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# Ofcom's draft impact assessment guidance

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This draft guidance has been replaced by [new guidance](#) published 19 July 2023

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# 1. Overview

This draft guidance has been replaced by [guidance](#) published 19 July 2023.

- 1.1 Ofcom is the independent regulator for the communications sector. We regulate the TV, radio, online and video on demand sectors, mobile and fixed-line telecoms, postal services plus the airwaves over which wireless devices operate.
- 1.2 We make a variety of policy interventions in the interests of citizens and consumers, where appropriate by promoting competition. Our interventions can range from monitoring and informal engagement to legally-binding requirements and enforcement action.
- 1.3 We have a set of overarching regulatory principles to guide how we operate, including that we:
  - a) operate with a bias against intervention, but with a willingness to intervene firmly, promptly and effectively where required;
  - b) strive to ensure our interventions will be evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome; and
  - c) always seek the least intrusive regulatory mechanisms to achieve our policy objectives.
- 1.4 We recognise that the decisions we make can deliver significant value for citizens and consumers but can also impose significant costs on our stakeholders. It is therefore important for us to think carefully before deciding whether a particular policy intervention may be appropriate.
- 1.5 We use impact assessments to help us understand and assess the potential impact of our policy decisions before we make them. They also help us explain the policy decisions we have decided to take.
- 1.6 This guidance sets out our general approach to how we assess and present the impact of our proposed decisions. It updates our previous guidance to reflect our new legal obligations as well as best practice and experience.

## 2. What is an impact assessment?

An impact assessment is a structured process for considering the potential effects of our decisions

### Introduction

- 2.1 At Ofcom we use our annual plan of work to set out what we expect to achieve over the year. To achieve our objectives, we make a wide range of policy decisions in order to fulfil our duties. These include both our principal duty to further the interests of citizens and consumers, where appropriate by promoting competition,<sup>1</sup> and also our relevant sector-specific duties.<sup>2</sup>
- 2.2 Our decisions take a wide range of forms: they may apply to a whole sector, such as when we place obligations on all broadcasters regarding how they should operate; they may apply to just one operator in a sector, such as the obligations we place on Openreach or Royal Mail; they may involve ‘softer’ interventions, such as when we issue best practice guidance; they may define markets, such as when we auction licences to make use of certain bands of spectrum; or they may be more minor changes, such as when we vary the conditions in those licenses.
- 2.3 Given the breadth and variety of our decisions, understanding the possible effects we may create before we act is particularly important. An impact assessment is a structured process to consider these possible effects. We consider them throughout a project and consolidate our reasoning and evidence to present to stakeholders in a consultation and statement. Our analysis may be quantitative, applying figures to the different costs and benefits, take a qualitative view of the different effects, or use a mix of both.
- 2.4 Sometimes legislation requires us to intervene, meaning Parliament considers intervention to be appropriate. In other instances, legislation may require us to review a particular market or area and decide whether to intervene. Or we may identify a market or area which we do not think is working well and will consider intervening to achieve our duties and objectives.
- 2.5 We may use impact assessments where we have discretion over whether and how to intervene. We may use them as a tool to help us decide when to intervene and if so, how best to achieve our objectives.
- 2.6 Section 3 below sets our legal obligations relating to impact assessments, including the type of decisions for which we may decide not to carry one out.

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<sup>1</sup> Section 3(1) of the Communications Act 2003 (the “Act”) sets out our principal duty to further the interests of citizens and consumers in relation to communications matters and to further the interest of consumers in relevant markets, where appropriate by promoting competition.

<sup>2</sup> We discuss these sector-specific duties in more detail in paragraph 3.6 below.

## Role of impact assessments in our policy decisions

- 2.7 Impact assessments play an important role in our policy decisions:
- a) They help us formulate policy proposals and decide whether to proceed with a particular proposal;
  - b) They help stakeholders understand the evidence and reasoning behind a particular proposal and provide them with the basis to respond with their own evidence and views;
  - c) They help us ensure our policy decisions are evidence-based and proportionate, and that we are making the best decisions to further the interests of citizens and consumers;<sup>3</sup> and
  - d) They help us ensure our decision-making process is transparent.<sup>4</sup>
- 2.8 To make good policy decisions we need to be clear on what we want to achieve, what we expect the impact to be, and subsequently understand what happened in practice.
- 2.9 As policy makers we frequently balance many factors when deciding on the best route to achieve our objectives. Our policy-making process generally involves identifying a range of stakeholders potentially affected by a decision (including vulnerable consumers and small businesses), and a variety of different impacts, from consumer harm to competition and investment concerns.
- 2.10 We will start thinking about the potential impact of a policy intervention in the early stages of a project. This will help us formulate a policy proposal in terms of whether and how we may want to intervene, taking into account the relevant legal framework. We will continually consider and review potential impacts throughout a project and, where appropriate, revise our impact assessment as our thinking progresses. All this work is consolidated in the consultation and statement. This ensures we are making the best decisions to further the interests of citizens and consumers.
- 2.11 Our policy-making and consultation documents will make it clear why we are considering or proposing to make certain choices. An impact assessment forms an important part of this consultation process by identifying the impacts (in terms of any costs and benefits) we anticipate a proposal will have on different stakeholders, and, where appropriate, how a market functions. Our consultation will also give stakeholders sufficient detail so that they can respond. By doing this we ensure that the impact assessment can be scrutinised and adjusted as appropriate.
- 2.12 We will take into account all consultation responses prior to making our decision based on all the evidence and what we consider to be the most proportionate and least intrusive means of achieving our objectives. The decision we take will also be the one that we

