

DIGITAL BRITAIN REPORT

Government response to the
Consultation on the proposed new
duties for Ofcom on resilience:
Secondary Information.

21 DECEMBER 2009

Government Response to a Consultation on Legislative changes to Ofcom's Duties published on 15 September 2009 (closed 30 October);

Ofcom should have the power to

- a) Require companies to report to Ofcom on risk assessments and emergency planning;**
- b) Require companies to test emergency plans and participate where necessary in Government testing of national response plans for telecoms.**

1 The Consultation

1.1 The Government proposed additional powers for Ofcom to facilitate their assessment of resilience in the UK communications infrastructure. These proposals would help Ofcom to report on the UK communications infrastructure to Government every two years, building on commitments set out in the Digital Britain White Paper.

1.2 The consultation and Consultation Stage Impact Assessment (<http://www.berr.gov.uk/files/file52744.pdf>) published by the Government on 15 September proposed that Ofcom should be provided with additional powers to:

- Direct companies to report to Ofcom on risk assessments and emergency planning;
- Direct companies to test emergency plans and participate where necessary in Government testing of national response plans for telecoms.

2 Response to the Consultation

2.1 We received 23 responses to the consultation (see list of respondents at Annex A) and stakeholders included; fixed line and mobile operators, trade associations/bodies, and consultancy organisations. Five respondents asked that their comments be kept confidential.

3 Summary of views

3.1 The majority of the respondents were broadly supportive of one or both of the proposed changes and acknowledged the value of electronic communication operators providing information on their risk assessments and emergency planning.

3.2 Some respondents, however, expressed concerns about the scope of application of the proposed requirements and asked whether the proposals would allow Ofcom to request the relevant information from all providers of electronic communications networks or only those involved in providing networks of a particular nature, for example those relating to critical infrastructure. One respondent highlighted that all companies in the electronic communications sector should provide information to Ofcom on their preparedness for climate change under the new powers. These proposed changes would help improve the resilience of the communications sector and the sectors that depend upon it. This would also help improve the UK's capacity to adapt to the future impacts of climate change both in the short and longer term.

3.3 Some respondents particularly network providers, noted that they work with the Centre for Protection of National Infrastructure (CPNI) and that risk assessment is essential to that relationship; they pointed to the good practice guide to Resilience that is widely used by companies. Some respondents were not clear whether the new powers that would be granted to Ofcom would duplicate, supplement or replace existing reporting practices to CPNI. Others highlighted the potential cost for both Ofcom and operators in providing this information and it would therefore be important to build on existing practice rather than starting from scratch.

3.4 In addition, some respondents commented that any new powers granted to Ofcom to demand such information should be limited in frequency to that necessary for Ofcom to report to Government under the reporting duty which will be every two years.

3.5 The majority of respondents were supportive of proposals to provide Ofcom with additional power that would require further risk assessments to be undertaken by relevant companies if those supplied were deemed to be insufficient. However many felt that this requirement could be significantly reduced if the definitions, criteria and methodology for Risk Assessment were consistent across all completing organisations. It was also highlighted that a high degree of capability and expertise would be required by Ofcom to interpret risk assessment in some cases and it should not be incumbent on the communication service provider to provide additional resource and effort to overcome any shortfalls within the recipient organisation.

3.6 Many of the respondents agreed that risk assessments should be based on existing Government processes on the following basis:

- The assessments undertaken as part of the Civil Contingencies Act (2004) should be taken into account
- That new legislation requiring such risk assessments is incorporated appropriately and in a timely manner
- Some form of funding is made available to industry

3.7 Although many of the respondents felt that the proposals in the consultation document appeared to be broadly in line with the expected

outcome of the Framework Review, a majority of them highlighted that there still remains a level of detail that needs to be worked through and the proposals should be handled as part of the national transposition process for the new Framework Directive. This would provide Ofcom, Government and industry more time to establish a system that strikes the right balance between the interests of UK plc and the interests of individual communication network providers.

4 Government Response

August Consultation

The Government recently published the response to the consultation on proposed new duties for Ofcom to promote efficient investment in infrastructure and to provide a full assessment of UK communications infrastructure every two years. This response outlined that there will be a clause in the Digital Economy Bill to report on communications infrastructure (the Bill was introduced in Parliament on 19 November 2009). This report will consist broadly of a survey of the different types of electronic communications networks and service in the UK, geographic and population coverage, downtime and measures in place to maintain or improve availability, emergency planning, and a comparison between UK network and service provision and that of our relevant competitors.

Secondary measures

The measures that were consulted upon were designed to support the Ofcom assessment, and further enhance the resilience of telecoms in the United Kingdom. However, Government is also anticipating future changes at a European level, which will impact upon measures the UK will be required to take.

Government will take into consideration the majority views expressed in this consultation, and will be taking forward work to increase the reporting framework for resilience. However, it is clear that the process for introducing measures to enhance resilience will need to be managed as effectively as possible. This is why our intention is to take forward measures on enhancing the resilience of UK telecoms as part of the full package of security and resilience measures set out in the Framework Directive of the Electronic Communications Framework Review – as requested by many of the respondents to the Consultation. For that reason, the Digital Economy Bill does not contain requirements reflecting the issues proposed in the consultation.

Deferring decisions in this area will provide more time to establish a system that strikes the right balance between the interests of UK and the interests of individual communication network providers. The Government believes that Ofcom can obtain sufficient information to make reasonable assessments of

the resilience of UK networks and services in the intervening period before the implementation of the Framework legislation.

The Government agrees that the industry should plan for the resilience challenges posed by climate change. The Government will find other ways to promote this idea within the sector.

5 Next Steps

The Electronic Communications Framework Review was agreed and signed off by the European Parliament on 24 November and by Council on 20 November. It is our intention to use the responses to this consultation to inform the implementation of the new Framework. There will also be further consultation on the transposition of the Framework Review in due course. No timescale has currently been set, but this is anticipated to take place during the course of 2010.

6 Help with queries

Questions about the policy issues raised in the document can be addressed to:

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7 Additional copies

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Annex A

List of Respondents to the New Duties Consultation

Please note we have not listed the organisations who have requested that their responses remain confidential.

Association for Interactive Media
Airwave Solutions Ltd
British Sky Broadcasting Group Plc
Communications Management Association
Cable & Wireless
Committee on Climate Change Adaptation
Federation of Communication Services
Hadams Consultants Ltd
Intellect
Joint Radio Company Ltd
KCOM Group Plc
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3