of any potential disadvantage or disproportionate impact on any individual group within society from our proposals to reform the domestic appeals procedure.

The Department has championed market based approaches in the electronic communications sector (eg; spectrum-trading and leasing, the fragmentation of incumbent operating companies allowing access to facilities and infrastructure). We consider these policy proposals to contribute to these market-based reforms, with the associated benefits for industry and consumer alike (as detailed in our approach to implementation publication). We built into our original EIA review process measures that monitor whether this tends towards any aspect of indirect discrimination.

## Involvement and consultation

### **First round consultation**

The Department launched a first round of public consultation in June 2008, following publication of the Commissions' proposals in November 2007. Within that consultation (q)14 specifically sought views on the "new provisions to help disabled people". Following consultation with, and written representations, from a range of consumer lobby and representative groups (eg Hearing Concern, Help the Aged, Ofcom and their Consumer Panel, LCD, Nomensa, PhoneAbility, RADAR, RNIB, RNID, TAG, Sense, Citizen's On-line, Action for the Blind, Wireless for the Blind, British Deaf Association, AbilityNet, Disability Wales, Mind, Pensions Ageing Society, Hearing Concern and Dyslexia Action) the UK Government supported the introduction of new Article 23a in the Universal

Services directive, and the additional provisions on access and choice for disabled end-users in the USD and elsewhere in the FWD.

### **Second round consultation**

In September 2010 the Government launched its second formal phase of consultation on its preferred approach to implementing the amendments to the European Framework. Officials organised four large-scale events for stakeholders (each attended by over 120 representatives), four smaller events on specific policy issues of concern to stakeholders (security and resilience, changes to the appeals framework and infrastructure sharing). There were dedicated meetings to discuss equivalence and disability issues at each of these events (often under the auspices of the e-Accessibility Forum).

At each of these events officials put out a call for evidence and pushed stakeholders to provide quantitative evidence to support both plans for implementation as well as to support any contrary views they may have held.

Officials also spoke at seven public events organised by stakeholders and their representative groups and officials met individually with over 82 stakeholders during the consultation period to discuss organisations specific concerns and views on proposals for implementation of the revisions to the Framework.

### **Third round (appeals specific) consultation**

Although all our previous consultation and research indicates that there is no evidence of any disadvantage, discrimination or disproportionate impact on any group within society, we continue to seek views and contributions on equality impact in this latest round of consultation.

This latest consultation, proposals for which have cleared the Better Regulation Executive (BRE) criteria for an abbreviated consultation, continue to explicitly seek contribution and feedback on any equality impact.

In addition, we are extending this further consultation exercise to all those who were originally consulted on implementation proposals and those who have engaged with us since, rather than just limiting consultation to those who have an expressed interest in appeals.

### **Research**

Equality Impact Assessment remains a component of this next round of consultation on proposals for change in the domestic appeals regime. However, it should be noted that a substantial independent review paper, and specific industry discussion sessions associated with that paper, (provided and facilitated by TowerHouse Consulting) found no evidence of

any discrimination, disadvantage, or disproportionate impact on any group within society.

### **OGD engagement**

During our main consultation activity on implementing changes to the revised EU Electronic Communications Framework (which originally included our proposals on changes to the appeals regime) the implementation team consulted the Office for Disability Issues (ODI) on equivalence issues.

The implementation team also sought the views of other Government Departments with an interest in this area (eg; the Home Office, the Office for Disability Issues, the Department for Business, the Ministry of Justice). Prior to public consultation the proposals for implementation were put before the Reducing Regulation Committee (RRC).

### **Ongoing concerns/questions**

The Government continues to consider the implications of access to electronic communications for all and we continue to consult on these issues. We approached implementation of the Framework in conjunction with the e-Accessibility Forum. It brings together representatives of business, the voluntary sector, and Government to explore and understand the issues of e-Accessibility (from media literacy to access for disabled end-users, from provision of terminal equipment to public policy development), to develop and share best practice across all sectors and facilitate business opportunities around the development of products and services. We continue to work closely with the e-Accessibility Forum.

## **What is the actual/likely impact?**

After initial screening and consultation, and with due regard to the impact on protected groups, the Government has concluded that implementing its proposed changes to the domestic appeals regime will not mean any disadvantage, discrimination or disproportionate impact for any groups within society.

The Government is firmly of the belief that implementation of the changes required by the revised EU Electronic Communications Framework has helped eliminate unlawful discrimination and help promote equality of opportunity.

## **Monitoring and review**

### **Analysis of consultation responses**

We have asked specific questions in the consultation on the provisions relating to equality. We are also asking respondents to comment on the EIA.

We will continue to work closely with the e-Accessibility Forum and with Ofcom's specialist leads in this area.

## **Decision making and quality control**

### **Going Forward**

We will look to include further consideration of those groups newly protected under the Equality Act 2010 as we continue to review the impact on implementation.