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<sup>3</sup> Our principal duty is set out in section 3 of the Communications Act. Section 3(3)(a) of the Communications Act also requires all our regulatory activities to be “*proportionate, consistent and targeted only at cases in which action is needed*”.

<sup>4</sup> Section 3(3)(a) of the Communications Act requires all our regulatory activities to be “*transparent*”.

consider to be most closely aligned with any relevant sector-specific duties and our principal duty to further the interests of citizens and consumers.

- 2.13 We will present our final decision in a statement following the consultation which will explain our reasons and evidence for making our decision, including any adjustments we have made to our impact assessment.
- 2.14 By setting out what we expect a policy should achieve and what impacts it may have, we can more easily carry out subsequent monitoring and evaluation of our decisions. This allows us to understand the actual impact of our decisions where we consider this is likely to be beneficial. Ex-post evaluations and assessments help us to make better policy decisions as we learn what worked as anticipated and where our expectations did not bear out.

**An impact assessment must consider the benefits, costs and risks of the policy**

## Form and content of an impact assessment

- 2.15 As explained above, we will consider and review the potential impacts of a policy intervention throughout a project. We will decide on the appropriate form and content of an impact assessment on a case-by-case basis. This will depend on the nature of the policy intervention we are considering, our relevant statutory obligations, and what we consider to be proportionate in the circumstances.
- 2.16 Our principal duty is to further the interests of citizens and consumers, where appropriate by promoting competition.<sup>5</sup> To fulfil this duty, an impact assessment will generally:
- specify the outcome we want to achieve, in some cases balancing multiple objectives;
  - identify the impacts of a policy on the interests of particular groups of consumers, citizens and other stakeholders;
  - identify any impacts it could have on competition or the wider market;
  - identify and, where appropriate, quantify the costs and benefits we expect the policy to have;
  - assess the key potential risks of the policy; and where appropriate
  - consider how the success of the policy might be monitored or evaluated.

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<sup>5</sup> See section 3(1) of the Communications Act. Section 3(4) of the Communications Act explains that we must have regard to the various matters identified in that sub-section in performing our duties, as appear to us to be relevant in the circumstances.

- 2.17 When deciding on the appropriate content of an impact assessment, we will also take into account any sector-specific duties we consider to be relevant.<sup>6</sup> Further information on the content of an impact assessment is in Section 4 below.
- 2.18 The way in which we present the impact assessment will also vary depending on what we consider to be appropriate in the circumstances. For example:
- a) as the issues considered in an impact assessment are fundamental to the policy proposal, a consultation may integrate the impact assessment throughout the document. For example, a large consultation with many policy proposals may set out the evidence for each separate policy proposal followed by our assessment of its impact and reasoning for our proposal;
  - b) in some cases, we may decide to publish the impact assessment, or technical analysis carried out as part of it, as a separate section within a consultation or as an annex; and
  - c) in other cases, the structure of our analysis is defined by legislation and here the impact assessment would be integrated into that framework.<sup>7</sup> In these cases the presentation of an impact assessment may be more limited than or different to the way we present impact assessments in other cases.
- 2.19 In any event, our consultation documents will generally contain a section headed “Impact Assessment” (or similar) which will either summarise the results of our impact assessment or identify where in the consultation we have published the results of our impact assessment. Where our impact assessment has been integrated throughout a document, we may also provide a consolidated overview of the impact we expect a policy to have. While this summary would necessarily lack the detail of our full reasoning, it may help stakeholders to navigate a long document and understand where to focus their attention.
- 2.20 Where we have not carried out an impact assessment we will explain why in the consultation document.

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<sup>6</sup> Examples include but are not limited to (a) any of the sector-specific matters identified in section 3(2) of the Communications Act; (b) our duties in section 3 of the Wireless Telegraphy Act 2006; (c) our duties in section 29 of the Postal Service Act 2011; (d) our duties relating to local radio in section 314 of the Communications Act; (e) our duty relating to numbering in section 63 of the Communications Act; and (f) our duties in Article 45(2) of the BBC Charter.

<sup>7</sup> We identify examples of where legislation sets out specific requirements for when and how we must conduct impact assessments in paragraph 3.6 below.

## 3. When will Ofcom do an impact assessment?

- 3.1 Impact assessments are one tool in our policy making process. This section sets out our legal obligations in regard to impact assessments, and the general principles of their use at Ofcom.

