

**BIS** | Department for Business  
Innovation & Skills

**IMPLEMENTING THE REVISED EU  
ELECTRONIC COMMUNICATIONS  
FRAMEWORK**

Impact Assessment

SEPTEMBER 2010

Department for Business, Innovation and Skills  
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## Overarching Impact Assessment

*This Impact Assessment, which contains a mainly qualitative assessment of the impacts of the revised Framework, should be read alongside the Consultation Document 'Overall approach and consultation on specific issues' for more detail on the specific elements of the Framework. There is a questionnaire attached to this Impact Assessment which seeks to elicit information to enable greater quantification of the impacts for future Impact Assessments.*

### **Introduction**

In 2002, EU Member States reached agreement on a regulatory Framework for electronic communication networks and services, which would apply to all Member States, covering all transmission networks and services (including access) for electronic communications including: telecommunications (fixed and mobile), e-mail, access to the internet, and content related broadcasting. Its aim was to harmonise regulation governing the provision of e-communications across the EU, which would help to reduce entry barriers and foster effective competition and ultimately lead to the creation of an internal market in this sector.

The original Framework, which was implemented in the UK through the Communications Act 2003, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and the Wireless Telegraphy Act 2006<sup>1</sup>, contained an inbuilt review mechanism. Consequently, the European Commission put forward its proposals for changes needed to better ensure the efficient working of the regulatory Framework in November 2007.

The revised Framework was finally adopted after two years of complex negotiations in November 2009 and is intended to raise standards of regulation and competition across all 27 European Member State communications markets.

This Impact Assessment looks at the effects of implementing the transposition requirements of the revised Framework in the UK, which is required by 25 May 2011, where these amendments are not already covered by existing legislation. As a Member State, it is mandatory under EU law that the provisions are transposed in the UK.

The UK, which already has a highly developed and sophisticated communications market, is already working towards the same goals as the revised Framework through the continued implementation of the Digital Economy Act 2010 and interventions to liberalise spectrum management. Therefore, a number of the amendments made to the Framework are already present in existing UK legislation.

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<sup>1</sup> The Wireless Telegraphy Act 2006 is a consolidation of previous Wireless Telegraphy Acts.

The Government will be implementing the amendments associated with the revised Framework (which are targeted measures to bring specific areas in line with the EU electronic communications market) in a proportionate manner to achieve the desired outcomes without gold-plating.

After thorough consideration of the “Principles of Regulation in the Coalition Government”, it has been determined that alternatives to regulation are not considered to be appropriate because, as the objective is to implement European law, the implementing measures must be binding. In addition there is a need for legal certainty to help achieve the benefits of the Framework, which only regulatory options can provide.

### **Rationale for Intervention**

There are two key arguments for further intervention in the European electronic communications market, supported by findings from the Commission’s review: the need to promote stronger competition in the e-communications market and to protect the rights of consumers.

- *Promoting stronger competition* The European Commission Impact Assessment, published in 2007, noted the continued dominance of one or a few operators across most markets in the EU. Combined with barriers to cross-border trade in e-communications services and services with pan-European potential, this can hamper competition substantially. Weaker competition can reduce incentives for operators to develop new electronic communication products and services. As a result, consumers – both businesses and private individuals – may face a more limited choice of products and services which would be offered by operators at potentially higher prices.

Furthermore, the removal of entry barriers across other Member States in the EU has the potential to open up market opportunities for UK businesses in the electronic communications industry.

- *Protecting the rights of consumers* Imperfect information about the range of providers and products on offer and their relative prices may lead to users choosing electronic services which do not best serve their needs or result in them paying more for a particular product than they would otherwise have wished, thus leading to a loss of consumer welfare<sup>2</sup>. This problem can be addressed through measures to improve transparency and information provision, including the provision of information about

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<sup>2</sup> The Commission noted that the July 2007 EU-wide Eurobarometer survey found that on average, 38% of the mobile users, 34% of the fixed telephone users and 30% of the internet users in the EU25 found it difficult to compare the offers available. Consequently, consumers in countries with a high degree of competition find it most difficult to compare information across offers of multiple operators (53%-63% of the users find it "very difficult" or "difficult" to compare mobile telephone offers in Belgium, Denmark, France, Germany, the Netherlands and Sweden).

service quality, conditions and tariffs to help make sure that consumers are aware of all the information when making a decision.

Problems with connectivity and quality of service and difficulties accessing some services means that consumers cannot enjoy the full benefits offered by electronic communications networks and services. This is particularly true for those with disabilities, the elderly and people with special needs who experience significant barriers to using electronic communication services and products, especially with regards to the availability of terminal equipment. For more information, please see the Equality Impact Assessment that accompanies this Impact Assessment.

Finally, poor levels of privacy, security and protection of personal data associated with the use of electronic services means that users may suffer financial loss and distress because they are at risk of their personal information being used other than in ways that they have given specific permission for.

## **The Framework – Policy Objectives and Intended Effects**

The original 2002 Framework was based on five EU Directives, which have been amended through two amending EU Directives<sup>3</sup>;

- the “Access” Directive (2002/19/EC)
- the “Authorisation” Directive (2002/20/EC)
- the “Framework” Directive (2002/21/EC)
- the “Universal Service” Directive (2002/22/EC)
- the “E-Privacy” Directive (2002/58/EC)

The revised Framework seeks to enhance competition in the communications sector through, for example, furthering the liberalisation of spectrum markets (e.g. promoting spectrum trading), and giving express powers in legislation to regulators to impose functional separation on dominant operators<sup>4</sup> (a provision inspired by the UK’s own experience of functional separation).

Although the aim of many of the amendments is to improve the overall regulatory framework for business and where possible to reduce regulatory burdens in the case of spectrum markets, in

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<sup>3</sup> 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 (the so-called “Better Regulation amending Directive), and

Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/22/EC on universal service and users’ rights relating to electronic communications networks and services, Directive 2002/58/EC 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.

<sup>4</sup> Functional separation is the establishment of operationally separated entities, the ownership of which remains with the parent company. The separate entities have separate accounts but they are not legally independent.

some instances the regulatory powers of Member States, national regulators, and the Commission itself are being extended, particularly with regard to consumer protection, e-privacy, and security and resilience. In some instances this brings the Framework in line with current UK practice, thus helping to limit the additional regulatory burden on the UK.

In seeking to ensure the further harmonisation of regulations across Member States the Commission has been granted new powers of scrutiny over regulators' decisions on how they regulate their national markets; in addition to new powers to issue harmonising recommendations and, in some cases, binding decisions. The enforcement powers of national regulatory authorities (NRAs) are also to be strengthened. This is intended to improve regulators' ability to deal with breaches of regulatory obligations.

Amendments to the Framework also extend the remit of existing provisions to cover changes in technology and service provision. For instance, some of the regulation that applies to voice telephony is extended to some "Voice over Internet Protocol" (VoIP) services, reflecting its increased use by consumers.

In addition, the Framework strengthens consumer rights, through new provisions (mostly, in the revised Universal Service Directive) intended to ensure that consumers are better informed about supply conditions and tariffs, and allow them to switch providers more easily. All of this is intended to help promote competition and maximise the benefits of competition in electronic communications. Member States also need to empower National regulators to impose obligations that ensure provision of equivalent access to certain electronic communications services for disabled end-users. These provisions can be applied to all operators (not only the designated universal service operator), where appropriate.

The main features of the revised Framework are:

- more consumer choice through competition between operators;
- greater consumer awareness, through access to information and making sure that people know if their personal details have been compromised;
- strengthened rights on accessibility;
- better oversight of deregulated markets, including through the creation of the Body of European Regulators in Electronic Communications (BEREC);
- greater independence for national telecom watchdogs;
- new powers to ensure that networks are kept running in the event of a breach of security or loss of integrity;
- facilitating investment in new wired and wireless communication infrastructure through greater infrastructure sharing; and
- promoting market led liberalisation of spectrum for new broadband wireless services.

## Policy Proposals

The implementation of the revised Framework is based on multiple policy objectives and therefore brings forward a number of different measures. The policy proposals under consultation and each Directive have an individual Impact Assessment (IA) which discusses the rationale, options for implementation, and the potential costs and benefits in more detail.

A brief summary of the main proposals is set out in the table below along with a qualitative assessment of the high level impacts of their implementation. At this stage a qualitative assessment is provided because of the technical nature of the many changes which are being implemented (where in some cases the policy is not settled) and a lack of availability of relevant data: we have attached a questionnaire to this Impact Assessment which we hope will help to support quantification of costs and benefits in future editions of the Impact Assessment.

Directive	Summary of Policy	Benefits/Costs
Framework Directive	The Framework Directive seeks to establish a harmonised framework for regulation of electronic communications networks and services, associated facilities and services, and following these changes, the regulation of certain aspects of terminal equipment to facilitate access for disabled users and hence the promotion of equality and diversity. It also lays down the tasks of national regulators and establishes procedures to ensure harmonised application of the regulatory framework across all Member States.	<ul style="list-style-type: none"> <li>+ Enhanced opportunities for infrastructure sharing to enable duct access thus facilitating greater investment in superfast broadband.</li> <li>+ Benefits from ensuring resilience of networks and services.</li> <li>- Costs to business of new security and resilience provisions.</li> <li>- Costs to Ofcom from monitoring security and resilience.</li> <li>- Article 12(4) allows national authorities to request information from undertakings in order to provide a detailed picture of the infrastructure in a Member State. There will be a cost to request this information.</li> <li>- Cost to business from providing the 'competent national authority' with the above information.</li> <li>+ Removal of regulatory burdens that hinder the introduction of spectrum leasing.</li> <li>+ Potential for efficiencies from possible review of appeals regime governing NRA.</li> </ul>
Access Directive	The Access Directive further harmonises the way in which Member States regulate access to and interconnection of electronic communications networks and associated facilities. The aim is to establish a regulatory framework in accordance with internal market principles to promote competition, interoperability and consumer benefits. A fundamental principle here is the provision of	<ul style="list-style-type: none"> <li>+ Potential increase in competition from express powers to NRA to enforce functional separation on undertakings with SMP. (This is a discretionary power – The NRA will be able to enforce functional separation should they believe there to be</li> </ul>



	<p>access to incumbent networks – breaking into monopolies – and the rules on which that is based. It also covers how the regulator might intervene to bring it about with explicit reference to the availability of functional separation as a market remedy.</p>	<p>benefits from doing so)</p> <ul style="list-style-type: none"> <li>+ Benefits for business of greater legal certainty regarding the powers and responsibilities of NRAs.</li> <li>+ Potential for greater investment if NRAs are required to take account of investment in regulatory decisions.</li> <li>- Possible costs given greater regulatory powers of NRAs.</li> </ul>
Authorisation Directive	<p>The Authorisation Directive looks to simplify the rules and conditions governing the authorisation required to provide electronic communications networks and services in order to better facilitate the provision of these services throughout the European Community. In so doing it further facilitates the internal market providing for harmonisation of what Member States are allowed to do and not allowed to do with an overall goal of levelling the playing field. The intention is to prevent Member States from introducing rules which prevent other operators from starting up or doing business.</p>	<ul style="list-style-type: none"> <li>+ Improvements in management of spectrum through effective and efficient use and associated benefits to business.</li> <li>- Costs to Ofcom from review of spectrum licenses granted for 10 years or more that can not be transferred or leased.</li> <li>+ Greater innovation through reduced barriers of entry to spectrum</li> <li>- Costs to Ofcom to review general authorisation and licenses within two years of the Directive coming into force.</li> <li>+ Consumer benefits from Ofcom being able to take action after a breach has been remedied.</li> <li>- Costs to business of providing evidence of compliance with the conditions of rights of use of radio frequencies to Ofcom, however this is a limited extension to current practice and is not very extensive.</li> </ul>
Universal Services Directive	<p>Provisions in the Universal Service Directive are intended to strengthen consumer protection by:</p> <ul style="list-style-type: none"> <li>• Improving the transparency of information from service providers to consumers, including information on supply conditions and on tariffs.</li> <li>• Setting a time limit of one working day for 'porting' (transferring) a telephone number following a change of fixed or mobile operator.</li> <li>• Enhancing the implementation of '112' emergency services, including by ensuring greater access to caller location information.</li> </ul> <p>In addition the Universal Service Directive also updates and strengthens provisions in the area of eAccessibility and the rights of users with disabilities. New provisions include;</p>	<ul style="list-style-type: none"> <li>+ Benefits to consumers from greater availability of information about supply conditions and tariffs. Much of this information is already provided to consumers in contracts in the UK.</li> <li>+ Greater efficiency of emergency services operations due to enhanced access to caller location information.</li> <li>+ Increased competitive intensity as a result of an increased level of switching due to a reduction in barriers to number porting<sup>5</sup>.</li> <li>+ Increased benefits to consumers as a result of being able to exploit welfare gains from switching.</li> <li>- Costs incurred by operators as a</li> </ul>

<sup>5</sup> Number porting is the process that allows a consumer to retain the same phone number when changing service provider. In the UK there is a donor led process for mobile number porting (where a customer wishing to port his/her number is required to contact the old provider (the Donor) to obtain a Porting Authorisation Code (PAC) which he/she then has to give to the new provider (the Recipient). Once having received the PAC the Recipient continues the port process by contacting the Donor) and a recipient led process for fixed number porting. In the majority of other Member States there are recipient led processes (for a customer wishing to port his/her number to contact the new provider (Recipient) who will then arrange necessary process with the old provider (Donor)) for both fixed and mobile.

	<ul style="list-style-type: none"> <li>▪ A requirement to ensure equivalent access by disabled users to 112 emergency services</li> <li>▪ A power for Ofcom to impose equivalence obligations on all operators, not just BT.</li> <li>▪ An obligation on Government to promote the availability of terminal equipment for disabled users.</li> </ul> <p>Some of these new obligations set out current UK practice and so will not constitute a new regulatory burden as such. Others empower (but do not require) Ofcom to impose regulation, while others are expected to have some impact on the regulatory burden of operators. In all cases, however, the ultimate goal is to promote the interests of consumers, whether through facilitating competition or protecting vulnerable groups.</p>	<p>result of moving to faster number porting.</p> <p>+ Benefits from increased opportunities and engagement in the digital economy for disabled users.</p> <p>- Potential cost to business to pay for any services mandated should Ofcom use their power to impose equivalence obligations on all operators.</p>
E-Privacy Directive	<p>This Directive sets out the fundamental rights and freedoms of EU citizens when using electronic communications. In particular, it strengthens rights to privacy and confidentiality with respect to the holding and processing of personal data by network and service providers. The key changes to this Directive are:</p> <ul style="list-style-type: none"> <li>▪ The introduction of a duty on providers of electronic communications services to notify personal data breaches to the Information Commissioner's Office;</li> <li>▪ A need for penalties, including criminal penalties where appropriate, for breaches of the Directive;</li> <li>▪ A change in the requirement for storing information on a subscriber's or user's equipment from a 'right to refuse' to obtaining consent;</li> </ul>	<p>+ Benefits of improved consumer welfare (through higher take-up of services which would also be mirrored by benefits to business) as a result of potential reduced incidences of breaches of personal data due to all three key changes proposed.</p> <p>+ Improvements to industry reputation as a result of fewer complaints.</p> <p>- Familiarisation costs associated with dealing with guidance.</p> <p>- Costs to Information Commissioner's Office of producing guidance.</p> <p>- Costs to browser owners from having to provide users with information about cookies and how to change the browser settings.</p>

## **Scope of the Proposals**

The policy proposals cover electronic communication networks and services. Electronic communication networks are essentially the infrastructure over which electronic data or voice communication is transmitted. Examples include telephone exchanges and the series of transmitters and receivers used in mobile phone networks. Electronic communication services are the services offered over these infrastructures. These include both fixed and mobile phone services as well as internet/broadband services.

Directly, the telecommunications services sector – as defined by SIC 2007 code 61 – generated some £28.7bn in gross value added and employed some 215,000 people in 2008. This represented around 2% of total UK GDP and less than 1% of UK employment<sup>6</sup>. Indirectly, telecommunications – like other forms of information and communication technology (ICT) – is a vital input in many other sectors of the UK economy.

<sup>6</sup> Annual Business Inquiry, Office for National Statistics

Today, the UK telecommunications sector is one of the most liberalised amongst industrialised countries. According to the European Competitive Telecommunications Association (ECTA) scorecard<sup>7</sup> which is produced every year the UK is ranked as one of the leading countries with the most effective regulatory regime. The OECD also ranks the UK as one of the countries having the lowest levels of regulation in the telecommunications sector.

*Table 1: Level of regulation in the telecommunications sector in OECD countries, 2007*

Country	Value	Country	Value
US	0.1	New Zealand	1.3
UK	0.6	Ireland	1.3
Finland	0.7	Sweden	1.3
Czech Republic	0.7	Australia	1.3
Denmark	0.8	France	1.3
Italy	0.9	Iceland	1.3
Poland	1.0	Canada	1.4
Korea	1.1	Greece	1.9
Netherlands	1.1	Belgium	2.0
Spain	1.1	Switzerland	2.0
Portugal	1.1	Norway	2.1
Hungary	1.2	Slovak Republic	2.1
Germany	1.2	Turkey	2.2
Austria	1.2	Mexico	2.3
Japan	1.2	Luxembourg	3.1

Source: OECD Product Market Regulation database

Note: The level of regulation is based on criteria including state control of business enterprises, legal and administrative barriers to entrepreneurship and barriers to international trade and investment. The level of regulation is scored between 0 and 6 where 0 represents low levels of regulation and 6 high levels of regulation.

<sup>7</sup> The scorecard is based on responses submitted by National Regulatory Authorities to a detailed questionnaire covering the institutional framework, general market access conditions and the specific competitive and regulatory conditions relating to the markets for fixed and mobile telephony, high speed business connections and broadband.

## **Overall assessment of the impact of the Framework**

Whilst it is not possible at this stage to quantify the different impacts in isolation or as a whole, the amendments to the Framework are expected to have significant de-regulatory benefits, particularly with regards to spectrum markets. However, there are some cases, such as for consumer protection, e-privacy and security and resilience, where new regulatory requirements will be introduced by the revised Framework where consumers are likely to benefit, albeit at a cost to business and Ofcom. In some cases powers are being extended to NRAs, the application of which is often already current practice in the UK. In any case the exercise of these powers may be largely discretionary, thus the expectation is that the additional impact on business would be likely to be limited and the costs and benefits would tend to materialise on a case-by-case basis. Every effort will be made when transposing these EU requirements to keep the level of regulation to a minimum, whilst still enabling consumers to gain the highest level of benefits that revisions to the Framework are designed to deliver.

As a result of the UK already having a highly developed electronic communications market, and being ahead of many other Member States, the additional benefits to the UK from implementing the revised Framework are likely to be lower than in other Member States because businesses and consumers are already experiencing many of the benefits the amendments are designed to achieve, with the main additional benefit coming from the development of the single market. This also means that the costs of implementing the amendments will be lower in the UK than other Member States because there are fewer changes required to current regulation.

A significant benefit to the UK from implementing the revised Framework will stem from the greater progress towards integration of the electronic communications markets of all Member States. This will deliver the benefits of a single market for UK businesses and consumers. There will be benefits for business because they will face the same conditions in other Member States as in the UK and this should increase the ease with which they can trade with, and provide services to, the other Member States of the EU. Consumers should benefit because they will be better able to compare the services and products offered throughout the EU and to make sure that they receive the best deal.

## **One In One Out**

This policy is out of the initial scope of the One In One Out requirements. Therefore, no corresponding Out is sought.

## Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

### **Basis of the review:**

The Directives of the Framework have review provisions in them which say that the Commission shall periodically review the functioning of the Directive and report to the European Parliament and the Council. The first review of the Framework was required to be within 3 years of implementation, and it is from this review that the amended Framework has been negotiated. The UK will be required to provide the Commission with information when they perform a review and will carry out its own review of implementation at this that time. The PIR would be expected to take place within the standard 3 – 5 year timeframe, by May 2016: the timing of such a review, and the nature of the review itself, would also be influenced by the Commission's intentions.

### **Review objective:**

The objective is to review the effective implementation of the provisions of the amended EU Electronic Communications Framework. The Framework is intended to raise standards of regulation and competition across all 27 European Member State communication markets.

### **Review approach and rationale:**

The UK Government will review the implementation of the Framework at the same time as it is required to provide information to the Commission for their review. This method of review was chosen so as to avoid an unnecessary burden on the Government, Stakeholders or Ofcom. The form that the review will take is not yet known.

### **Baseline:**

The review will use the do nothing options detailed in the Impact Assessment as a baseline against which the change introduced by the legislation can be measured.

### **Success criteria:**

The review will review the effective implementation of the provisions of the revised EU Electronic Communication Framework that were not previously covered under existing legislation. The review will evaluate whether the provisions have been transposed in such a way as to deliver the main aims of the revised Framework to UK users and businesses. The main aim is to raise standards of regulation and competition across all Member States.

### **Monitoring information arrangements:**

Under the revised Framework, Ofcom, the National Regulatory Authority, is required to carry out a review of the markets that are considered to have aspects of Significant Market Power every three years. These reviews should be able to provide information for the review because they will assess the state of competition within the markets, which will give an idea of whether the provisions of the Framework are achieving their aim of increasing competition. In addition, the Government plans to have ongoing engagement with stakeholders over the implementation and effects of the provisions.

### **Reasons for not planning a PIR:**

Not Applicable

<b>Framework Directive: Overarching Impact Assessment</b>  <b>Lead department or agency:</b> Department for Business, Innovation and Skills <b>Other departments or agencies:</b> Ofcom	<b>Impact Assessment (IA)</b>
	<b>IA No:</b> BIS0022
	<b>Date:</b> 10/09/2010
	<b>Stage:</b> Consultation
	<b>Source of intervention:</b> EU
	<b>Type of measure:</b> Secondary legislation
<b>Contact for enquiries:</b> Colette Beaupre 020 7215 1650	

## Summary: Intervention and Options

**What is the problem under consideration? Why is government intervention necessary?**  
 Intervention is required to ensure that there is a harmonised framework for electronic communications services and networks in order to facilitate the continued development of a single EU market. Diverging regulatory requirements across EU Member States may deter entry and hinder effective competition thus limiting the benefits for UK businesses and consumers.

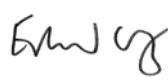
**What are the policy objectives and the intended effects?**  
 The Framework Directive aims to establish a harmonised framework for electronic communications networks and services, associated facilities and services, and certain aspects of terminal equipment to facilitate access for disabled users. It also sets out the job of national regulators and established procedures to ensure harmonised application of the regulatory framework across all Member States.

**What policy options have been considered? Please justify preferred option (further details in Evidence Base)**  
 Option 0: Do Nothing  
 Option 1: Implement the provisions of the amended Framework Directive of the EU Electronic Communications Framework. This is the preferred option that will help deliver the benefits of a single EU electronics communication market. This involves implementing the provisions of the Directive that are not already in place in the UK.

<b>When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?</b>	It will be reviewed 05/2016
<b>Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?</b>	Yes

**Ministerial Sign-off For** consultation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:  Date: 13/09/2010

# Summary: Analysis and Evidence Policy Option 1

Description:

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)			
			Low: Not	High: Not	Best Estimate:	
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Cost (Present Value)</b>		
Low	Not Quantifiable		Not Quantifiable	Not Quantifiable		
High	Not Quantifiable		Not Quantifiable	Not Quantifiable		
Best Estimate						
<b>Description and scale of key monetised costs by 'main affected groups'</b>						
<b>Other key non-monetised costs by 'main affected groups'</b>						
<p>There will be a cost to business from being required to take appropriate measures to manage risk to the security of networks and services; taking steps to guarantee the integrity, and help ensure continuity, of supply of service. There will also be costs if Ofcom requires them to provide information, submit to a security audit or issues binding instructions. There will be a cost of notifying Ofcom of breaches of security or loss of integrity. There will be a cost to Ofcom of notifying ENISA, other regulators and the public of breaches of security or of loss of integrity. There will be a cost associated with producing an annual report on breaches for the Commission and ENISA. There will also be a cost to Ofcom of using their powers to investigate cases of non-compliance. There will be a cost to businesses involved in dispute cases if Ofcom choose to use their discretionary power to recover their costs. There will be a new cost to Ofcom to collect data on the number, subject and duration of appeals and report this to BEREC and the Commission on request and to notify the Commission and BEREC of its proposed ex ante regulation. There will be an increased cost to Ofcom from the requirement to review markets every three years. Ofcom may face some implementation costs to introduce spectrum leasing. There may be a cost to Ofcom if the requirement to regularly review the restrictions imposed on allocations, licenses and general authorisations leads to them having to carry out more reviews. The 'competent national authority' will face a cost if it is required to provide an inventory of infrastructure in the UK, this could potentially pose a large increase in administrative burdens. The increase in the number of undertakings with access to Ofcom's dispute resolution system has the potential to increase the number of disputes they have to deal with, which could increase the cost to Ofcom.</p>						
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Benefit (Present Value)</b>		
Low	Not Quantifiable		Not Quantifiable	Not Quantifiable		
High	Not Quantifiable		Not Quantifiable	Not Quantifiable		
Best Estimate						
<b>Description and scale of key monetised benefits by 'main affected groups'</b>						
<b>Other key non-monetised benefits by 'main affected groups'</b>						
<p>The harmonised Framework will increase the benefits that the single market brings, including an increase in competition and price transparency throughout the MSs. This provides benefits to consumers through lower prices and a wider choice of services available. The harmonised Framework should also provide businesses operating in the market with greater certainty and consistency when they are operating within the MSs. Harmonisation of the application of the regulatory Framework within MS should encourage competition as part of the single market because network and service providers will face similar conditions in each MS which should produce a level playing field. There should also be a benefit to business, especially businesses that operate in more than one MS, because they will operate under the same regulatory framework in each MS which should simplify any changes they need to make to comply with the provisions of the Framework, as they should be similar in each State.</p>						
<b>Key assumptions/sensitivities/risks</b>				<b>Discount rate (%)</b>		
<b>Impact on admin burden (AB) (£m):</b>			<b>Impact on policy cost savings (£m):</b>		<b>In scope</b>	
<b>New AB:</b>	<b>AB savings:</b>	<b>Net:</b>	<b>Policy cost savings:</b>			<b>Yes/No</b>

## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	UK				
From what date will the policy be implemented?	25/05/2011				
Which organisation(s) will enforce the policy?	HMG, Ofcom				
What is the annual change in enforcement cost (£m)?	Not Quantifiable				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	No				
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	<b>Traded:</b> 0		<b>Non-traded:</b> 0		
Does the proposal have an impact on competition?	Yes				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	<b>Costs:</b> 0		<b>Benefits:</b> 0		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	<b>Micro</b> Not Quantifiable	<b>&lt; 20</b> Not Quantifiable	<b>Small</b> Not Quantifiable	<b>Medium</b> Not Quantifiable	<b>Large</b> Not Quantifiable
Are any of these organisations exempt?	No	No	No	No	No

## Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
<b>Statutory equality duties</b> <sup>8</sup> <a href="#">Statutory Equality Duties Impact Test guidance</a>	Yes	22
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	Yes	21
Small firms <a href="#">Small Firms Impact Test guidance</a>	No	-
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	No	-
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	No	-
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	-
Human rights <a href="#">Human Rights Impact Test guidance</a>	No	-
Justice system <a href="#">Justice Impact Test guidance</a>	No	-
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	-
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	No	-

<sup>8</sup> Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.



# Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

## References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	
2	
3	
4	

+ Add another row

## Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

### Annual profile of monetised costs and benefits\* - (£m) constant prices

	Y <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
<b>Transition costs</b>										
<b>Annual recurring cost</b>										
<b>Total annual costs</b>										
<b>Transition benefits</b>										
<b>Annual recurring benefits</b>										
<b>Total annual benefits</b>										

\* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office  
Excel Worksheet

## **Evidence Base (for summary sheets)**

### **Background**

The Framework Directive (Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services) provides the overall structure for the regulatory regime governing the provision of electronic communication services across the EU and sets out fundamental rules and objectives which read across all five Directives. It aims to establish a harmonised regulatory framework governing electronic communications networks and services, associated facilities and services, and following the recent amendments, certain aspects of terminal equipment to facilitate access for disabled users. It also sets out the role of national regulators and established procedures to ensure harmonised application of the regulatory framework across all Member States.

### **Rationale for Government Intervention**

Intervention is required to ensure that there is a harmonised framework for electronic communications services and networks in order to facilitate the continued development of a single EU market. Inconsistencies in the application of the regulatory framework will act as a barrier to entry and prevent companies competing across borders, because they will not be competing on a level playing field. This will prevent UK businesses and users benefiting from the single EU market. By intervening to ensure a harmonised framework, the government can help businesses compete across Member States. It can also help companies that operate in a number of Member States who will only need to adjust to be compliant with one framework, instead of multiple ones in different countries.

### **Option**

#### **Option 0: Do nothing**

A do nothing option is included as a theoretical baseline against which the effects of implementing the provisions of the Directive can be assessed. This option is not feasible because it would not be compliant with EU law and risks infraction proceedings. Under this option UK consumers and businesses would miss out on the benefits that implementing the provisions of the Directive would bring.

