



Implementing the revised EU Framework

Forthcoming publications and approach

Short statement

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Section 1

Introduction

- 1.1 As a result of revisions to the EU Electronic Communications Framework, the government is proposing to amend relevant UK legislation, one effect of which will be to confer on Ofcom a number of new powers, duties and responsibilities. This document explains the steps Ofcom will take ahead of, and following, Parliamentary approval of those amendments.
- 1.2 In so doing, in this document we seek to provide all stakeholders with an overview and further details of our regulatory activities in this regard, in addition to our related announcements in our Annual Plan 2011/12¹.

The Electronic Communications Framework

- 1.3 The Framework applies to all communications networks and services (including access), as well as associated facilities and services, for electronic communications. It is intended to ensure more effective competition and better rights for consumers as well as constituting the basis for a supportive and consistent regulatory environment across all 27 European Member States' communications markets. It consists of five Directives²:
- Directive 2002/21/EC (the "Framework Directive");
 - Directive 2002/19/EC (the "Access Directive");
 - Directive 2002/20/EC (the "Authorisation Directive");
 - Directive 2002/22/EC (the "Universal Services Directive"); and
 - Directive 2002/58/EC (the "E-Privacy Directive").
- 1.4 The original Framework was agreed in 2002 and had in-built provision for review. Amendments to the Framework were agreed in late 2009 and were adopted by the EU legislator on 25 November 2009. Member States have been given until 25 May 2011 to transpose its elements into national law.
- 1.5 The implementation of revisions to the Framework is mandatory for all EU Member States and, for the most part, the UK has little discretion in terms of making these changes. The government consulted on its approach to implementation in autumn

¹ <http://www.ofcom.org.uk/about/annual-reports-and-plans/annual-plans/annual-plan-2011-12/>

² 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.

2010³ and has recently published its statement *Implementing the revised EU Electronic Communications Framework*⁴ following a consultation on the Framework transposition.

³ www.bis.gov.uk/Consultations/revised-eu-electronic-communications-framework

⁴ www.culture.gov.uk/publications/8048.aspx

Section 2

Activity ahead of transposition

- 2.1 There are a number of areas in which changes to UK legislation arising from the revised Framework grants Ofcom new or altered powers. Many of the revisions in the Framework follow the mandatory corresponding provisions in the Directives, which were published in the Official Journal on 18 December 2009.
- 2.2 In addition to documents we have already published, there are a number of areas where we are working to publish either a consultation or guidelines ahead of the 25 May 2011 transposition deadline. These expected publications are outlined below.

General Conditions and Universal Service Conditions

- 2.3 As part of our transposition requirements, we are working to complete our revision of a number of General Conditions and Universal Service Conditions as soon as possible ahead of the transposition deadline in order to bring them into line with the revised Framework.
- 2.4 We published our consultation document on 24 February 2011⁵, having been able to take account of relevant stakeholder responses to the government's consultation on implementation of the Framework, which closed on 3 December 2010.
- 2.5 We are working to publish our statement ahead of 25 May 2011, while having proper regard to all responses to our consultation to ensure that our regulatory measures are appropriately revised.

Network Security and Resilience

- 2.6 As a result of revisions to the Framework Directive, the government intends to revise the Communications Act 2003 to place new obligations on providers of public networks and services and give Ofcom new duties in relation to network security and resilience.
- 2.7 We have been in contact with stakeholders about our approach, both directly and via EC-RRG⁶ and the government's Framework Implementation consultation workshops. We are publishing, alongside this document, high-level guidelines on these new provisions⁷.
- 2.8 Once the changes have been transposed, providers of such networks and services will have to report significant outages to us. The guidelines include a template for reporting, as well as setting thresholds to define what constitutes a serious enough outage to require reporting to us.

⁵ <http://stakeholders.ofcom.org.uk/consultations/gc-usc/>

⁶ EC-RRG – Electronic Communications Resilience and Response Group

⁷ <http://stakeholders.ofcom.org.uk/telecoms/policy/security-resilience/implementation-eu-framework/>

