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## **Impact assessment guidance**

Consultation on Ofcom's approach to impact assessment

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**CONSULTATION:**

Publication date: 17 March 2023

Closing date for responses: 12 May 2023

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# 1. Overview

## **We are consulting on proposed changes to our impact assessment guidance to reflect our new legal obligations, best practice and our experience.**

Ofcom is the independent regulator for the UK communications sector. In this role we make a variety of policy decisions in the interests of citizens and consumers, and where appropriate to promote competition. Our impact assessment guidance sets out our general approach to how we assess the impact of our proposed decisions.

### **What we are proposing – in brief**

Given the age of our 2005 guidance we are proposing changes to align it with our current approach to assessing impacts, including the following key changes:

- Recognising how our duties differ across an increasingly wide range of sectors.
- Maintaining our bias against intervention while clarifying that the law may require us to intervene.
- Updating how we present our impact assessments to stakeholders.
- Increased recognition that qualitative impacts are an important part of assessing some policy decisions.
- Recognising that impact assessments are an important input for ex-post evaluations.
- Updating how we develop an impact assessment in light of new assessment approaches and resources.
- Updating the guidance to reference our current public sector equality duties and obligations in relation to the Welsh language.

### **Next steps**

- We welcome responses from all stakeholders and individuals until the deadline of the 12 of May 2023.
- We expect to publish a final version of the new impact assessment guidance in early Q3 of 2023.
- The new guidance will come into effect when we publish our Statement and will apply to projects commencing on or after this date.
- For more information about responding to this consultation, please see Annex 1.

## 2. Introduction

### Our approach to assessing impacts

- 1.1 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.
- 1.2 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.
- 1.3 The way in which we assess the impacts of our proposed decisions needs to be evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome. It is also important that we seek the least intrusive regulatory mechanisms to achieve our policy objectives.
- 1.4 The purpose of our impact assessment guidance is to set out our general approach to how we assess and present the impact of our proposed decisions.

### Why we are updating our approach to impact assessments

- 1.5 The context in which we produce impact assessments has changed since we last published guidance in 2005.<sup>1</sup>
- 1.6 Our legal responsibilities have expanded, and we now regulate a wider range of sectors, each with their own characteristics and challenges. The Equality Act 2010 and Welsh Language (Wales) Measure 2011 have also been introduced, alongside other legislative changes, which are not currently reflected in our 2005 guidance.
- 1.7 While the fundamental principles of impact assessment have not significantly changed, new tools and guidance are now available. For example, HM Treasury's guidance in the Green and Magenta books have been updated. New tools such as theories of change have been introduced in the literature to help policy makers share their rationale. New analytic perspectives have come into use, including using behavioural insights to consider consumer behaviour, and using large data sets to make predictions.
- 1.8 We have also continued to develop our own skills, gaining more experience in assessing impacts. Since the 2005 guidance was published, we have introduced periodic ex-post evaluations to review the impact of certain policies and continue to consider how best to monitor and evaluate the impact of our work. A project's original impact assessment can contribute to the design of the ex-post evaluation.
- 1.9 For all these reasons, we are proposing to update our guidance to reflect our current legal obligations and best practice and experience.

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<sup>1</sup> <https://www.ofcom.org.uk/consultations-and-statements/better-policy-making-ofcoms-approach-to-impact-assessment>

- 1.10 Given the length of time since our 2005 guidance, we are also proposing to generally refresh and restructure the guidance to make it more user-friendly.
- 1.11 We have described the key changes in detail below. We have also published a proposed revised version of our impact assessment guidance alongside this consultation.

### 3. Proposed changes to our impact assessment guidance

- 1.12 We are proposing to rework our 2005 guidance to align it with our new legal obligations as well as best practice and experience. We have summarised the key changes below.