#### **Option 1: Implement the provisions of the Framework Directive of the EU Electronic Communications Framework**

There are a number of provisions of the Framework Directive that are not already covered within UK law. These include:

- A requirement that national regulatory authorities (NRAs) operate independently of political interference. The UK is largely compliant with these provisions through the Office of Communications Act 2002 although minor changes to that legislation and other communications legislation is required in order to ensure that the UK is fully compliant.
- Member States will be obliged to collect data on the number, subject and duration of appeals against the NRA's decisions and report this to BEREC (Body of European Regulators for Electronic Communications) and the European Commission on request.
  - The UK has a sophisticated and resource intensive appeal regime and other changes to the regulatory framework may necessitate a change in the approach taken on appeals. An Impact Assessment in Annex 1 discusses the effect of these changes.
- Ofcom will be obliged to notify the Commission and BEREC of its proposed ex ante regulation affecting trade between Member States only once a national consultation has been completed. It will have to take the utmost account of comments made by BEREC on the notified measures as well as taking account of comments from the Commission.
  - The Commission is given powers to scrutinise remedies as well as market definition and SMP (Significant Market Power) assessments as part of the market review process. The effects of this on Ofcom's market review process are included in an Impact Assessment included in Annex 1.
  - The Commission's scrutiny over NRA decisions is increased, and Ofcom will be required to review markets within three years of the adoption of a previous measure relating to the market, and within two years of the adoption of a revised Recommendation on relevant markets previously not notifiable to the Commission. This is more frequently than Ofcom currently review markets and the effects of this change are included in an Impact Assessment in Annex 1.
  - An obligation will be placed on Ofcom to notify to the Commission any 'draft measure' only on completion of the national consultation. This means that Ofcom will have to reach a further provisional view on its consultation proposals after considering every response received during the national consultation before notifying the draft measure to the Commission. Currently Ofcom is able to notify the Commission and other regulators at the same time as it consults nationally.
  - Ofcom is required to make the draft measure accessible for community consultation after the national consultation has been completed. The consultation period is limited to 1 month because it now follows the domestic consultation period. During this time, if the Commission thinks that the proposal may cause a barrier to the single market or is incompatible with community law, the proposal may not be adopted for a two month standstill period. Ofcom will be able to give

immediate effect to its proposals during the stand still period if the Commission withdraws its concerns.

- If the Commission issues a recommendation that Ofcom withdraw or amend its proposals, reasoned justification will need to be provided by Ofcom to continue with the proposals. Final measures will need to be notified to the Commission and BEREC.
- There will be new ways in which Ofcom are to oversee spectrum management that provide for some liberalisation of spectrum markets.
  - UK spectrum policy is already consistent with many of the provisions to promote spectrum trading and strengthen the principle of technology and service neutrality.
  - Member States are required to ensure that, except in limited and justifiable circumstances, for all spectrum allocated after 25<sup>th</sup> May 2011 all types of technology and services may be used in those frequency bands that have been declared available for electronic communications services in the National Frequency allocation Plan. This is consistent with Ofcom's duties and policies, but it will now need to be set out in legislation.
  - Member States are invited to consider how they might deal with spectrum hoarding. Ofcom already has powers to deal with spectrum hoarding and expects to set out its general approach to the issue later in the year.
  - Ofcom will be required to regularly review the necessity of any restrictions imposed on allocations, licenses and general authorisations. This needs to be made formal in the UK as current practice is for Ofcom to review license conditions and restrictions on application from licence holders. The review process will now be formalised and Ofcom will be required to publish the results.
  - In order to ensure that there is a process in place to lift regulatory burdens that are found to be no longer necessary, all general authorisations and licenses granted before 25<sup>th</sup> May 2011 are required to be reviewed to ensure that they are in line with the new service and technology neutrality provisions and those relating to spectrum trading and leasing. Ofcom will review all licences by the May 2016 deadline.
  - The trading and leasing of spectrum licenses is provided for in specific spectrum bands nominated by the Commission. There is also discretion for Member States to introduce it in other bands. Spectrum transfer is already provided for in the UK, but regulatory burdens have hindered the introduction of spectrum leasing. The new provisions allow the removal of these barriers. A simplified system for leasing enabling greater clarity and a less burdensome approach for industry could be introduced.

- The Directive increases the potential opportunities for operators sharing the national network of infrastructure and facilities. A separate consultation that will also examine the application of infrastructure sharing with other utility companies as well as telecoms companies will be undertaken.
  - There will be a requirement for certain decisions relating to rights of way under the Communications Code to be made by the competent authority within 6 months in order to simplify the regulatory process. In the UK, rights of way are usually implemented through the Electronic Communications Code, and Ofcom normally process applications for Code powers within 3 months. The Government considers that the requirement that decisions on rights of way be made within 6 months relates not to the grant of Code powers but to all decisions of competent authorities granting rights of way.
  - Member States will be able to require facility sharing between electronic communications providers in certain circumstances where this would be proportionate and non-discriminatory, and Ofcom will have the power to impose facility sharing between electronic communications network operators even in the absence of Significant Market Power. Infrastructure sharing is consistent with the Coalition Government's policy to reduce the barriers to the deployment of superfast broadband.
  - Article 12(4) allows national authorities to request information from undertakings in order to provide a detailed picture of the infrastructure in a Member State. More information about this is given in the Impact Assessment in Annex 2.
- A new chapter in the Directive describes the requirements of a new set of obligations on security and resilience to ensure, as far as is possible, the continuity and integrity of electronic communication services. These provisions are covered in more detail in an Impact Assessment in Annex 3.
  - There will be a requirement imposed on all public electronic network and service providers to take appropriate steps to ensure the security of public communications networks and services.
  - The Directive also seeks to 'guarantee' the availability of public communications networks and 'ensure' the continuity of supply. What is appropriate here will vary depending on the network and service.
  - Providers of public communications networks and services will be required to notify Ofcom of an event which has, or has the potential to have, a significant impact on the operation and availability of their networks or services. This should focus on the reporting of events that are major or raise new issues of general concern.

- Where appropriate Ofcom will be required to inform other Member States or ENISA of an event, and this is likely to be the case if the incident has an impact on other Member States or internationally.
- Ofcom may also inform the public, or require the relevant provider to do so, should this be judged to be in their interest.
- Ofcom will be required to report to ENISA and the Commission on an annual basis, giving details of the incidents affecting the availability of communications networks and services and the action taken.
- Ofcom will have the power to investigate any case of non-compliance with Article 13a(1) and (2) of the Directive. This will primarily be triggered by an incident or some other obvious indication that there is possible non-compliance.
- Ofcom should have the power to compel companies to correct failures in relation to any obligations on the companies. This would mean that instructions could be given to address perceived failures in relation to risk management and would allow for company discretion on the reporting of security breaches to be overridden.
- Where it has concerns as to a company's compliance with these new provisions, Ofcom should be able to require documentation to assess the security and/or integrity of that company's services and networks and, if justified, commission a security audit.
- There is a new provision that requires Member States to encourage broadcasters and manufactures to work together so that the range of interactive services available on digital television services includes those accessible to disabled end users.
- The Commission will be able to issue a recommendation or a decision on the harmonised application of provisions within the Framework in pursuit of specified NRA objectives, in areas where it considers there has been an inconsistent regulatory approach taken by Member States.
  - NRAs must take utmost account of the recommendations, although these are non-binding.
  - The Commission will have to power to change non-binding decisions to binding decisions in certain circumstances.
- The scope of dispute resolution has been expanded to include undertakings 'benefiting from obligations of access and/or interconnection arising under this Directive and the Specific Directives'. This potentially expands the number of companies using Ofcom's dispute resolution system, the effects of which are examined in an impact assessment included in Annex 1.
  - In order to discourage the referral of disputes that could be resolved without Ofcom's intervention and to encourage disputing parties to seek resolution of their

disputes through alternative dispute resolution, Ofcom will be granted a discretionary power to recover, where appropriate, the costs and expenses it has incurred in relations to resolving disputes. Except in the case of spectrum disputes, where Ofcom already has this power, Ofcom's costs are recovered through the administrative charges levied across industry, however these are not expected to provide the right incentives.

## Costs

*Costs to Business* – There will be a cost to business from being required to take appropriate measures to manage risk to the security of networks and services; taking steps to guarantee the integrity, and help ensure continuity, of supply of service. There will also be costs if Ofcom requires them to provide information, submit to a security audit or issues binding instructions. There will be a cost of notifying Ofcom of breaches of security or loss of integrity. There will be a cost to businesses involved in dispute cases if Ofcom choose to use their discretionary power to recover their costs.

*Costs to Ofcom* –There will be a cost to Ofcom to collect data on the number, subject and duration of appeals and report this to BEREC and the Commission on request. There will be a limited cost to Ofcom to notify the Commission and BEREC of its proposed ex ante regulation. There will be an increased cost to Ofcom from the requirement to review markets every three years; this also has implications for the appeals process which are examined in an Impact Assessment in Annex 1. Ofcom may face some implementation costs to introduce spectrum leasing. There may be a cost to Ofcom if the requirement to regularly review the restrictions imposed on allocations, licenses and general authorisations leads to them having to carry out more reviews. Ofcom will face a cost to be able to provide an inventory of such facilities that are being shared between electronic communications network, this could potentially pose a large increase in administrative burdens. There will be a cost to Ofcom of notifying ENISA, other regulators and the public of breaches of security or of loss of integrity. There will be a cost associated with producing an annual report on breaches for the Commission and ENISA. There will also be a cost of using their powers to investigate cases of non-compliance. The increase in the number of undertakings with access to Ofcom's dispute resolution system has the potential to increase the number of disputes they have to deal with, which could increase the cost to Ofcom.

## Benefits

The Framework Directive covers a large number of areas and should lead to a large number of benefits for consumers and businesses. Based on the aims of the revised Directive, there are two main areas that deliver benefits.

- The harmonised Framework for electronic communications networks and services that the Directive is designed to help deliver will increase the benefits that the single EU electronic communication market bring. This includes an increase in competition and price transparency throughout the Member States. This provides benefits to consumers through lower prices and a wider choice of services available. The harmonised Framework should also provide businesses operating in the market with greater certainty and consistency when they are operating within the Member States.
- The Directive sets out the job of national regulators and helps ensure harmonisation of the application of the regulatory Framework within Member States. This should encourage competition as part of the single market because network and service providers will face similar conditions in each Member State which should produce a level playing field. There should also be a benefit to business, especially businesses that operate in more than one Member State, because they will operate under the same regulatory framework in each Member State which should simplify any changes they need to make to comply with the provisions of the Framework, as they should be similar in each State.

## Competition

The Directive is expected to have a pro competitive effect because it promotes a level playing field within the single EU electronic communications market. This will allow companies to compete and operate under similar conditions, and will make it easier for consumers to compare price and quality throughout the Member States.

Facilitating infrastructure sharing is regarded as a pro-competitive means of promoting broadband because it reduces the high costs of deploying infrastructure through Fibre to the Cabinet (FTTC) or Fibre to the Home (FTTH). Civil works account for up to 80 per cent<sup>9</sup> of the total cost of deployment – thus lowering the barriers to entry for communication providers committed to infrastructure deployment, although some construction activity may still be needed. Meanwhile, there are also other benefits such as additional revenue for infrastructure owners as well as the potential for avoiding disruption to society such as congestion and noise associated with civil works.

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<sup>9</sup> Analysys Mason (2010) Operational models for shared duct access



### Small Firms

After initial screening, there is not expected to be a disproportionate effect of the Directive on small firms.

### Other Specific Impact Tests

#### *Other environment/ rural proofing*

After an initial screening it has been deemed that no significant impact is anticipated on the environment and rural proofing.

#### *Race, disability and gender equality*

After an initial screening it has been deemed that no significant impact is anticipated on race or gender equality. The amendments are expected to have a positive effect for disabled users, please see the Equalities Impact Assessment for more information.

#### *Other tests*

Other specific impact tests have been considered including Legal Aid, Sustainable Development and Carbon Assessment. Again, after initial screening, it has been deemed that no significant impact is anticipated.

## Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<b>Basis of the review:</b> For details of the Post Implementation Review please see the Plan on page 10.
<b>Review objective:</b>
<b>Review approach and rationale:</b>
<b>Baseline:</b>
<b>Success criteria:</b>
<b>Monitoring information arrangements:</b>
<b>Reasons for not planning a PIR:</b>

<b>Annex 1: Provisions on Market Reviews, Dispute Resolutions and Appeals</b>  <b>Lead department or agency:</b> Department for Business, Innovation and Skills <b>Other departments or agencies:</b> Ofcom	<b>Impact Assessment (IA)</b>
	<b>IA No:</b> BIS0114
	<b>Date:</b> 10/09/2010
	<b>Stage:</b> Consultation
	<b>Source of intervention:</b> EU
	<b>Type of measure:</b> Secondary legislation
<b>Contact for enquiries:</b> Colette Beaupre 020 7215 1650	

## Summary: Intervention and Options

**What is the problem under consideration? Why is government intervention necessary?**  
 Amendments to the Framework Directive with regards to dispute resolution and the frequency of market reviews have highlighted the resource implications of the previous transposition. The amendments on disputes and market reviews increase the number of decisions made by Ofcom that can be appealed against to the Competition Appeal Tribunal. Intervention is required to help release Ofcom's resources so that it is able to perform its duties as a national regulator more efficiently.

**What are the policy objectives and the intended effects?**  
 The present transposition exercise provides an opportunity to make sure that the provisions with regards to appeals meet what is required by the Framework Directive but do not go beyond what is required. The aim of the policy options is to help release Ofcom's resources so that it is better able to perform its duties whilst also ensuring that there remains a suitable appeals mechanism in place.

**What policy options have been considered? Please justify preferred option (further details in Evidence Base)**  
 Option 0: Do Nothing  
 Option 1: Amend the Communications Act to more accurately reflect the wording of the Framework Directive.

<b>When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?</b>	It will be reviewed 05/2016
<b>Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?</b>	Yes

**Ministerial Sign-off For** consultation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:  ..... Date: 13/09/2010

# Summary: Analysis and Evidence Policy Option 1

## Description:

Amend the Communications Act to more accurately reflect the wording of the Framework Directive.

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Not	High: Not	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Not Quantifiable	Not Quantifiable	Not Quantifiable
High	Not Quantifiable	Not Quantifiable	Not Quantifiable
Best Estimate			

### Description and scale of key monetised costs by 'main affected groups'

### Other key non-monetised costs by 'main affected groups'

There may be a reduction in the level of scrutiny to which Ofcom decisions are subjected on appeal. However, it would be for the Competition Appeal Tribunal and the Courts to decide how the new transposition is interpreted.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Not Quantifiable	Not Quantifiable	Not Quantifiable
High	Not Quantifiable	Not Quantifiable	Not Quantifiable
Best Estimate			

### Description and scale of key monetised benefits by 'main affected groups'

### Other key non-monetised benefits by 'main affected groups'

This option may lead to a reduction in the number of appeals brought against Ofcom, although it is not clear what the scale of this reduction will be. This will bring a benefit to Ofcom as they will be able to devote fewer resources to 'armour plating' their decisions against the risk of appeals, and will be able to commit more resources to policy development and ensuring regulatory certainty as far as possible. This has the benefit of reducing unnecessary administration burdens on Ofcom. There will be a benefit to business from improved regulatory certainty.

### Key assumptions/sensitivities/risks

Discount rate (%)

Impact on admin burden (AB) (£m):			Impact on policy cost savings (£m):		In scope
New AB:	AB savings:	Net:	Policy cost savings:		Yes/No

## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	UK				
From what date will the policy be implemented?	25/05/2011				
Which organisation(s) will enforce the policy?	Ofcom, CAT, HMG				
What is the annual change in enforcement cost (£m)?	Not Quantifiable				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	No				
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	<b>Traded:</b> 0		<b>Non-traded:</b> 0		
Does the proposal have an impact on competition?	Yes				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	<b>Costs:</b> 0		<b>Benefits:</b> 0		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	<b>Micro</b> Not Quantifiable	<b>&lt; 20</b> Not Quantifiable	<b>Small</b> Not Quantifiable	<b>Medium</b> Not Quantifiable	<b>Large</b> Not Quantifiable
Are any of these organisations exempt?	No	No	No	No	No

## Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
<b>Statutory equality duties</b> <sup>10</sup> <a href="#">Statutory Equality Duties Impact Test guidance</a>	No	-
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	Yes	32
Small firms <a href="#">Small Firms Impact Test guidance</a>	No	-
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	No	-
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	No	-
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	-
Human rights <a href="#">Human Rights Impact Test guidance</a>	No	-
Justice system <a href="#">Justice Impact Test guidance</a>	No	-
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	-
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	No	-

<sup>10</sup> Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

## Evidence Base (for summary sheets)

### Background

*The consultation document does not ask specific questions about the market reviews and dispute articles in the revised Directive and therefore these are not covered by this Impact Assessment. This IA covers proposed changes to the current appeals process designed to enable Ofcom to better fulfil its new requirements for dispute resolution and market reviews under the revised Directive.*

The revised Directive increases the class of companies that can refer disputes to Ofcom to be resolved within 4 months. Ofcom's decisions on those disputes can be appealed to the Competition Appeal Tribunal. Under the original terms of the Directive, Ofcom only resolves disputes between electronic communications providers or disputes on a network access question between various communications companies. The revised Directive expands the current scope to include undertakings who benefit from access and/or interconnection obligations.

Under the previous transposition of the Directive Ofcom are required to carry out market reviews to monitor the amount of competition in certain markets, and to impose remedies to increase the level of competition as desired. Until 2007 there was a requirement to review 18 markets, however, following a recommendation by the European Commission, 11 of these are now deemed to be competitive and no longer need to be reviewed on a regular basis<sup>11</sup>. Therefore, since 2007 Ofcom has been required to carry out reviews of seven markets where significant market power (SMP) is still found.

An Ofcom market review involves three stages:

- Define the market – This requires economic analysis
- Assess dominance and SMP in the market – This requires economic analysis
- Decide on remedies to address any SMP – Under the Framework the remedies can take one of four forms as non-discrimination, transparency obligations, access obligations or pricing.

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<sup>11</sup> If Ofcom want to make a change or reduction to any regulation in the 11 competitive markets they need to carry out a review to check for SMP before proceeding.

Under the original terms of the Directive, Ofcom is required to notify the Commission when it carries out a review. The Commission is able to veto the findings of stages 1 or 2 of the review and is able to send a comments letter on stage 3. Under the amended Directive, the Commission is able to scrutinise stage 3 as well.

Under the original terms of the Directive no time scale was specified in which reviews were required to take place. Ofcom's current practice is to carry out a forward looking review, and implement remedies, every 4 to 5 years. This gives them time to produce strong analytical evidence to support the remedies they choose to impose, to challenge any appeals against the remedies, and to observe the effects of the remedies before starting the next review.

The revised Directive places an obligation on NRAs to review markets every 3 years to ensure the harmonisation of the market review process throughout Member States. The three year period is expected to be measured from the notification of measures to the adoption of the next set of measures. This process takes on average a little over two years for the NRAs of most Member States, however Ofcom is an outlier because it currently takes them longer to complete their reviews.

This means that Ofcom will need to make some changes to their current process in order to run the whole process within 3 years. Ofcom say that they would be able to do this if they were able to complete stages 1 to 3 within a year and then had two years to observe the effects of the remedies in order to inform the next review.

Furthermore, the current appeals process provides that appeals are 'decided on the merits' which can often result in a full rehearing of Ofcom's decision rather than a review to determine whether they made a material error. The current transposition exercise presents an opportunity to review the previous transposition and bring it in line with the Directive which only requires that the merits of the case are 'duly taken into account'.

The Framework Directive, both the original and the revised, requires Member States to provide for a right of appeal against decisions taken by the national regulatory authority. Article 4(1) of the Directive states that:

*Member States shall ensure that effective mechanisms exist at a national level under which any user or undertaking providing electronic communications networks and/or services who is affected by a decisions 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 appeal, the decision of the national regulatory authority shall stand, unless the appeal body decides otherwise. ...*

*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.*

This was implemented in the UK 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.”* [emphasis added].

The question of what is required by Article 4(1) to provide an effective appeal against regulatory decisions by Ofcom was considered by the Court of Appeal in the T-Mobile case, in December 2008<sup>12</sup>. The case concerned the question of whether the High Court had jurisdiction to hear a judicial review of an Ofcom decision to hold a spectrum auction and in particular (i) whether Article 4 requires a rehearing and (ii) whether judicial review was capable of meeting the specific requirements of Article 4(1) Framework Directive duly to take account of the merits of a case.

Lord Justice Jacob held in relation to the requirements of Article 4(1) that: *“it is inconceivable that Art. 4 in requiring an appeal which can duly take into account the merits, requires Member States to have in effect a fully equipped duplicate regulatory body waiting in the wings just for appeals. What is called for is an appeal body and no more, a body which can look into whether the regulator had got something material wrong.”* He went on to find that Judicial Review was capable of meeting the requirements of Article 4(1).

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<sup>12</sup> Judgement by Lord Justice Jacob, T-Mobile (UK) Ltd & Telefónica O2 Ltd v Ofcom (2008) EWCA Civ 1373 Lord Justice Jacob held in relation to the requirements of Article 4(1) that: *“it is inconceivable that Art. 4 in requiring an appeal which can duly take into account the merits, requires Member States to have in effect a fully equipped duplicate regulatory body waiting in the wings just for appeals. What is called for is an appeal body and no more, a body which can look into whether the regulator had got something material wrong.”* He went on to find that Judicial Review was capable of meeting the requirements of Article 4(1).



The current appeals process can seem attractive under some circumstances because it gives a second view on Ofcom's review and decisions. The cost of the appeals process, relative to the delay and possible overturning of Ofcom's decision, could be viewed as being worthwhile. However, changes to the Directive with regards to the frequency of market reviews and the scope of dispute resolution, means that there will be greater resource pressures on Ofcom.

Another effect of the three year time frame for market reviews is that it may have adverse impacts on regulatory certainty, which is necessary for facilitating the climate for investment decisions of companies operating within the markets. Industry will have to expect reviews, and measures to be introduced, every three years, instead of the longer timeframe they have been used to. A lengthy appeals process could potentially increase this uncertainty.

The current appeals process puts considerable pressure on Ofcom's resources and this is expected to be exacerbated by the implementation of the new provisions of the revised Directive. In the review of the current appeals process to remedy the previous transposition, which is being interpreted as going beyond what is necessary, the changes to the Directive need to be taken into account and consideration given to reducing and releasing Ofcom's resources currently devoted to the appeals process.

The Government considers that the minimum that is needed of an effective appeal is consideration of whether the Regulator acted lawfully, and followed the correct procedures, took relevant issues and evidence into account and generally acted in accordance with its statutory duties. The Framework Directive requires, on top of the general requirements of an effective appeal, that the merits of the case are 'duly taken into account' and we are considering how best to give that effect in UK legislation.

### **Rationale for Government Intervention**

Government intervention is required to increase the efficiency with which Ofcom fulfils its statutory duties as a national regulator, including those required under the revised Directive. The resource intensive nature of the current appeals process may prevent Ofcom from performing its duties to the optimal standard given the need to carry out reviews every three years and the expansion of the potential dispute resolution cases.

## Options

### **Option 0: Do nothing**

Under this option there would be no change to the current appeals process. This will have resource implications for Ofcom who will have to carry out more regular market reviews, and potentially face more dispute cases, whilst facing the same level of appeals. Companies would be able to expect the same level of scrutiny of Ofcom's decisions, but may also face an increase of regulatory uncertainty. This increase will come from the increased frequency of market reviews and the time taken to reach a decision in appeals cases.

Ofcom consider the current process unduly burdensome for them, even before the provisions of the revised Directive have been implemented. The National Audit Office is currently undertaking a value for money assessment of Ofcom that is due to be published after the publication of this Impact Assessment.

### **Option 1: Amend the Communications Act to more accurately reflect the wording of the Framework Directive**

This option would bring the UK appeals regime in line with that required by the Directive and demonstrate that there is no intention to go beyond what the Directive requires, which some appellants have claimed. We believe it would reduce the likelihood of a rehearing of the case, but it will be for the Competition Appeal Tribunal and the Courts to decide how the new wording is put into practice.

## Costs

There would not be a cost saving to Ofcom – but resources would be freed up to fulfil their statutory duties. There would be no additional burden to the CAT or business. Business would still have the right to appeal, for merits to be duly taken into account and the CAT would still be able to determine where Ofcom had made a material error.

## Benefits

This option may lead to a reduction in the number of appeals brought against Ofcom, although it is not clear what the scale of this reduction will be. This will bring a benefit to Ofcom as they will be able to devote more resources to exercising their regulatory functions than in defending their decisions on appeal. This has the benefit of reducing unnecessary administration burdens on Ofcom.

Business should benefit from increased regulatory certainty. Currently decisions made by Ofcom can go into abeyance when they are appealed against. Appeals to the CAT can last for up to two years and then the CAT's decision can be appealed to the Court of Appeal. A reduction in the number of appeals will mean that this happens less often, and there should therefore be an increase in the level of regulatory certainty in the market.

### Competition

If the option results in fewer appeals against Ofcom, there may be a positive effect on competition if the freeing up of resources means that Ofcom is able to spend more time on measures to increase competition in the markets it reviews.

### Small Firms

After initial screening, there is not expected to be a disproportionate effect of this Option on small firms.

### Other Specific Impact Tests

#### *Other environment/ rural proofing*

After an initial screening it has been deemed that no significant impact is anticipated on the environment and rural proofing.

#### *Race, disability and gender equality*

After an initial screening it has been deemed that no significant impact is anticipated on race, disability and gender equality.

#### *Other tests*

Other specific impact tests have been considered including Legal Aid, Sustainable Development and Carbon Assessment. Again, after initial screening, it has been deemed that no significant impact is anticipated.

## Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<b>Basis of the review:</b> For details of the Post Implementation Review please see the Plan on page 10.
<b>Review objective:</b>
<b>Review approach and rationale:</b>
<b>Baseline:</b>
<b>Success criteria:</b>
<b>Monitoring information arrangements:</b>
<b>Reasons for not planning a PIR:</b>

## Annex 2: Infrastructure Sharing Information Provision

**Lead department or agency:**

Department for Business, Innovation and Skills

**Other departments or agencies:**

Ofcom

Other relevant Agencies

## Impact Assessment (IA)

**IA No:** BIS0023

**Date:** 10/09/2010

**Stage:** Consultation

**Source of intervention:** EU

**Type of measure:** Secondary legislation

**Contact for enquiries:**

Colette Beaupre 020 7215 1650

## Summary: Intervention and Options

**What is the problem under consideration? Why is government intervention necessary?**

While there is evidence of infrastructure sharing, at present, it is perceived that the degree to which this occurs is less than the "right" level required by society, partly due to a perceived information provision problem about the existence, location and capacity of existing infrastructure that prevents undertakings making the optimal decision with regards to deploying their own services. If an undertaking were to have more information about the available infrastructure it may be able to make better use of infrastructure sharing in order to inform network investment decisions regarding the delivery of super fast broadband.

**What are the policy objectives and the intended effects?**

The present transposition exercise provides an opportunity to examine proposals for infrastructure sharing where telecommunication companies other than BT (which has significant market power) are concerned regardless of market power so as to facilitate the deployment of super fast broadband.

**What policy options have been considered? Please justify preferred option (further details in Evidence Base)**

Option 0: Do Nothing

Option 1: Give Ofcom information gathering powers for use on an ad hoc basis to enforce infrastructure sharing

Option 2: Give Ofcom and other authorities information gathering powers for use on an ad hoc basis

Option 3: Impose a Duty on Ofcom to compile an inventory of the information it obtains in order to provide a detailed picture of the infrastructure in the UK

Option 4: Give Ofcom the power or impose a duty to regularly compile an inventory of the information it obtains in order to provide a detailed picture of the infrastructure in the UK and give other authorities information gathering powers for use on an ad hoc basis

**When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?**

It will be reviewed  
05/2017

**Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?**

Yes

**Ministerial Sign-off For** consultation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:  ..... Date: 13/09/2010 .....

# Summary: Analysis and Evidence Policy Option 1

Description: Give Ofcom information gathering powers for use on an ad hoc basis to enforce infrastructure sharing

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Not Quantifiable	High: Not Quantifiable	Best Estimate: Not Quantifiable
N/A	N/A	N/A			

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Not Quantifiable	Not Quantifiable	Not Quantifiable
High	Not Quantifiable	Not Quantifiable	Not Quantifiable
Best Estimate	Not Quantifiable	Not Quantifiable	Not Quantifiable

**Description and scale of key monetised costs by 'main affected groups'**

N/A

**Other key non-monetised costs by 'main affected groups'**

This option would impose a cost on Ofcom to request the information from undertakings and to publish the information they gather. The cost of gathering information and publishing will depend on how often Ofcom needs to request the information. The circumstances under which this information will be requested are not yet known and would be informed by responses to the consultation.

There will be a cost to undertakings to provide information on request to Ofcom, although efforts will be made when determining the conditions under which the request can be made to minimise this cost. Ofcom will only be able to request information when the burden to undertakings to provide it is considered proportionate to the benefits it is expected to bring. Undertakings should already have much of the information requested, although not in a standardised format.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Not Quantifiable	Not Quantifiable	Not Quantifiable
High	Not Quantifiable	Not Quantifiable	Not Quantifiable
Best Estimate	Not Quantifiable	Not Quantifiable	Not Quantifiable

**Description and scale of key monetised benefits by 'main affected groups'**

N/A

**Other key non-monetised benefits by 'main affected groups'**

There will be a benefit to undertakings from the greater availability of information about infrastructure in the UK. This should make it easier for them to find out where they can benefit most from infrastructure sharing and therefore where they can competitively extend the provision of their service. It should also help inform network investment decisions more widely.