Information-gathering

- 2.9 As a result of revisions to the Authorisation Directive, the government intends to revise the Communications Act and the Wireless Telegraphy Act to extend our information-gathering powers.
- 2.10 One revision concerns future network or service developments in electronic communications, by which a change to the Communications Act will empower Ofcom to gather information related to “evaluating future network or service developments that could have an impact on wholesale services made available to competitors”.
- 2.11 Another revision concerns the extension of our powers to gather information related to spectrum to the same level as exist already for electronic communications. This will enable us to gather information for our functions in this area, including for the purposes of “safeguarding the efficient use and ensuring the effective management of radio frequencies”.
- 2.12 Currently, the Wireless Telegraphy Act only gives Ofcom power to gather information for statistical purposes. The government is proposing to remove this restriction. One area where this extended power could be used would relate to transmitter location information. This would assist us with our duties to consider the extent to which the electromagnetic spectrum is available for use, or further use, for wireless telegraphy throughout the UK by having more information to help our understanding of issues such as congestion.
- 2.13 We have a statutory duty to publish formal guidance relating to the processes for gathering information from stakeholders. These detail when we will use the powers, how we will request information and uses to which information will be put. We are working towards revising our current policy on information gathering⁸ before 25 May 2011 to reflect the changes to the Communications Act and Wireless Telegraphy Act.

Dispute resolution

- 2.14 The government is proposing to remove the obligation on Ofcom to resolve network access disputes. Our remaining duty to resolve disputes between communication providers will only apply to existing obligations.
- 2.15 It is also proposed that the class of potential disputants is extended to include issues between communication providers and those “benefiting from” access obligations.
- 2.16 Furthermore, the government proposes to widen our discretionary powers to recover costs in resolving disputes from disputing parties. The aim of this is mainly to encourage alternative dispute resolution where appropriate.
- 2.17 We have recently consulted on a new draft set of Dispute Resolution Guidelines, separate to changes brought about by the revised Framework, in a consultation document published on 17 December 2010⁹. We are working to publish further guidance as close as possible to 25 May 2011 in relation to the changes we understand the government is intending to make, as summarised above.

⁸ http://stakeholders.ofcom.org.uk/binaries/consultations/info_gathering/statement/policy.pdf

⁹ <http://stakeholders.ofcom.org.uk/consultations/dispute-resolution-guidelines/>

Enforcement

- 2.18 Changes as a result of revisions to the Framework grant certain additional enforcement powers designed to improve our ability to deal with breaches of regulatory obligations. These changes include:
- Enabling us to issue a penalty for a breach regardless of whether the breach has been remedied;
 - Enabling us to impose a penalty at the same time as finding a breach;
 - Revisions to the timing rules of when we can take action to prevent so-called '30 day' scams; and
 - Power to issue penalties that are retroactive (i.e. taking into account the time from when the breach occurred) and periodic (for example for non-compliance on a day-to-day basis).
- 2.19 We intend to consult on updating our guidance in this area and are working to publish such a consultation as close as possible to 25 May 2011.
- 2.20 The government proposes to increase the maximum penalty for information-gathering breaches to £2 million. Stakeholders will be notified when this new maximum penalty becomes available to us.

Section 2

Post-transposition activity

- 3.1 There are other revisions to the Framework which may require us to change our processes where we receive revised or new duties once the revised Framework has been transposed into UK law. In these areas, we are not planning at present to publish further guidelines or consultations.

Infrastructure sharing

- 3.2 As a result of revisions to the Framework Directive, the government intends to revise the Communications Act to empower Ofcom to require infrastructure sharing, including in cases where there is an absence of significant market power. The intention is to increase infrastructure competition, promoting innovation and investment, which will ultimately lead to more choice and better prices for consumers.
- 3.3 While we have no firm proposals to develop specific guidelines on this form of infrastructure sharing, the circumstances in which we would exercise this power will have to meet a number of tests, such as being proportionate and non-discriminatory.
- 3.4 In most cases, we hope to perform a facilitating role between the owner of the infrastructure and the provider that is seeking access. It is preferable that both parties are able to reach a commercial agreement. In circumstances where no commercial agreement can be reached in relation to a specific request for access, we will consider carefully the case for exercising our revised infrastructure sharing powers in a way that does not constrain investment in network infrastructure.
- 3.5 At present, Ofcom has limited information on the potential demand for infrastructure access of the type that could be facilitated by these new sharing powers. If there is significant demand, in terms of the number of specific and concrete requests for access that fail to result in commercial agreements, we will consider the need to develop guidance on how we will exercise these powers.

Market reviews

- 3.6 As a result of the revised Framework Directive, there will be various amendments to our market review processes in the Communications Act. In general, these changes include a requirement for market reviews in certain markets to be conducted every three years and that the European Commission and BEREC are notified of any draft measures to set, modify or revoke significant market power and access-related conditions ahead of national consultation.
- 3.7 Ofcom will consider how these changes may affect its internal processes and consider the processes necessary to comply with the notification requirements.