**We will carry out an impact assessment in relation to a large majority of our policy decisions**

### Our general obligation to assess impacts

- 3.2 Section 7 of the Communications Act 2003 (the “Communications Act”) says that Ofcom must carry out and publish an impact assessment:
- a) where we are proposing to do anything related to the carrying out of our functions; and
  - b) it appears to us that the proposal is important;
  - c) unless the urgency of the matter makes it impracticable or inappropriate for us to comply.
- 3.3 The Communications Act says a proposal is “important” if it would be likely to do one or more of the following:
- a) involve a major change in Ofcom’s activities;
  - b) have a significant impact on persons carrying on businesses operating in markets Ofcom regulates; or
  - c) have a significant impact on the general public in the UK or a part of the UK.
- 3.4 Assuming that the urgency of the matter does not make it impracticable or inappropriate for us to comply, we must carry out an impact assessment if we are making an “important proposal”. The exception is if we believe this to be unnecessary, in which case we must publish a statement saying why this is the case. An example of where an impact assessment would be unnecessary could include a situation where an impact assessment relating to the same issue has been produced relatively recently.

### When we will not carry out impact assessments

- 3.5 The general obligation to carry out impact assessments contained in the Communications Act is wide-ranging and whether or not a proposal is “important” within the meaning of the Communications Act may be open to debate. However, because impact assessments form part of good policy making, we expect to carry them out in relation to the large majority of our policy decisions. Nevertheless, there are some cases where, as a general



rule, an impact assessment will not be required. In general, we will not carry out impact assessments:

- a) when legislation requires us to intervene in a particular way and an impact assessment was carried out prior to that legislation being introduced (although we may carry out an impact assessment where we have discretion over the way in which we intervene);
- b) when conducting investigations, because what is being enforced will have been put in place as a consequence of an impact assessment and/or primary or secondary legislation;<sup>8</sup>
- c) when resolving a dispute, where the dispute relates to regulation which has been put in place as a consequence of an impact assessment and/or primary or secondary legislation;<sup>9</sup> and
- d) when publishing guidance relating to how we will undertake such investigations. Such guidance will generally just flesh out how we will fulfil obligations created following the carrying out of an impact assessment.

## Sector-specific obligations

3.6 In some cases, we may have statutory obligations which set specific requirements relating to when or how we must conduct impact assessments. For example:

- a) The Online Safety Bill, as currently drafted, will insert new sub-sections 4A and 4B into section 7 of the Communications Act 2003 and require us to consider the likely impact of our interventions relating to our online safety functions on small- and micro-businesses specifically;<sup>10</sup>
- b) Section 107 of the Communications Act requires us to have regard to the specific matters set out in that section prior to granting powers under the Electronic Communications Code to a provider of electronic communications networks;
- c) Section 106 of the Broadcasting Act 1990 requires us to have regard to the specific matters set out in that section relating to the character and coverage of national and local radio services when considering the licensing of such services.

3.7 As explained in paragraph 2.17 above, we may also be subject to sector-specific duties which require us to take into account certain matters when carrying out an impact assessment.

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<sup>8</sup> For example, see section 96A of the Communications Act (reasonable grounds for believing that there has been or is a contravention of a condition).

<sup>9</sup> For example, this might be the case if we are resolving a dispute under section 188 of the Communications Act (procedure for resolving disputes relating to the provision of Network Access).

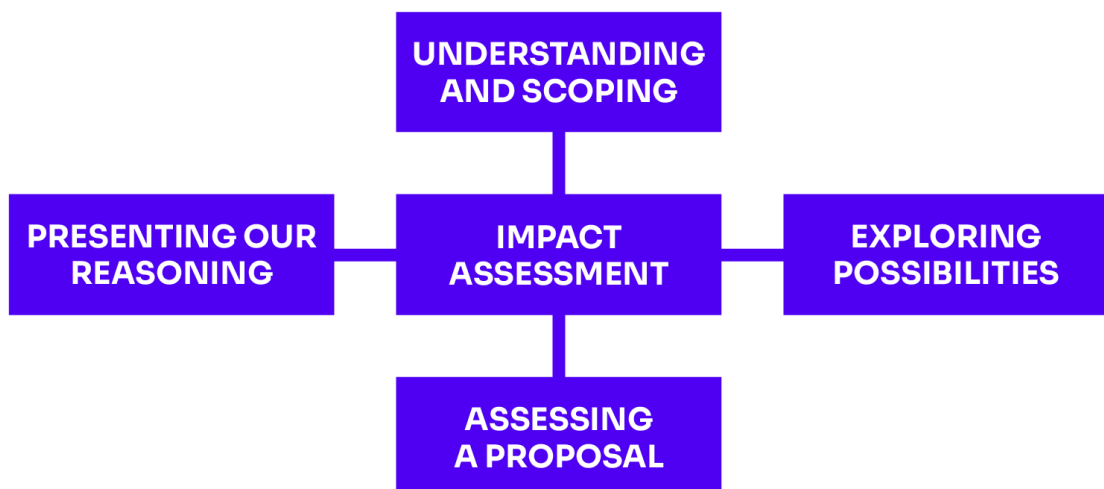
<sup>10</sup> We recognise that the Online Safety Act 2023 is not currently law in the UK although may become law prior to us issuing a statement on our proposed changes to this Guidance later this year