**Key assumptions/sensitivities/risks**

Discount rate (%)

There is a possible risk that an inventory of the sort proposed could act as a disincentive to invest for larger companies and this will be considered further.

<b>Impact on admin burden (AB) (£m):</b>			<b>Impact on policy cost savings (£m):</b>		<b>In scope</b>
New AB:	0	AB savings:	0	Net:	0
				Policy cost savings:	N/A

## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	UK				
From what date will the policy be implemented?	25/05/2011				
Which organisation(s) will enforce the policy?	HMG, Ofcom				
What is the annual change in enforcement cost (£m)?	Not Quantifiable				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	No				
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	<b>Traded:</b> 0		<b>Non-traded:</b> 0		
Does the proposal have an impact on competition?	Yes				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	<b>Costs:</b> 0		<b>Benefits:</b> 0		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	<b>Micro</b> Not Quantifiable	<b>&lt; 20</b> Not Quantifiable	<b>Small</b> Not Quantifiable	<b>Medium</b> Not Quantifiable	<b>Large</b> Not Quantifiable
Are any of these organisations exempt?	No	No	No	No	No

## Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
<b>Statutory equality duties</b> <sup>13</sup> <a href="#">Statutory Equality Duties Impact Test guidance</a>	No	-
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	Yes	50
Small firms <a href="#">Small Firms Impact Test guidance</a>	Yes	50
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	No	-
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	No	-
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	-
Human rights <a href="#">Human Rights Impact Test guidance</a>	No	-
Justice system <a href="#">Justice Impact Test guidance</a>	No	-
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	-
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	No	-

<sup>13</sup> Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

## Summary: Analysis and Evidence Policy Option 2

**Description:** Give Ofcom and other authorities information gathering powers for use on an ad hoc basis

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Cost (Present Value)</b>
Low	Not Quantifiable		Not Quantifiable		Not Quantifiable
High	Not Quantifiable		Not Quantifiable		Not Quantifiable
Best Estimate	Not Quantifiable		Not Quantifiable		Not Quantifiable
<b>Description and scale of key monetised costs by 'main affected groups'</b> N/A					
<b>Other key non-monetised costs by 'main affected groups'</b> The cost to undertakings could be significantly greater under this option compared to option 1 because they could be asked for information by more than one authority and the burden to business should be minimised wherever possible. However, the same provisions in terms of requesting the information only when it is considered proportionate would still apply. There would be a cost to any national authority, including Ofcom, from requesting the information and publishing it where necessary. It is not yet known the frequency with which information may be requested.					
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Benefit (Present Value)</b>
Low	Not Quantifiable		Not Quantifiable		Not Quantifiable
High	Not Quantifiable		Not Quantifiable		Not Quantifiable
Best Estimate	Not Quantifiable		Not Quantifiable		Not Quantifiable
<b>Description and scale of key monetised benefits by 'main affected groups'</b> The benefits of this option are expected to be similar to those under option 1. However, they may be larger because the wider range of authorities who can gather information may mean that there is more information available on which undertakings can make their investment decisions.					
<b>Other key non-monetised benefits by 'main affected groups'</b> The benefit of this option is that it provides the inventory to undertakings in one go, instead of them having to wait for it to be built up before they can make use of it to inform investment decisions. It also means that national authorities will be able to request any additional information they feel would be beneficial for making investment decisions.					
<b>Key assumptions/sensitivities/risks</b> There is a possible risk that an inventory of the sort proposed could act as a disincentive to invest for larger companies and this will be considered further.					<b>Discount rate (%)</b>

Impact on admin burden (AB) (£m):

Impact on policy cost savings (£m):

In scope



New AB: 0	AB savings: 0	Net: 0	Policy cost savings:	N/A
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## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	UK				
From what date will the policy be implemented?	25/05/2011				
Which organisation(s) will enforce the policy?	HMG, Ofcom				
What is the annual change in enforcement cost (£m)?	Not Quantifiable				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	No				
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	Traded: 0		Non-traded: 0		
Does the proposal have an impact on competition?	Yes				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs: 0		Benefits: 0		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

## Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
<b>Statutory equality duties</b> <sup>14</sup> <a href="#">Statutory Equality Duties Impact Test guidance</a>	No	-
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	Yes	50
Small firms <a href="#">Small Firms Impact Test guidance</a>	Yes	50
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	No	-
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	No	-
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	-
Human rights <a href="#">Human Rights Impact Test guidance</a>	No	-
Justice system <a href="#">Justice Impact Test guidance</a>	No	-
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	-
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	No	-

<sup>14</sup> Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

## Summary: Analysis and Evidence Policy Option 3

Description: Impose a Duty on Ofcom to compile an inventory of the information it obtains in order to provide a detailed picture of the infrastructure in the UK

Price Base Year N/A	PV Base Year N/A	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A
<b>COSTS (£m)</b>	<b>Total Transition</b> (Constant Price) Years		<b>Average Annual</b> (excl. Transition) (Constant Price)	<b>Total Cost</b> (Present Value)	
Low	Not Quantifiable		Not Quantifiable	Not Quantifiable	
High	Not Quantifiable		Not Quantifiable	Not Quantifiable	
Best Estimate	Not Quantifiable		Not Quantifiable	Not Quantifiable	
<b>Description and scale of key monetised costs by 'main affected groups'</b>					
N/A					
<b>Other key non-monetised costs by 'main affected groups'</b>					
There may be a significant cost to Ofcom to produce an inventory of this kind, however a better indication of these costs should be possible following the consultation when there should be a better idea of the nature of what is needed from the inventory. The consultation seeks guidance on whether this significant cost is proportionate to the benefits that such an inventory may bring.					
There will be a cost to undertakings from providing the information to Ofcom to allow them to produce an					
<b>BENEFITS (£m)</b>	<b>Total Transition</b> (Constant Price) Years		<b>Average Annual</b> (excl. Transition) (Constant Price)	<b>Total Benefit</b> (Present Value)	
Low	Not Quantifiable		Not Quantifiable	Not Quantifiable	
High	Not Quantifiable		Not Quantifiable	Not Quantifiable	
Best Estimate	Not Quantifiable		Not Quantifiable	Not Quantifiable	
<b>Description and scale of key monetised benefits by 'main affected groups'</b>					
N/A					
<b>Other key non-monetised benefits by 'main affected groups'</b>					
The main benefit of this option over options 1 and 2 is that all the information will be available in one go. This means that undertakings will not have to wait for a picture of UK infrastructure to be built up over time before they can use it to help make decisions about where to invest.					
<b>Key assumptions/sensitivities/risks</b>					<b>Discount rate (%)</b>
There is a possible risk that an inventory of the sort proposed could act as a disincentive to invest for larger companies and this will be considered further.					
<b>Impact on admin burden (AB) (£m):</b>			<b>Impact on policy cost savings (£m):</b>		<b>In scope</b>
New AB: 0	AB savings: 0	Net: 0	Policy cost savings:		N/A

## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	UK				
From what date will the policy be implemented?	25/05/2011				
Which organisation(s) will enforce the policy?	HMG, Ofcom				
What is the annual change in enforcement cost (£m)?	Not Quantifiable				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	No				
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	<b>Traded:</b> 0		<b>Non-traded:</b> 0		
Does the proposal have an impact on competition?	Yes				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	<b>Costs:</b> 0		<b>Benefits:</b> 0		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	<b>Micro</b>	<b>&lt; 20</b>	<b>Small</b>	<b>Medium</b>	<b>Large</b>
Are any of these organisations exempt?	No	No	No	No	No

## Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
<b>Statutory equality duties</b> <sup>15</sup> <a href="#">Statutory Equality Duties Impact Test guidance</a>	No	-
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	Yes	50
Small firms <a href="#">Small Firms Impact Test guidance</a>	Yes	50
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	No	-
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	No	-
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	-
Human rights <a href="#">Human Rights Impact Test guidance</a>	No	-
Justice system <a href="#">Justice Impact Test guidance</a>	No	-
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	-
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	No	-

<sup>15</sup> Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

## Summary: Analysis and Evidence Policy Option 4

**Description:** Give Ofcom the power to regularly compile an inventory of the information it obtains in order to provide a detailed picture of the infrastructure in the UK and give other authorities information gathering powers for use on an ad hoc basis

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate:
<b>COSTS (£m)</b>	<b>Total Transition</b> (Constant Price) Years		<b>Average Annual</b> (excl. Transition) (Constant Price)		<b>Total Cost</b> (Present Value)
Low	Not Quantifiable		Not Quantifiable		Not Quantifiable
High	Not Quantifiable		Not Quantifiable		Not Quantifiable
Best Estimate	Not Quantifiable		Not Quantifiable		Not Quantifiable
<b>Description and scale of key monetised costs by 'main affected groups'</b>					
N/A					
<b>Other key non-monetised costs by 'main affected groups'</b>					
As well as the costs given under the other options, there would be a cost to Undertakings to provide information to agencies that have asked for it, in addition to the cost of providing Ofcom with the information they need to prepare their inventory. This cost is therefore likely to be greater than the cost under option 3. There will be a significant cost to Ofcom to prepare the inventory, as discussed in option 3, and there will be a cost to other national agencies that choose to request information.					
<b>BENEFITS (£m)</b>	<b>Total Transition</b> (Constant Price) Years		<b>Average Annual</b> (excl. Transition) (Constant Price)		<b>Total Benefit</b> (Present Value)
Low	Not Quantifiable		Not Quantifiable		Not Quantifiable
High	Not Quantifiable		Not Quantifiable		Not Quantifiable
Best Estimate	Not Quantifiable		Not Quantifiable		Not Quantifiable
<b>Description and scale of key monetised benefits by 'main affected groups'</b>					
N/A					
<b>Other key non-monetised benefits by 'main affected groups'</b>					
The benefit of this option is that it provides the inventory to undertakings in one go, instead of them having to wait for it to be built up before they can make use of it to inform investment decisions. It also means that national authorities will be able to request any additional information they feel would be beneficial for making investment decisions.					
<b>Key assumptions/sensitivities/risks</b>					<b>Discount rate (%)</b>
There is a possible risk that an inventory of the sort proposed could act as a disincentive to invest for larger companies and this will be considered further.					
<b>Impact on admin burden (AB) (£m):</b>			<b>Impact on policy cost savings (£m):</b>		<b>In scope</b>
<b>New AB:</b>	<b>AB savings:</b>	<b>Net:</b>	<b>Policy cost savings:</b>		<b>Yes/No</b>

## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	United Kingdom				
From what date will the policy be implemented?	25/05/2011				
Which organisation(s) will enforce the policy?	HMG, Ofcom				
What is the annual change in enforcement cost (£m)?	Not Quantifiable				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	No				
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	Traded: 0		Non-traded: 0		
Does the proposal have an impact on competition?	Yes				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs: 0		Benefits: 0		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

## Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
<b>Statutory equality duties</b> <sup>16</sup> <a href="#">Statutory Equality Duties Impact Test guidance</a>	No	-
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	Yes	50
Small firms <a href="#">Small Firms Impact Test guidance</a>	Yes	50
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	No	-
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	No	-
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	-
Human rights <a href="#">Human Rights Impact Test guidance</a>	No	-
Justice system <a href="#">Justice Impact Test guidance</a>	No	-
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	-
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	No	-

<sup>16</sup> Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

## Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

### References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
5	
6	
7	
8	

+ Add another row

### Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

#### Annual profile of monetised costs and benefits\* - (£m) constant prices

	Y <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
<b>Transition costs</b>										
<b>Annual recurring cost</b>										
<b>Total annual costs</b>										
<b>Transition benefits</b>										
<b>Annual recurring benefits</b>										
<b>Total annual benefits</b>										

\* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office  
Excel Worksheet

## **Evidence Base (for summary sheets)**

### **Background**

Superfast broadband has the potential to deliver benefits stemming from new advanced education and healthcare services, for example. It could also yield employment benefits as a result of the construction and maintenance of the broadband infrastructure. Research conducted by NESTA suggests that if the UK mirrored the South Korean upgrade to superfast broadband then 600,000 jobs could be created in 4 years<sup>17</sup>.

Commercial deployment of superfast broadband is making good progress, and is expected to reach 65-70% of the market commercially over time. However, the Government believes this can be extended by reducing the cost of deployment and creating the right conditions for investment. Infrastructure sharing has been identified by the coalition Government as an appropriate way of furthering the deployment of superfast broadband.

Civil works account for up to 80%<sup>18</sup> of the total cost of deployment. By encouraging infrastructure sharing this cost can be greatly reduced, although some construction activity may still be necessary. Infrastructure sharing avoids the duplication of investment in duct networks. By lowering this cost the barriers to entry for communication providers are reduced which is regarded as having a pro-competitive effect, promoting the deployment of broadband through Fibre to the Cabinet or Fibre to the Home. Additional benefits of infrastructure sharing include additional revenue for infrastructure owners as well as the potential for avoiding disruption to society as congestion and noise associated with civil works.

Ofcom currently has the power to require network owners with significant market power to offer its underground ducts and overhead poles so other companies can install their own fibre to deliver superfast broadband. Following its wholesale local access review consultation, published in March 2010, Ofcom plans to use this power to require BT to do this. The Framework Directive empowers Ofcom to be able to impose this facility sharing where it is considered proportionate and non-discriminatory even in the absence of significant market power. This may be in the form of passive infrastructure sharing, such as the re-use of duct and pole capacity. Sharing of existing network elements such as the local loop could lead to greater competition at the wholesale level.

One of the market failures that has been identified to help explain why the current level of infrastructure sharing is perceived to be below the level required by society is that there are coordination failures between the different companies that prevent agreements to share infrastructure. Other market failures include regulatory failure where planning regulations

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<sup>17</sup> <http://www.nesta.org.uk/library/documents/Getting-up-to-speedv5.pdf>

<sup>18</sup> Analysys Mason (2010) Operational models for shared duct access

associated with wayleaves<sup>19</sup> deter companies from seeking to apply to gain access to infrastructure because of time, complexity and resources, imperfect information that stops companies identifying the benefits of infrastructure sharing and regulatory failure where price regulations limiting the revenue that can be earned by non core businesses may provide a disincentive for companies to seek to provide access to their infrastructure due to insufficient returns.

Article 12(4) of the Directive provides that:

*'Member States shall ensure that competent national authorities may require undertakings to provide the necessary information, if requested by the competent authorities, in order for these authorities, in conjunction with national regulatory authorities, to be able to establish a detailed inventory of the nature, availability, and geographical location of the facilities referred to in paragraph 1 and make it available to interested parties.'* Article 12(4) (Paragraph 1, as referenced here, can be found in the footnotes<sup>20</sup>)

This allows for national authorities, including NRAs, to request information from undertakings in order to provide a detailed picture of the infrastructure of a Member State. Access to this information should help the authorities to make decisions on whether to enforce infrastructure sharing.

The Consultation Document asks three questions with regards to the provisions on infrastructure sharing.

- Firstly it asks whether a detailed inventory of infrastructure would be desirable in order to facilitate infrastructure sharing and if respondents were granted access to such information, would this inform investment decisions.
- Secondly it asks whether it is appropriate for Ofcom to be the sole authority that is able to request information from undertakings in order to facilitate infrastructure sharing.
- Lastly, the consultation asks whether it would be more appropriate for this information to be requested on an ad-hoc basis and incorporated into Ofcom's regular infrastructure reporting in order to build up a picture over time, or whether we impose a duty on Ofcom to produce a national, detailed inventory.

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<sup>19</sup> A wayleave is a contractual license for which an annual payment is made in advance to the owner and/or occupier to cover the financial impact of having equipment on their land.

<sup>20</sup> *'Where an undertaking providing electronic communications networks has the right under national legislation to install facilities on, over or under public or private property, or may take advantage of a procedure for the expropriation or use of property, national regulatory authorities shall, taking full account of the principle of proportionality, be able to impose the sharing of such facilities or property, including buildings, entries to buildings, building wiring, masts, antennae, towers and other supporting constructions, ducts, conduits, manholes, cabinets.'* Article 12(1)



## **Rationale for Government Intervention**

The Government aims to increase the deployment of superfast broadband by reducing the cost of deployment and creating the right conditions for investment. As discussed above, by allowing and encouraging infrastructure sharing the cost of deployment is reduced. As part of encouraging the right conditions for investment it would be useful, when making decisions about investing in infrastructure sharing, for information to be available with regards to the spare capacity in ducts and other information.

There is a perceived information provision problem about the existence, location and capacity of existing infrastructure that prevents undertakings making the optimal decision with regards to deploying their own services. If an undertaking were to have more information about the available infrastructure it may be able to make better use of infrastructure sharing when deploying their services. This information should help undertakings be able to make decisions about where they would be able to competitively provide a service by sharing duct access. This information may also prove useful in order to inform network investment decisions more widely.

## **Options**

### **Option 0: Do Nothing**

Under this option the Government will continue to move ahead with its plans to use infrastructure sharing both with other existing utilities, such as electricity companies, and through Ofcom's demands on BT, as a means of lowering the price and creating the right conditions for investment for the further deployment of superfast broadband. Undertakings are already under a number of obligations to maintain certain records of apparatus installed and to allow inspection by interested parties on request<sup>21</sup>.

### **Option 1: Give Ofcom information gathering powers for use on an ad hoc basis to enforce infrastructure sharing**

The Government proposes to implement Article 12(4) by extending Ofcom's powers under section 135 of the Communications Act 2003 to give Ofcom the power to require undertakings to provide further information to that that they are already required to maintain, about the existence, location and capacity of existing infrastructure on an ad hoc basis where requiring such information would be proportionate to its likely use bearing in mind the burden this would impose on undertakings. The likely use will be informed by the nature of any request and Ofcom's own intentions.

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<sup>21</sup> Regulations 11 and 12 of the electronic Communications Code (Conditions and Restrictions) Regulations 2003 (SI 2003/2553) as amended, Street Works (Records) (England) Regulations 2002, Street Works (Records) Wales 2005 and Street Works (Northern Ireland) Order 1995 as amended.

Ofcom currently produces a report under Article 134 of the Communications Act 2003. Under this option, the Government would require Ofcom to incorporate any information gathered using these extended powers into this report, so that over time an inventory of infrastructure in the UK is built up.

### Costs

This option would impose a cost on Ofcom to request the information from undertakings and to publish the information they gather. The cost of gathering information and publishing will depend on how often Ofcom needs to request the information. The circumstances under which this information will be requested are not yet known and would be informed by responses to the consultation.

There will be a cost to undertakings to provide information on request to Ofcom, although efforts will be made when determining the conditions under which the request can be made to minimise this cost. Ofcom will only be able to request information when the burden to undertakings to provide it is considered proportionate to the benefits it is expected to bring. Undertakings should already have much of the information requested, although not in a standardised format.

### Benefits

There will be a benefit to undertakings from the greater availability of information about infrastructure in the UK. This should make it easier for them to find out where they can benefit most from infrastructure sharing and therefore where they can competitively extend the provision of their service. It should also help inform network investment decisions more widely.

## **Option 2: Give Ofcom and other authorities information gathering powers for use on an ad hoc basis**

The Government is considering whether it is appropriate for Ofcom to be the sole national authority who can request information from undertakings in order to facilitate infrastructure sharing. Under this option, in addition to the proposals in Option 1, the Government would give other national authorities the power to request information from undertakings on an ad hoc basis. Responses to the consultation will be used to decide which national authorities should be granted this power but this is most likely to mean Local Authorities, who are becoming increasingly involved in network deployment.

## Costs

The cost to undertakings could be significantly greater under this option compared to option 1 because they could be asked for information by more than one authority. This goes against the principles of Government regulation to minimise the burden to business wherever possible. However, the same provisions in terms of requesting the information only when it is considered proportionate would still apply.

There would be a cost to any national authority, including Ofcom, from requesting the information and publishing it where necessary. It is not yet known the frequency with which information may be requested.

## Benefits

The benefits of this option are expected to be similar to those under option 1. However, they may be larger because the wider range of authorities who can gather information may mean that there is more information available on which undertakings can make their investment decisions.

### **Option 3: Impose a Duty on Ofcom to compile an inventory of the information it obtains in order to provide a detailed picture of the infrastructure in the UK**

Under this option the Government would give Ofcom the power to require undertakings to provide further information to that that they are already required to maintain, about the existence, location and capacity of existing infrastructure. However, instead of this being on an ad hoc basis, as in options 1 and 2, the Government would also extend the obligation in section 134a of the Communications Act 2003 to require Ofcom to prepare a detailed inventory of infrastructure in the UK. Consultation responses will be used to establish the frequency with which an inventory of this kind should be produced.

## Costs

There may be a significant cost to Ofcom to produce an inventory of this kind, however a better indication of these costs should be possible following the consultation when there should be a better idea of the nature of what is needed from the inventory. The consultation seeks guidance on whether this significant cost is proportionate to the benefits that such an inventory may bring.

There will be a cost to undertakings from providing the information to Ofcom to allow them to produce an inventory. This cost may be greater than under option 1 because the information may be requested for the whole of the UK in one go, however, this may also make the process

of responding with the request simpler, as requests for information would not come in an ad hoc fashion.

### Benefits

The main benefit of this option over options 1 and 2 is that all the information will be available in one go. This means that undertakings will not have to wait for a picture of UK infrastructure to be built up over time before they can use it to help make decisions about where to invest.

### **Option 4: Give Ofcom the power or have a duty to regularly compile an inventory of the information it obtains in order to provide a detailed picture of the infrastructure in the UK and give other authorities information gathering powers for use on an ad hoc basis**

Under this option Ofcom would be given the powers to request information from undertakings and would have the power to produce a full inventory as in option 3. Under this option, national authorities other than Ofcom would be given the power to request additional information from undertakings as in Option 2.

### Costs

As well as the costs given under the other options, there would be a cost to Undertakings to provide information to agencies that have asked for it, in addition to the cost of providing Ofcom with the information they need to prepare their inventory. This cost is therefore likely to be greater than the cost under option 3.

There will be a significant cost to Ofcom to prepare the inventory, as discussed in option 3, and there will be a cost to other national agencies that choose to request information.

### Benefits

The benefit of this option is that it provides the inventory to undertakings in one go, instead of them having to wait for it to be built up before they can make use of it to inform investment decisions. It also means that national authorities will be able to request any additional information they feel would be beneficial for making investment decisions.

### Competition

The provisions should increase the level of competition as it should make it easier for undertakings to find out which markets they can commercially enter and provide competition to

the incumbent firm. However, initial conversations with stakeholders have indicated that this sort of inventory could be a disincentive to invest for larger companies.

### Small Firms

The provisions should make it easier for small firms that wish to enter broadband markets to find out where they will be able to commercially enter a market and provide competition to the incumbent supplier.

### Other Specific Impact Tests

#### *Other environment/ rural proofing*

There may be some benefit if the provisions increase the use of infrastructure sharing and reduce the amount of civil works that can cause disruption and noise pollution. There may also be a benefit to rural communities if the potential increased use of infrastructure sharing means that superfast broadband is supplied to them when it would not otherwise have been commercially viable to do so.

#### *Race, disability and gender equality*

After an initial screening it has been deemed that no significant impact is anticipated on race, disability and gender equality.

#### *Other tests*

Other specific impact tests have been considered including Legal Aid, Sustainable Development and Carbon Assessment. Again, after initial screening, it has been deemed that no significant impact is anticipated.

## Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<b>Basis of the review:</b> For details of the Post Implementation Review please see the Plan on page 10
<b>Review objective:</b>
<b>Review approach and rationale:</b>
<b>Baseline:</b>
<b>Success criteria:</b>
<b>Monitoring information arrangements:</b>
<b>Reasons for not planning a PIR:</b>

## Annex 3: Provisions on Security and Resilience

**Lead department or agency:**

Department for Business, Innovation and Skills

**Other departments or agencies:**

Ofcom

## Impact Assessment (IA)

**IA No:** BIS0110

**Date:** 10/09/2010

**Stage:** Consultation

**Source of intervention:** EU

**Type of measure:** Secondary legislation

**Contact for enquiries:**

Colette Beaupre 020 7215 1650

## Summary: Intervention and Options

**What is the problem under consideration? Why is government intervention necessary?**

The resilience of communications infrastructure and services is central to economic performance, given that it underpins utility infrastructure, financial services and many other sectors that drive the economy. Although network operators are likely to take into account the impact of problems with communications infrastructure or services on other businesses, consumers and citizens, what is not readily available is the reliability of provision of such networks or services. A lack of transparency as to how secure or resilient infrastructure or a communications service is for the user, especially where the availability of communications infrastructure is relied upon, will consequently have a greater cumulative impact on society. Additionally, when preparing risk assessments, emergency plans and developing secure services, network operators may not take this into account.

**What are the policy objectives and the intended effects?**

The revised Framework describes the requirements of a new set of obligations on security and resilience to ensure, in so far as is possible, the continuity of electronic communication services during any event which may effect availability – this can include a security incident or loss of integrity. The obligations place increased requirements on companies in terms of security and define a new role for the NRA (which will be Ofcom in the UK) in terms of monitoring and enforcement. They are designed to ensure that companies place greater importance on ensuring security and resilience of networks and services.

**What policy options have been considered? Please justify preferred option (further details in Evidence Base)**

Option 0: Do nothing

Option 1: Copy the text of the security and resilience provisions of the Directive into new stand alone provisions in the Communications Act 2003. This is the preferred option. This option enables the UK to be compliant with EU legislation and to be able to make sure that the Communications Act 2003 contains the intended effects of the amendments to the Framework Directive.

**When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?**

It Will be reviewed  
05/2016

**Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?**

Yes

**Ministerial Sign-off For** consultation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:  ..... Date: 13/09/2010 .....

# Summary: Analysis and Evidence Policy Option 1

Description:

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Not	High: Not	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Not Quantifiable	Not Quantifiable	Not Quantifiable
High	Not Quantifiable	Not Quantifiable	Not Quantifiable
Best Estimate			

### Description and scale of key monetised costs by 'main affected groups'

At this stage it is not possible to quantify the costs to companies and Ofcom.

### Other key non-monetised costs by 'main affected groups'

Costs to companies from: being required to take appropriate measures to manage risk to the security of networks and services; taking steps to guarantee the integrity, and help ensure continuity, of supply of service; if Ofcom requires them to provide information, submit to a security audit or issues binding instructions; notifying Ofcom and the public of breaches of security or loss of integrity. Costs to Ofcom from: notifying ENISA, other regulators and the public where the company involved hasn't been asked to do this; producing an annual report on breaches for the Commission and ENISA; using powers to investigate cases of non-compliance; ordering a security audit where they feel it is necessary.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Not Quantifiable	Not Quantifiable	Not Quantifiable
High	Not Quantifiable	Not Quantifiable	Not Quantifiable
Best Estimate			

### Description and scale of key monetised benefits by 'main affected groups'

It is not currently possible to quantify the benefits of the requirements.

### Other key non-monetised benefits by 'main affected groups'

Main identifiable benefit would be any further improvement in the availability of communications services in the event of problems that are realistically likely to be faced - potentially mitigating the disruption to economic activity and the daily lives of consumers and citizens.

### Key assumptions/sensitivities/risks

Discount rate (%)

The scale of the costs will be associated with the scale of the notification requirements and the extent to which companies are already compliant with the provisions.  
It is accepted by the Government that it is not possible to guarantee the resilience of any network or service, as under enough pressure even the most secure network has some risk of failing.

Impact on admin burden (AB) (£m):		Impact on policy cost savings (£m):		In scope Yes/No
New AB:	AB savings:	Net:	Policy cost savings:	



## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	UK				
From what date will the policy be implemented?	25/05/2011				
Which organisation(s) will enforce the policy?	Ofcom, HMG				
What is the annual change in enforcement cost (£m)?	Not Quantifiable				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	No				
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	<b>Traded:</b> 0		<b>Non-traded:</b> 0		
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	<b>Costs:</b> 0		<b>Benefits:</b> 0		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	<b>Micro</b> Not Quantifiable	<b>&lt; 20</b> Not Quantifiable	<b>Small</b> Not Quantifiable	<b>Medium</b> Not Quantifiable	<b>Large</b> Not Quantifiable
Are any of these organisations exempt?	No	No	No	No	No

## Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
<b>Statutory equality duties</b> <sup>22</sup> <a href="#">Statutory Equality Duties Impact Test guidance</a>	No	-
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	Yes	61
Small firms <a href="#">Small Firms Impact Test guidance</a>	Yes	61
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	No	-
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	No	-
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	-
Human rights <a href="#">Human Rights Impact Test guidance</a>	No	-
Justice system <a href="#">Justice Impact Test guidance</a>	No	-
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	-
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	No	-

<sup>22</sup> Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

## Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

### References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
9	
10	
11	
12	

+ Add another row

### Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

#### Annual profile of monetised costs and benefits\* - (£m) constant prices

	Y <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
Transition costs										
Annual recurring cost										
Total annual costs										
Transition benefits										
Annual recurring benefits										
Total annual benefits										

\* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office  
Excel Worksheet

## **Evidence Base (for summary sheets)**

### **Background**

The issue of resilience – the ability of any system to withstand any form of shock and to recover from it – has gained national and international prominence as a result of both the changing national security agenda and the increased dependency, and interdependency, on complex systems. This is particularly true of communications networks, where the nature of networks and the services that run over them has changed dramatically in the past twenty years.

There is a high level of inherent resilience in communications networks and services, and on the whole such networks and services have good levels of in-built security and resilience. This is especially true of those that form part of the critical national infrastructure.