Spectrum

- 3.8 Changes in the Framework in relation to spectrum include the implementation of new spectrum management practices, such as spectrum leasing, and to review spectrum management restrictions against specific criteria.

Licensing

- 3.9 We will acquire new duties in relation to spectrum management as a result of revisions to the Authorisation and Framework Directives, and accordingly to the Wireless Telegraphy Act. These include:
- A duty to review, by 25 May 2016, restrictions on the spectrum allocations, general authorisations (licence exemption) and individual rights of use which were issued before 25 May 2011. Details of this review will be announced in due course.
 - A duty to review, by December 2011, all licences which are long-term (10 years or more), are non-transferable and which have been in place since 2009 or earlier, with a view to removing the need for a licence if the conditions for doing so are met. Where the conditions for licence exemption are not met we should explore whether the licences could be made transferable.

Trading and leasing

- 3.10 Spectrum trading is an important mechanism for securing optimal use of the radio spectrum by allowing users to access spectrum through the market.
- 3.11 We consulted in September 2009 both on changes to make the trading process simpler and on changes that allow for a new way to trade, called 'spectrum leasing'. The transposition of the Framework will allow us to enable spectrum leasing as anticipated in our statement "Simplifying spectrum trading"¹⁰ published on 15 April 2010.

¹⁰ <http://stakeholders.ofcom.org.uk/consultations/simplify/statement/>

Section 4

New discretionary powers

- 4.1 The revised Framework contains new permissive powers, and where we decide it is appropriate to exercise such new powers, this may lead to further consultation in 2011/12. Areas currently under consideration include:

Equivalence

- 4.2 As a result of revisions to the Universal Service Directive and Framework Directive, the government proposes to amend the Communications Act to include an explicit reference to the power to impose General Conditions requiring undertakings to offer equivalence of services to disabled end-users.
- 4.3 In addition, the changes will allow Ofcom to choose the appropriate means of most effectively securing equivalence for disabled end-users, whether through the imposition of a Universal Service Obligation on specific providers, a General Condition on all providers or a combination.
- 4.4 We will issue a consultation on a review of relay services shortly considering the appropriate means of ensuring that disabled end-users are able to access electronic communications services to the level enjoyed by other end-users.
- 4.5 We also intend to conduct a review of the measures in General Condition 15 in the light of transposition changes as well as recent social and technological trends. Ofcom currently intends to consider the appropriateness of a general obligation to offer equivalence and choice of services, in addition to any specific, discretionary changes to GCs which might flow on from the new equivalence requirement. We plan to issue a separate consultation document in due course about any such proposed changes.

Net neutrality

- 4.6 As a result of revisions to the Universal Service Directive, the Communications Act will be revised by 25 May 2011 to provide us with the new powers in relation to traffic management. These include the ability to set a minimum quality of service for broadband.
- 4.7 We believe that greater transparency of traffic management practices is a necessary part of a well-functioning broadband market and we will work with industry, as well as preparing our own analysis, to determine how this is best provided.
- 4.8 We are continuing our work in relation to traffic management by identifying the good outcomes we would like the market to deliver and how to ensure consumer transparency of traffic management practices supports these outcomes. We are also considering the powers we have available, should the market not deliver a good outcome for consumers, which could include exercising our new powers from the revised EU Framework. We will be providing further guidance on these issues in the summer.

- 4.9 We are also working through the Body of European Regulators of Electronic Communications (BEREC) on transparency, quality of service requirements and discrimination in relation to Net Neutrality¹¹.

Non-geographic numbers: tariff principles and maximum prices

- 4.10 Paragraph 1 of Part C of the Annex to the revised Authorisation Directive clarifies that NRAs have the power to adopt tariff principles or to set retail tariff caps in relation to certain numbers or number ranges. The government therefore intends to amend the Communications Act to grant Ofcom the power to set appropriate restrictions in the Numbering Plan on the tariff principles and maximum prices applicable to numbers for the purposes of ensuring protection of consumers, as well as enabling Ofcom to set a general condition to impose tariff principles and maximum prices for the same purpose. We propose to make use of this power where there is a clear consumer protection need and where taking such action is demonstrably proportionate, objectively justifiable and non-discriminatory.
- 4.11 Ofcom consulted on this and related matters with respect to non-geographic numbers in December 2010¹², and we expect to do further work later this year.

¹¹ see section 4.2 of the BEREC 2011 Work Programme at

http://berec.europa.eu/doc/berec/bor_10_43_1.pdf

¹² <http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geo-numbers/>