## 4. Developing the impact assessment

**We will continually consider and review potential impacts throughout a project and, where appropriate, revise our impact assessment as our thinking progresses**

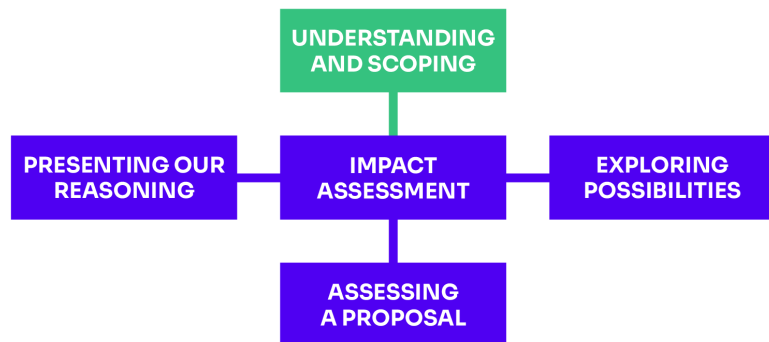
- 4.1 An impact assessment is a process of thinking, which we then consolidate and present to stakeholders in our consultations and statements.
- 4.2 It is an iterative process rather than linear. We will carry out our analysis as necessary for a particular project. We may return to earlier 'stages' to do more analysis on a certain area, revise our thoughts when presented with new information, develop thinking further when it becomes apparent that more depth is needed, and so on.
- 4.3 We apply the principle of proportionality when assessing potential impacts; the depth of analysis should be proportionate to the potential impact of the decision under consideration. Put simply, the larger or more complicated the potential impact, the greater the need for a more detailed impact assessment. In some cases there may only be one realistic policy option, for example if the scope of the policy question is very narrow, or legislation limits our powers in the area; in such scenarios the impact assessment may be less extensive.
- 4.4 There are four key elements involved in assessing the likely impact of our decisions:
- understanding more about the situation and the scope of the project;
  - exploring possibilities and formalising our thinking;
  - assessing a proposal; and
  - presenting our reasoning and evidence.

**Figure 1: A diagram of the four key elements in an impact assessment**



## Understanding and scoping

4.5 In the first stage of projects we seek to understand the situation and why we are thinking about intervening. In particular, we will consider what legal duties may be engaged, the type of stakeholders that may be affected and the type of information we may need to better understand the situation.



4.6 At Ofcom we regulate many sectors, with varying powers and responsibilities in each. In addition, the types of decisions we make across and within each of these sectors will also significantly differ in scale and scope. In some cases, legislation may require us to intervene, for example carrying out a periodic review of a market or implementing new legislation. In other cases, we have discretion over whether or how we may want to intervene. This context will shape our scoping and subsequent thinking.

4.7 We will identify who is likely to be affected by a potential intervention. This may include identifying particular sub-groups, such as vulnerable consumers, small businesses, or whether a policy will have different effects on rural versus urban areas. We will also consider how best to make affected persons aware of a potential intervention and encourage them to engage in our consultation process.<sup>11</sup> In doing so, we may consider it appropriate to discuss a proposal with relevant internal and external representative bodies and communities.<sup>12</sup> We discuss our obligations in relation to assessing the impact of proposed decisions on the needs and interests of specific groups of persons in more detail in Section 5 below.

4.8 Understanding and scoping will always take place at the start of projects, but may also be revisited if new information emerges, the situation changes, or we decide further research is necessary to help us formulate a proposal.

4.9 In some areas we may already have a very good understanding of the situation and need only to set it out. In others we may want to plan further research and our work on this element may be more extensive.

4.10 We may use a variety of information sources to improve our understanding of the situation. This may include information we already hold, such as market research or complaints data. We may decide to undertake new research, such as commissioning reports or carrying out our own surveys, experiments and analysis. And we may decide to gather more information from stakeholders at an early stage, whether informally, through a call for evidence, or in some cases, using our statutory information gathering powers.

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<sup>11</sup> To stay up-to-date with our work, we also encourage people to sign up to our [email updates](#).

<sup>12</sup> Examples of internal bodies may include our Nations Advisory Committees, Advisory Committee for Older and Disabled People and the Communications Consumer Panel.

4.11 Our early information gathering will influence the course of the project, and we may decide to seek new information throughout the project.

**Examples from previous projects:**

- We used a call for evidence to inform our position on the use of the upper 6GHz band at the World Radiocommunications Conference in 2023. Stakeholder responses highlighted several services and applications which would benefit from using the band. The call for evidence responses, alongside other engagement and our own analysis, contributed to us favouring a “no change” outcome. Specific proposals about the use of the band will be consulted on separately.<sup>13</sup>

4.12 As indicated above, we expect to carry out impact assessments in relation to the large majority of our policy decisions. In such cases, we will consider the appropriate form of the impact assessment at an early stage in the project and reassess as appropriate.