The revised EU Electronic Communications Framework includes new provisions on security and resilience in the Framework Directive. These place obligations on electronic communications networks and services providers to take appropriate steps to ensure the security of public networks and services and the availability of public networks. The provisions increase the requirements on companies in terms of security and define a new role for the National Regulatory Authority (Ofcom in the UK) in terms of monitoring and enforcement.

The Government wishes to ensure that the different risks, and different ways of mitigating against such risks, faced by different communications network and service providers are taken into account when reviewing the measures taken by each company.

A number of the actions set out in the legislation already take place, such as implementing security measures or notification to some extent, this legislation formalises these processes and allows for a coherent reporting and enforcement structure to be built on them.

For many of these provisions, the UK Government has little choice as to the nature of the implementation of these provisions, but there will be some scope to agree with Ofcom and industry on how the implementation will work in practice.

### **Rationale for Government Intervention**

Communications infrastructure, be it for example fixed or mobile telephony or broadband, underpins economic activity and the social and cultural way of life in the UK. Although network operators are likely to take into account the impact of problems with communications infrastructure or services on other businesses, consumers and citizens, what is not readily available is the reliability of provision of such networks or services. A lack of transparency as to how secure or resilient infrastructure or a communications service is for the user, especially

where the availability of communications infrastructure is relied upon, could consequently have a greater cumulative impact on society. Additionally, when preparing risk assessments, emergency plans and developing secure services, network operators may not take this into account.

It is crucial that the communications infrastructure is sufficiently resilient as a failure to resist any kind of shock, and the inability to recover quickly from it, can have a potentially very significant negative impact on UK society and the economy. There are several reasons for this:

- *Large number of users of communications:* Nearly every individual and business is connected to each other via one or more communications platform, and uptake continues to increase. Consequently, any problem with the communications infrastructure or services or the ability of the market to function efficiently has the potential to affect a very large number of people.

- *The ICT sector is of major economic importance to the UK:* The information and communication technology (ICT) sector is of major economic importance, forming the backbone of the UK economy. In 2008, it generated around £98 billion in gross value added (GVA) and employed 1.22 million people. This represents around 7.5% of total UK GVA and 4% of total UK employment<sup>23</sup>. ICT is also a powerful driver of productivity and innovation and thus makes a positive contribution to the competitiveness of a large number of sectors, in many of which the UK enjoys significant comparative advantage.

- *Emergency services:* A high speed and reliable communications infrastructure is crucial to the delivery of emergency services. A failure to contact the emergency services promptly because of problems with the communications infrastructure can contribute to a loss of life as people in urgent need of medical attention do not receive it in time.

- *Delivery of public services:* Greater certainty of well functioning communications infrastructure also has an important role to play in helping the UK Government achieve equality objectives such as greater social inclusion and the provision of high quality public services in more rural and remote areas of the country. The Government is increasingly moving its services online. The existence of technical problems with the infrastructure may hamper the ability of the UK Government to achieve these goals.

- *Wider strategic importance:* Communications makes a significant contribution to the wider infrastructure and strategic interests of the UK.

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<sup>23</sup> See page 12 of the second editions of the Digital Economy Bill Impact Assessments, March 2010, which can be accessed at : <http://www.bis.gov.uk/assets/biscore/corporate/docs/d/10-810-digital-economy-bill-impact-assessments.pdf>

### **Box: Findings from the PwC Information Security Breaches Survey 2010.**

Organisations are more likely to perform risk assessments than in previous years. This is probably due to increased awareness of risk based standards, such as ISO 27001. Four-fifths of large organisations have assessed security risks in the last year. Small companies are not far behind, but a quarter still base their priorities on perception, rather than formal risk assessment. The utilities sector is most likely to have completed a risk assessment; over 90% had done so. Other sectors with high levels of oversight and regulation (e.g. financial services, telecoms and government) are also more likely to have completed a risk assessment. This contrasts with the property and construction sector, where nearly half the respondents had not performed one.

For small respondents, average expenditure is now nearly 10% of IT budget. Average expenditure in large respondents remains at around 6% of IT budget, consistent with the levels seen in past surveys. Information security expenditure is not always allocated to IT budgets and organisations differ in their interpretations of what constitutes security spending.

Organisations also seem to spend more in response to serious security incidents. Three-fifths of respondents that had suffered an extremely serious incident increased their security spending. Among those that had not suffered a serious incident, just over a third increased their expenditure. The seriousness of incidents experienced appears to have less impact on decisions taken to reduce security expenditure. The priorities set by senior management clearly influence expenditure. Where they assign a very high priority to information security, respondents spend 13% of their IT budget on security; this is three times the amount spent by those with a low priority on security. Respondents that have carried out risk assessments spend more on security (8% of IT budget) than those that have not (5% on average). These gaps have widened since 2008.

### **Policy Options**

#### **Option 0: Do Nothing**

Under this option the UK would be in breach of EU legislation. There will be no increase in the level of security and resilience experienced by communications networks and therefore the risk of attack or not being able to recover from one is not reduced.

#### **Option 1: Copy the text of the security and resilience provisions of the Directive into new stand alone provisions in the Communications Act 2003.**

Given the complexities associated with the security and resilience provisions the Government proposes to copy out the text in the Directive into new stand alone provisions in the Communications Act 2003. It would then be for Ofcom, in conjunction with business, to develop the processes necessary for the implementation to work in practice.

Details of the changes (quotes taken from article 13a and b of the Framework Directive):

- Public electronic communication networks and service providers will be required to take 'appropriate technical and organisational measures to appropriately' manage risk to the security of networks and services. These should focus on incidents which impact upon users and interconnected networks. Additionally, network operators will need to take all 'appropriate' steps to 'guarantee the integrity of their networks' and 'ensure' continuity of supply of services.

- Companies will need to notify Ofcom if they have a breach of security or loss of 'integrity' that has a 'significant impact' on the 'operation of networks and services'. Where appropriate, Ofcom will need to notify the European Network and Information Security Agency (ENISA), and other national regulators. This should only take place if the event is severe enough to warrant such notification and where Ofcom considers that it is in their interest, it can also inform the public.

- The European Commission will have powers to take decisions on 'appropriate technical implementing measures' on all of the above changes. The UK may have to use these technical measures in its implementation as a minimum standard. Proposals on this from the Commission are likely to come after the 25<sup>th</sup> May 2011 implementation deadline and there are no early indications on what they might be, therefore, the UK's implementation of the security and resilience provisions may need to be revisited in the light of the Commission's implementing measures.

- Ofcom will have the power to issue binding instructions, to require companies to provide information needed to assess security and integrity and to require companies to submit to a 'security audit' if they believe it to be necessary.

- Ofcom will need to have all the necessary powers to be able to investigate cases of non-compliance and their effects. The trigger for such investigation and for the new powers listed in the bullet point above would be if Ofcom had reasonable grounds to believe that a company was in breach of its obligations under these provisions.

### Costs

It is not possible to give an idea of the scale of the costs associated with this option at this stage because it has yet to be agreed how the implementation will work in practice. It is only possible to identify where the majority of the costs will fall.

- There will be costs to both public electronic communication networks and service providers associated with them being required to take appropriate measures to manage risk to the

security of networks and services. These costs will only be significant if the measures that are considered appropriate go a long way beyond what the companies are doing already.

- There will be a cost to network operators to take steps to guarantee the integrity, and help ensure continuity, of supply of service.

- There may be costs to companies if Ofcom has to issue binding instructions, requires them to provide information needed to assess security and integrity or requires them to submit to a security audit. These costs will only come about if Ofcom have concerns about the company's compliance with the provisions.

- There will be a cost to companies associated with having to notify Ofcom of breaches of security or loss of integrity with a significant impact on the operation of networks and services. The scale of these costs will be associated with the level of detail needed as part of the notification.

- There will be a cost to Ofcom to notify ENISA and other national regulators, and also informing the public, where appropriate, of breaches of security or loss of integrity with a significant impact on the operation of networks or services. The cost of notifying the public may fall to the company involved instead of Ofcom, depending on a decision from Ofcom.

- There will be a cost to Ofcom to produce an annual summary report on breaches for the Commission and ENISA.

- There will be costs to Ofcom to use their powers to investigate cases of non-compliance and their effects.

### Benefits

The main identifiable benefit would be any further improvement in the availability of communications services in the event of problems that are realistically likely to be faced, potentially mitigating the disruption to economic activity and the daily lives of consumers and citizens.

### Competition Assessment

After initial screening, it has been deemed that these proposals would not have a significant impact on competition. It is unlikely to directly or indirectly limit the number of network operators and internet service providers, limit their ability to compete or the incentives to do so.

### Small Firms Impact Test

The communications infrastructure in the UK is dominated by two main network operators, BT and Virgin Media. It is possible that there may be an impact on the smaller network operators who may incur disproportionately higher costs.

### Other Specific Impact Tests

Other specific impact tests have been considered including Legal Aid, Sustainable Development, Carbon Assessment, Other Environment, Health Impact Assessment, Race Equality, Disability Equality, Gender Equality, Human Rights and Rural Proofing.

After an initial screening, it has been deemed that no significant impact is anticipated in any case.



## Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<b>Basis of the review:</b> For details of the Post Implementation Review please see the Plan on page 10.
<b>Review objective:</b>
<b>Review approach and rationale:</b>
<b>Baseline:</b>
<b>Success criteria:</b>
<b>Monitoring information arrangements:</b>
<b>Reasons for not planning a PIR:</b>

# Access Directive: Overarching Impact Assessment

Lead department or agency:

**Department for Business, Innovation and Skills**

Other departments or agencies:

**Ofcom**

## Impact Assessment (IA)

IA No: BIS0024

Date: 10/09/2010

Stage: Consultation

Source of intervention: EU

Type of measure: Secondary legislation

Contact for enquiries:

Colette Beaupre 020 7215 1650

## Summary: Intervention and Options

### What is the problem under consideration? Why is government intervention necessary?

The Access Directive is designed to harmonise the way Member States regulate access to and interconnection of electronic communications networks and associated facilities. The aim of the provisions in the Directive is to provide access to incumbent networks and break up monopolies. This is more of a problem in some other Member States than in the UK, however the harmonisation of regulations within the single EU electronic communications market will increase competition and provide benefits for UK users and businesses.

### What are the policy objectives and the intended effects?

The Directive aims to establish a regulatory framework in accordance with internal market principles to promote competition, interoperability and consumer benefits. The fundamental principles of the Directive are the provisions of access to incumbent networks, opening up monopolies, and the rules on which this is based.

### What policy options have been considered? Please justify preferred option (further details in Evidence Base)

Option 0: Do Nothing

Option 1: Implement the provisions of the amended Access Directive of the EU Electronic Communications Framework. This is the preferred option that will help improve the benefits to UK users and businesses from the single EU electronic communications market. This involves implementing the provisions of the Directive that are not already in place in the UK.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?

It will be reviewed  
05/2016

Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?

Yes

**Ministerial Sign-off** For consultation stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister:



..... Date: 13/09/2010 .....

# Summary: Analysis and Evidence Policy Option 1

Description:

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: <b>Not</b>	High: <b>Not</b>	Best Estimate:
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Cost (Present Value)</b>	
Low	Not Quantifiable		Not Quantifiable	<b>Not Quantifiable</b>	
High	Not Quantifiable		Not Quantifiable	<b>Not Quantifiable</b>	
Best Estimate					
<b>Description and scale of key monetised costs by 'main affected groups'</b>					
<b>Other key non-monetised costs by 'main affected groups'</b>					
<p><i>Costs to Business</i> – There will be a cost to businesses should Ofcom use its powers to require SMP operators to make public certain information in relation to limits on access and/or access arrangements. There will be a cost to a company that decides to functionally separate to notify Ofcom of their intention. <i>Costs to Ofcom</i> – There may be limited costs to Ofcom from using their powers to place obligations on operators. There will be a cost to Ofcom if it decides to use its powers to enforce functional separation because they will be required to undertake a coordinated analysis of the different access markets and prepare a proposal for the Commission.</p>					
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Benefit (Present Value)</b>	
Low	Not Quantifiable		Not Quantifiable	<b>Not Quantifiable</b>	
High	Not Quantifiable		Not Quantifiable	<b>Not Quantifiable</b>	
Best Estimate					
<b>Description and scale of key monetised benefits by 'main affected groups'</b>					
<b>Other key non-monetised benefits by 'main affected groups'</b>					
<p>The main benefit of the Access Directive is that it will help to provide access to incumbent networks. This should reduce the number of monopolies within the EU operating over incumbent networks. This benefit will be smaller in the UK than in other Member States because many of the provisions of the Directive are already common practice and are simply made explicit. The power for Ofcom to be able to introduce obligations on undertakings that control access to end-users to make their services interoperable should increase competition by allowing more service providers to access the incumbent network. There will be benefits for businesses because they will face the same conditions in other MS as in the UK and will be able to compete on a more even ground, and this should increase the ease with which they can trade with, and provide services to, other MS. Consumers should benefit because they will be able to compare the services and products offered throughout MSs and will be better able to make sure they receive the best deal. Increased competition within Member States should increase the level of competition within the single EU electronic communications market.</p>					
<b>Key assumptions/sensitivities/risks</b>				<b>Discount rate (%)</b>	

Impact on admin burden (AB) (£m):

Impact on policy cost savings (£m):

In scope

New AB:

AB savings:

Net:

Policy cost savings:

Yes/No

## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?		UK			
From what date will the policy be implemented?		25/05/2011			
Which organisation(s) will enforce the policy?		Ofcom, HMG			
What is the annual change in enforcement cost (£m)?		Not Quantifiable			
Does enforcement comply with Hampton principles?		Yes			
Does implementation go beyond minimum EU requirements?		No			
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)		Traded: 0		Non-traded: 0	
Does the proposal have an impact on competition?		Yes			
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?		Costs: 0		Benefits: 0	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro Not Quantifiable	< 20 Not Quantifiable	Small Not Quantifiable	Medium Not Quantifiable	Large Not Quantifiable
Are any of these organisations exempt?	No	No	No	No	No

## Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
<b>Statutory equality duties</b> <sup>24</sup> <a href="#">Statutory Equality Duties Impact Test guidance</a>	No	-
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	Yes	69
Small firms <a href="#">Small Firms Impact Test guidance</a>	No	-
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	No	-
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	No	-
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	-
Human rights <a href="#">Human Rights Impact Test guidance</a>	No	-
Justice system <a href="#">Justice Impact Test guidance</a>	No	-
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	-
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	No	-

<sup>24</sup> Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

## Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

### References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
13	
14	
15	
16	

+ Add another row

### Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

#### Annual profile of monetised costs and benefits\* - (£m) constant prices

	Y <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
<b>Transition costs</b>										
<b>Annual recurring cost</b>										
<b>Total annual costs</b>										
<b>Transition benefits</b>										
<b>Annual recurring benefits</b>										
<b>Total annual benefits</b>										

\* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office  
Excel Worksheet

## **Evidence Base (for summary sheets)**

### **Background**

The Access Directive (Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities) is designed to harmonise the way Member States regulate access to and interconnection of electronic communications networks and associated facilities. The aim of the Directive is to establish a regulatory framework in accordance with internal market principles to promote competition, interoperability and consumer benefits.

The fundamental principle of the Access Directive is the provision of access to incumbent networks, opening up monopolies, and the rules on which this is based. It also covers how the national regulator might intervene to bring about this access with explicit reference to the availability of functional separation as a market remedy.

The provisions of the Access Directive that are not already covered under UK law are not open to Government discretion in their implementation. They are therefore not open to consultation, but are included here to give an indication of the effect of implementing all aspects of the revised Framework in the UK.

### **Rationale for Government Intervention**

The Access Directive is designed to intervene to reduce the monopoly power present in the use of some networks and services in Member States. The presence of monopolies means that consumers are charged a higher price than they would be under open competition. This is more of a problem in some other Member States than in the UK, however the harmonisation of regulations within the single EU electronic communications market will increase competition and provide benefits for UK users and businesses.

### **Option**

#### **Option 0: Do nothing**

A do nothing option is included as a theoretical baseline against which the effects of implementing the provisions of the Directive can be assessed. This option is not practical because it would not be compliant with EU law. Under this option UK consumers and businesses would miss out on the benefits that implementing the provisions of the Directive would bring. Many of the amendments of the Access Directive are already common practice in the UK but under this option there would be no obligation for them to continue.

## Option 1: Implement the provisions of the amended Access Directive of the EU Electronic Communications Framework

There are a number of provisions of the amended Access Directive that are not already covered within UK law. These are:

- Powers and responsibilities to the NRA in relation to access to, interconnection and interoperability of services.
  - The UK Government is required to give Ofcom the power to introduce obligations on undertakings that control access to end-users to make their services interoperable. Ofcom would exercise this power, should it choose to do so, through a change to the access conditions.
  - The UK Government is obliged to add to Ofcom's the discretionary power to require operators to make public certain information, with the amendment giving Ofcom the power to require publication of terms and conditions for supply which include conditions limiting access to and/or use of services and applications.
- The availability of 'Functional Separation'<sup>25</sup> and 'Voluntary separation by a vertically integrated undertaking', where an undertaking has been deemed to have significant market power, as market remedies to achieve effective competition. This is not expected to have a significant impact in the UK where functional separation already exists.
  - The Directive makes express the powers of Ofcom to enforce functional separation on undertakings with significant market power.
  - New obligations placed on Ofcom, should it choose to use this power, to undertake a coordinated analysis of the different access markets. Ofcom must submit a proposal to the Commission when it intends to impose the obligation. Operators seeking to voluntarily separate must notify Ofcom.

### Costs

*Costs to Business* – There will be a cost to businesses should Ofcom use its powers to require operators to make public certain information. There will be a cost to a company that decides to functionally separate to notify Ofcom of their intention.

*Costs to Ofcom* – There may be costs to Ofcom from using their powers to place obligations on operators. There will be a cost to Ofcom if it decides to use its powers to enforce functional separation because they will be required to undertake a coordinated analysis of the different access markets and prepare a proposal for the Commission.

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<sup>25</sup> Functional separation means the establishment of operationally separated entities, the ownership of which remains with the parent company. The separate entities have separate accounts but they are not legally independent.

## Benefits

The main benefit of the Access Directive is that it will help to provide access to incumbent networks. This should reduce the number of monopolies within the EU operating over incumbent networks. This benefit will be smaller in the UK than in other Member States because many of the provisions of the Directive are simply made explicit by their implementation. For example, functional separation in the UK, in the case of BT, has already been carried out under UK competition law, without the need for Commission clearance. There will be a benefit from Ofcom having the power to improve significant market power situations should they be seen to occur. The power for Ofcom to be able to introduce obligations on undertakings that control access to end-users, to make their services interoperable, should increase competition by allowing more service providers to access the incumbent network.

Along with even greater regulatory certainty, there should be benefits to UK businesses and consumers from the increase in competition throughout EU Member States. There will be benefits for businesses because they will face the same conditions in other Member States as in the UK and will be able to compete on a more even ground, and this should increase the ease with which they can trade with, and provide services to, the other Member States of the EU. Consumers should benefit because they will be able to compare the services and products offered throughout Europe and will be better able to make sure they receive the best deal. Increased competition within Member States should increase the level of competition within the single EU electronic communications market.

## Competition

The Access Directive is designed to increase the level of competition within the single EU electronic communications market through the removal of barriers to entry. The provisions of the Access Directive lower the costs of access to a market, for example with the discretionary power on Ofcom to introduce obligations on undertakings that control access to end-users to make their services interoperable, and increase the competition within markets to allow new entrants to enter, for example the ability of Ofcom to use functional separation as a market remedy.

## Small Firms

The Access Directive should increase access to incumbent networks for smaller firms in order to increase competition.

## Other Specific Impact Tests

*Other environment/ rural proofing*



After an initial screening it has been deemed that no significant impact is anticipated on the environment and rural proofing.

*Race, disability and gender equality*

After an initial screening it has been deemed that no significant impact is anticipated on race, disability and gender equality.

*Other tests*

Other specific impact tests have been considered including Legal Aid, Sustainable Development and Carbon Assessment. Again, after initial screening, it has been deemed that no significant impact is anticipated.

## Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<b>Basis of the review:</b> For details of the Post Implementation Review please see the Plan on page 10.
<b>Review objective:</b>
<b>Review approach and rationale:</b>
<b>Baseline:</b>
<b>Success criteria:</b>
<b>Monitoring information arrangements:</b>
<b>Reasons for not planning a PIR:</b>

# Authorisation Directive: Overarching Impact Assessment

Lead department or agency:

**Department for Business, Innovation and Skills**

Other departments or agencies:

**Ofcom**

## Impact Assessment (IA)

**IA No:** BIS0025

**Date:** 10/09/2010

**Stage:** Consultation

**Source of intervention:** EU

**Type of measure:** Secondary legislation

**Contact for enquiries:**

Colette Beaupre 020 7215 1650

## Summary: Intervention and Options

### What is the problem under consideration? Why is government intervention necessary?

The Authorisation Directive aims to simplify the rules and conditions governing the authorisation required to provide electronic communications services in order to better facilitate the provision of these services throughout the EU. Intervention at an EU level is required to make it easier for these services to be provided throughout Member States. Differences between the authorisations of different MSs can act as barriers to operators starting up or doing business between them. Intervention at a UK level is needed to ensure that UK businesses and users are able to benefit from the better functioning of the EU electronic communications market.

### What are the policy objectives and the intended effects?

The Directive aims to simplify the rules and conditions governing the authorisation required to provide electronic communications services in order to better facilitate the provision of these services throughout the EU. In order to do this, it further facilitates the internal market providing for harmonisation of what MSs are allowed to do with an overall goal of levelling the playing field. The objective is to prevent MSs introducing rules that prevent other operators from starting up or doing business.

### What policy options have been considered? Please justify preferred option (further details in Evidence Base)

Option 0: Do Nothing

Option 1: Implement the provisions of the amended Authorisation Directive of the EU Electronic Communications Framework. This is the preferred option that will help deliver the benefits of a single EU electronics communication markets. This involves implementing the provisions of the Directive that are not already in place in the UK.

**When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?**

It will be reviewed  
05/2016

**Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?**

Yes

**Ministerial Sign-off** For consultation stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister:



..... Date: 13/09/2010 .....

# Summary: Analysis and Evidence Policy Option 1

Description:

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: <b>Not</b>	High: <b>Not</b>	Best Estimate:
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Cost (Present Value)</b>	
Low	Not Quantifiable		Not Quantifiable	<b>Not Quantifiable</b>	
High	Not Quantifiable		Not Quantifiable	<b>Not Quantifiable</b>	
Best Estimate					
<b>Description and scale of key monetised costs by 'main affected groups'</b>					
<b>Other key non-monetised costs by 'main affected groups'</b>					
<p><i>Costs to Business</i> – There will be no costs for compliant businesses associated with the changes to enforcement powers granted to Ofcom. There may be a small cost to business from providing evidence to Ofcom to help them monitor compliance. <i>Costs to Ofcom</i> – There will be a cost to Ofcom to review spectrum licenses that have been granted for 10 years or more and where the licence cannot be transferred or leased. There will be a cost on Ofcom to review general authorisations and licenses within two years of the Directive coming into force.</p>					
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Benefit (Present Value)</b>	
Low	Not Quantifiable		Not Quantifiable	<b>Not Quantifiable</b>	
High	Not Quantifiable		Not Quantifiable	<b>Not Quantifiable</b>	
Best Estimate					
<b>Description and scale of key monetised benefits by 'main affected groups'</b>					
<b>Other key non-monetised benefits by 'main affected groups'</b>					
<p>Benefits of the Directive should come from the simplification of the rules and conditions governing the authorisation required to provide electronic communications services. This should make it more straight forward for businesses to operate within this market. Another aim of the Directive is to level the playing field to facilitate the internal market for electronic communications. This could increase the level of competition within the market as all the undertakings will be competing under the same conditions, which should have benefits to consumers who could receive a wider variety of services at a more competitive price.</p>					
<b>Key assumptions/sensitivities/risks</b>				<b>Discount rate (%)</b>	

Impact on admin burden (AB) (£m):		Impact on policy cost savings (£m):		In scope
New AB:	AB savings:	Net:	Policy cost savings:	<b>Yes/No</b>

## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	UK				
From what date will the policy be implemented?	25/05/2011				
Which organisation(s) will enforce the policy?	Ofcom, HMG				
What is the annual change in enforcement cost (£m)?	Not Quantifiable				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	No				
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	<b>Traded:</b> 0		<b>Non-traded:</b> 0		
Does the proposal have an impact on competition?	Yes				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	<b>Costs:</b> 0		<b>Benefits:</b> 0		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	<b>Micro</b> Not Quantifiable	<b>&lt; 20</b> Not Quantifiable	<b>Small</b> Not Quantifiable	<b>Medium</b> Not Quantifiable	<b>Large</b> Not Quantifiable
Are any of these organisations exempt?	No	No	No	No	No

## Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
<b>Statutory equality duties</b> <sup>26</sup> <a href="#">Statutory Equality Duties Impact Test guidance</a>	No	-
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	Yes	79
Small firms <a href="#">Small Firms Impact Test guidance</a>	No	-
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	No	-
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	No	-
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	-
Human rights <a href="#">Human Rights Impact Test guidance</a>	No	-
Justice system <a href="#">Justice Impact Test guidance</a>	No	-
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	-
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	No	-

<sup>26</sup> Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

## Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

### References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
17	
18	
19	
20	

+ Add another row

### Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

#### Annual profile of monetised costs and benefits\* - (£m) constant prices

	Y <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
Transition costs										
Annual recurring cost										
Total annual costs										
Transition benefits										
Annual recurring benefits										
Total annual benefits										

\* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office  
Excel Worksheet

## **Evidence Base (for summary sheets)**

### **Background**

The Authorisation Directive (Directive 2002/20/EC on the authorisation of electronic communications networks and services) aims to simplify the rules and conditions governing the authorisation required to provide electronic communications services in order to better facilitate the provision of these services throughout the EU.

In order to do this it further facilitates the internal market providing for harmonisation of what Member States are allowed to do and not allowed to do with regards authorising the provision of electronic communications networks and services. The overall goal is to level the playing field and prevent Member States from introducing rules that prevent other operators from starting up or doing business.

Of the provisions of the Authorisation Directive that are not already covered under UK law, some are not open to Government discretion in their implementation. These are therefore not open to consultation, but are included here to give an indication of the effect of implementing all aspects of the revised Framework in the UK. The provision where there is some scope for Government intervention is covered in more detail in an individual impact assessments attached to this one.

### **Rationale for Government Intervention**

Intervention at an EU level is required to simplify the rules and conditions governing the authorisations required to provide electronic communications services in order to make it easier for these services to be provided throughout Member States. In order for the single market to operate there needs to be consistency with authorisation. Differences between Member States can act as barriers that prevent other operators from starting up or doing business across different Member States.

Intervention at a UK level is needed to ensure that UK businesses and users are able to benefit from the better functioning of the single EU electronic communications market.

### **Option**

#### **Option 0: Do nothing**

A do nothing option is included as a theoretical baseline against which the effects of implementing the provisions of the Directive can be assessed. This option is not practical because it would not be compliant with EU law. Under this option UK consumers and businesses would miss out on the benefits that implementing the provisions of the Directive would bring.

## **Option 1: Implement the provisions of the amended Authorisation Directive of the EU Electronic Communications Framework**

There are a number of provisions of the amended Authorisation Directive that are not already covered within UK law. These are:

- The Directive builds on the provisions on spectrum management in the Framework Directive (covered in the impact assessment on the Framework Directive) that are intended to move spectrum management closer to a market orientated regime.
  - Promote the use of general authorisations, as opposed to the issuing of individual rights of use for spectrum, as far as possible. Member States may still grant spectrum licenses and the list of grounds justifying a licence as opposed to a general authorisation has been amended by the Directive. This amendment will have no real practical effect in the application of policy in the UK.
  - Where an undertaking has a licence that has been granted for 10 years or more and where that licence cannot be transferred or leased, Ofcom has to ensure that the conditions which enabled them to issue a license rather than a general authorisation still apply. If they no longer apply, the license has to be changed to a general authorisation, or the license has to be made transferable. This will require Ofcom to keep such licenses under review.
  - Ofcom already has powers to deal with spectrum hoarding and obligations requiring it to ensure that spectrum is used efficiently and effectively, but may wish to add a requirement that leases of some types of spectrum are notified to Ofcom.
  - The Directive currently details a procedure that Ofcom must apply when considering whether to limit the number of licenses to be granted for radio spectrum. The amendments to this provision now apply a modified version of this procedure to situations where Ofcom is considering whether to extend the duration of existing licenses other than in accordance with the terms of the license. The provision will oblige Ofcom to give due weight to maximising benefits and promoting competition and to publish their decisions.
  - New provisions now require amendments to rights, conditions and procedures concerning general authorisations and rights of use or rights to install facilities must, where appropriate take into account the tradability of rights of use of radio frequencies. Minor changes of rights of use, or rights to install facilities can be agreed with the holder of the right or covered by the general authorisation.
  - An obligation has been placed on Member States to review general authorisations and licenses which were in place on 31<sup>st</sup> December 2009 within two years of the



date the Directive comes into force, to ensure that they comply with the provisions of the Directive. In the UK, this will be done by Ofcom.