#### Recognising how our duties range across an increasingly wide range of sectors

- 1.13 When planning an impact assessment, it is important to consider the context in which it is being undertaken. At Ofcom we regulate many sectors, with varying powers and responsibilities in each. We regulate a wider range of sectors and stakeholders and with more duties than we did in 2005 when our previous impact assessment guidance was written. These stakeholders include postal services, the BBC, and video-on-demand platforms, and new duties on operators of essential services for digital infrastructure. At the time of writing, we are also expecting to receive powers from Parliament to regulate online safety in the UK.
- 1.14 It is important that our impact assessment guidance considers the increasing range of policy decisions we may take across the different sectors we now regulate. For example, how we can or decide to assess the impact of a proposed decision may vary significantly between sectors, depending on the type of stakeholders we regulate and the quantitative or qualitative data that may be available to us.
- 1.15 How we assess impacts will also depend on our relevant statutory obligations. The 2005 guidance was written to align with our general duty in section 7 of the Communications Act 2003 to assess impacts. However, some sector-specific regimes also set specific requirements for when or how we must conduct impact assessments. Some of these obligations are from legislation that was not in force when we issued our 2005 guidance and relate to some of the new sectors we now regulate.
- 1.16 Our proposed updates to the 2005 guidance reflect some of the specific nuances of different regimes and reflect our increasing range of duties. This ensures we have the flexibility to decide on the most appropriate way to assess impacts, considering the relevant policy context and our statutory duties.
- 1.17 Due to some legislation requiring us to intervene (which we discuss in more detail below) we are also proposing to update the types of scenarios in which we will generally not carry out an impact assessment in paragraph 3.5 of our guidance. We are proposing to include the scenario where legislation requires us to intervene in a particular way and an impact assessment was carried out prior to that legislation being introduced.

## Maintaining our bias against intervention while clarifying that the law may require us to intervene

- 1.18 Our 2005 guidance focused on us always operating with a bias against intervention and not regulating where possible. This remains an important principle, taking into account our obligation in section 6(1) of the Communications Act 2003 – which requires us to ensure our regulation does not involve “*the imposition of burdens which are unnecessary*” or “*the maintenance of burdens which have become unnecessary*”.
- 1.19 However, in an increasing number of instances, Parliament has determined that market forces alone will not achieve certain policy outcomes and legislation has been made which requires us to intervene (although the form of that intervention may be left to our discretion). For example, the Network and Information Systems Regulations 2018 require us to take various actions, including publishing guidance for the digital infrastructure subsector.<sup>2</sup> As currently drafted, our obligations relating to online safety would also require us to intervene, including by issuing various codes of practice.<sup>3</sup>
- 1.20 To reflect this legislative landscape, we are proposing to clarify that in some instances the law may require us to intervene. Where the law does not require us to intervene, we will maintain our bias against intervention. Where we do intervene, we will maintain the principle of ensuring any intervention is the least intrusive means to achieve our objective.

## Updating how we present our impact assessments to stakeholders

- 1.21 Our 2005 guidance explains that our impact assessments will generally be presented in a separate annex.
- 1.22 Many of the policy problems we deal with are not black and white. There can be many different factors interacting which can influence the outcome of an impact assessment. As a result, sometimes the reasoning behind any given decision can be complex. Due to this, in some cases it is better that the explanation of our decision is spread throughout the document, rather than in a separate annex. This allows us to ensure our decision is explained in the context of the issue.
- 1.23 Since the publication of our 2005 guidance, we have carried out many impact assessments. We have found this way of integrating the impact assessment into the policy problem under consideration can be a practical way for us to clearly explain our analysis when we publish documents.
- 1.24 We try to make our documents as simple as possible, and we believe our impact assessments are often easier to understand through integrating them in the document, rather than being a separate annex.

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<sup>2</sup> See Regulation 3(3)(b). Also see our network security and network resilience work: <https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/network-security-and-resilience/our-work>

<sup>3</sup> See, for example, section 36(1) in the Online Safety Bill: <https://bills.parliament.uk/publications/49376/documents/2822>

- 1.25 In light of best practice and experience, we are therefore proposing to remove the guidance that impact assessments will generally be published in a separate annex. We are instead proposing to explain that the form in which we present an impact assessment will vary depending on what we consider to be appropriate in the circumstances. We also intend to clarify that our consultation documents and statements 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 or statement we have published the results of our impact assessment.

## **Increased recognition that qualitative impacts are an important part of policy decisions**

- 1.26 We are proposing to place greater emphasis in our guidance on qualitative assessment being as important as quantitative assessments. We need to give appropriate weight to all impacts when we are carrying out an assessment, even the ones where it would be inappropriate to quantify the impact. This is particularly relevant to work we do on harms as they are often non-financial. It is also one way of ensuring our guidance is aligned with the increasing range of policy decisions we may take across the different sectors we now regulate.