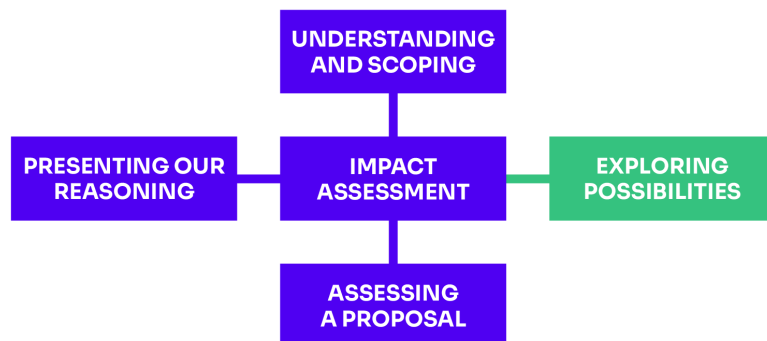
**We will start thinking about the potential impact of a policy and how we will assess that impact in the early stages of a project**

## Exploring possibilities

4.13 When we have a sufficient understanding of the situation we will consider the objective(s) we wish to achieve and the approach we might take.

4.14 This will usually involve identifying our objectives in light of our relevant statutory duties, understanding the type of policy intervention we may want to make, and identifying how consumers, citizens and other stakeholders may be affected.

4.15 In some cases a variety of regulatory approaches are available to us, including taking no action and/or continuing to monitor the situation. Where appropriate we will consider the benefits, costs, and risks of different approaches to help us decide on a preferred approach. In other cases, our approach is determined by legislation. The appropriate approaches to explore will always depend on the context of the decision.



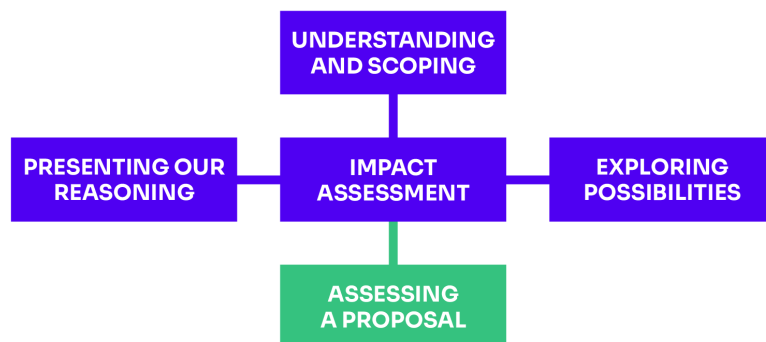
<sup>13</sup> Update on the Upper 6 GHz band, [https://www.ofcom.org.uk/data/assets/pdf\\_file/0028/248770/update-on-upper-6hz-band.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0028/248770/update-on-upper-6hz-band.pdf)

- 4.16 We also should be able to explain how an approach will lead to desired outcomes. A ‘theory of change’ may be a useful tool for this.<sup>14</sup> We may or may not publish this work separately, but in any case the consultation and statement documents will make clear how we expect our intervention to achieve our objectives.
- 4.17 Where we consider it useful, we may explore possibilities and conduct more in-depth analysis of a particular approach simultaneously. These two elements work in tandem to help us decide on the best approach to meet our objectives. We may also return to this element if the situation changes or new information emerges.
- 4.18 Our thinking about possible approaches will usually result in one or more approaches being clearly preferred. The approach we propose to take will usually require further analysis, to be presented in our consultation and statement. We will not assess obviously unviable options and will devote resources to the impact assessment that are proportionate to the expected impact of the decision.

**We may use broad assessments of the costs, benefits and risks of possible approaches to help choose a preferred approach.**

## Assessing a proposal

- 4.19 Once we have a sufficient understanding of the most viable approaches which will meet our objectives, we will consider whether some approaches, or particular aspects of approaches, require a more in-depth assessment of the potential benefits, costs, and risks.



- 4.20 In the following paragraphs, we discuss the type of analysis we generally expect to carry out as part of an in-depth assessment including (i) identifying a counterfactual; (ii) key principles relevant to our analysis; and (iii) how we expect to monitor and evaluate a particular approach.
- 4.21 This type of structure is a tool to help inform regulatory judgements, it does not replace them. The form of assessment chosen should be proportionate to the expected impact of the project. On large, complex projects with access to financial data this may take the form of a quantified cost-benefit analysis, on other projects it may be a purely qualitative assessment.
- 4.22 For example, for decisions that are likely to impose significant obligations on our stakeholders or that may have a significant impact on all consumers, we may consider a more detailed impact assessment to be appropriate. However, for decisions relating to a

<sup>14</sup> See section 2.2.1. of the Magenta Book: <https://www.gov.uk/government/publications/the-magenta-book>

minor change<sup>15</sup> or a single stakeholder,<sup>16</sup> we may consider that a simpler impact assessment is sufficient.