- The Directive makes a number of changes to the enforcement powers granted to NRAs to enable them to deal more effectively with cases of breach.
  - The power to levy sanctions for breach of the conditions of general authorisations or rights of use that can be both periodic and retrospective.
  - The power to require immediate cessation of the breach and removal of the requirement to allow the undertaking time to remedy the breach.
  - The power to require an undertaking to cease to offer a service if, pending compliance with access obligations, it would be harmful to competition.
  - Ofcom enabled to levy sanctions that are effective, proportionate and dissuasive and which can be imposed even after the breach has been remedied.
  - Ofcom's existing powers to take interim measures are amended so that any interim measures have to be confirmed or revoked within 3 months from their adoption. This can be extended for a further 3 months in certain circumstances.
- As detailed above, Ofcom needs to be given powers to levy dissuasive sanctions in the case of non-compliance. The current level of the sanction for breach of Ofcom's main information gathering power in the Communications Act 2003 (section 135) is not considered to be sufficiently dissuasive and will need to be increased. An impact assessment detailing the impact of an increase in the level of the penalty is included in Annex 1.
- The Directive makes a number of changes to the information gathering powers of NRAs in order to ensure compliance with the conditions of general authorisations.
  - NRAs are required to have the power to require undertakings to provide them with all the information necessary to verify compliance with conditions of general authorisations, licenses or the allocation of telephone numbers.
  - Ofcom already has a wide information gathering power in section 135 of the Communications Act, however this power does not extend to spectrum matters and so a new information gathering power will be added to the Wireless Telegraphy Act 2006.
- Point 1 of Part C of the Annex to the Authorisation Directive has been amended to clarify that NRAs have the power to adopt tariff principles or to set retail tariff caps in relation to certain numbers or number ranges. This is intended to create greater transparency for consumers calling (e.g.) non-geographic numbers and to help prevent bill shock. The Government proposes to amend the Communications Act 2003 to implement this provision.

## Costs

*Costs to Business* – There will be no costs for compliant businesses associated with the changes to enforcement powers granted to Ofcom to allow them to deal with cases of breach. There may be a small cost to business from providing evidence to Ofcom to help them monitor compliance with the conditions of general authorisations, especially with regards to spectrum where the information gathering power is new. If Ofcom chooses to use its power to set retail tariff caps or tariff principles in relation to certain numbers or number ranges there may be a cost to business from revenue forgone though this may be offset by greater demand for services where demand is currently suppressed due to tariff uncertainty.

*Costs to Ofcom* – There will be a cost to Ofcom to review spectrum licenses that have been granted for 10 years or more and where the licence cannot be transferred or leased in order to ensure that the conditions under which they issued a licence rather than a general authorisation still apply. There will be a cost to Ofcom to review general authorisations and licenses within two years of the Directive coming into force.

## Benefits

Benefits of the Directive should come from the simplification of the rules and conditions governing the authorisation required to provide electronic communications services. This should make it more straight forward for businesses to operate within this market. Another aim of the Directive is to level the playing field to facilitate the internal market for electronic communications. This could increase the level of competition within the market as all the undertakings will be competing under the same conditions, which should have benefits to consumers who could receive a wider variety of services at a more competitive price.

With the intention of preventing Member States from introducing rules that prevent other operators from starting up or doing business, the Directive can reduce, or prevent, barriers to entry to markets which also has the effect of increasing the level of competition.

## Competition

The simplification and harmonisation of the authorisation required to provide electronic communications services is expected to have a positive effect on competition within the single EU electronic communications market. Inconsistencies in the authorisation conditions can act as barriers to businesses operating, or setting up, across Member States. By reducing these barriers, competition within Member States and within the single market has the potential to increase as companies will be competing on a level playing field.

### Small Firms

After initial screening, there is not expected to be a disproportionate effect of the Directive on small firms.

### Other Specific Impact Tests

#### *Other environment/ rural proofing*

After an initial screening it has been deemed that no significant impact is anticipated on the environment and rural proofing.

#### *Race, disability and gender equality*

After an initial screening it has been deemed that no significant impact is anticipated on race, disability and gender equality.

#### *Other tests*

Other specific impact tests have been considered including Legal Aid, Sustainable Development and Carbon Assessment. Again, after initial screening, it has been deemed that no significant impact is anticipated.

## Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<b>Basis of the review:</b> For details of the Post Implementation Review please see the Plan on page 10.
<b>Review objective:</b>
<b>Review approach and rationale:</b>
<b>Baseline:</b>
<b>Success criteria:</b>
<b>Monitoring information arrangements:</b>
<b>Reasons for not planning a PIR:</b>

## Annex 1: Dissuasive Sanctions

Lead department or agency:

Department for Business, Innovation and Skills

Other departments or agencies:

Ofcom

## Impact Assessment (IA)

IA No: BIS0113

Date: 10/09/2010

Stage: Consultation

Source of intervention: EU

Type of measure: Secondary legislation

Contact for enquiries:

Colette Beaupre 020 7215 1650

## Summary: Intervention and Options

### What is the problem under consideration? Why is government intervention necessary?

Under Article 10 of the Authorisation Directive Member States are required to give National Regulatory Authorities the power to impose dissuasive financial penalties to ensure compliance with the conditions of general authorities or rights of use of radio frequencies. In respect of its information gathering power in section 135 of the Communications Act 2003, Ofcom currently has the power to impose a financial penalty but the current maximum penalty of £50,000 is believed to be an inadequate deterrent. A more effective deterrent is required to ensure industry compliance with the obligations. Breaches of Ofcom's information gathering power may prevent Ofcom carrying out its duties as set out by the Directive.

### What are the policy objectives and the intended effects?

The objective of the policy proposal is to minimise the number of breaches of Ofcom's information gathering power under section 135 of the Communications Act 2003. To do that, full compliance with the current legislation needs to be incentivised by increasing the level of penalty that is applied to offending businesses. Ofcom does not consider the current maximum penalty of £50,000 to be high enough to act as an effective deterrent for companies where the gains achievable by breaching the conditions are very large. The same level of penalty will apply for breaches of the new Wireless Telegraphy Act spectrum information gathering power.

### What policy options have been considered? Please justify preferred option (further details in Evidence Base)

Option 0: Do nothing. This option would mean that the maximum fine Ofcom can levy will remain £50,000. This is considered not to be dissuasive and, therefore, does not comply with EU law

Option 1: Amend section 139 of the Communications Act 2003 to increase the level of fine that can be imposed for breach of Ofcom's information gathering powers (section 135 of the Communications Act). This is the preferred option. This will reduce the number of breaches of Ofcom's information gathering power, as it will no longer be financially beneficial to breach it.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?

It will be reviewed  
05/2016

Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?

Yes

**Ministerial Sign-off** For consultation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:  ..... Date: 13/09/2010 .....

# Summary: Analysis and Evidence Policy Option 1

Description:

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: <b>Not</b>	High: <b>Not</b>	Best Estimate:

<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>	<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Cost (Present Value)</b>
Low	Not Quantifiable	Not Quantifiable	<b>Not Quantifiable</b>
High	Not Quantifiable	Not Quantifiable	<b>Not Quantifiable</b>
Best Estimate			

Description and scale of key monetised costs by 'main affected groups'

**Other key non-monetised costs by 'main affected groups'**

There will be no costs for a complaint business whilst there are likely to be transitional costs for non-complaint businesses to comply with regulations. Costs to non-complaint businesses are not included in the accounting of costs and benefits of regulations. Any resulting increase in penalties leading to increased costs for businesses that are fined would be a transfer.

<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>	<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Benefit (Present Value)</b>
Low	Not Quantifiable	Not Quantifiable	<b>Not Quantifiable</b>
High	Not Quantifiable	Not Quantifiable	<b>Not Quantifiable</b>
Best Estimate			

Description and scale of key monetised benefits by 'main affected groups'

**Other key non-monetised benefits by 'main affected groups'**

There will be benefits to consumers from increased level of compliance with Ofcom's information gathering powers they will help enable Ofcom to perform its duties and potential benefits to compliant businesses from a more level playing field. Any resulting increase in penalties leading to increased revenues for enforcement authorities would be a transfer.

**Key assumptions/sensitivities/risks**

**Discount rate (%)**

Costs from any policy option would only arise to non-compliant businesses. Benefits associated with the policy will only arise if levels of compliance were to increase as a result of higher penalties available to the regulator.

Impact on admin burden (AB) (£m):		Impact on policy cost savings (£m):		In scope <b>Yes/No</b>
New AB:	AB savings:	Net:	Policy cost savings:	

## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	UK				
From what date will the policy be implemented?	25/05/2011				
Which organisation(s) will enforce the policy?	Ofcom, HMG				
What is the annual change in enforcement cost (£m)?	Not Quantifiable				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	No				
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	<b>Traded:</b> 0		<b>Non-traded:</b> 0		
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	<b>Costs:</b> 0		<b>Benefits:</b> 0		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	<b>Micro</b> Not Quantifiable	<b>&lt; 20</b> Not Quantifiable	<b>Small</b> Not Quantifiable	<b>Medium</b> Not Quantifiable	<b>Large</b> Not Quantifiable
Are any of these organisations exempt?	No	No	No	No	No

## Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
<b>Statutory equality duties</b> <sup>27</sup> <a href="#">Statutory Equality Duties Impact Test guidance</a>	No	-
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	Yes	90
Small firms <a href="#">Small Firms Impact Test guidance</a>	No	-
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	No	-
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	No	-
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	-
Human rights <a href="#">Human Rights Impact Test guidance</a>	No	-
Justice system <a href="#">Justice Impact Test guidance</a>	No	-
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	-
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	No	-

<sup>27</sup> Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

## Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

### References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
21	
22	
23	
24	

+ Add another row

### Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

#### Annual profile of monetised costs and benefits\* - (£m) constant prices

	Y <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
Transition costs										
Annual recurring cost										
Total annual costs										
Transition benefits										
Annual recurring benefits										
Total annual benefits										

\* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office  
Excel Worksheet



## Evidence Base (for summary sheets)

### Background

Art 10 of the Authorisation Directive has been amended to strengthen the enforcement powers available to National Regulatory Authorities (Ofcom in the UK). It sets out new provisions to ensure compliance with the conditions of general authorisations and rights of use of radio frequencies. The NRA is required to monitor compliance and there is a slightly modified obligation on business to provide evidence to the NRA for such purposes. It is the opinion of Ofcom that no changes are needed to the obligation on them to monitor compliance.

Article 10(1) requires NRAs to have the power to require undertakings providing electronic communications networks and services under the general authorisation, holders of a license under the Wireless Telegraphy Act 2006, or numbers allocated under the National Telephone Number Plan to provide the NRA with all information necessary to verify compliance with the conditions of the general authorisation, the license or the allocation of telephone numbers.

Section 135 of the Communications Act 2003 already gives Ofcom a wide information gathering power that will enable them to be able to require the provision of this information. However, though that power is wide, it does not extend to purely spectrum matters. Section 32 of the Wireless Telegraph Act 2006 contains an information gathering power but that only enables Ofcom to require information to be provided for statistical purposes. Therefore in order to implement the change to Article 10(1) of the Authorisation Directive, we will introduce a new information gathering power into the Wireless Telegraphy Act 2006.

The new information gathering power that we will introduce into the WTA 2006 will also need to be backed up by a power to issue a dissuasive financial penalty for breach of that provision. This will mirror the financial penalty in section 139 of the Communications Act 2003.

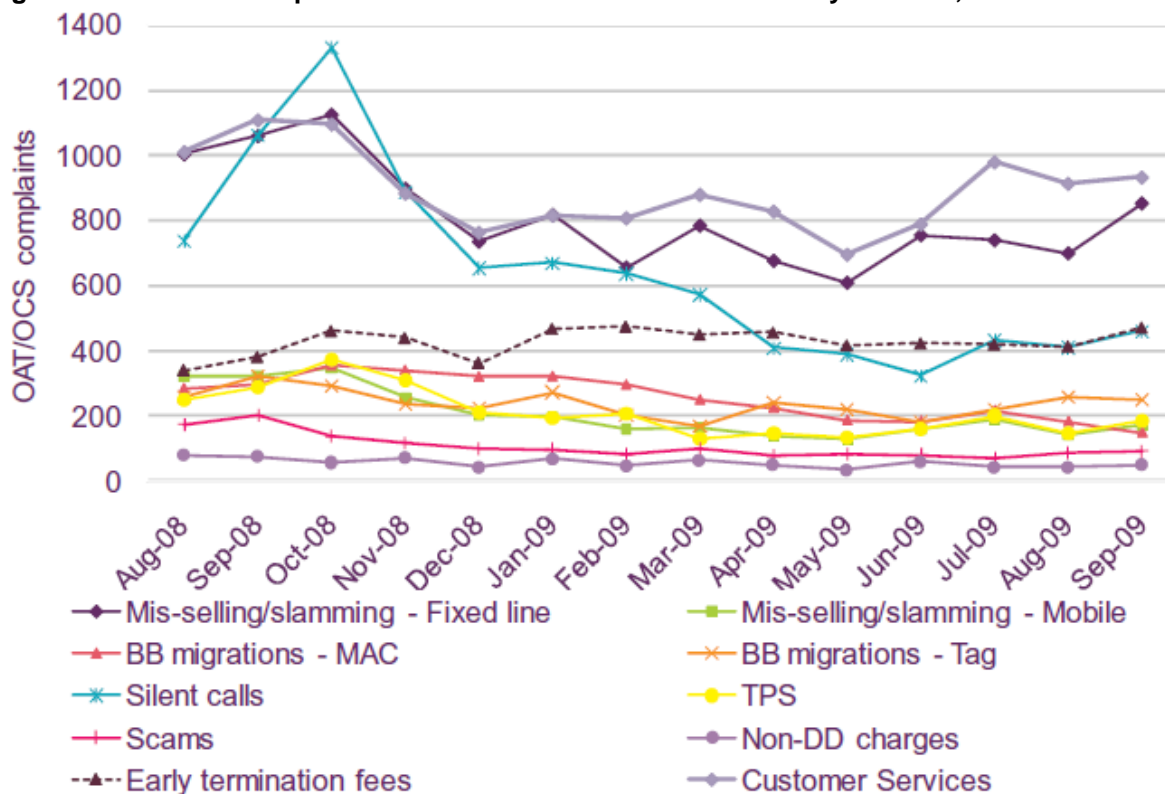
Amendments in Article 10(3) require new powers be granted to NRAs to levy dissuasive financial sanctions in cases of breach. Implementation of the new provisions will require the level of the sanction that Ofcom can impose under section 139 of the Communications Act 2003 to be increased. The current limit is set in section 139 of the Communications Act 2003 at £50,000. Recent changes to sanctions for silent calls have proposed raising the level of sanction Ofcom can levy to £2 million. This was suggested in the responses to a consultation to be a dissuasive level of penalty in this situation.

Currently NRAs do not have the power to take action once the breach has been remedied. The

regulator has said that this does not allow them to deal effectively with breaches such as 30 day scams, where, for example, operators set up premium rate numbers and then withdraw them only as the 30 day remedy period is due to expire. In order to remedy this failure, amended provisions in Articles 10(3) and (5) provide that the sanctions that can be levied for non-compliance be both periodic and retrospective and in addition, can be imposed even once the breach has been remedied.

Figure 1, below, shows the trends in complaints about telecoms issues received by the Ofcom Advisory Team (OAT) over time. These issues account for over half of the complaints received by Ofcom. The objective of the policy is to help reduce the number of breaches which should help to reduce the number of times consumers need to complain to Ofcom. These areas of complaint are a nuisance to consumers causing anxiety and distress as well as having potential financial implications.

**Figure 1: Trends in Complaints about Telecoms Issues Received by the OAT, Over Time<sup>28</sup>**



Source: Ofcom, OAT data

The consultation document, that this impact assessment accompanies, asks what level of financial penalty that can be imposed under section 139 of the Communications Act 2003 could be considered to be dissuasive. This impact assessment focuses on the need for, and impact of, higher maximum penalties and not on the other changes to the enforcement regime.

<sup>28</sup> The Consumer Experience 2009, Ofcom

## **Rationale for Government Intervention**

The information gathering powers Ofcom has under section 135 of the Communications Act enable Ofcom to perform its duties. Dissuasive sanctions for breaches of the information gathering power are required as part of more general enforcement mechanisms to enable Ofcom to carry out its duties as set out in the Directive. If Ofcom is not able to perform its duties then there is a risk that consumers will suffer, therefore government intervention is necessary from a consumer protection view. If companies are breaching their conditions of general authorisations in order to seek to increase revenues they are not protecting customers or serving their needs to the extent that they are expected to. Breaches may result in customers being defrauded or spending more on a service than they need to. As well as these potential financial implications, breaches can cause a nuisance to consumers causing anxiety and distress to customers. Compliance with Ofcom's information gathering powers could enable Ofcom to better investigate and prevent breaches.

## **Options**

When considering the cost-benefit analysis of an increase in the maximum penalty, the costs and benefits would only arise if there was less than 100 per cent compliance with existing obligations. Therefore, the rise in the maximum penalty would only have an impact on non-compliant businesses, and any resulting increase in the penalties faced by businesses would be treated as a transfer with the costs to non-compliant businesses being fined being offset by increased revenues to the enforcement authorities.

### **Option 0: Do Nothing**

Under this option it is unlikely that many companies will be dissuaded from breaching the requirement to provide information to Ofcom. It is likely that there will continue to be a similar level of incidences where a business can benefit from a breach even after paying the current level of fine. This means that, although Ofcom has the power to impose a monetary penalty on companies who breach the information gathering power, the UK will not be compliant with EU law because Article 10(3) requires that the financial penalties that a national regulatory authority can impose must be dissuasive.

## **Option 1: Amend section 139 of the Communications Act 2003 to increase the level of fine that can be imposed for breach of Ofcom's information gathering powers (section 135 of the Communications Act).**

Raising the penalty would result in a strong deterrent for most businesses from breaching an information request from Ofcom.

In order to be dissuasive, the level of fine that is decided on will need to be high enough to prevent it from being worthwhile for a company to breach section 135 of the Communications Act 2003. Businesses which decide whether or not to breach the conditions on financial grounds would find it rational to breach the conditions if this creates more money for the business than they will be fined or from being compliant. For example, if the potential profit from a breach is £150,000 and the maximum penalty is £50,000 it may be rational for a company to breach the conditions, as they will still make £100,000 even after being fined. It is rational to do this if the £100,000 is greater than what the company would have made if it had been following the conditions. If they believe that the risks of investigation and sanctions being imposed are low, then the risk adjusted level of penalty will fall making it more likely that the benefits of breaching outweigh the costs of the penalty. Therefore, for the level of fine to be dissuasive, it must be greater than any potential benefits that can be gained by breaching the conditions.

### Costs

There will be no costs for a complaint business. Costs to non-complaint businesses are not included in the accounting of costs and benefits of regulations. Any resulting increase in penalties leading to increased costs for businesses that are fined would be a transfer.

### Benefits

An increase in the maximum penalty would lead to the following benefits:

- The main benefit of dissuasive sanctions for breaches of Ofcom's information gathering powers is that it should help enable Ofcom to perform its duties as set out by the Directive, which leads to a number of consumer protection benefits.
- Potential benefits to consumers would include reduced consumer detriment by eliminating or at least reducing breaches to the conditions of general authorisations because Ofcom will be better able to perform its role as the NRA.
- If the higher penalty is likely to lead to much higher compliance then compliant businesses in the electronic communications industry are likely to benefit with improvements in the industry's reputation and the opportunity to compete on a level playing field if all companies comply with conditions. Potential benefits include reduced

consumer complaints and improved service, which may help to improve consumer loyalty. Also, there could be a possible reduction in operating costs including for example by handling fewer consumer complaints in customer service.

- Reduced costs of enforcement activity as this may include a reduction in the number of cases being pursued in the longer term.

### Competition

Giving Ofcom the power to impose higher financial penalties is not expected to have a significant impact on competition. There may be a small potential increase in competition attributable to the provisions because the dissuasive sanctions should enable Ofcom to be able to perform its duties, including duties to reduce significant market power.

### Other Specific Impact Tests

Other specific impact tests have been considered including the Small Firms Impact Test, Legal Aid, Sustainable Development, Carbon Assessment, Other Environment, Rural Proofing, Health and Human Rights. After initial screening it has been deemed that no significant impact is anticipated in any case.

We have also considered the potential effects of these proposals on race, disability and gender equality. After initial screening as to the potential impact of this policy on race, disability and gender equality it has been decided that there will not be a major impact upon minority groups in terms of numbers affected or the seriousness of the likely impact, or both.

## Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<b>Basis of the review:</b> For details of the Post Implementation Review please see the Plan on page 10.
<b>Review objective:</b>
<b>Review approach and rationale:</b>
<b>Baseline:</b>
<b>Success criteria:</b>
<b>Monitoring information arrangements:</b>
<b>Reasons for not planning a PIR:</b>

<b>Universal Service Directive: Overarching Impact Assessment</b>  <b>Lead department or agency:</b> Department for Business, Innovation and Skills <b>Other departments or agencies:</b> eAccessibility Forum Ofcom	<b>Impact Assessment (IA)</b>
	<b>IA No:</b> BIS0026
	<b>Date:</b> 10/09/2010
	<b>Stage:</b> Consultation
	<b>Source of intervention:</b> EU
	<b>Type of measure:</b> Secondary legislation
<b>Contact for enquiries:</b> Colette Beaupre 0207 215 1650	

## Summary: Intervention and Options

**What is the problem under consideration? Why is government intervention necessary?**  
 Intervention is required to ensure that consumers are protected whilst using electronic communications networks and services and to encourage the developments of ways in which all users have access to equivalent services.

**What are the policy objectives and the intended effects?**  
 The Directive aims to promote the interests of consumers by strengthening provisions relating to consumer protection. Provisions included in the amended Directive are intended to: - Improve the transparency of information from service providers to consumers. - Set a time limit of one working day for number porting following a change of fixed or mobile operator. - Better implement '112' emergency services, including ensuring greater access to caller location information and ensuring equivalent access by users with disabilities. - Update and strengthen provisions in the area of eAccessibility and the rights of users with disabilities, including Ofcom having the power to impose equivalence obligations on all operators and an obligation on Government to encourage the availability of terminal equipment for disabled users.

**What policy options have been considered? Please justify preferred option (further details in Evidence Base)**  
 Option 0: Do Nothing  
 Option 1: Implement the provisions of the amended Universal Service Directive of the EU Electronic Communications Framework. This is the preferred option that will help deliver the benefits of a single EU electronics communication markets by protecting consumers and users. This involves implementing the provisions of the Directive that are not already in place in the UK.

<b>When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?</b>	It will be reviewed 05/2016
<b>Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?</b>	Yes

**Ministerial Sign-off** For consultation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:  ..... Date: 13/09/2010 .....

# Summary: Analysis and Evidence Policy Option 1

Description:

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Not	High: Not	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Not Quantifiable	Not Quantifiable	Not Quantifiable
High	Not Quantifiable	Not Quantifiable	Not Quantifiable
Best Estimate			

### Description and scale of key monetised costs by 'main affected groups'

There will be costs to set up the system to allow porting within one working day. Ofcom estimate that for consumer mobile number porting within one working day and to provide PACs within 2 hours the total capital expenditure is estimated to be £2.5 million and that the total operating expenditure is estimated to be £1.8 million per year. This is beyond the proposed implementation and therefore the costs are expected to be less than this estimate. These costs do not include the cost of implementing the proposal for fixed lines or bulk porting.

### Other key non-monetised costs by 'main affected groups'

There will be a cost to undertakings to notify Ofcom in advance of any disposal of network assets. There may be a small cost to businesses to amend their consumer contracts to make sure they provide all the information required under the Directive. There will be a cost to undertakings to provide equivalent services to disabled users, should Ofcom decide to use its powers to require this. There will be a cost to business to provide subscriber information to the provider of directory enquiries. There will be a cost to Ofcom to process notifications in advance of undertakings disposing of network assets.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Not Quantifiable	Not Quantifiable	Not Quantifiable
High	Not Quantifiable	Not Quantifiable	Not Quantifiable
Best Estimate			

### Description and scale of key monetised benefits by 'main affected groups'

Ofcom estimate that the total benefit to mobile consumers from a decrease in porting time is given by £1.30 (willingness to pay) x 2.6million (ports per year) = £3.38 million. This is expected to be a low estimate of the benefits. This does not include benefits from implementing the proposals for fixed lines or bulk porting.

### Other key non-monetised benefits by 'main affected groups'

The Universal Service Directive should provide a number of benefits to consumers by promoting consumers' interests and increasing consumer protection. The provisions within the Directive that concern disabled users should enable greater access to the electronic communications networks and services for disabled users which has the potential to provide significant benefits. Examples of these include the cost savings available through online shopping and the improved social inclusion that telephones and the internet can provide. All users will be better protected from unexpected surprises, for example through the greater transparency of terms and conditions in consumer contracts, which should provide greater confidence in using services. It should also reduce the chance of anxiety and disruption caused by not being fully aware of these things.

Key assumptions/sensitivities/risks	Discount rate (%)
-------------------------------------	-------------------

Impact on admin burden (AB) (£m):	Impact on policy cost savings (£m):	In scope
New AB:	Policy cost savings:	Yes/No
AB savings:	Net:	



## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	UK				
From what date will the policy be implemented?	25/05/2010				
Which organisation(s) will enforce the policy?	Ofcom, HMG				
What is the annual change in enforcement cost (£m)?	Not Quantifiable				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	No				
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	<b>Traded:</b> 0		<b>Non-traded:</b> 0		
Does the proposal have an impact on competition?	Yes				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	<b>Costs:</b> 0		<b>Benefits:</b> 0		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	<b>Micro</b> Not Quantifiable	<b>&lt; 20</b> Not Quantifiable	<b>Small</b> Not Quantifiable	<b>Medium</b> Not Quantifiable	<b>Large</b> Not Quantifiable
Are any of these organisations exempt?	No	No	No	No	No

## Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
<b>Statutory equality duties</b> <sup>29</sup> <a href="#">Statutory Equality Duties Impact Test guidance</a>	Yes	101
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	Yes	101
Small firms <a href="#">Small Firms Impact Test guidance</a>	No	-
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	No	-
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	No	-
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	-
Human rights <a href="#">Human Rights Impact Test guidance</a>	No	-
Justice system <a href="#">Justice Impact Test guidance</a>	No	-
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	-
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	No	-

<sup>29</sup> Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

## Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

### References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
25	
26	
27	
28	

+ Add another row

### Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

#### Annual profile of monetised costs and benefits\* - (£m) constant prices

	Y <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
Transition costs										
Annual recurring cost										
Total annual costs										
Transition benefits										
Annual recurring benefits										
Total annual benefits										

\* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office  
Excel Worksheet

# Evidence Base (for summary sheets)

## Background

The Universal Service Directive (Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services) aims to promote the interests of consumers and it includes a number of consumer protection measures including transparency in consumer contracts.

The "Citizens Rights Directive" (Directive 2009/136 that amends the Universal Service Directive) makes provisions intended to:

- Improve the transparency of information from service providers to consumers.
- Set a time limit of one working day for number porting following a change of fixed or mobile operator.
- Further implement and embed '112' emergency services, including ensuring greater access to caller location information and ensuring equivalent access by users with disabilities.
- Update and strengthen provisions in the area of eAccessibility and the rights of users with disabilities, including giving Ofcom the power to impose equivalence obligations on all operators and an obligation on Government to promote the availability of terminal equipment for disabled users.

## Rationale for Government Intervention

The Universal Service Directive is designed to address a number of market failures within the EU electronic communications market.

- Consumer Protection The Directive aims to promote the interests of consumers by strengthening provisions relating to consumer protection. This includes the limit on the length of time that can be taken to port a number, which should reduce the barriers to switching consumers face, and the ability for Ofcom to set minimum quality of service obligations.
- Information Provision Currently consumers are not always provided with all the information about terms and conditions and the quality of service they can expect, or are provided with the information in a way that is not user friendly, when making decisions and they may therefore make sub-optimal decisions.
- Equivalence The Directive includes a number of provisions which aim to strengthen the provisions for and rights of users with disabilities. These provisions are designed to

enable disabled users to have equivalent access to electronic communications services as non-disabled users.

## **Options**

### **Option 0: Do nothing**

A do nothing option is included as a theoretical baseline against which the effects of implementing the provisions of the Directive can be assessed. This option is not practical because it breach the UK's obligations under EU law. Under this option UK consumers and businesses would miss out on the benefits that implementing the provisions of the Directive would bring.

### **Option 1: Implement the provisions of the amended Universal Service Directive of the EU Electronic Communications Framework**

There are a number of provisions of the amended Universal Service Directive that are not already fully covered under UK law and will require minor amendments to the Communications Act 2003 or Ofcom's General Conditions to implement. These are:

- Universal service providers (in the UK, BT and Kingston Communications) will be required to notify Ofcom in advance of any disposal of network assets.
- Ofcom will be given the power to monitor price evolution for matters falling within articles 4-7 of the Universal Service Directive including monitoring pricing of services provided by operators other than BT and Kingston
- Undertakings will be obliged to provide consumers with more information in contracts including whether caller location information is provided charges relating to number portability.
- The Directive provides for minimum quality of service standards with specific reference to access for disabled end-users.
  - Ofcom is enabled, but not required, to impose minimum quality of service obligations on electronic communications networks and service operators and can impose additional quality of service standards in respect to services provided to disabled consumers.
  - Ofcom is likely to consider using existing competition tools and consumer transparency options before considering using this power.
- There is a range of provisions that strengthen the requirements for equivalent access and choice for disabled users that build on the existing references to equivalence in the Universal Services Obligation.
  - There is a duty placed on Member States to encourage the availability of terminal equipment suitable for disabled end-users. The UK Government intends to use the

eAccessibility forum as a primary means of encouraging manufactures to produce more and better affordable and accessible equipment. The costs and benefits of implementing the duty in this way are looked at in the Impact Assessment in Annex 1.