## **Recognising that impact assessments are an important input for ex-post evaluations**

- 1.27 Ex-post evaluations are a method of looking back on the actual outcome of a policy after implementation to evaluate its success and whether things happened as we expected. At the time of writing our 2005 guidance, we had only just started our ex-post evaluation programme. Our 2005 guidance only included a reference to how impact assessments could possibly feed into an evaluation of the policy decision after implementation. In the time since we wrote that guidance, we have established a programme of regular ex-post evaluations which we publish on our website.
- 1.28 We are proposing to update the guidance to reflect how impact assessments help form the basis for future ex-post evaluations. The proposed guidance recognises the importance of impact assessments in our wider programme of monitoring and evaluation.

## **Updating how we develop an impact assessment in light of new assessment approaches and resources**

- 1.29 Our 2005 guidance uses a linear approach to describe the process of producing an impact assessment. It sets out each stage of the process as occurring in turn with the final outcome being the impact assessment.
- 1.30 We are proposing to update the 2005 guidance to focus on how we develop an impact assessment as part of an iterative process. This reflects the increased emphasis we are putting on thinking about potential impacts throughout a project. When assessing



impacts continually, it is possible that as our thinking progresses we may have to review and revise the potential impacts considered. Therefore, we are proposing to reflect the flexibility an iterative approach requires in our guidance.

- 1.31 Additionally, we are proposing to move away from referring to impact assessments considering different ‘options’ in our guidance. This is because in some cases it is clear there is only one feasible option, for example if the scope of the policy question is very narrow, or legislation limits our powers in the area. In these cases, it is an inefficient and disproportionate use of resources to assess the impacts of unrealistic options. Therefore, we are proposing to update our guidance to better reflect that in some cases it is not realistic to assess multiple options.
- 1.32 We are also proposing to update our guidance to explain that we may use Government guidance on impact assessments, such as The Green Book,<sup>4</sup> when carrying out impact assessments. We are also proposing to reference additional assessment methods that can be used in an impact assessment, for example ‘theory of change’. These are optional, but useful, references we may use when carrying out an impact assessment.

## **Updating the guidance to reference our current public sector equality duties and obligations in relation to the Welsh language**

- 1.33 When the 2005 guidance was written, there was separate legislation relating to race equality and disability equality which was applicable in Great Britain. Our public sector equality obligations applicable in Great Britain are now consolidated in section 149 of the Equality Act 2010, which requires us to consider potential impacts on a wider range of groups of persons identified in those sections as having protected characteristics. Our public sector equality duties in relation to Northern Ireland are set out in section 75 of the Northern Ireland Act 1998.
- 1.34 We are proposing to update our guidance to reflect our current equality duties and explain how we intend to comply with those duties.
- 1.35 We are also proposing to update our guidance to refer to our obligations to consider:
- a) potential impacts on the needs and interests of groups of persons identified in section 3(4) of the Communications Act 2003; and
  - b) where the Welsh Language Standards are engaged, potential impacts on opportunities to use Welsh and treating Welsh no less favourably than English.<sup>5</sup>

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<sup>4</sup> HM Treasury and Government Finance Function, The Green Book (2022), <https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government/the-green-book-2020>

<sup>5</sup> The Welsh language has official status in Wales (see Section 1(1), Welsh Language (Wales) Measure 2011). To give effect to this, certain public bodies, including Ofcom, are required to comply with Welsh language standards in relation to the use of Welsh, including the general principle that Welsh should not be treated less favourably than English in Wales.

1.36 We are proposing to add a new section 5 on our other statutory duties to consider impacts at the end of our guidance.

