



department for  
**culture, media  
and sport**

# Equality Impact Assessment

## Implementing the revised EU Electronic Communications Framework

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# Equality Impact Assessment

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## Equality Impact Assessment

This **Equality Impact Assessment** supports the analysis provided by the “regulatory” impact assessments 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 upcoming 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 Framework Implementation Team (which has been transferred from the Information Economy (IE) directorate in BIS to DCMS during the course our and consultation and implementation periods) has been working closely with Departmental policy leads and Legal Services to transpose revisions contained in two amending directives that update the EU Electronic Communications Framework. We are required to implement these changes into national legislative and regulatory provision (where change is needed - it should be noted that much of what is required already exists in the UK) by May 25<sup>th</sup> 2011.

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

In delivering on implementation we shall also be working very closely with Ofcom, the independent national regulatory authority (NRA) for electronic communications in the UK and the Information Commissioner’s Office (ICO), the UK’s independent authority on information rights.

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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> Coming into force on 5 April 2011 the Public Sector Equality Duty 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.
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Some of the revisions are obligations placed on, or powers given to, the UK as a Member State, (although in some cases the Government may be of the opinion that Ofcom or ICO are better placed to comply with the obligation or exercise the power); in some instances the Government is obliged to empower the NRA; and in other circumstances the NRA is obliged to comply with the obligation or exercise the power. In such circumstances changes will be affected by Ofcom making changes to their “General Conditions of Entitlement” or ICO making changes to their guidance. In these instances the regulator will consult under the statutory obligations placed on them to do so and those consultations will include a separate equality impact assessment and cost benefit analysis. We anticipate some of the work implementing measures aimed at “users, including disabled users, elderly users, and users with special social needs” (to use the language of the Framework) will be delivered in this way.

**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 these proposal in June 2008, ahead of extensive negotiations which ultimately saw adoption of the revised package in November 2009

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

Under European law we have until 25<sup>th</sup> May 2011 to implement the necessary changes, or face the risk of infraction proceedings. In some respects implementation will amount to empowering Ofcom or ICO to take further, future, action.

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

The European Parliament and Council adopted a package of reform measures during an extended co-decision process in October 2009. This was, in part, driven by the European Parliament’s desire to introduce robust consumer protection provisions (including disability provision) to the revised package in a European Parliament election year.

The subsequent revisions to the Framework, adopted in November 2009 are intended overall 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.

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 also deliver improved transparency, quality of service and access to information rights for consumers, but many of these revised provisions are also supported with specific reference to rights for disabled end-users. In this respect, it is important to note that the UK compares favourably with all other Members 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>3</sup>.

### **The Amending Directives**

The adopted package consists of two amending directives,

- the so-called "Better Regulation" amending directive (Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services); and
- the so-called "Citizen's Rights" amending directive (Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC

<sup>3</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)

concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws).

The wider Framework package also included a regulation which saw the establishment of the Body of European Regulators for Electronic Communications (BEREC);

- Regulation (EC) No 121/2009 of the European Parliament and of the Council of 25 November 2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office

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>4</sup> "Communication on e-Accessibility of 2005".

The Better Regulation amending directive seeks to liberalise electronic communications markets, contribute to the development of the Single Market and ensure the consistency of regulatory application, and remedy, where needed across the EU. This should encourage competition and provide a stable and certain regulatory framework encouraging investment, in particular in next generation access (NGA) technologies and services which should help advance the e-Inclusion agenda and the so-called digital dividend. Currently in the UK 17 million people do not actively use the internet. Direct access to technologies such as computers and the Internet, mobile phones, personal digital assistants (PDAs) and digital TV. These devices can help people gain access to:

- employment and skills
- social, financial, informational and entertainment benefits of the Internet
- improved services, including public services
- wider choice and empowerment around the major areas of their lives.

<sup>4</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.

Of the 17 million non-users it is estimated that 15 per cent of the population – more than six million adults - are socially and digitally excluded<sup>5</sup>.

The Citizen’s Rights amending directive strengthens Universal Service Obligations, including Social Obligations (Chapter II of the Universal Services Directive, USD), but further looks to deliver a range of consumer benefits in relation to information provisions, transparency of contracts, switching supplier, and rights for disabled end-users. In amending the e-Privacy directive it also requires a regime of protection, notification and penalty with a view to guaranteeing personal data and e-privacy.

It should be noted that the revised Framework is a result of the co-decision process of the European Union, and under European law the UK has to implement the revised directives.

## Relevance Race

We have given due regard to the impact on race as part of our overall equality assessment.

We firmly believe that there will not be any adverse effect in terms of race equality from implementation of the revised directives. In fact, we believe that the market liberalisation, competition and consumer protection measures which were adopted under the package will further encourage the engagement of consumers including those from BAME (Black, Asian, Minority Ethnic) backgrounds, in the electronic communications sector.

There is no evidence that BAME users encounter any disadvantage in accessing electronic communications markets. In fact, a detailed breakdown by the regulator shows level of take up across the spectrum of electronic communications networks and services to be higher amongst BAME than other users.

	Indian adults	Pakistani adults	Black Caribbean adults	Black African adults	UK adults total
Multiple platform ownership	62%	65%	55%	62%	53%
Digital TV ownership	83%	89%	81%	82%	82%
Mobile phone take-up	90%	91%	88%	95%	85%
Internet take-up	76%	72%	64%	69%	62%
Willingness to get internet	25%	35%	30%	30%	15%

<sup>5</sup> <http://www.communities.gov.uk/documents/communities/pdf/1001077.pdf>



\*\* Home ownership of digital television, internet and mobile phone  
\* Base: All adults who do not have the internet at home  
Source (Ofcom media literacy audit 2008)<sup>6</sup>

Further, the updated Framework builds on provisions in the original regulatory framework which require Member States to ensure NRAs “promote the interests of the citizens of the European Union by ... (a) ensuring all citizens have access to a universal service specified in Directive 2002/22/EC (USD); and ... (e) addressing the needs of specific social groups, in particular disabled users, elderly users and users with special social needs” (Articles 8.4 (a)&(e) Framework directive, FWD)

Our internal advisory group on racial equality share our view that implementation of the revised Framework provisions will not disadvantage individuals on the basis of their race, and that BAME are as likely to gain from the improved package of citizen and consumer rights as all other groups.

During the course of our public consultation, which has included measures targeted at individual consumers as well as corporate correspondents (eg; we provided an online “survey monkey” facility for responding both to the consultation and IA questions) we have not received any contribution suggesting any disadvantage to BAME electronic communication users.

## **Gender**

We have given due regard to the impact on gender as part of our overall equality assessment.

Ofcom’s annual “Consumer Experience”<sup>7</sup> report for 2009 shows minimal difference in the level of take up of fixed line and mobile connection between men and women. It shows a slightly higher (but declining) use of pre-pay packages for mobile phones amongst women and, again amongst women, a slightly lower (but increasing) rate of take up of contracted packages

Over the last five years women have caught up with men in terms of ownership of PCs, internet access at home, broadband access and access to Digital TV. This change is also reflected in the fact that rate of growth in use of these electronic communication technologies is faster amongst women than it is amongst men.

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<sup>6</sup> [http://stakeholders.ofcom.org.uk/market-data-research/media-literacy/medlitpub/medlitpubrssi/ml\\_emg08/](http://stakeholders.ofcom.org.uk/market-data-research/media-literacy/medlitpub/medlitpubrssi/ml_emg08/)

<sup>7</sup> <http://stakeholders.ofcom.org.uk/market-data-research/market-data/consumer-experience-reports/>

Although the revised regulatory Framework does not make specific positive action commitments (except in relation to disability), domestic legislation (much of which implements European legislation) provides for protection against discrimination. It is also pertinent to note that the European Commission's recently published "Digital Agenda"<sup>8</sup> does provide for some positive action programmes in relation to gender and ICT.

Again, our public consultation, including measures targeted at individual consumers as well as corporate correspondents (eg; the "survey monkey" facility for responding both to the consultation and IA questions) did not deliver any contributions suggesting any disadvantage to female electronic communication users

### **Disability**

We have given due regard to the impact on disability as part of our overall equality assessment

The Government is firmly of the view that the revisions to the Framework will not cause any disability-related discrimination. Far from that, the Government firmly believes that the revised Framework will actively contribute to the promotion "of equality of opportunity between disabled persons and other persons".

A new Article within the USD introduces provisions "ensuring equivalence in access and choice for disabled end-users" (Article 23a (USD), and places an obligation on Member States to "encourage the availability of terminal equipment offering the necessary services and functions".

These strengthened references in relation to disability - the 2002 Framework made only brief reference to "special measures for the disabled users" as part of the universal service criterion for addressing market failure – is further supported by several new references across the Directive ensuring equivalence in, amongst other things, access to information and transparent contracts, access to the emergency services and quality of service criteria.

In addition to the provisions referenced above which outline the responsibilities of NRAs (Articles 8.4 (FWD)), national regulators are also newly charged with "ensuring that users, including disabled users, elderly users, and users with special social needs derive maximum benefit in terms of choice, price, and quality (Article 8.2 (a) of the Framework directive (FWD) ) from electronic communications. There is a separate further provision on the interoperability of digital television services (Article 18 (FWD) which requires Member States to encourage

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<sup>8</sup> [http://ec.europa.eu/information\\_society/digital-agenda/documents/digital-agenda-communication-en.pdf](http://ec.europa.eu/information_society/digital-agenda/documents/digital-agenda-communication-en.pdf)

broadcasters and manufacturers to work together so that the range of interactive services available includes those accessible to disabled end-users.

Given the very specific references to the “equivalence for disabled end-users” the following analysis of evidence in this Equality Impact Assessment tends to focus on the impact of changes in relation to disability.

We have received a number of responses to our consultation that have suggested that the revised provisions of the Universal Service Directive, mandate the introduction of Video Relay Services (VRS) and, in some instances, a separate Telecommunications Relay Fund (TRF) to finance such provision. Some of these contributions included some cost benefit analysis which the Government has considered in developing its fuller proposals.

It should be noted, though, that the revised Framework does not mandate the introduction of VRS and few members states would be in a position to do so. Rather, revisions to the Framework do require Member States to enable NRAs to specify, where appropriate, measures that ensure equivalence of access and choice for disabled end-users. The Government is changing legislation to ensure that the NRA will have that power.

The Framework makes clear that decisions on equivalence are a matter for the independent regulator Ofcom.

The objective for Ofcom’s review of relay services later in the spring will be to assess whether the current arrangements for the provision of relay services are adequate in delivering equivalence to voice telephony for hearing- and speech-impaired end-users and, if they are not, to consider proportionate solutions. This involves looking at, amongst other things, the existing text relay service and additional relay services including video relay and captioned telephony.

### **Age**

We have given due regard to impact on age as part of our overall equality assessment.

We firmly believe that there will not be any adverse effect in terms of equality in relation to age from implementation of the revised directives. In fact, we believe that the market liberalisation, competition and consumer protection measures which were adopted under the package will further encourage the engagement of all consumers of varying ages and continue to facilitate the current positive trends we are seeing across all age ranges in relation to take up and use of electronic communications.

Consumer market data available to us, like that published annually in Ofcom’s “Consumer Experience” report, shows positive trends across the whole of society in terms of contracting to and use of various means of

electronic communications. Where that report breaks into detailed analysis by age band we witness some further positive trends. For example, in relation to Next Generation Access (NGA), take-up of digital services has significantly increased over the past year amongst older consumers and lower income households. Broadband penetration amongst those aged 65-75 rose nine percentage points since 2009. However, younger age groups and higher-earning households still dominate broadband take-up.

Mobile phone ownership among over 75s has risen steadily and now over half (56%) of this age group personally use a mobile. Similarly, mobile phone ownership among over 75s has been rising steadily and now over half (56%) of this age group personally use a mobile. The trends are equally as positive at the other end of the age spectrum where mobile phone ownership amongst youngest owners has almost reached saturation point. A significant rise among the youngest age (15+) group takes ownership to 99% and comparable with ownership among 25-44 year olds (98%).

Younger age groups and lower socio-economic groups are more likely to live in a mobile-only home – nearly three in ten adults aged 15-24 live in a mobile-only household, with the same true of those with a household income of £17.5k and under.

Government firmly believes that the revised framework will further advance consumer participation in and consumer benefit from electronic communications.