- Ofcom will be given discretion over whether to require all undertakings to provide equivalent services to disabled users. If Ofcom choose to exercise this power it will need to consult on this in due course.
- There will be new obligations placed on Undertakings to provide subscriber information, at their request, to the provider of directory enquiry services. This is already ensured by Ofcom's General Conditions for the provision of telephony services.
- The access requirements from traditional telephony to new technologies will be extended to provide better access to emergency services. This strengthens operators' obligations to pass information about caller location to emergency authorities, and aims to improve general awareness of the European emergency number '112'.
  - Member States are obliged to ensure disabled consumers can access the same emergency services as non-disabled users. In the UK a pilot study has been taking place to provide text alert access to emergency services for disabled users.
- Member States are required to ensure that all number porting, the process that enables users to change service provider but take their number with them, should take place within one working day. We consider that the definition of what has to be ported will be restricted to the number only, and the 'one working day' would start when the agreement to port has been concluded, allowing equipment and SIM cards to move to a different timescale beforehand and allow the certainty desired by business. This applies equally to both bulk porting and consumer porting.

## Costs

*Costs to Business* – There will be a cost to the two universal service undertakings to notify Ofcom in advance of any disposal of network assets. There may be a small cost to businesses to amend their consumer contracts to make sure they provide all the information required under the Directive. There will be a cost to undertakings to provide equivalent services to disabled users, should Ofcom decide to use its powers to require this. There will be a cost to business to provide subscriber information to the provider of directory enquiries.

There will be a cost to some operators to set up the system to allow porting within one working day. The costs below are based on increasing the speed of porting to one working day and issuing PACs by SMS within 2 hours. These assumptions go beyond what is required from the UK Government's proposed implementation as detailed above, and therefore the costs to operators are expected to be less than the costs given here. Based on the responses to its

August 2009 consultation, Ofcom estimates that for consumer porting the capital expenditure required by the five largest mobile network operators to speed up the porting process to one working day and issue PACs by SMS within 2 hours is £1.7million<sup>30</sup>. Ofcom estimates that the five largest mobile network operators have a share of subscribers of around 87%. Ofcom therefore estimates that the total industry cost is £2 million (i.e. £1.7m/87%). Ofcom estimate that there will be a porting hub capital expenditure cost of £0.5million to enhance the Syniverse system<sup>31</sup>. Therefore the total capital expenditure is estimated to be £2.5 million.

Ofcom has estimated that the total additional labour requirement across the industry is estimated at £1.4 million per year for this option. The operator specific operating expenditure is estimated to be £0.2 million per year and the porting hub operating expenditure is estimated at £0.1 million per year. Therefore the total operating expenditure is estimated to be £1.8 million per year<sup>32</sup>.

These costs have been estimated for increasing the speed of consumer mobile number porting and not bulk porting or fixed line number porting. The changes to bulk number porting have not been estimated in this impact assessment, however they are not expected to increase the costs given here to a large extent because of the way the provision is being transposed. Under this option, the operators would be able to retain their current system, and would therefore not require large amounts of capital expenditure.

*Costs to Ofcom* – There will be a cost to Ofcom to process notifications in advance of the two relevant universal service undertakings disposing of network assets.

## Benefits

The amended Universal Service Directive should provide a number of benefits to consumers by promoting consumers interests and increasing consumer protection. The provisions within the Directive that concern disabled users should enable greater access to electronic communications networks and services for disabled users which have the potential to provide significant benefits to them. Examples of these include the improved social inclusion that telephones and the internet can provide and the cost savings available through online shopping. All users will be better protected from unexpected surprises, for example through the greater transparency of terms and conditions in consumer contracts, which should provide greater confidence in using services. It should also reduce the chance of anxiety and disruption caused by not being fully aware of these things.

Possible benefits from improvements to the number porting process come under three categories:

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<sup>30</sup>Changes to the Mobile Number Porting Process, Statement and Conclusion, Ofcom, April 2010

<sup>31</sup> To facilitate the transfer process, operators in the UK exchange data through a web-based system operated by Syniverse. Syniverse is also used by operators to generate PACs.

<sup>32</sup> Changes to the Mobile Number Porting Process, Statement and Conclusion, Ofcom, April 2010

1. Benefits to the porting individual
2. Benefits to those wishing to call the porting individual, who would not have ported under the current system
3. Benefits to competition in the mobile and fixed line market.

This analysis does not include the benefits to business of one day number porting.

In its April 2010 consultation response, Ofcom estimates that the average 'definite' willingness to pay for one day consumer mobile number porting is £1.30<sup>33</sup>, based on data from its consumer research asking consumers how much they would be willing to pay for one day porting. This can be used to give an estimate of the benefits to consumers from one day porting. Ofcom estimates that there are 2.6 million people who port each year<sup>34</sup>. Therefore an estimate of the total benefit to consumers from an increase in porting time is given by £1.30 x 2.6million = £3.38 million.

This is expected to be a low estimate of the benefits for a number of reasons. Firstly, this uses current porting figures and does not take into account any possible increase in the number of people porting numbers because of a reduction in the time taken to port. Secondly, Ofcom estimates of the consumer willingness to pay used in this option are based purely on consumers who indicated that they would definitely be willing to pay for faster porting, and not those who said they would probably pay. If these figures were used they would increase the calculated benefit. This figure also does not take into account the external benefits that an increase in the number of people porting could bring, such as external benefits to individuals and businesses who need to contact people who choose to port because of the reduced time it takes and not needing to update their records. The figure does not take account of the effect of any competition benefits accruing from an increase in the number of people porting.

The maximum potential benefit to consumers based on consumer willingness to pay is £7.63 million. This is based on the assumption that all mobile users who switch each year, port their number. Under this assumption there would be 5.8 million people who port their number each year. The maximum potential benefit may increase if the reduction in the length of time taken to port increases the number of people who switch provider each year.

These calculations refer to consumer mobile number ports and not bulk ports or fixed line number porting. Businesses requiring bulk ports may experience some benefits from the reduced time to port. However businesses may get a greater benefit from certainty over the porting date, rather than speed.

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<sup>33</sup> Changes to the Mobile Number Porting Process, Statement and Conclusion, Ofcom, April 2010

<sup>34</sup> This is based on there being 47.1 million consumers aged over 16 in the UK, and 89% of them being mobile users. Of those with mobiles, 14% switch each year and 45% of these port their numbers. Therefore an estimate of the total number of people who port their number each year is given by  $47.1m \times 0.89 \times 0.14 \times 0.45 = 2.6m$

### Competition

Any effect of the Directive on competition should be positive. For example the provisions to reduce the time taken to port a number will have a positive effect on competition between service providers because it will lower the barriers to switching faced by consumers.

### Small Firms

After initial screening, there is not expected to be a disproportionate adverse impact of the Directive on small firms.

### Other Specific Impact Tests

#### *Other environment/ rural proofing*

After an initial screening it has been deemed that no significant impact is anticipated on the environment and rural proofing.

#### *Race, disability and gender equality*

After an initial screening it has been deemed that no significant impact is anticipated on race, gender equality. The amendments are expected to have a positive effect for disabled users, please see the Equalities Impact Assessment for more information.

#### *Other tests*

Other specific impact tests have been considered including Legal Aid, Sustainable Development and Carbon Assessment. Again, after initial screening, it has been deemed that no significant impact is anticipated.



## Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<b>Basis of the review:</b> For details of the Post Implementation Review please see the Plan on page 10.
<b>Review objective:</b>
<b>Review approach and rationale:</b>
<b>Baseline:</b>
<b>Success criteria:</b>
<b>Monitoring information arrangements:</b>
<b>Reasons for not planning a PIR:</b>

## Annex 1: Provisions on Access and Choice for Disabled Users

**Lead department or agency:**

Department for Business, Innovation and Skills

**Other departments or agencies:**

Ofcom

### Impact Assessment (IA)

**IA No:** BIS0111

**Date:** 10/09/2010

**Stage:** Consultation

**Source of intervention:** EU

**Type of measure:** Secondary legislation

**Contact for enquiries:**

Colette Beaupre 020 7215 1650

## Summary: Intervention and Options

**What is the problem under consideration? Why is government intervention necessary?**

The UK already provides many of the services to disabled end users that are mandated in the Directive. However, there is a problem in the UK as well as other Member States with the under provision of terminal equipment and little suitable equipment available without modification. Government intervention is necessary on equity and fairness grounds as disabled users are currently missing out on some of the benefits that electronic communications services can bring. There are also positive externalities associated with the development of terminal equipment for disabled users, as there are benefits to society that go beyond the benefits experienced by the developers and the disabled users themselves. These are not taken into account when making private quantity decisions and this leads to an under provision of suitable terminal equipment than would be socially optimal.

**What are the policy objectives and the intended effects?**

The objective of Article 23a of the Universal Services Directive is to empower the national regulatory authority to ensure equivalence in access and choice for disabled end-users where this is practicle and appropriate. The Government wishes to find the most effective way of encouraging the development of equivalent terminal equipment. By implementing this provision, the intended effect is to increase the availability of suitable terminal equipment for disabled users.

**What policy options have been considered? Please justify preferred option (further details in Evidence Base)**

Option 0: Do Nothing

Option 1: Make use of the e-accessibility forum to invite stakeholders to decide options of encouraging technological development. This is the preferred option. This option provides the Government with access to a large number of stakeholders who are best placed to advice on the most efficient way to encourage the development of suitable terminal equipment. The e-accessibility forum has already been set up, and therefore this option has limited costs associated with it.

**When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?**

It will be reviewed  
05/2016

**Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?**

Yes

**Ministerial Sign-off** For consultation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:  ..... Date: 13/09/2010 .....

# Summary: Analysis and Evidence Policy Option 1

Description:

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Not	High: Not	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Not Quantifiable	Not Quantifiable	Not Quantifiable
High	Not Quantifiable	Not Quantifiable	Not Quantifiable
Best Estimate			

Description and scale of key monetised costs by 'main affected groups'

Other key non-monetised costs by 'main affected groups'

There will be costs associated with holding additional e-accessibility forum meetings in order to discuss the options, both in terms of time for the members of the forum and in arranging a room for the meeting. At this time it is not clear how many additional meetings may be required, but it is not expected that many will be needed. Therefore, these costs are expected to be minimal.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Not Quantifiable	Not Quantifiable	Not Quantifiable
High	Not Quantifiable	Not Quantifiable	Not Quantifiable
Best Estimate			

Description and scale of key monetised benefits by 'main affected groups'

Other key non-monetised benefits by 'main affected groups'

There will be benefits associated with asking the opinions of the members of the e-accessibility forum for advice on the best way to encourage the development of equivalent terminal equipment. The members of the forum are stakeholders in the best position to offer advice on this issue. The benefits will come from their advice being able to give the highest level of benefits to disabled users in the shortest possible time.

Key assumptions/sensitivities/risks

Discount rate (%)

Impact on admin burden (AB) (£m):			Impact on policy cost savings (£m):	In scope
New AB:	AB savings:	Net:	Policy cost savings:	Yes/No

## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	UK				
From what date will the policy be implemented?	25/05/2011				
Which organisation(s) will enforce the policy?	HMG				
What is the annual change in enforcement cost (£m)?	Not Quantifiable				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	No				
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	<b>Traded:</b> 0		<b>Non-traded:</b> 0		
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	<b>Costs:</b> 0		<b>Benefits:</b> 0		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	<b>Micro</b> Not Quantifiable	<b>&lt; 20</b> Not Quantifiable	<b>Small</b> Not Quantifiable	<b>Medium</b> Not Quantifiable	<b>Large</b> Not Quantifiable
Are any of these organisations exempt?	No	No	No	No	No

## Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

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Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
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<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	Yes	113
Small firms <a href="#">Small Firms Impact Test guidance</a>	No	-
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	No	-
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	No	-
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	-
Human rights <a href="#">Human Rights Impact Test guidance</a>	No	-
Justice system <a href="#">Justice Impact Test guidance</a>	No	-
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	-
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	No	-

<sup>35</sup> Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

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### References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
29	
30	
31	
32	

+ Add another row

### Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

#### Annual profile of monetised costs and benefits\* - (£m) constant prices

	Y <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
<b>Transition costs</b>										
<b>Annual recurring cost</b>										
<b>Total annual costs</b>										
<b>Transition benefits</b>										
<b>Annual recurring benefits</b>										
<b>Total annual benefits</b>										

\* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office  
Excel Worksheet

## Evidence Base (for summary sheets)

### Background

The Family Resources Survey<sup>36</sup> showed that there are up to 10 million disabled people in the UK and millions of other people who are affected by mild cognitive, sensory and physical impairments. Of the 10 million, 4.6 million are over State Pension Age and 700,000 are children. The UK already provides many of the services to disabled end users that are mandated in the Directive.

Article 23a(1) of the Universal Service Directive specifies that Member States shall enable relevant national authorities to specify requirements to be met by undertakings to ensure that disabled users have access to electronic communications services equivalent to those used by the majority of end users, and benefit from the choice of undertakings and services available to the majority of end users. In the UK, this means the Government giving Ofcom the power to specify, where appropriate, measures that undertakings will have to take to ensure disabled users have access to equivalent electronic communications technology as non-disabled users. This is not the subject of this Impact Assessment as it would be for Ofcom to consult on any such measures. Therefore the costs and benefits are not included here.

Article 23a(2) obliges the UK Government to encourage the availability of terminal equipment offering the necessary services and functions. The Government intends to implement this provision through the BIS eAccessibility forum. This was set up as a consequence of the Digital Economy Act 2010. It brings together representatives of business, disability rights groups, Government and other interest groups to facilitate business opportunities around the development of products, and in particular, terminal equipment for disabled users.

Current technology available in the UK can often be adapted to be used by disabled users; however, there is limited technology that allows disabled users to use electronic communications technologies without modification.

In recent years the use of electronic communications technology has become wide spread within society. Use of phones and other communications technologies enable users to communicate with family, friends and work colleagues and also to carry out transactions with banks, shops and businesses. However, for those with disabilities, making use of these technologies can prove difficult, which can restrict them from participating in activities that others take for granted. The development of a wide variety of communications systems, including SMS and Voice over Internet Protocol (VoIP), has changed the landscape of electronic communications and has provided the potential for an increasingly wide range of solutions for

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<sup>36</sup> Family Resources Survey 2003/4 London: Analytical Services Division, Department for Work and Pensions, 2005

disabled users, at prices that are considerably lower than was the case in the past. However, there is currently no regulation on VoIP to make sure it is accessible to all.

Every disability is different and disabled users may need to find a bespoke solution that work best for them. However, the market has started to find solutions to common problems disabled users face when using electronic communications terminals. Current technology provides a range of different options for different disabilities, but there are areas where there is room for improvement and research shows that many people do not take advantage of the services that are available<sup>37</sup> for a number of reasons.

## End User Equipment

### Telephones

There are a number of solutions available to make communicating by fixed line phone easier for disabled users. These are all adaptations to or available using current technology for a range of disabilities<sup>38</sup>.

Hearing: Figures from the Royal National Institute for Deaf People show that around 9 million people in the UK are either deaf or hard of hearing<sup>39</sup>. The two main difficulties faced with standard terminal equipment for someone who is hard of hearing are hearing speech over the service and hearing the phone ring. Speech and ring amplification are offered on a large proportion of standard phones. Some phones are fitted with an inductive coupler that may reduce the interference if using a hearing aid with a telecoil. In order to know that the phone is ringing, additional loud ringers and sensory alerts are available such as flashing lights or pagers.

An alternative to a standard telephone is the textphone. This enables one, or both, users involved in a conversation to send or receive messages in text. Under the terms of the Universal Service Order, BT is obliged to provide funds for a text relay service for deaf and speech-impaired users. Other communications providers must also offer access to the text relay service to their customers. The relay service is free at the point of use and the text relay users are entitled to a rebate to compensate them for the extra time taken by these calls. The relay assistant voices over what the deaf or speech-impaired person types, and types what the hearing person says.

SMS messages can be sent and received by both compatible landline phones and mobile phones, but this does not provide the same real-time conversation that can be achieved using a textphone. Currently mobile phones can cause interference with older analogue hearing aids,

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<sup>37</sup> Communication Choices: For Deaf or Hard of Hearing People, BT, 2008

<sup>38</sup> Communication Solutions, BT, 2010

<sup>39</sup> Communication Choices: For Deaf or Hard of Hearing People, BT, 2008

and some digital hearing aids and mobile phones pick up interference from electromagnetic devices.

Sight: Figures from the Royal National Institute of Blind People show that there are approximately 350,000 people registered blind or partially sighted in the UK. Certain models of mobile and landline phones available have features that make them more suitable for blind or partially sighted users than others. These include large, well spaced keys with good contrast between the background and numbers, illuminated keypads, clear and large text on the screen, a raised pip on the number 5 key, memory stored access to regularly used numbers, keypad beeps to indicate the number being entered and voice prompts when using menus.

Speech and Language: Outgoing voice amplification and textphones are possible technologies that can help those with no usable voice, speech difficulties or weak and quiet voices. Caller display, messaging services and call back options, give users more control over when and how they take a call.

Mobility: The cordless telephone allows users with mobility difficulties to keep the phone with them, as long as it is allowed to charge in the dock when necessary. This removes the necessity to get to a certain place to answer or make a phone call. Answering machines enable a caller to leave a message, when it is not convenient for a user to answer the phone at that time.

Dexterity: Dexterity problems and other disabilities can affect a user's ability to pick up the phone or hold it to their head for long periods of time. Advances in technology offer a number of solutions to these problems including easy to grip handsets, hands free or head set options, large and well spaced buttons, memory stores to reduce the number of buttons required to call regularly used numbers and speed dial options. Some phones also offer a pre-dial facility to check before dialling that a number has been entered correctly.

Mental Health and Learning Disabilities: Learning Disabilities and Mental Health conditions can cause communications problems, but technological developments can be used to simplify the experience of using a phone. These include pre-dialling facilities that display the number being dialled as the numbers are being pressed, which allows users to correct any mistakes if they occur, speed dial options that make telephone use quicker, and phones with simple menu options and large, clear and well-spaced buttons.

## The Internet

The internet has the potential to provide much more independence in daily life to disabled users. For example, it can enable deaf or hard of hearing people to stay in touch with friends and family more easily using email, instant messaging and British Sign Language (BSL) over



webcams, shopping and banking online may be more accessible than using the high street and it can enable a dyslexic person to discover new forms of literature and expression. However, there is significantly lower take up of the internet by those with disabilities, compared to those without, as seen in Table 1. Whilst many of the reasons disabled people choose not to go online will be the same as non-disabled people, there are a number of additional reasons that drive the lower level of take up. Disabled people are less likely to be in work, only 50% of disabled people are in work<sup>40</sup>, and so are less likely to have had contact with computers and technology. This is likely to make them less aware of the benefits that being online can bring. The high cost of access technologies, on top of a computer and internet access, often put them out of reach of those who need them.

**Table 1: Table of UK population home access to broadband<sup>41</sup>**

	Broadband Access at Home
People with visual impairments	42%
People with a hearing impairment	32%
People with a mobility impairment	36%
Older people 65 - 74	33%
Older people 75+	13%
General Population	70%

There is also a supply side issue with internet access. Often websites, sign-up pages and forms are inaccessible, even when access technologies can be used.

Use of the internet can offer a range of communication choices for a person with impaired hearing. These include email, instant messaging, VoIP, webcams and TalkByText home edition. TalkByText home edition is software from the RNID that turns a PC into a text terminal so that it can hold text calls over the internet, this allows proper conversations and calls via the text relay service. Use of webcams is popular within the deaf community for signing over broadband using BSL although upload speeds can be an issue as they are often significantly lower than download speeds. Department for Work and Pensions figures show that there are about 50,000 to 70,000 people who use BSL in the UK.

<sup>40</sup> Disability Rights Commission

<sup>41</sup> Consumer Expert Group report into the use of the Internet by disabled people: barriers and solutions, October 2009

## Assistive Technology Products

Assistive technology products are designed to provide access to computer systems and other telecommunication technologies for disabled users. Below is a selection of examples of such technologies. These are technologies developed for disabled users that adapt existing technology to make it usable by disabled users.

Alternative input devices are designed to allow users to control their computers through means other than a standard computer or mouse. These include alternative keyboards, sip-and-puff systems, joysticks and touch screens.

Braille embossers allow computer generated text to be printed out as Braille. Braille translation software can be used to convert scanned in text or text generated by standard word processing software.

Light signaller alerts use light signals to alert users to computer sounds. For example, a light flash can be used to alert the user that a new email has arrived or that a command has been completed.

Screen readers are able to verbalise everything on the screen into a computerized voice that then reads it out to the user. This includes all text, graphics, control buttons and menus. Screen readers are essential for blind computer users.

Speech recognition or voice recognition programs allow people to control and enter data to a computer using their voice instead of a keyboard or mouse.

## Rationale for Government Intervention

Under Article 23a(2) of the Universal Services Directive, Member States shall encourage the availability of terminal equipment suitable for disabled end-users.

The rationale for government intervention comes from there being equity arguments and positive externalities associated with the development of technology for disabled users. The equality argument comes from the fact that currently disabled users are missing out on the benefits that electronic communication technologies bring. For example, there is the potential for financial savings from shopping online, that those for whom it is not possible to use the internet may miss out on. There is also the fact that it may be difficult for disabled users to make the most of society, when they struggle to interact with technologies including phones, computers, televisions and radios, that non-disabled users take for granted.

There are positive spill over effects of developing terminal technology suitable for disabled users. These are additional benefits to society that would not be included in the price of such technology. These include benefits to society from disabled users being able to use electronic

communication technologies, which might enable them to make more use of online services or even to be able to move into employment. These benefits are not included in a manufacturer's decision on how many products to produce, and as a result there will be a lower level of production than would be socially optimal. There is therefore a rationale for government intervention to increase the level of production to a socially optimal level.

## **Options**

### **Option 0: Do Nothing**

A do nothing option is included as a theoretical baseline against which the effects of implementing option 1 can be assessed. Under this option the UK Government would give Ofcom the power to specify requirements to be met by undertakings to allow disabled users to have access to equivalent electronic communications technology as non-disabled users. However the government would not consult the e-accessibility forum on methods of encouraging the availability of terminal equipment offering the necessary services and functions. There are not expected to be any costs or benefits associated with this option. However, if this options leads to the Government not encouraging the development of suitable technology, there is likely be a gap between what is needed for the remedies Ofcom suggests and what is available in the market to the majority of disabled users.

### **Option 1: Make use of the e-accessibility forum to invite stakeholders to decide options of encouraging technological development.**

Under this option the UK Government would give Ofcom the power to specify requirements to be met by undertakings to allow disabled users to have access to equivalent electronic communications services as non-disabled users. In relation to the encouragement of availability of terminal equipment, the government would make use of the e-accessibility forum to invite stakeholders to decide options for encouraging the development of terminal equipment offering the necessary services and functions.

The e-accessibility forum is a group, led by the Department for Business, Innovation and Skills, that draws together Government, industry and the third sector to explore and understand issues of e-accessibility and develop and share best practice across all sectors. The Forum will initially operate from April 2010 to March 2013.

There are likely to be costs and benefits associated with implementing the method of encouraging the development of terminal equipment, once this has been decided on. A further impact assessment will be carried out at the time of such a policy being implemented.

### Costs

The e-accessibility forum has already been set up and is operating. There are therefore only small costs associated with getting a view from this forum on ways to encourage the availability of necessary terminal equipment. There may be minimal costs associated with holding additional meetings. It is not yet known the number of additional meetings required.

### Benefits

There are benefits from getting the e-accessibility forum to decide on possible methods of encouraging the development of terminal equipment that come from being able to consult a large group of stakeholders and include them in the development process. These include expanded opportunities for business and the engagement of disabled users in the wider digital economy. In this way it is hoped that the method of encouragement of terminal equipment used will be able to produce the maximum benefits to disabled users in the shortest necessary time. It is currently not possible to quantify this benefit.

### Competition assessment

It is not anticipated that there will be any competition impact from consulting the e-accessibility forum on the best method for encouraging the development of technologies for disabled users. However, the chosen method may have competition effects which will be assessed in an impact assessment when possible methods are being implemented.

### **Other specific impact tests**

#### *Other environment/ rural proofing*

After an initial screening it has been deemed that no significant impact is anticipated on the environment and rural proofing.

#### *Race, disability and gender equality*

After an initial screening it has been deemed that no significant impact is anticipated on race, disability and gender equality from consulting the e-accessibility forum. However, the method

chosen for encouraging the development of terminal technology suitable for disabled users will have a positive effect on disabled users. These will be fully examined in a further impact assessment following consultation with the forum.

#### *Other tests*

Other specific impact tests have been considered including the Small Firms Impact Test, Legal Aid, Sustainable Development and Carbon Assessment. Again, after initial screening, it has been deemed that no significant impact is anticipated.

## Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<b>Basis of the review:</b> For details of the Post Implementation Review please see the Plan on page 10.
<b>Review objective:</b>
<b>Review approach and rationale:</b>
<b>Baseline:</b>
<b>Success criteria:</b>
<b>Monitoring information arrangements:</b>
<b>Reasons for not planning a PIR:</b>

<b>E-Privacy Directive: Overarching Impact Assessment</b>  <b>Lead department or agency:</b> Department for Business, Innovation and Skills <b>Other departments or agencies:</b> Information Commissioner's Office	<b>Impact Assessment (IA)</b>
	<b>IA No:</b> BIS0027
	<b>Date:</b> 10/09/2010
	<b>Stage:</b> Consultation
	<b>Source of intervention:</b> EU
	<b>Type of measure:</b> Secondary legislation
<b>Contact for enquiries:</b> Colette Beaupre 020 7215 1650	

## Summary: Intervention and Options

**What is the problem under consideration? Why is government intervention necessary?**  
 The E-Privacy Directive sets out the fundamental rights and freedoms of EU citizens when using electronic communications. This is needed to address the negative externalities associated with personal data breaches and the lack of information provision for consumers.

**What are the policy objectives and the intended effects?**  
 The amended Directive strengthens rights to privacy and confidentiality with respect to the holding and processing of personal data by electronic network and service providers. The main provisions introduced by the amended Directive are:

- The introduction of a duty on providers of electronic communications services to notify personal data breaches to the Information Commissioner's Office and in certain circumstances, the data subject.
- A need for an effective and dissuasive enforcement regime, including criminal penalties where appropriate, for breaches of the Directive.
- A change in the requirement for storing information on a subscriber's or user's equipment from a 'right to refuse' to obtaining consent.

**What policy options have been considered? Please justify preferred option (further details in Evidence Base)**  
 Option 0: Do Nothing  
 Option 1: Implement the provisions of the E-Privacy Directive of the EU Electronic Communications Framework. This is the preferred option that will help deliver the benefits of a single EU electronics communication markets by setting out the fundamental rights and freedoms of EU citizens when using electronic communications. This involves implementing the provisions of the Directive that are not already in place in the UK.

<b>When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?</b>	It will be reviewed 05/2016
<b>Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?</b>	Yes

**Ministerial Sign-off** For consultation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:  ..... Date: 13/09/2010 .....

# Summary: Analysis and Evidence Policy Option 1

Description:

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Not	High: Not	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Not Quantifiable	Not Quantifiable	Not Quantifiable
High	Not Quantifiable	Not Quantifiable	Not Quantifiable
Best Estimate			

Description and scale of key monetised costs by 'main affected groups'

**Other key non-monetised costs by 'main affected groups'**

There will not be any costs from the duty on service providers to notify personal data breaches to the ICO if they are compliant. There may be a transitional cost for non compliant providers to become compliant. There will be a cost to business to provide users with information about cookies and how to manage them. There may be a cost to browser operators to make the browser management tools easier to use. There will be a small cost to users in terms of the time needed to familiarise themselves with the information about cookies and how to manage them. There will be a cost to the ICO to issue guidance on the notification of data breaches and of exercising their powers of audit and enforcement.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Not Quantifiable	Not Quantifiable	Not Quantifiable
High	Not Quantifiable	Not Quantifiable	Not Quantifiable
Best Estimate			

Description and scale of key monetised benefits by 'main affected groups'

**Other key non-monetised benefits by 'main affected groups'**

The main benefit of the E-Privacy Directive is to increase the security of users using electronic communications services. Users should benefit from the reduced risk of data breaches. They should also benefit from feeling more secure using the internet knowing they have their cookies settings at the appropriate level for them. Both of these should reduce the anxiety experienced by users. There will be benefits for business from a reduction in the number of complaints they receive about personal data breaches. This should reduce the cost of enforcement and the handling of complaints. There is the potential for benefits for companies that make use of cookies as consumers become more confident in them with the increased information.