- 4.23 The further assessment we carry out may be used to inform our exploration of possibilities, and/or it may form part of the reasoning we set out for proposing a particular approach in a consultation or statement.

## Identifying a counterfactual

- 4.24 It is critical to identify a counterfactual for impact assessment analysis, as the impact of an intervention can only be assessed in comparison to a specified alternative. A counterfactual is an alternative 'state of the world' without the policy change under consideration. The counterfactual acts as a baseline, with the difference between the counterfactual and the 'factual' (the state of the world including the policy option) showing the impact of that option. The design of the counterfactual requires professional judgement.
- 4.25 The standard counterfactual is often, although not confined to, a 'do nothing' (also known as 'Business as Usual') scenario. The 'do nothing' scenario approach considers what may happen with the current situation if we were to take no action. This counterfactual scenario may also include major existing trends, expected technological shifts or changes in market structure, or anticipated policy changes from other organisations which are likely to affect the market in question over a longer time period.
- 4.26 In some cases impact assessments are 'incremental', such as when a policy decision was made by Government, and only the incremental impacts of any decisions we make when implementing the policy need to be assessed. For such impact assessments the appropriate counterfactual may not be the 'do nothing' scenario. In these cases, the appropriate counterfactual is not a 'state of the world' where we do not intervene, as intervention is legally required. Rather, it may be one where we intervene in a minimal way. In this case, different options of how we may implement the Government's policy can be assessed based on their impacts.

## Key principles

- 4.27 When carrying out our analysis, we will generally take into account the key principles set out below. The form and detail in which we do so will depend on the nature of the policy proposal and what we consider to be proportionate in the circumstances. In practice, this means we generally expect to:
- a) focus on the most significant costs and benefits and not spend a disproportionate amount of time considering costs and benefits which are relatively minor;

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<sup>15</sup> For example, we may be consulting on making administrative changes to spectrum or broadcasting licences which do not require action by licensees or which do not materially change any rights and obligations of licensees.

<sup>16</sup> For example, we may be consulting on granting powers to a provider of electronic communications networks under the Electronic Communications Code which may have a geographically narrow impact.

- b) include the most significant costs and benefits whether or not they can be quantified;
- c) quantify impacts where it is possible and proportionate to do so, while recognising that non-financial and unquantifiable impacts may hold great weight in policy decisions;
- d) as far as possible, make clear who bears the costs and who receives the benefits, including those flowing from the impacts on the interests of particular groups or sub-groups of stakeholders;
- e) include implementation costs for Ofcom to the extent they may result in increased administrative fees for stakeholders;
- f) set out and explain assumptions and major uncertainties;
- g) only take into account those costs and benefits that would be reasonably incurred because of a policy being implemented (as opposed to costs and benefits that would be incurred anyway);
- h) identify and account for the cost of complying with regulation e.g. of providing regulatory information or adopting new technical requirements, if possible;
- i) where relevant, consider other policies that may affect the outcome of our actions, which may be other Ofcom policies or anticipated action by a government or other body; and
- j) have regard to what the key risks and side effects are of our policies, and how they may be mitigated, noting that it is impractical to try to identify all risks or potential unintended side effects.

4.28 When carrying out impact assessments, we may refer to published guidance from other organisations for explanations of specific techniques where we consider them to be relevant. These include HM Treasury’s Green<sup>17</sup> and Magenta<sup>18</sup> books, the Regulatory Policy Committee’s review of impact assessments,<sup>19</sup> and the Competition and Markets Authority’s Competition impact assessment guidelines.<sup>20</sup>

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<sup>17</sup> <https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government/the-green-book-2020>

<sup>18</sup> <https://www.gov.uk/government/publications/the-magenta-book>

<sup>19</sup> <https://www.gov.uk/government/publications/impact-assessments-room-for-improvement>

<sup>20</sup> <https://www.gov.uk/government/publications/competition-impact-assessment-guidelines-for-policymakers>

#### Examples of areas to consider:

- **Behaviour:** we may use behavioural insights techniques or other tools to consider how consumer or stakeholder behaviour may affect the impact of a policy;
- **Competition:** where appropriate we will consider the likely effect of the policy on competition in the market;
- **Business impact:** where relevant we will also ensure we understand the business models operating in a market and consider the effect of our policy on participants throughout the industry. We will particularly consider how the policy may affect the ability and incentives of firms to make efficient investments; and
- **Existing models:** where appropriate we may use existing models to inform our assessment of the costs and benefits, for example our model of harms to online users.<sup>21</sup>

4.29 We will also assess the potential impacts of a proposed intervention on particular groups of persons, and the Welsh language, as discussed in Section 5 below.