### **Sexual orientation, transgender, religion or belief and maternity and paternity**

The adoption of the Equalities Act 2010 requires us to extend consideration of potential disadvantage and discrimination to further “protected” members of our society. We have not received any consultation feedback, nor been able to identify any research which suggests that electronic communications consumers will be disadvantaged or discriminated against on the basis of their sexual orientation, transgender, religion or belief, or maternity and paternity.

We are however, conscious of the need to factor examination and analysis of the impact of implementing revisions to the Electronic Communications Framework into our post implementation and project management review processes.

## **Available evidence**

### **Analysing Existing Evidence**

In preparing the original Equality Impact Assessment we have 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 the 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

In addition to the material above, Ofcoms’ survey of user trends, published with “The Consumer Experience” shows the rate of growth in take up of use by Black, Asian, Minority Ethnic (BAME) is growing faster, (and from a higher start level of penetration) for mobile use, PC use, internet use and broadband use than for non-BAME users. Only in relation to the use of digital radio is non-BAME use higher than for BAME – although the growth in use for BAME users is currently at a faster rate.

Comparisons of male and female usage of electronic communications (above) also need to be understood in the context of increased numbers of men and women working from home using these facilities, with the gap between the number of men and women working in such a way reducing. The number of women that mainly work from home using both a telephone and a computer increased from 1.9% of total female workers in 1998 to 4.9% over the ten years to 2008. In the same period, the proportion of male workers who worked mainly from home using both a telephone and computer increased from 3.3% to 7.4% of total male workers. Both sets of data indicate an increased tendency to work from home – a trend that is likely to continue, driven in part by the continued roll out of Broadband with increasingly faster speeds.

Ofcom’s consumer panel has undertaken research various aspects of age and electronic communications including a study into the attitudes of older people to communications technology (and their consequent engagement) and research on whether the lack of home internet access further disadvantages already disadvantaged children.

## **Evidence-based conclusions**

### **Race**

After initial screening the Department has reached the view that the regulatory provisions described in the revised Framework will not have a disproportionate effect on, or disadvantage, BAME. We have 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.

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 built into our EIA review process measures that monitor whether this tends towards any aspect of indirect discrimination.

### **Gender**

Similarly after initial screening, we have reached the conclusion that there is nothing in implementing the revised Framework that will have a disproportionate effect on, or disadvantage, either men or women on the basis of their gender. In relation to both race and gender we anticipate that consumers will benefit from the liberalisation of the electronics communications sector, the promotion of competition, the encouragement to invest that a stable regulatory framework will provide and the specific consumer-centric, rights, safeguards and protections that the revised Framework provides. Again we have sought further advice on this from the CEHR, and responses to our public consultation have not shown any indication of discrimination or potential disadvantage. .

### **Disability**

We have sought advice from our internal advisory group on disability, (who work closely with the Employers' Forum on Disability), and a range of disability representative and lobby groups. They share our view that there is nothing in the revised Framework that will discriminate, or disproportionately disadvantage disabled end-users. In fact they welcome the moves to promote equivalence in access and choice.

Although a number of responses have been received that push for the introduction of VRS, we also received considerable support for measures that the Government is taking to implement revisions to the Framework. This includes changes Section 51 of the Communications Act 2003 to clarify Ofcom's power to impose a general condition in relation to equivalence. This will enable Ofcom to do so should they reach that conclusion after a process of review, consultation, cost benefit analysis, This process includes a proportionality test.

## Age

Changes have been made to Chapter III of the revised Framework directive (FWD), which lay out the role of the national regulatory authority under Article 8 “Policy Objectives and Regulatory Principles”. These changes introduce the term “elderly users and users with special social needs;” alongside references to disabled end users in relation to the promotion of their interests and ensuring that they derive maximum benefit in terms of choice, price, and quality from the promotion of competition within the electronic communications sector and the promotion of their interests generally as citizens of the EU. We believe this indication of high level intent combined with specific changes to improve services to, choice and protection for consumers as a whole will ensure that consumers are not in any way disadvantaged or discriminated against on the basis of age.

## Sexual orientation, transgender, religion or belief and maternity and paternity

After initial screening the Department has reached the view that the regulatory provisions described in the revised Framework will not have a disproportionate effect on, or disadvantage, on the new groups protected by provisions of the Equalities Act 2010.

## 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 felt mandated to support 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.

### **Research**

Ofcom published their consultation “Access and Inclusion – Digital Communications for All” (from March to June 2009) as the final stages of the Framework package were being concluded at second reading in May 2009. We were mindful of the conclusions of that consultation in shaping our thoughts on implementing the revised provisions of access for disabled end-users.

Both Ofcom and the Information Commissioner’s office (the independent regulator of privacy in the UK) were asked to trawl their data holding to pull for additional quantitative data to underpin the policy decisions outlined in this Impact Assessments.

BIS also published a questionnaire together with the Government’s preferred approach to implementation to help build the evidence base. E-mails were sent out on a regular basis to over 420 stakeholders to encourage them to complete the online questionnaire. Wherever possible this evidence has been built into the Government’s IA and EIA.

We have received a number of contributions from stakeholders that included limited some analysis on the costs and benefits of providing video relay services.

Separate to the requirements of the revised EU directives and the Government’s consultation on proposals for implementation, Ofcom had announced, as part of their forward business planning processes, the need to review relay services for disabled end-users of electronic communications. In February 2011 they published some market research which provides some context for the review  
<http://stakeholders.ofcom.org.uk/market-data-research/telecoms-research/ofcom-relay-services/>

Ofcom will be publishing its formal consultation on relay services in the Spring but the Government has considered this published market research in developing its implementation proposals.



## **OGD engagement**

We have consulted the Office for Disability Issues (ODI) on a practical meaning of “equivalence” and any precedent in relation to UK interpretation in UK legislation. We have also sought and received their guidance on any read across to the “UN Convention on the Rights of Persons with Disabilities” which the UK ratified in June 2009. The ODI supports the Government Equalities Office (GEO) in negotiations in Europe on EU “Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation” (the so-called “Goods and Services” directive), and we want to ensure effective read-across/compatibility with this emerging EU legislation.

The implementation team 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 Culture Media and Sports, the Ministry of Justice). Prior to public consultation the proposals for implementation were put before the Reducing Regulation Committee (RRC).

After the formal closure of the consultation, on 21st December 2010 the Prime Minister announced that responsibility for competition and policy issues relating to the media, broadcasting, digital and telecoms sectors were to be transferred from BIS to the Secretary of State for Culture, Media and Sport. This includes policy responsibility for implementing revisions to the EU Electronic Communications Framework.

## **Ongoing concerns/questions**

The Government estimates that there are over 10 million people with disabilities and long term health conditions in Britain<sup>9</sup>. In 2007 the Disability Rights Commission reported that of all people without any formal qualifications, over one-third were disabled, and that of all people of working age out of work 40% were disabled. However, we do see progress on digital inclusion, facilitated by implementation of the regulatory Framework, as a means of addressing these concerns.

Ofcom’s annual Consumer Experience report shows that in 2009 only 51% (but growing), 41% and 39% respectively of people with visual, hearing and mobility problems had access to the internet at home, compared to around 73 % of the general population (but with generally slower growth rates in take up amongst people with disabilities than those without disability). Figures for access to broadband were again, comparatively speaking, disappointing. Only 46%, 37% and 38% respectively of people with visual, hearing and mobility problems had access to broadband at home, compared to around 70 % of the general population

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<sup>9</sup> Family Resources Survey 2003/4 London: Analytical Services Division, Department for Work and Pensions, 2005

Therefore, the Government continues to consider the implications of access to electronic communications for people with a variety of disabilities and we continue to consult on these issues. We approach implementation of the Framework in conjunction with the newly founded e-Accessibility Forum. It brings together representatives of business, the voluntary sector, (including disability rights groups), and Government to explore and understand the issues of e-Accessibility, to develop and share best practice across all sectors and facilitate business opportunities around the development of products, and in particular, terminal equipment for disabled users.

The Digital Television Group (DTG), the industry association for digital television in the UK will continue to progress its work on innovation and interoperability in UK digital television, including the setting out of detailed specification for the transmission and reception of digital terrestrial services (including those for disabled end-users). The DTG is developing a “U-book” focussing on requirements for usability and accessibility.

We are also aware of the work that the RNIB are progressing with manufacturers to develop set top boxes that will advance accessibility for disabled end-users.

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

### **Revised Directive Texts**

The following is an analysis of the individual provisions which impact on protected characteristics, as set out in the Equality Act 2010 and paying due regard under the public sector equality duty. It is also worth noting that in some areas, and in terms of the benefits it is anticipated it will deliver, the revised Framework makes close association between disability and age and age-related disabilities. As mentioned previously there are no specific provisions which address race or gender (particularly in terms of positive action), but there are also no provisions within the revised directives which, after initial screening, the Department perceives could adversely affect people on the basis of their race or gender.

There are several new references to provision for disabled end-users in the revised directives. Both FWD and USD make reference to the matter in the new determination of their scope. Both directives now reference “certain aspects of terminal equipment” as falling within the remit of their direction.

Article 23a (1) requires that Member States shall enable relevant national authorities to specify, where appropriate, requirements to be met by undertakings providing publicly available electronic communication services to ensure that disabled end-users have access to electronic communications services equivalent to that enjoyed by the majority of

end-users; and benefit from the choice of undertakings and services available to the majority of end-users.

Article 23a (2) of USD obliges Member States to encourage the availability of terminal equipment. The Government intends to make use of the e-accessibility forum to invite stakeholders to discuss options for encouraging technological development and provide recommendations to Ministers. This process is already underway. Any advance in the provision of terminal equipment can only serve to increase engagement of disabled end-users in society both in a personal capacity but also in a professional one with substantial benefits all round. A more detailed analysis of the adaptive technology available in the electronic communications sector is contained in the final impact assessments of the Impact Assessments annex, "Provision of access and choice for disabled end-users.

In addition, there are further new provisions which require that "access for disabled end-users to emergency services is equivalent to that enjoyed by other users" (Article 26.4 of USD). The Government is supporting the roll out of a trial SMS based service for registered disabled users across the nation.

Further, Member States shall ensure that disabled end-users are able to access services provided under the "116" numbering range (Article 27a (2)). This has been part of the UK consultation and appointment procedures for the first range of 116 numbers.

Article 31, "Must carry" obligations (USD) has been amended to make it clear that accessibility services can be included within the must carry obligation. In the UK the provisions dealing with "must carry" services already cover ancillary services which are defined so as to include accessibility services.

Existing requirements for measures for disabled users continue (Articles 7, USD and elsewhere in Chapter II). Provision for disabled users is also explicitly referenced in Article 21 "Transparency of Information" and Article 22 "Quality of Service" (both USD) but these do not place additional implementation obligations on the UK

Article 18 (FWD) "Interoperability of digital interactive TV services" has been revised to require that Member States encourage, "providers of digital TV services and equipment to cooperate in the provision of interoperable TV services for disabled end-users". This agenda will continue to be addressed be advanced through the work of the DTG.

## **Address the impact**

After initial screening and consultation, and with due regard to the impact on protected groups, the Government has concluded that implementing the revised directives will help eliminate unlawful discrimination and help promote equality of opportunity. We also believe that the additional

protection available for individuals with disabilities in relation to “treating disabled people more favourably” and “promoting a positive attitude towards disabled people” are met by the positive action interventions provided for under Framework provisions (eg; preferential repair service for disabled users, SMS access to emergency services, text relay services and on-line provision of customer information in relation to accessibility for disabled users of both fixed and mobile lines.)

## **Monitoring and review**

### **Analysis of consultation responses**

We have asked specific questions in the consultation on the provisions relating to disabled-end users. We are also asking respondents to comment on the EIA.

During the course of our public consultation, Ed Vaizey, Minister for Communications, launched the e-Accessibility Forum and its e-Accessibility Action Plan. The Forum has been instrumental both as a vehicle for discussing our published proposals for implementation and ensuring that debates on equivalence were not overshadowed by other aspects of Framework implementation..

We will continue to work closely with the e-Accessibility Forum and with Ofcom’s specialist leads in this area and we will continue to work with groups like PhoneAbility, who have previously advised DCMS on matters relating to disability and electronic communications.

## **Decision making and quality control**

### **Going Forward**

The e-Accessibility forum has met twice during the course of the formal consultation period, considering implementation of the revised Electronic Communications Framework as part of its agenda on each occasion. The e-Accessibility forum has also been represented at two pre-consultation stakeholder events, where two separate round table events have been held. The e-Accessibility forum is seen as the vehicle for further debating and quality assuring our implementation decisions – where we have the discretion and flexibility to do so.

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.