Key assumptions/sensitivities/risks

Discount rate (%)

Impact on admin burden (AB) (£m):		Impact on policy cost savings (£m):		In scope
New AB:	AB savings:	Net:	Policy cost savings:	Yes/No



## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	UK				
From what date will the policy be implemented?	25/05/2011				
Which organisation(s) will enforce the policy?	ICO, HMG				
What is the annual change in enforcement cost (£m)?	Not Quantifiable				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	No				
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	<b>Traded:</b> 0		<b>Non-traded:</b> 0		
Does the proposal have an impact on competition?	Yes				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	<b>Costs:</b> 0		<b>Benefits:</b> 0		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	<b>Micro</b> Not Quantifiable	<b>&lt; 20</b> Not Quantifiable	<b>Small</b> Not Quantifiable	<b>Medium</b> Not Quantifiable	<b>Large</b> Not Quantifiable
Are any of these organisations exempt?	No	No	No	No	No

## Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
<b>Statutory equality duties</b> <sup>42</sup> <a href="#">Statutory Equality Duties Impact Test guidance</a>	No	-
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	Yes	122
Small firms <a href="#">Small Firms Impact Test guidance</a>	Yes	122
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	No	-
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	No	-
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	-
Human rights <a href="#">Human Rights Impact Test guidance</a>	No	-
Justice system <a href="#">Justice Impact Test guidance</a>	No	-
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	-
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	No	-

<sup>42</sup> Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

## Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

### References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
33	
34	
35	
36	

+ Add another row

### Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

#### Annual profile of monetised costs and benefits\* - (£m) constant prices

	Y <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
Transition costs										
Annual recurring cost										
Total annual costs										
Transition benefits										
Annual recurring benefits										
Total annual benefits										

\* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office  
Excel Worksheet

## **Evidence Base (for summary sheets)**

### **Background**

The E-Privacy Directive (Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector) sets out the fundamental rights and freedoms of EU citizens when using electronic communications. It strengthens rights to privacy and confidentiality with respect to the holding and processing of personal data by electronic network and service providers.

The main provisions introduced by the amended Directive are:

- The introduction of a duty on providers of electronic communications services to notify personal data breaches to the Information Commissioner's Office, and in certain circumstances, to notify the data subject.
- A requirement to have an effective and dissuasive enforcement and penalties regime, including criminal penalties where appropriate, for breaches of the Directive.
- A change in the requirement for storing information on a subscriber's or user's equipment from a 'right to refuse' to obtaining consent.

### **Rationale for Government Intervention**

There are a number of market failures that the amended E-Privacy Directive is designed to address.

- There are negative externalities associated with personal data breaches where a company holding personal data spends less on data protection than would be socially optimal because they balance the private cost of security against the private cost of a data breach. Therefore, there are consumer protection arguments for increasing the level of security against personal data breaches because breaches can result in harm and disruption to individuals, which companies don't take into consideration.
- The Directive also addresses a lack of information provision for consumers. The notification of data breaches will give consumers information about the most secure service providers and the need to be able to make informed decisions about cookies will ensure consumers have the information they need to make optimal decisions.

### **Option**

#### **Option 0: Do nothing**

A do nothing option is included as a theoretical baseline against which the effects of implementing the provisions of the Directive can be assessed. This option is not practical

because the UK would be in breach of its EU obligations. Under this option UK consumers and businesses would miss out on the benefits that implementing the provisions of the Directive would bring.

### **Option 1: Implement the provisions of the E-Privacy Directive of the EU Electronic Communications Framework**

There are a number of provisions of the E-Privacy Directive that are not already covered within UK law. These are:

- A duty on providers of electronic communications services to notify 'personal data breaches' to the competent national authority and, in certain circumstances, the data subject.
  - The Information Commissioner's Office (ICO) will have the power to issue guidance on the notification of data breaches and the power to impose appropriate sanctions on organisations which do not comply with their notification obligations.
  - The ICO must also have powers to audit companies' compliance with the Directive
  - The content of the guidance will be subject to a consultation by the ICO.
  - Any penalties introduced must be 'effective, proportionate and dissuasive'. The ICO will be given powers to impose these along with powers to investigate and order the cessation of breaches.
  - These measures are the subject of an Impact Assessment in Annex 2.
- The amendments with regards to cookies are also covered in an Impact Assessment attached in Annex 3.
  - Consent will need to be given by the user to the use of cookies except when the cookies is strictly necessary to deliver a service which has been explicitly requested by the user.

#### Costs

*The costs of the provisions of the Directive are covered in greater detail in separate impact assessments.*

*Costs to Business* – There will not be any costs from the duty on service providers to notify personal data breaches to the ICO if they are compliant. There may be a transitional cost for non compliant providers to become compliant. There will be a cost to business to provide users with information about cookies and how to manage them. There may be a cost to browser operators to make the browser management tools easier to use.

*Costs to users* – There will be a small cost in terms of the time needed to familiarise themselves with the information about cookies and how to manage them.

*Costs to ICO* – There will be a cost to the ICO to issue guidance on the notification of data breaches and of exercising their power to investigate breaches.

### Benefits

*The benefits of the provisions of the Directive are covered in greater detail in separate impact assessments.*

The main benefit of the E-Privacy Directive is to increase the security of users using electronic communications services. Users should benefit from the reduced risk of data breaches. They should also benefit from feeling more secure using the internet knowing they have their cookies settings at the appropriate level for them. Both of these should reduce the anxiety experienced by users.

There will be benefits for business from a reduction in the number of complaints they receive about personal data breaches. This should reduce the cost of enforcement and the handling of complaints. There is the potential for benefits for companies that make use of cookies as consumers become more confident in them with the increased information and are happier to make greater use of them.

### Competition

The E-Privacy Directive is expected to have a small, positive effect on competition. The provisions in the Directive will ensure that businesses are operating on a level playing field within the Member States. Consumers will have more information, which has the potential to increase the level of competition because consumers will be better able to compare different service providers with lower search costs for relevant information about security.

### Small Firms

The cost of complying with the provisions on business may be disproportionately high for small firms. However, compliant small firms may experience greater benefits from the increased confidence in the internet and security of personal data, especially those which operate largely online.

### Other Specific Impact Tests

#### *Other environment/ rural proofing*

After an initial screening it has been deemed that no significant impact is anticipated on the environment and rural proofing.

### *Race, disability and gender equality*

After an initial screening it has been deemed that no significant impact is anticipated on race, disability and gender equality.

### *Other tests*

Other specific impact tests have been considered including Legal Aid, Sustainable Development and Carbon Assessment. Again, after initial screening, it has been deemed that no significant impact is anticipated.

## Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<b>Basis of the review:</b> For details of the Post Implementation Review please see the Plan on page 10.
<b>Review objective:</b>
<b>Review approach and rationale:</b>
<b>Baseline:</b>
<b>Success criteria:</b>
<b>Monitoring information arrangements:</b>
<b>Reasons for not planning a PIR:</b>

## Annex 1: Data Breach Notification

**Lead department or agency:**

Department for Business, Innovation and Skills

**Other departments or agencies:**

Information Commissioner's Office

## Impact Assessment (IA)

**IA No:** BIS0108

**Date:** 10/09/2010

**Stage:** Consultation

**Source of intervention:** EU

**Type of measure:** Secondary legislation

**Contact for enquiries:**

Colette Beaupre 020 7215 1650

## Summary: Intervention and Options

**What is the problem under consideration? Why is government intervention necessary?**

The E-Privacy Directive includes amendments with the aim of improving the security of electronic communications networks and services, including reducing the number of personal data breaches. Government intervention is necessary to protect consumers from the harm and disruption that could result from a personal data breach. There are negative externalities associated with personal data breaches where the harm that they may cause will affect more than just the company whose responsibility it is to protect the data. This means that companies may spend less on protecting personal data than would be optimal for society as a whole.

**What are the policy objectives and the intended effects?**

The objective of the policy proposal is to minimise the number of data breaches suffered or permitted by publicly available electronic communications services and breaches to the revised E-Privacy Directive. To do this, an effective and dissuasive enforcement regime must be in place.

**What policy options have been considered? Please justify preferred option (further details in Evidence Base)**

Option 0: Do nothing. Under this option the maximum fine that can be imposed by the ICO remains at £50,000 with a lower maximum of £5,000 under certain circumstances. The ICO will not have the power to enforce the notification of data breaches that is required under EU law.

Option 1: This is the preferred option. BIS gives power to ICO to issue guidance on notification of data breaches.

**When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?**

It will be reviewed  
05/2016

**Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?**

Yes

**Ministerial Sign-off** For consultation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:  ..... Date: 13/09/2010 .....



# Summary: Analysis and Evidence Policy Option 1

Description:

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Not	High: Not	Best Estimate:
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Cost (Present Value)</b>	
Low	Not Quantifiable		Not Quantifiable	Not Quantifiable	
High	Not Quantifiable		Not Quantifiable	Not Quantifiable	
Best Estimate					
<b>Description and scale of key monetised costs by 'main affected groups'</b>					
<b>Other key non-monetised costs by 'main affected groups'</b>					
There will be no costs for a complaint business whilst there are likely to be transitional costs for non-complaint businesses to comply with regulations. Costs to non-complaint businesses are not included in the accounting of costs and benefits of regulations. Any resulting increase in penalties leading to increased costs for businesses that are fined would be a transfer.					
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Benefit (Present Value)</b>	
Low	Not Quantifiable		Not Quantifiable	Not Quantifiable	
High	Not Quantifiable		Not Quantifiable	Not Quantifiable	
Best Estimate					
<b>Description and scale of key monetised benefits by 'main affected groups'</b>					
<b>Other key non-monetised benefits by 'main affected groups'</b>					
There will be benefits to consumers from reduced risk of data breaches which would lead to reduced anxiety. In addition, there would be a reduced number of complaints made about personal data breaches and consequently reduced enforcement costs and costs of handling complaints. Any resulting increase in penalties leading to increased revenues for enforcement authorities would be a transfer.					
<b>Key assumptions/sensitivities/risks</b>				<b>Discount rate (%)</b>	
Costs from any policy option would only arise to non-compliant businesses. Benefits associated with the policy will only arise if levels of compliance were to increase as a result of higher penalties available to the regulator.					
<b>Impact on admin burden (AB) (£m):</b>			<b>Impact on policy cost savings (£m):</b>		<b>In scope</b>
New AB:	AB savings:	Net:	Policy cost savings:		Yes/No

## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	UK				
From what date will the policy be implemented?	25/05/2011				
Which organisation(s) will enforce the policy?	ICO, HMG				
What is the annual change in enforcement cost (£m)?	Not Quantifiable				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	No				
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	<b>Traded:</b> 0		<b>Non-traded:</b> 0		
Does the proposal have an impact on competition?	Yes				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	<b>Costs:</b> 0		<b>Benefits:</b> 0		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	<b>Micro</b> Not Quantifiable	<b>&lt; 20</b> Not Quantifiable	<b>Small</b> Not Quantifiable	<b>Medium</b> Not Quantifiable	<b>Large</b> Not Quantifiable
Are any of these organisations exempt?	No	No	No	No	No

## Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
<b>Statutory equality duties</b> <sup>43</sup> <a href="#">Statutory Equality Duties Impact Test guidance</a>	No	-
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	Yes	135
Small firms <a href="#">Small Firms Impact Test guidance</a>	No	-
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	No	-
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	No	-
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	-
Human rights <a href="#">Human Rights Impact Test guidance</a>	No	-
Justice system <a href="#">Justice Impact Test guidance</a>	No	-
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	-
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	No	-

<sup>43</sup> Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

## Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

### References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
37	
38	
39	
40	

+ Add another row

### Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

#### Annual profile of monetised costs and benefits\* - (£m) constant prices

	Y <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
<b>Transition costs</b>										
<b>Annual recurring cost</b>										
<b>Total annual costs</b>										
<b>Transition benefits</b>										
<b>Annual recurring benefits</b>										
<b>Total annual benefits</b>										

\* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office  
Excel Worksheet

## Evidence Base (for summary sheets)

### **Background**

The revised E-Privacy Directive introduces a number of key changes that the UK is not already compliant with<sup>44</sup>. These are:

1. The introduction of a duty on providers of electronic communications services to notify personal data breaches to the Information Commissioners Office (ICO) in the UK and in certain circumstances to notify the data subject.
2. A requirement to have an effective and dissuasive enforcement and penalties regime, including criminal penalties where appropriate, for breaches of the Directive.
3. A change in the requirement for storing information on a subscriber's or user's equipment from a 'right to refuse' to obtaining consent.

Point number 3 above is the subject of a separate Impact Assessment entitled 'Cookies - Implementation of a system of informed consent' that forms part of this consultation. The focus of this Impact Assessment is on points 1 and 2.

The Directive allows the Relevant National Authority, the ICO in the UK, to issue guidance on notification of data breaches by providers of electronic communications services. The UK Government proposes to give the ICO the power to do this in the implementing Regulations. The Consultation Document that this Impact Assessment accompanies seeks guidance on whether the Government is proposing to implement the Directive in the best way. The content of the guidance is at the discretion of the ICO and would therefore be the subject of a separate consultation by the ICO.

The Directive calls for 'effective, proportionate and dissuasive' penalties to be introduced for any infringement of the provisions of the revised Directive. This includes both failure to notify personal data breaches and failure to obtain consent for storing information on a subscriber's or user's equipment, as well as other areas.

### *The Value of the Privacy of Personal Data*

Personal data has a value from a number of perspectives, which gives a rationale for implementing measures to decrease the number of personal data breaches. 'Value' here refers to what would be lost if the information were unusable or unavailable, and the harm that could be caused to individuals and society in the event of a personal data breach<sup>45</sup>.

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<sup>44</sup> The Directive also includes other amendments that the UK is already compliant with. These are the use of personal data for marketing certain services, and using automated systems to make unsolicited marketing communications.

<sup>45</sup> The Privacy Dividend: The business case for investing in proactive privacy protection, Information Commissioner's Office, March 2010

There are four perspectives from which personal data draws its privacy value, these are<sup>46</sup>:

- Its value to the individual to whom it relates. Personal data has value to the person to whom it relates because they consider it important. Individuals can be caused harm and distress if their personal data is used in ways or for purposes other than those to which the organisation that holds the data was given permission. The extent to which individuals value the privacy of their personal data may not become clear to them until their privacy is breached.
- Its value as an asset used within an organisation's operations. Personal data has value to organisations that hold it if it is used by them to deliver specific objectives. The information can add value if it is being used for delivery goods, for customising a product or for controlling a service. Personal data can also be used for more strategic purposes by the organisation. From this perspective, personal data is an asset to organisations, and as with other assets it needs protecting to ensure it is used effectively.
- Its value to other parties who might want to use the information for either legitimate or improper purposes. Personal data can have considerable value to other parties. This may be for legitimate reasons such as for delivering a requested service to an individual, but also for wrongful, improper uses. These wrongful uses may be aimed at harming individuals or the organisation. The value of personal data from this perspective comes from the fact that by using the data, other parties might cause harm or distress to the people or organisations involved.
- Its social value as interpreted by regulators and other groups. The effects of the misuse or abuse of personal data bear not only on the individual but also on society. The societal value placed on the privacy of personal data manifests itself in most organisations wanting to be trustworthy, transparent and respectful of people's privacy and in the value given to the protection of privacy by regulators.

### **Rationale for Government Intervention**

There are negative externalities associated with personal data breaches. When a company makes a decision on how much to invest in protecting data they will base the decision on the potential cost of a data breach on themselves. The company will not include in their calculation the potential cost of the breach on the individuals whose data they are holding. This means that companies may spend less on protecting personal data than would be optimal for society as a whole. There is a rationale for government intervention here in order to increase the level of investment on data protection by companies to the socially optimal level.

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<sup>46</sup> The Privacy Dividend: The business case for investing in proactive privacy protection, Information Commissioner's Office, March 2010

Government intervention can be justified based on consumer protection. E-Privacy breaches can result in harm and disruption being caused to individuals if their personal data is used for reasons other than those to which it was originally given. Notification of data breaches will provide consumers with information about which service providers have suffered breaches, so they are able to make informed decisions when deciding who to give personal data to.

## **Options analysis**

### **Option 0: Do nothing.**

Under this option the ICO will not be able to issue guidance on the notification of data breaches and will not have the power to enforce it. The ICO will not have the power to impose effective, proportionate and dissuasive sanctions for any infringement of the revised E-Privacy Directive. There is unlikely to be any reduction in the level of personal data breaches, or increase in the number of these being reported to the relevant authority or customers. With no powers of enforcement it is unlikely that businesses will invest in implementing the provision of the revised E-Privacy Directive, meaning that consumers will not benefit from the increased protection that the revisions are expected to bring.

### **Option 1: Give power to ICO to issue guidance on notification of data breaches**

Under this option BIS will give the ICO the power to issue guidance on notification of data breaches. This is in line with Article 4 of the E-Privacy Directive which introduces a duty on providers of electronic communications services to notify personal data breaches to the competent national authority, this being the ICO in the UK. The ICO would have discretion over the content of the guidance and would consult on this separately. It is expected that notification will consist of an email to the ICO from the electronic communications service provider and may also require the service provider to email their customers to inform them of the breach.

### *Costs*

There are likely to be small costs for an organisation to become compliant with the guidance laid out by the ICO for notification of personal data breaches. These costs are not expected to be significantly high because notification is likely to consist of an email to the ICO. Following a breach, organisations may also be required to notify customers, this may also consist of an email. Depending on the size of the organisation and their customer base, the size of this cost will vary. Notification will only be required in the event of a data breach and electronic communications service providers should already have procedures to protect data in place. Therefore it is hoped that the number of potential notifications will be small.

There will be a cost to the ICO from putting together the guidance on notification of breaches of personal data.

### *Benefits*

Benefits to consumers will also include information about electronic communications providers which have caused personal data breaches or, through lax data security, have allowed those breaches to occur. Customers are then able to make more informed decisions about who they give personal data to, and what data they give. This has the potential to cause all electronic communications service providers to increase the level of protection of personal data because consumers may begin to choose services only from those with a certain level of protection.

There are potentially large benefits to an organisation that protects personal data. Some of these benefits include helping to achieve business goals by increasing service take-up by encouraging trust in the organisation and cost reductions, and reducing risks by improving resilience or reducing assurance or compliance risks.

Benefits to individuals from organisations protecting their personal data include a reduced chance of them suffering harm and distress from their data being used in an illegitimate way.

### Competition

Option 1 has the potential to increase the level of competition in the electronic communications industry by assuring that all electronic communication service providers are operating on a level playing field. This means that some providers would not be able to gain an unfair advantage over the other providers by breaching the E-Privacy Directive.

Option 1 has the potential to create competition based on the level of security offered by the providers for personal data. As notification of breaches is required, consumers will be able to find out which providers have committed or allowed to occur the most and the fewest number of breaches, and will be able to decide who to give their custom to accordingly.

### **Specific impact tests**

Other specific impact tests have been considered including the Small Firms Impact Test, Legal Aid, Sustainable Development, Carbon Assessment, Other Environment, and Rural Proofing. After initial screening it has been deemed that no significant impact is anticipated in any case.

We have also considered the potential effects of these proposals on race, disability and gender equality. After initial screening as to the potential impact of this policy/regulation on race, disability and gender equality it has been decided that there will not be a major impact upon minority groups in terms of numbers affected or the seriousness of the likely impact, or both.



## Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<b>Basis of the review:</b> For details of the Post Implementation Review please see the Plan on page 10.
<b>Review objective:</b>
<b>Review approach and rationale:</b>
<b>Baseline:</b>
<b>Success criteria:</b>
<b>Monitoring information arrangements:</b>
<b>Reasons for not planning a PIR:</b>

## Annex 2: Information Provision

**Lead department or agency:**  
Department for Business, Innovation and Skills

**Other departments or agencies:**  
Information Commissioner's Office

## Impact Assessment (IA)

**IA No:** BIS0109

**Date:** 10/09/2010

**Stage:** Consultation

**Source of intervention:** EU

**Type of measure:** Secondary legislation

**Contact for enquiries:**  
Colette Beaupre 020 7215 1650

## Summary: Intervention and Options

### What is the problem under consideration? Why is government intervention necessary?

Police and security services will continue, under the amended E-Privacy Directive, to be able to request information from the providers of electronic communications services in order to aid in the protection of national security and following criminal cases. Government intervention is required to increase the investment service providers put into being able to provide this information on request in order that the information provided is of the maximum benefit to society.

### What are the policy objectives and the intended effects?

The intended effect of the policy is to increase the availability of suitable information for use by the police and security services to enable them to provide a high level of protection to citizens. To do this providers of publicly available electronic communications services must have a procedure in place to be able to respond to request for information from the police or security services. In order to monitor and enforce this, the relevant national authority, the Information Commissioners Office in the UK, must be able to ask for information from service providers about the procedure they have in place and the amounts and types of information requests they have had from the police and security services.

### What policy options have been considered? Please justify preferred option (further details in Evidence Base)

Option 0: Do nothing – Service providers will not be required to have a procedure in place to respond to information requests from the police and security services.

Option 1: Introduce regulation that providers must have procedures to respond to requests and to give ICO powers to ask for information – This is the preferred option

**When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?**

It will be reviewed  
05/2016

**Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?**

Yes

**Ministerial Sign-off** For consultation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:  ..... Date: 13/09/2010 .....

# Summary: Analysis and Evidence Policy Option 1

Description:

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Not	High: Not	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Not Quantifiable	Not Quantifiable	Not Quantifiable
High	Not Quantifiable	Not Quantifiable	Not Quantifiable
Best Estimate			

Description and scale of key monetised costs by 'main affected groups'

Other key non-monetised costs by 'main affected groups'

There will be costs associated with service providers needing to implement internal procedures to respond to information requests, however these are expected to be minimal. There will be costs associated with granting ICO the power to request information from the service providers. These are also expected to be minimal. There would be a cost to the ICO from setting up a process for requesting information from service providers and for setting up an enforcement regime.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Not Quantifiable	Not Quantifiable	Not Quantifiable
High	Not Quantifiable	Not Quantifiable	Not Quantifiable
Best Estimate			

Description and scale of key monetised benefits by 'main affected groups'

Other key non-monetised benefits by 'main affected groups'

There will be benefits to UK citizens from the increase in protection that they may receive because security services and the police will be able to access more detailed information from the providers of publicly available electronic communications services more easily.

Key assumptions/sensitivities/risks

Discount rate (%)

Impact on admin burden (AB) (£m):			Impact on policy cost savings (£m):	In scope
New AB:	AB savings:	Net:	Policy cost savings:	Yes/No

## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	UK				
From what date will the policy be implemented?	25/05/2011				
Which organisation(s) will enforce the policy?	ICO, HMG				
What is the annual change in enforcement cost (£m)?	Not Quantifiable				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	No				
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	<b>Traded:</b> 0		<b>Non-traded:</b> 0		
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	<b>Costs:</b> 0		<b>Benefits:</b> 0		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	<b>Micro</b> Not Quantifiable	<b>&lt; 20</b> Not Quantifiable	<b>Small</b> Not Quantifiable	<b>Medium</b> Not Quantifiable	<b>Large</b> Not Quantifiable
Are any of these organisations exempt?	No	No	No	No	No

## Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
<b>Statutory equality duties</b> <sup>47</sup> <a href="#">Statutory Equality Duties Impact Test guidance</a>	No	-
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	Yes	142
Small firms <a href="#">Small Firms Impact Test guidance</a>	No	-
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	No	-
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	No	-
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	-
Human rights <a href="#">Human Rights Impact Test guidance</a>	No	-
Justice system <a href="#">Justice Impact Test guidance</a>	No	-
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	-
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	No	-

<sup>47</sup> Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

## Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

### References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
41	
42	
43	
44	

+ Add another row

### Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

#### Annual profile of monetised costs and benefits\* - (£m) constant prices

	Y <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
<b>Transition costs</b>										
<b>Annual recurring cost</b>										
<b>Total annual costs</b>										
<b>Transition benefits</b>										
<b>Annual recurring benefits</b>										
<b>Total annual benefits</b>										

\* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office  
Excel Worksheet

## Evidence Base (for summary sheets)

### Background

The E-Privacy Directive includes provisions that Member States prohibit listening, tapping, storage or other kinds of interception of communication. Article 15 of the E-Privacy Directive gives an 'opt-out' from this in cases where these methods of information gathering are a necessary, appropriate and proportionate measure within a democratic society in order to safeguard national security, defence, public security, or for the prevention, investigation, detection and prosecution of criminal offences or of unauthorised use of the electronic communications system.

'National Security' is not defined by UK law, but is open to interpretation<sup>48</sup>. The interpretation of national security can include not just preventing military or terrorist attacks on the UK, but also protecting the safety of citizens abroad, the protection of the UK's democratic constitution, the effective operation of national security bodies and co-operation with other countries in fighting international terrorism.

The UK Government is proposing to amend the previous implementing regulations requiring providers of publicly available electronic communications services to have internal procedures in place to respond to requests for access to users' personal data from the police or security services, on the basis that they require the information to protect national security or in an investigation concerning criminal activity.

In order to monitor this, the UK Government is proposing to give the Information Commissioners Office (ICO) the power to request information from providers of publicly available electronic communications services about the procedures they have in place for responding to requests for access to users' personal data, the number of requests received, the legal justification invoked and their response.

### Rationale for Government Intervention

There is a positive externality associated with service providers being able to respond effectively to requests for information from the police and security services. The benefits of this information are greater to the police and security services and the wider society than to the

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<sup>48</sup> Freedom of Information Act  
[http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/detailed\\_specialist\\_guides/s24\\_national\\_security\\_v1\\_fop098.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/s24_national_security_v1_fop098.pdf)

individual service providers. These benefits come from the information being able to assist the police and security services in their job of protecting citizens and the increased protection citizens then receive. However, it is the service providers who must invest in being able to supply the information on request. Service providers will therefore invest to a level below that which would be optimal for the wider society. This, therefore, provides a rationale for government intervention in order to increase the level of investment by service providers in being able to provide this information to the socially optimal level.

## **Options**

### **Option 0: Do nothing**

Under this option providers of publicly available electronic communications services will not be required to have in place internal procedures for responding to requests for access to user's personal data from the police or security services. However, this does not mean that the service providers will not already have such a system in place.

As under this option service providers will not be required to have a process for responding to information requests in place, the ICO will not be given the power to request information about the process in order to enforce the requirement.

### **Option 1: Introduce provisions to ensure that providers must have procedures to respond to requests and to give ICO powers to ask for information**

Providers of publicly available electronic communications services will be required to establish internal procedures for responding to requests for access to users' personal data based on safeguarding national security, defence public security and the prevention, investigation, detection and prosecution of criminal offences or of unauthorised use of electronic communications systems. Providers will be required to provide the competent national authority, the ICO in the UK, on demand, with information about these procedures, the number of requests received, the legal justification invoked and their response. Providers will not be required to give specific details about individual cases. The ICO will be given powers by the UK Government to request this information from the providers of electronic communications services.

The ICO will be given the power to request such information in order to monitor and enforce the existence of internal procedures to deal with information requests. In order to enforce the requirement, the ICO will need to be able to impose dissuasive penalties on service providers which did not have a procedure in place. In order to be dissuasive, such penalties would need

to be greater than the cost of establishing a suitable internal procedure. Any penalties imposed on non compliant service providers will not be included in the analysis of costs and benefits because they would be a transfer.

### Costs

There will be costs associated with service providers needing to implement internal procedures to respond to information requests, however these are expected to be minimal.

There will be costs associated with granting ICO the power to request information from the service providers. These are also expected to be minimal. There would be a cost to the ICO from setting up a process for requesting information from service providers and for setting up an enforcement regime.

### Benefits

There will be benefits to UK citizens from the increase in protection that they may receive because security services and the police will be able to access more detailed information from the providers of publicly available electronic communications services more easily.

### Competition

It is not anticipated that this option will have a significant effect on competition. The cost to service providers of setting up an internal procedure for responding to requests for information may be proportionally higher for smaller providers, but the cost itself is expected to be minimal so this should not have an effect on competition.

### Other Specific Impact Tests

Other specific impact tests have been considered including the Small Firms Impact Test, Legal Aid, Sustainable Development, Carbon Assessment, Other Environment, and Rural Proofing. After initial screening it has been deemed that no significant impact is anticipated in any case.

We have also considered the potential effects of these proposals on race, disability and gender equality. After initial screening as to the potential impact of this policy/regulation on race, disability and gender equality it has been decided that there will not be a major impact upon minority groups in terms of numbers affected or the seriousness of the likely impact, or both.



## Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<b>Basis of the review:</b> For details of the Post Implementation Review please see the Plan on page 10.
<b>Review objective:</b>
<b>Review approach and rationale:</b>
<b>Baseline:</b>
<b>Success criteria:</b>
<b>Monitoring information arrangements:</b>
<b>Reasons for not planning a PIR:</b>

## Annex 3: Cookies - Implementation of a system of informed consent

**Lead department or agency:**

Department for Business, Innovation and Skills

**Other departments or agencies:**

Information Commissioner's Office

### Impact Assessment (IA)

**IA No:** BIS0107

**Date:** 10/09/2010

**Stage:** Consultation

**Source of intervention:** EU

**Type of measure:** Secondary legislation

**Contact for enquiries:**

Colette Beaupre 020 7215 1650

## Summary: Intervention and Options

**What is the problem under consideration? Why is government intervention necessary?**

The revised E-Privacy Directive introduces a change in the requirement for storing information on a subscriber's or user's equipment from a user's 'right to refuse' that storing to a requirement to obtain a user's consent. This refers to any attempt to store information, or gain access to stored information, in a user's equipment and applies to both legitimate and illegitimate practices. Existing legislation already covers illegitimate users in the UK. The main legitimate practice is the use of cookies which have a wide range of practical uses on the Internet. Currently users do not have sufficient information about the use and management of cookies that is easily accessible. Government intervention is needed to ensure consumers have optimal information when acting to ensure their privacy.