### Monitoring and evaluation

4.30 The assessment of a proposed intervention should also consider our approach to monitoring and evaluation of the policy. Where considered appropriate, we will monitor and evaluate the actual outcome of a policy in a proportionate way. This may be through our ongoing sectoral monitoring programme, existing research programmes, or through later targeted evaluation work. Depending on the nature of a regulatory intervention, we may also consider it appropriate to assess its wider impact, for example, across a market as a whole.

4.31 Evaluation improves our policy-making by allowing us to see when things have not worked out as we expected and learn from these cases. As set out in our annual plan of work, we have an ongoing programme of ex-post evaluations to help us understand the impact of our work on consumer outcomes. We publish these ex-post evaluations on our website.

4.32 Impact assessment and evaluation are complementary processes, with each helping to improve the other: lessons learned from evaluations improve our approach to impact assessments, and good impact assessments help us to more robustly evaluate the effects of policies after they have been put into practice.

4.33 Additionally, we have a duty in section 6(1) of the Communications Act 2003 to keep our work under review to ensure we are not introducing or maintaining unnecessarily burdensome regulations.

4.34 For larger policy changes, we may consider what a potential ex-post evaluation would require during our impact assessment. We will not carry out an ex-post evaluation of every

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<sup>21</sup> <https://www.ofcom.org.uk/research-and-data/online-research/how-people-are-harmed-online>

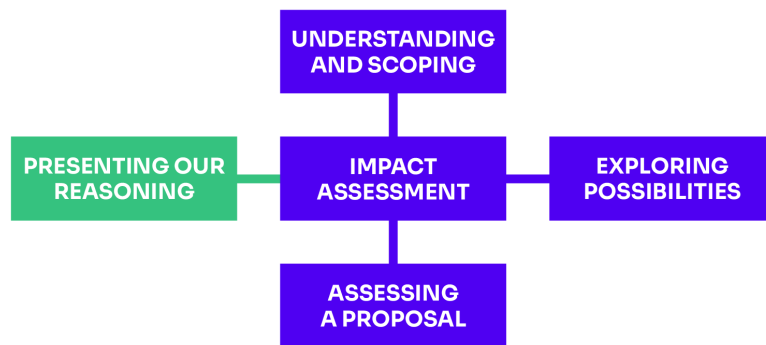


policy, but where we do decide it is appropriate then our original views on the time frame, methodology and data requirements are a useful starting point.

**A proportionate assessment of a proposal can use both qualitative and quantitative techniques, and will usually consider monitoring and evaluation.**

## Presenting our reasoning

4.35 When we are satisfied that we have sufficiently assessed the impact or one or more approaches, we will decide on which approach (or approaches) to put forward as a proposal (or proposals) in a consultation document. The consultation will summarise the impact we expect our proposal(s) to have. In other words, an impact



assessment is both a tool to help us decide on an approach, and a sub-set of our thinking which summarises our reasoning and evidence and which we must present to stakeholders in our consultations.

4.36 The form in which we present our impact assessment will differ depending on the situation, as discussed in Section 2 above.

4.37 Sometimes the structure of the impact assessment may be taken from legislation, and the factors to assess are set out in law. Otherwise, we will consider the appropriate form and detail of an assessment on a case-by-case basis. We will also generally explain the approach we have taken to the impact assessment in our consultation so that stakeholders can comment on this as part of their response.

4.38 We will take into account all consultation responses and then present our final decision in a statement following the consultation which will explain our reasoning, including any adjustments we have made to our impact assessment.

**Examples from previous projects:**

- The consultation on clarifying the use of mobile numbers by communication providers presented a clear, qualitative explanation of the impact of the change in 07x range numbers.<sup>22</sup> The subtitle “Impact of the proposed modification” provides signposting. “The vast majority of uses...will be unaffected” is an example of clarity without quantification. The section summarises the detailed information throughout the document and explains why we considered the benefits to outweigh the costs.

**We will clearly present our reasoning and evidence in our consultations and statements so that stakeholders can respond to our assessment of potential impacts**

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<sup>22</sup> See paragraphs 4.13-4.18 <https://www.ofcom.org.uk/consultations-and-statements/category-2/modification-national-telephone-numbering>

## 5. Other statutory duties to assess impacts

**We will also consider any potential impacts on equality and inclusion and the Welsh language**

- 5.1 Ofcom is committed to promoting equality and diversity, both internally and through the policy decisions we make. We are also committed to ensuring our policies are inclusive for everyone by considering any impacts on particular groups of persons. This commitment is reflected in our statutory obligations as well as our diversity and inclusion strategy.<sup>23</sup>
- 5.2 In particular, and in addition to considering the general impact of a proposal on our stakeholders, consumers and citizens, we will consider the following when formulating policy proposals:
- a) our equality obligations under section 149 of the Equality Act 2010 (the “Equality Act”) and section 75 of the Northern Ireland Act 1998 (the “NI Act”) including potential impacts on the groups of persons identified in those sections as having protected characteristics;
  - b) potential impacts on the needs and interests of groups of persons identified in section 3(4) of the Communications Act 2003; and
  - c) where the Welsh Language Standards are engaged, potential impacts on opportunities to use Welsh and treating Welsh no less favourably than English.

### Equality impacts

- 5.3 Section 149 of the Equality Act imposes a duty on Ofcom, when carrying out its functions, to have due regard to the need to eliminate discrimination, harassment, victimisation and other prohibited conduct related to the following protected characteristics: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex and sexual orientation. The Equality Act also requires Ofcom to have due regard to the need to advance equality of opportunity and foster good relations between persons who share specified protected characteristics and persons who do not.
- 5.4 Section 75 of the NI Act also imposes a duty on Ofcom, when carrying out its functions relating to Northern Ireland, to have due regard to the need to promote equality of opportunity and have regard to the desirability of promoting good relations across a range of categories outlined in the NI Act. Ofcom’s Revised Northern Ireland Equality Scheme explains how we comply with our statutory duties under the NI Act.<sup>24</sup>

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<sup>23</sup> <https://www.ofcom.org.uk/about-ofcom/corporate-responsibility/diversity-and-equality>

<sup>24</sup> <https://www.ofcom.org.uk/about-ofcom/how-ofcom-is-run/nations-and-regions/northern-ireland>

5.5 To help us comply with our duties under the Equality Act and the NI Act, we will assess the potential impact of a policy proposal on persons sharing protected characteristics and in particular whether they may discriminate against such persons or impact on equality of opportunity or good relations.

## **Impacts on the needs and interests of specific groups of persons**

5.6 In addition to our public sector equality duties, section 3(4) of the Communications Act 2003 requires us to have regard the needs and interests of specific groups of persons when performing our duties, including:

- a) the vulnerability of children and of others whose circumstances appear to us to put them in need of special protection;
- b) the needs of older persons, persons with disabilities, and persons on low incomes; and
- c) the different interests of persons in the different parts of the UK, of the different ethnic communities within the UK and of persons living in rural and in urban areas.

5.7 We will assess the potential impact of a policy proposal on the needs and interests of specific groups of persons identified in section 3(4) of the Communications Act.

5.8 We will consider any potential impacts on persons identified in section 149 of the Equality Act, section 75 of the NI Act and section 3(4) of the Communications Act in the early stages of a project and commit to undertaking market research to get the views of particular persons or communities that we think may be particularly affected.

5.9 Where we are carrying out a public consultation in relation to a policy proposal, we will also summarise our initial conclusions in relation to the potential impacts of our proposal on particular groups of persons or communities. We will invite views on those initial conclusions and will take in account all consultation responses prior to making our decision.

5.10 In some cases, we may not consider a proposal to have any equality implications or different impacts on specific groups of persons. In many cases, we may not have identified any adverse impacts but may have identified various positive impacts. In cases where we have identified potential adverse impacts, we will seek to eliminate or mitigate those impacts, to the extent it is feasible and proportionate to do so.

5.11 We are committed to ensuring our consultation processes are as open and inclusive as possible so that different groups of persons have the opportunity to share their thoughts on any changes we are proposing before we make a decision.

## **Impacts on Welsh Language**

5.12 The Welsh language has official status in Wales.<sup>25</sup> To give effect to this, certain public bodies, including Ofcom, are required to comply with Welsh language standards in relation

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<sup>25</sup> Section 1(1), Welsh Language (Wales) Measure 2011.

to the use of Welsh, including the general principle that Welsh should not be treated less favourably than English in Wales.

- 5.13 The standards issued to Ofcom are listed in Ofcom’s compliance notice effective from 25 January 2017<sup>26</sup> and cover a wide range of matters including our policy proposals.<sup>27</sup>
- 5.14 We will consider whether the Welsh Language Standards are engaged when formulating policy proposals which are relevant to Wales (including proposals which are not targeted at Wales specifically but are of interest across the UK).
- 5.15 Where the Welsh Language Standards are engaged, we will consider the potential impact of a policy proposal on (i) opportunities for persons to use the Welsh language; and (ii) treating the Welsh language no less favourably than the English language and consider how it could be formulated so as to have, or increase, a positive impact, or not to have adverse effects or to decrease any adverse effects. When consulting on the policy proposal, we will invite views on these matters and responses we receive will be taken into account when reaching our final decision.

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<sup>26</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0026/96920/Hysbysiad-Cydymffurfio44-Y-Swyddfa-Gyfathrebiadau-cy.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0026/96920/Hysbysiad-Cydymffurfio44-Y-Swyddfa-Gyfathrebiadau-cy.pdf) (in Welsh) and [https://www.ofcom.org.uk/data/assets/pdf\\_file/0034/96919/Hysbysiad-Cydymffurfio44-Y-Swyddfa-Gyfathrebiadau-en.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0034/96919/Hysbysiad-Cydymffurfio44-Y-Swyddfa-Gyfathrebiadau-en.pdf) (in English).

<sup>27</sup> See, in particular, Standards 84 – 93. In addition to policy proposals, the Welsh Language Standards may also be engaged when Ofcom is carrying out market research or public facing activities. Further information on our work in the Welsh language is available on our [website](#).