## 4. Assessment of the impact of our proposed changes

- 1.37 Section 7 of the Communications Act requires us to carry out and publish an assessment of the likely impact of implementing a proposal which would be likely to have a significant impact on businesses or the general public, or when there is a major change in Ofcom's activities.
- 1.38 We consider that the proposals on which we are consulting will either have no additional impact (to the extent they already reflect our best practices and experience) or will tend to have a positive impact on stakeholders, citizens and consumers by:
- a) providing further transparency in our decision-making process;
  - b) allowing stakeholders to be informed on our current approach to assessing impacts and the evidence and reasoning behind a proposal, which should in turn allow them to fully engage in our decision-making process and respond with their own informed views and evidence;
  - c) ensuring our decisions take into account all available evidence;
  - d) ensuring our decisions are proportionate and that we choose the least intrusive means of achieving our objectives; and
  - e) ensuring we are ultimately making the best decisions in the interests of citizens and consumers.
- 1.39 We have also considered whether our proposals will have a particular impact on persons sharing protected characteristics (broadly including race, age, disability, sex, sexual orientation, gender reassignment, pregnancy and maternity, marriage and civil partnership and religion or belief in the UK and also dependents and political opinion in Northern Ireland), and in particular whether they may discriminate against such persons or impact on equality of opportunity or good relations. This assessment helps us comply with our duties under section 149 of the Equality Act 2010 and section 75 of the Northern Ireland Act 1998.
- 1.40 We do not consider that any of the proposed changes to our Impact Assessment Guidance will in themselves have any equality impacts (whether in Northern Ireland or the rest of the UK). To the extent we are proposing to ensure our guidance reflects our current equality obligations and how we intend to comply with them, our proposals should have positive equality impacts. In particular, they should allow people to be informed on our current approach to assessing equality impacts and the evidence and reasoning behind a proposal. This should in turn allow them to fully engage in our decision-making process and respond with their own informed views and evidence. This should ultimately improve our decision-making processes.

# A1. Responding to this consultation

## How to respond

- A1.1 If you would like to submit views and comments on the issues raised in this document, please do so by Friday 12<sup>th</sup> May 2023.
- A1.2 You can [download a response form](#) from the Ofcom website. You can return this by email or post to the address provided in the response form.
- A1.3 If your response is a large file, or has supporting charts, tables or other data, please email it to [ImpactAssessmentGuidance@ofcom.org.uk](mailto:ImpactAssessmentGuidance@ofcom.org.uk), as an attachment in Microsoft Word format, together with the cover sheet.
- A1.4 Responses may alternatively be posted to the address below, marked with the title of the consultation:
- Impact assessment guidance consultation  
Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA
- A1.5 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
- Send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files. Or
  - Upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A1.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A1.7 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.
- A1.8 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A1.9 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at Annex 4. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.
- A1.10 If you want to discuss the issues and questions raised in this consultation, please contact the team by email at [ImpactAssessmentGuidance@ofcom.org.uk](mailto:ImpactAssessmentGuidance@ofcom.org.uk).

## Confidentiality

- A1.11 Consultations are more effective if we publish the responses before the consultation period closes. In particular, this can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish all responses on our website as soon as we receive them.
- A1.12 If you think your response should be kept confidential, please specify which part(s) this applies to, and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A1.13 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.14 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further in our Terms of Use.

## Next Steps

- A1.15 Following this consultation period, we plan to publish a final version of the new impact assessment guidance in early Q3 of 2023.
- A1.16 If you wish, you can register to receive mail updates alerting you to new Ofcom publications.

## Ofcom's consultation processes

- A1.17 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 2.
- A1.18 If you have any comments or suggestions on how we manage our consultations, please email us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk). We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.19 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:

Corporation Secretary  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA  
Email: [corporationsecretary@ofcom.org.uk](mailto:corporationsecretary@ofcom.org.uk)

## A2. Ofcom's consultation principles

**Ofcom has seven principles that it follows for every public written consultation:**

### **Before the consultation**

A2.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. If we do not have enough time to do this, we will hold an open meeting to explain our proposals, shortly after announcing the consultation.

### **During the consultation**

A2.2 We will be clear about whom we are consulting, why, on what questions and for how long.

A2.3 We will make the consultation document as short and simple as possible, with a summary of no more than two pages. We will try to make it as easy as possible for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.

A2.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.

A2.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.

A2.6 If we are not able to follow any of these seven principles, we will explain why.

### **After the consultation**

A2.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website as soon as we receive them. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

# A3. Consultation coversheet

## BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

## CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts? \_\_\_\_\_

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If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

## DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

## A4. Consultation question

A2.8 We are proposing to update our impact assessment guidance to reflect changes within Ofcom since the 2005 guidance was published, and to make the guidance more useful. We would welcome views on the question below.

Question 1: Do you have any views on our proposed new guidance?