**What are the policy objectives and the intended effects?**

The aim of the E-Privacy Directive is to ensure that consumers have the opportunity to give specific and informed consent to the placing of cookies or other information on their equipment. This will have the effect of ensuring that they are more aware of the use of such technology by the websites they visit, and so are able to use the internet with more confidence.

**What policy options have been considered? Please justify preferred option (further details in Evidence Base)**

Option 0: Do Nothing

Option 1: Implement an 'opt-in' system for cookies

Option 2: Allow consent to the use of cookies to be given via browser settings. This is the preferred option because it allows the UK to be compliant with the E-Privacy Directive without the permanent disruption caused by an opt-in regime.

**When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?**

It will be reviewed  
05/2016

**Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?**

Yes

**Ministerial Sign-off** For consultation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:  ..... Date: 13/09/2010 .....

# Summary: Analysis and Evidence Policy Option 1

Description: Implement an 'opt-in' system for cookies

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Not	High: Not	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Not Quantifiable	Not Quantifiable	Not Quantifiable
High	Not Quantifiable	Not Quantifiable	Not Quantifiable
Best Estimate			

### Description and scale of key monetised costs by 'main affected groups'

Loss of revenue generated by behavioural and interest based advertising that is estimated to be up to £740 million by 2012 if users block the cookies that enable the generation of this revenue.

### Other key non-monetised costs by 'main affected groups'

Costs associated with implementing the policy, including programming pop-up windows or other means of obtaining consent. Directly lost revenue from lost sales due to not being able to use online shopping baskets or non-specific advertising. The revenue lost to companies and the economy from users switching from UK and EU based websites to non-EU websites. The cost of some companies abandoning the EU market because of the disruption. Cost to users through disruption of giving/withholding consent.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Not Quantifiable	Not Quantifiable	Not Quantifiable
High	Not Quantifiable	Not Quantifiable	Not Quantifiable
Best Estimate			

### Description and scale of key monetised benefits by 'main affected groups'

### Other key non-monetised benefits by 'main affected groups'

Users would get some benefit from having complete control over exactly which cookies are downloaded and the increased protection of their privacy this brings. Users may increase their confidence in using the internet.

Key assumptions/sensitivities/risks

Discount rate (%)

Impact on admin burden (AB) (£m):		Impact on policy cost savings (£m):		In scope Yes/No
New AB:	AB savings:	Net:	Policy cost savings:	

## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	UK				
From what date will the policy be implemented?	25/05/2011				
Which organisation(s) will enforce the policy?	HMG				
What is the annual change in enforcement cost (£m)?	Not Quantifiable				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	No				
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	<b>Traded:</b> 0		<b>Non-traded:</b> 0		
Does the proposal have an impact on competition?	Yes				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	<b>Costs:</b> 0		<b>Benefits:</b> 0		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	<b>Micro</b> Not Quantifiable	<b>&lt; 20</b> Not Quantifiable	<b>Small</b> Not Quantifiable	<b>Medium</b> Not Quantifiable	<b>Large</b> Not Quantifiable
Are any of these organisations exempt?	No	No	No	No	No

## Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
<b>Statutory equality duties</b> <sup>49</sup> <a href="#">Statutory Equality Duties Impact Test guidance</a>	No	-
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	Yes	157
Small firms <a href="#">Small Firms Impact Test guidance</a>	Yes	159
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	No	-
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	No	-
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	-
Human rights <a href="#">Human Rights Impact Test guidance</a>	No	-
Justice system <a href="#">Justice Impact Test guidance</a>	No	-
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	-
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	No	-

<sup>49</sup> Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

# Summary: Analysis and Evidence Policy Option 2

Description: Allow consent to the use of cookies to be given via browser settings

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Not	High: Not	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Not Quantifiable	Not Quantifiable	Not Quantifiable
High	Not Quantifiable	Not Quantifiable	Not Quantifiable
Best Estimate			

### Description and scale of key monetised costs by 'main affected groups'

Maximum of 5 lines

### Other key non-monetised costs by 'main affected groups'

Cost to browser providers from having to provide users with information about cookies and how to change the browser settings. Browser providers may also need to change the browser settings themselves, to make them more user friendly, for which there would also be a cost. Website owners that use cookies may be required to make it clearer on their websites the cookies that would be downloaded and their purposes. Small cost to users to familiarise themselves with the information about cookies and any new browser

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Not Quantifiable	Not Quantifiable	Not Quantifiable
High	Not Quantifiable	Not Quantifiable	Not Quantifiable
Best Estimate			

### Description and scale of key monetised benefits by 'main affected groups'

Maximum of 5 lines

### Other key non-monetised benefits by 'main affected groups'

Users will be able to make informed changes to the browser settings to suit their individual privacy needs and should therefore feel more confident using the internet. This may increase the number of users who choose to accept cookies, potentially increasing the effectiveness of online services, including advertising. EU based websites may be viewed as more secure and increase their use for online shopping or other services. Increased consumer trust and confidence in publishers and online marketers who use them.

### Key assumptions/sensitivities/risks

Discount rate (%)

Impact on admin burden (AB) (£m):			Impact on policy cost savings (£m):		In scope Yes/No
New AB:	AB savings:	Net:	Policy cost savings:		

## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	UK				
From what date will the policy be implemented?	25/05/2011				
Which organisation(s) will enforce the policy?	HMG				
What is the annual change in enforcement cost (£m)?	Not Quantifiable				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	No				
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	<b>Traded:</b> 0		<b>Non-traded:</b> 0		
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	<b>Costs:</b> 0		<b>Benefits:</b> 0		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	<b>Micro</b> Not Quantifiable	<b>&lt; 20</b> Not Quantifiable	<b>Small</b> Not Quantifiable	<b>Medium</b> Not Quantifiable	<b>Large</b> Not Quantifiable
Are any of these organisations exempt?	No	No	No	No	No

## Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
<b>Statutory equality duties</b> <sup>50</sup> <a href="#">Statutory Equality Duties Impact Test guidance</a>	No	-
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	Yes	159
Small firms <a href="#">Small Firms Impact Test guidance</a>	Yes	159
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	No	-
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	No	-
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	-
Human rights <a href="#">Human Rights Impact Test guidance</a>	No	-
Justice system <a href="#">Justice Impact Test guidance</a>	No	-
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	-
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	No	-

<sup>50</sup> Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

## Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

### References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
45	
46	
47	
48	

+ Add another row

### Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

#### Annual profile of monetised costs and benefits\* - (£m) constant prices

	Y <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
<b>Transition costs</b>										
<b>Annual recurring cost</b>										
<b>Total annual costs</b>										
<b>Transition benefits</b>										
<b>Annual recurring benefits</b>										
<b>Total annual benefits</b>										

\* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office  
Excel Worksheet

## Evidence Base (for summary sheets)

### Background

The amended E-Privacy Directive introduces a change in the requirement for storing information on a subscriber's or user's equipment from a 'right to refuse' to obtaining consent. This refers to any attempt to store information, or gain access to stored information, in a user's equipment. This can refer to both legitimate and illegitimate practices. Illegitimate practices include the use of spyware and viruses and these are already addressed in other legislation. The UK Government does not propose to introduce further measures to deal with these as a result of this amendment. The main legitimate practice is the use of small text files known as 'cookies' which have a wide range of uses on the Internet and without which the Internet as it is today would be unusable or severely restricted.

### Cookies

Cookies are text files that are saved on a computer when a user visits certain websites. They have multiple practical uses.

### How Cookies Work

Cookies are pieces of information sent by a web server to a browser when a user accesses a website. When the same website is accessed in the future, the browser returns the information, unchanged, to the server. This acts as a memory of what has happened previously on that website. For example, cookies are used to store information about the customised layout of the [bbc.co.uk](http://bbc.co.uk) homepage, including the positioning of modules and feeds and whether they are expanded or minimised<sup>51</sup>. Without cookies, accessing a website would be an individual event with no links to what has occurred in the past. Cookies in themselves do not identify an individual user, but the computer that was used to access a website.

### Uses

Uses of cookies include session management, personalisation, tracking and third party cookies. Overall cookies make using websites more efficient and easier.

Session Management – Cookies can be used to preserve a user's information whilst they are navigating through a website. They can be used to keep track of a customer's shopping basket

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<sup>51</sup> <http://www.bbc.co.uk/privacy/bbc-cookies-policy.shtml>



as they move through an online store, or to keep a record of the items in a shopping basket for a subsequent visit. (Records of the contents of shopping baskets are usually stored on a database on the server side rather than the cookie itself, but a cookie will be used to identify the user). Another common use of cookies is to allow users to log in to a website.

Personalisation – Cookies can be saved on a computer to identify the preferences a user has set up on a website for their next visit. This might mean the cookie including the username last used to log in to the site, or the skin chosen previously for the website.

Tracking – Cookies can be used to track an internet user's personal browsing habits. This is used by advertising firms to tailor the advertising a user receives. IP addresses can also be used to do this, but cookies are more accurate. Tracking within a website can also be carried out using cookies, which can provide visitor numbers. A tracking cookie has the potential to infringe a user's privacy as they can be used to build up an anonymous profile of a user.

Third party cookies – Most websites include information from a range of sources, this means that when the website is opened, data is downloaded to the browser from these sources. While this information is being downloaded, some of these sources may send cookies to the user's browser. These third party cookies can be used to track a user's movement over different websites. This is usually done by online advertising companies to help target advertising campaigns. Online behavioural or interest based advertising made up roughly 50% of display advertising revenue in 2009, which was equivalent to £350 million<sup>52</sup>.

### Dangers of Cookies

Cookies are not dangerous. They are small pieces of text that are not computer programmes and can't be executed as code. They cannot be used to disseminate computer viruses and up to date versions of internet browsers, including Microsoft Internet Explorer and Firefox, allow users to set their own limits on the number of cookies that can be saved on to their computer.

Cookies are saved on a computer's hard drive, but cannot read any other information saved on the hard drive and cannot get hold of the user's email address or other personal information. They can only transfer, and only contain, as much information as the user themselves has disclosed to a certain website. However, the use of third party cookies means that it may be possible for user's information to be passed to third party websites without the user's knowledge or consent. Third party cookies usually come from companies that sell internet advertising on behalf of other websites, and can be stored on a computer without the user visiting the original website. Information gathered by third party cookies is usually used to analyse internet surfing

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<sup>52</sup> Figures from the Internet Advertising Bureau

habits. This has the potential to reduce the level of privacy users experience online and is the most common reason why users wish to remove cookies, or not allow them in the first place.

The information that can be gathered through the use of cookies can be used to improve and customise the advertisements shown when a specific computer is used to visit a website. Consumers place some value on internet based advertising, and the more relevant to them it is, the more value they place on it. Consumers also place value on the media content they are able to receive for free because of the use of effective and relevant advertising.

Cookies are used to process the data that is collected but do not hold the data themselves. This means that any consent given is for the use of cookies, rather than the collection and use of the data itself.

There are two ways in which cookies can damage the performance of a browser. The first is that if a computer has a very large number of cookies saved on it they can begin to make up a large file on the computer and may prevent the browser functioning properly. This is why deleting cookies is often one of the first things to try when a browser stops running smoothly. The other potential problem is if a cookie doesn't delete itself properly there can be confusion between the information stored on the computer and the information coming from the website server. This can cause a website to get stuck on a loop. This is usually caused by cookies not being written properly.

#### **Box: Managing Cookies**

Currently cookies can be refused by a user by changing their browser settings, or a user can set up a browser to alert them before a cookie is saved on their computer. There is often some information on individual web pages that tells users about the cookies that may be saved on their computer after visiting that site.

There are four ways in which cookies can be removed from a browser:

1. When the browser is closed, all cookies that are not persistent are deleted.
2. Persistent cookies have an expiration date specified within them. They are automatically deleted on that day.
3. If the expiration date of a cookie is changed to a time in the past, they will be deleted.
4. A user can request that cookies are deleted, using options in the browser.

#### **Rationale for government intervention**

There is evidence that many users of the internet are not aware of the use of cookies or do not have all the information they need to make an informed decision about whether cookies should be stored on their equipment. This amendment was brought in to ensure consumers are able to find the optimal trade off between protecting themselves from their privacy potentially being undermined and allowing cookies to be saved to enable the efficient running of the internet.

## **Policy Objectives**

The aim of the amendment to the E-Privacy Directive is to ensure that consumers have the opportunity to give specific and informed consent to the placing of cookies and other information on their equipment. This will have the effect of ensuring that they are more aware of the use of such technology by the websites they visit, and so are able to use the Internet with more confidence.

## **Options**

### **Option 0: Do nothing**

Under this option there would be no change to the use of, or management of, cookies online. Modern browsers have detailed setting that users can adjust to decide how many cookies they receive and whether they would like notification of them before they are saved on a computer. Information about cookies is available to anyone who wishes to find out about them, but use of the browser settings is not obvious for users who know little or nothing about the benefits and risks of cookies.

### *Benefits*

Benefits of this option include the use of cookies being able to carry on as previously. This means that there will be no cost to companies whose business models depend on cookies from having to update the way they operate. Users would continue to be able to adjust the number of cookies they receive via browser settings.

### *Costs*

Some users would continue to know little or nothing about cookies and how to control the use of them on their computers. These customers may continue to use the internet with the level of cookies that are downloaded onto their computer not being at the level that would be optimal for them given their personal preferences. Other users may continue to worry and restrict their use of cookies because they don't know enough about them to understand the benefits they can bring. These customers may continue to miss out on some online services because they do not allow the use of cookies.

This option would be a breach of the UK's obligations and therefore the UK would be subject to infraction proceedings.

## Option 1: Implement an 'opt-in' system for cookies

This option is an interpretation of the amended E-Privacy Directive. A requirement to 'opt-in' would mean that users would have to confirm every cookie placed on their computer, which would lead to permanent disruption of services. It would require repeated pop-up windows, or other intrusive virtual labels on every web page visited by a user. In order to make these decisions informed each pop-up would need to give details about the individual cookies.

### *Benefits*

This option would give users complete control over the cookies they allowed or didn't allow to be downloaded onto their computers. This means that they could retain greater control over their personal information. This may lead to a reduction in potential harm and distress caused to consumers, if parties who might have previously used this information for illegitimate reasons are prevented from getting hold of it in the first place. However, there is little evidence of information gathered via cookies being used for illegitimate reasons and so the scale of this benefit is likely to be small.

The increase in transparency about where cookies are coming from may increase some users trust and confidence in certain online services.

### *Costs*

It is difficult to quantify the full extent of the cost of an opt-in regime for all cookies, but it is expected that it would have a large negative impact across a wide range of internet business models. There are three main groups of costs associated with this option. These are:

1. **The costs associated with implementing the policy, including the cost of programming pop up windows or another means of obtaining consent for the use of cookies.** These are expected to be the smallest of the costs of this option.
2. **The directly lost revenue from users choosing not to allow cookies including lower advertising revenue and lost sales.** This option would make it very difficult for the media to build viable advertising revenues online. There will be a loss of a proportion of the display advertising revenue generated by online behavioural or interest based advertising which is dependent on cookies. Before the implementation of the Directive, this revenue was estimated to be approximately £740 million<sup>53</sup> by 2012 and represent

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<sup>53</sup> Figures from the Internet Advertising Bureau, assuming 15% growth year on year.

75% of the total value of online display advertising. Without the availability of a large audience, the use of behavioural or interest based advertising may reduce significantly.

- 3. The revenue lost to companies and the economy from users switching from UK and EU based websites to non-EU websites that are easier to use.** This option would make the Internet in Europe less attractive to users and would prevent the potential growth of the digital economy. It would also put into doubt the continued existence of European companies that are fully or partially dependent on the internet. Some companies may leave the EU market because their business models would not be able to generate enough to justify the investment, because of the disruption caused by an opt-in regime.

There would also be a cost to users from the time and disruption of giving or withholding consent for every cookie. Browsing the web would become a less rewarding and more frustrating user experience, which could cause some users to reduce or stop their use of the web, or limit it to non-EU websites.

### *Competition Assessment*

Option 1 would make UK and EU websites less competitive compared to non-EU websites. This is because the use of pop-ups to ask for consent for each cookie would be disruptive for users and would be very time consuming. Users would then have an incentive to avoid EU based websites and only visit those where consent for each cookie is not needed.

### **Option 2: Allow consent to the use of cookies to be given via browser settings**

This option tries to find a balance within the amended E-Privacy Directive between safeguarding consumers' privacy online and delivering more customised and efficient online services. The Directive acknowledges that the cookie controls on modern browsers give users full and granular control over cookies. A recital to the Directive states that control settings on a browser are sufficient to give consent, providing consumers have enough information available to them to make an informed decision. This means that browser settings need to be made more visible to consumers, and consumers need to be provided with clear and comprehensive information about cookies and how to opt-out of them if they wish.

The Directive acknowledges the importance of cookies to carry out certain online activities by saying that consent is not required when the cookie is 'strictly necessary' to deliver a service that has been explicitly requested by the user. The UK Government does not intend to give a hard definition of what is strictly necessary, but rather transpose this provision of the Directive with the minimum of change to the wording, leaving future regulators the flexibility to adjust to

changes in usage and technology. It would be almost impossible, given the fast paced nature of the internet, to put a definition on when the use of cookies is strictly necessary and any definition of that kind would risk damaging innovation.

### *Benefits*

Under this option users will have the information they need to be able to make informed decisions about the use of cookies on their computers. They will know how to change the browser settings to suit their individual privacy needs and should therefore feel more confident using the internet.

Increased knowledge and confidence of cookies may increase the number of users who choose to accept them. This could potentially increase the effectiveness of behavioural or interest based advertising and the revenue companies that use these are able to make. The increase in confidence may also lead to EU based websites being viewed as more secure and an increase in their use for online shopping or other services.

Increased transparency over the use of cookies and the benefits they bring and easier management of cookies should increase consumer trust and confidence in publishers and online marketers who use them.

### *Costs*

There will be a cost to browser owners from having to provide users with information about cookies and how to change the browser settings. Browser owners may also need to change the browser settings themselves, to make them more user friendly, for which there would also be a cost.

All website owners that use cookies may be required to make it clearer on their websites the cookies that would be downloaded and their purposes. This is not expected to be a large cost and should not consist of much work.

Users will need to spend a small amount of time familiarising themselves with the information about cookies and any new browser settings.

The overall impact of giving users more information about cookies is uncertain. It is not known whether an increase in information about cookies and how to manage them will lead to greater concern about them and increase the preference for rejecting cookies, or whether it will increase user's confidence in cookies and benefits they bring and lead to users who rejected

them because they didn't know enough about them, allowing them in the future. It is expected that the overall outcome will be a mixture of these two effects.

#### *Competition assessment*

After initial screening Option 2 is not expected to have a large effect on competition.

#### **Small Firms Test**

The costs of both options are likely to be disproportionately high for small firms, where they are likely to take up a larger proportion of a firm's revenue. However, small firms that provide a large proportion of their services over the internet may benefit greatly from the increase in confidence of internet users.

#### **Other specific impact tests**

##### *Other environment/ rural proofing*

After an initial screening it has been deemed that no significant impact is anticipated on the environment and rural proofing.

##### *Race, disability and gender equality*

After an initial screening it has been deemed that no significant impact is anticipated on race, disability and gender equality.

##### *Other tests*

Other specific impact tests have been considered including Legal Aid, Sustainable Development and Carbon Assessment. Again, after initial screening, it has been deemed that no significant impact is anticipated.

## Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<b>Basis of the review:</b> For details of the Post Implementation Review please see the Plan on page 10.
<b>Review objective:</b>
<b>Review approach and rationale:</b>
<b>Baseline:</b>
<b>Success criteria:</b>
<b>Monitoring information arrangements:</b>
<b>Reasons for not planning a PIR:</b>



## Annex A - Equality Impact Assessment

An equality impact assessment on implementing the revised EU Electronic Communications Framework.

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 race, gender and disability (a requirement under statutory equality duties). In line with the duties imposed by amended equalities legislation, 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 in Information Economy (IE) directorate will be 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.

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 may 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 and include a separate equality impact assessment.

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. 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	<p><b><u>Implementation Deadline</u></b>  Under European law we have until 25<sup>th</sup> May 2011 to implement the necessary changes, or face the risk of infraction proceedings</p>
Policy aims	<p><b><u>Rationalising Change</u></b>  The European Parliament and Council adopted a package of reform measures during an extended co-decision process which ultimately went to conciliation and third reading 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.</p> <p>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 should benefit from improved competition, regulatory certainty and encouragement to invest that revisions to the Framework will deliver.</p> <p>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.</p> <p>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" in many of these requirements attracting 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</p>

television<sup>54</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 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 package also includes a regulation which sees 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>55</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

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<sup>54</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>55</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.

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.

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>56</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 Equality Duty**

We have considered the race equality duty in section 71 of the Race Relations Act (RA) 1976. In preparing our consultation and advancing implementation we have therefore had due regard for the need to;

- (a) eliminate unlawful racial discrimination
- (b) promote equality of opportunity and good relations between persons of different racial groups

However, 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.

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<sup>56</sup> <http://www.communities.gov.uk/documents/communities/pdf/1001077.pdf>  
Delivering Digital Inclusion – An Action Plan for Consultation

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%

\*\* 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>57</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.

### **Gender Equality Duty**

We have considered the gender equality duty in section 76A of the Sex Discrimination Act (SDA) 1975. In preparing our consultation and advancing implementation, we have therefore had due regard to the need to:

- (a) eliminate unlawful discrimination and harassment, and
- (b) promote equality of opportunity between men and women.

Ofcom’s annual “Consumer Experience”<sup>58</sup> report for 2009

<sup>57</sup> [http://stakeholders.ofcom.org.uk/market-data-research/media-literacy/medlitpub/medlitpubrss/ml\\_emg08/](http://stakeholders.ofcom.org.uk/market-data-research/media-literacy/medlitpub/medlitpubrss/ml_emg08/)

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.

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>59</sup> does provide for some positive action programmes in relation to gender and ICT.

### **Disability Equality Duty**

We have considered the disability equality duty under section 49A of the Disability Discrimination Act (DDA) 1995, as amended by the Disability Discrimination Act 2005. In preparing our consultation and advancing implementation, we have therefore had due regard to:

- (a) the need to eliminate discrimination that is unlawful under the DDA 1995;
- (b) the need to eliminate harassment of disabled persons that is related to their disabilities;
- (c) the need to promote equality of opportunity between disabled persons and other persons;
- (d) the need to take steps to take account of disabled persons' disabilities, even where that involves treating disabled persons more favourably than other persons;
- (e) the need to promote positive attitudes towards disabled persons; and
- (f) the need to encourage participation by disabled persons in public life.

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" (see "(c)", above).

A new Article within the USD introduces provisions "ensuring equivalence in access and choice for disabled end-users"

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<sup>58</sup> <http://stakeholders.ofcom.org.uk/market-data-research/market-data/consumer-experience-reports/>

<sup>59</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)

(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 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.

Available  
evidence

### **Analysing Existing Evidence**

In preparing this 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, Ofcom's 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 gaps

##### **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 forthcoming public consultation will be a further opportunity to test this conclusion.

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 will build 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 look forward to testing our thinking with the responses to the public consultation.

### **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.

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.

### **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 was being concluded at second reading in May 2009 (except for one outstanding issue in relation to net neutrality/copyright infringement, which took the package to conciliation). We have been mindful of the conclusions of that consultation in shaping our thoughts on implementing the revised provisions of access for disabled end-users.

### **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 Department for Business has sought the views of other Government Department 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).

### **Ongoing concerns/questions**

The Government estimates that there are over 10 million people with disabilities and long term health conditions in Britain<sup>60</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

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”

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<sup>60</sup> Family Resources Survey 2003/4 London: Analytical Services Division, Department for Work and Pensions, 2005

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 our obligations on race, gender and disability equality duties. 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 page 103 - 115 of this Impact Assessments package, “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 for the obligations of the various equality duties, 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 extra duties required under the disability equality duty 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 disable 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 plan to ask specific questions in the consultation on the provisions relating the disabled-end users. We are also asking respondents to comment on the EQI.

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 PhoneAbility, consultant advisors to the Department on matters relating to disability and electronic communications

Action Plan

3<sup>rd</sup> December Consultation close, analysis of responses on

## Article23a (2)

Feb/Mar 2011 Official Government response to consultation  
25<sup>th</sup> May Deadline for implementation

Decision  
making and  
quality control

### **Going Forward**

The e-Accessibility forum has met twice, 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.

## Annex B – Process Questions on Impact Assessment

The purpose of this questionnaire is to identify the costs and benefits of the new regulations which will implement the revised EU Electronic Communications Framework. All of your responses are confidential and your details will not be shared with any third parties.

### Demographics

- 1. Which parts of the electronic communications sector do you/your company operate in? Please indicate your predominant market.**

Comments:

- 2. How many people do you/your company employ in the UK? *Include all part-time, full-time and temporary employees. Please only tick one answer***

- |                          |           |           |
|--------------------------|-----------|-----------|
| <input type="checkbox"/> | 1 – 4     | employees |
| <input type="checkbox"/> | 5 – 9     | employees |
| <input type="checkbox"/> | 10 – 19   | employees |
| <input type="checkbox"/> | 20 – 49   | employees |
| <input type="checkbox"/> | 50 – 99   | employees |
| <input type="checkbox"/> | 100 – 199 | employees |
| <input type="checkbox"/> | 200 – 249 | employees |
| <input type="checkbox"/> | 249 +     | employees |

- 3. In which year did you/your company start trading?**

Comments:

## General

**4. What overall impact will the revised Framework have on your business? *Please only tick one answer***

- Will result in a substantial overall loss
- Will result in a small overall loss
- No impact
- Will result in a small increase in profits
- Will result in a substantial increase in profits

**5. Which aspects of the revised Framework will be most costly for you/your business?**

Comments:

Please explain why this is the case:

**6. Which aspects of the revised Framework will be most beneficial for you/your business?**

Comments:

Please explain why this is the case:

**7. Please provide estimates (in £) of the costs and benefits to your business of each of the different measures outlined in the attached Impact Assessment**

Comments:

## Security and resilience

8. Please provide an estimate (in £) of how much you/your firm currently spends on complying with regulations on security and resilience. *Include all costs such as staff costs, admin costs, one off costs, ongoing costs, etc. Please provide a breakdown where possible.*

Comments:

9. Please provide an estimate (in £) of how much you/your firm would need to spend, on top of current expenditure, in order to be compliant with the revised Framework. *Include all costs such as staff costs, admin costs, one off costs, ongoing costs, etc. Please provide a breakdown where possible.*

Comments:

10. What is the total cost (in £) of notifying Ofcom of a security breach if notification consisted of an email? Please provide total and a breakdown of costs.

Comments:

11. What is the total cost (in £) of notifying Ofcom of a security breach if notification consisted of a report? Please provide total and a breakdown of costs.

Comments:



**12. Please provide an estimate (in £) of the potential costs of a security breach. *Include all costs such as staff costs, admin costs, one off costs, ongoing costs, etc. Please provide a breakdown where possible.***

Comments:

**13. Please provide an estimate (in £) of the potential costs of the electronic communications networks or services not being available for a period of time. *Include all costs such as staff costs, admin costs, one off costs, ongoing costs, etc. Please provide a breakdown where possible. Please state what time period your estimate relates to, e.g. one day, one week, etc***

Comments:

#### **Data breach notifications**

**14. Do you/your firm hold personal data?**

Comments:

**15. Please provide an estimate (in £) of how much you/your firm currently spends on data protection. *Include all costs such as staff costs, admin costs, one off costs, ongoing costs, etc. Please provide a breakdown where possible.***

Comments:

**16. Please provide an estimate (in £) of how much it would cost you to notify the Information Commissioner's Office of a Data Breach. *Include all costs such as staff costs, admin costs, one off costs, ongoing costs, etc. Please provide a breakdown where possible.***

Comments:

### Information provision

**17. Do you currently have any internal procedures to respond to information requests from the Information Commissioner's Office?**

Yes

No

If yes: What is the cost (in £) of responding to an information request? *Include all costs such as staff costs, admin costs, one off costs, ongoing costs, etc. Please provide a breakdown where possible*

If no: How much would it cost (in £) to implement such a procedure? *Include all costs such as staff costs, admin costs, one off costs, ongoing costs, etc. Please provide a breakdown where possible.*

Comments:

## Cookies

**18. Do you/you firm have a website?**

- Yes, for providing information
- Yes, for on-line sales
- Yes, for both sales and providing information
- Yes, for other, *please specify*.....
- No.

Comments:

**19. Does the website use cookies? (If yes, what type?)**

Comments:

**20. Could the website function in the desired way without the use of cookies?**

Comments:

**21. Please provide an estimate (in £) of how much revenue the website generates.**

Comments:

**22. How much information about the types of cookies is available on your website?**

Comments:

**23. How is the information about cookies made available to website users? *E.g. via a webpage, a downloadable word document or PDF, etc.***

Comments:

**24. Please provide an estimate (in £) of how much it would cost you to provide more information on your website about the cookies used. *Include all costs such as staff costs, admin costs, one off costs, ongoing costs, etc. Please provide a breakdown where possible.***

Comments:

**25. Please provide an estimate (in £) of how much it would cost to put the information about cookies in a more prominent position. *Include all costs such as staff costs, admin costs, one off costs, ongoing costs, etc. Please provide a breakdown where possible.***

Comments: