

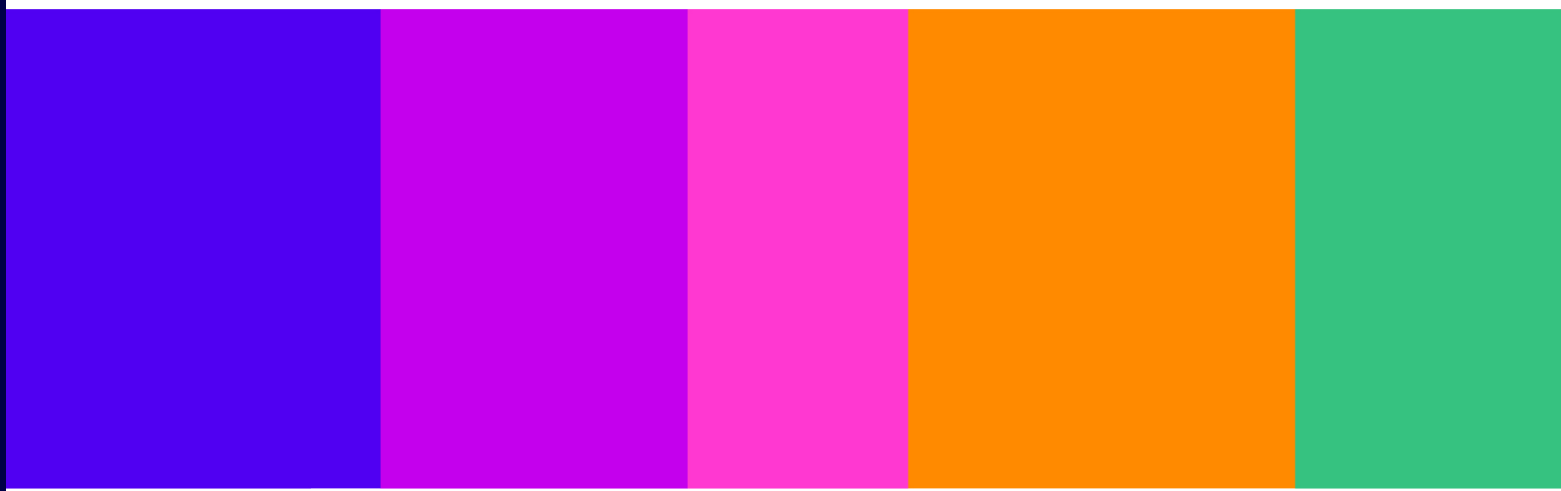


Ofcom's Impact Assessment Guidance

Statement on our updated guidance

Statement

Published 19 July 2023



Contents

Section

1. Overview	3
2. Introduction.....	4
3. Consultation responses and Ofcom decisions	7
4. Summary of the changes we have made	22
A1 Assessment of impact of the changes.....	23

1. Overview

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.

On 17 March 2023, we published a consultation on updating our impact assessment guidance to reflect our legal obligations, best practice and our experience. This document sets out our final decision relating to that proposal.

What we have decided – in brief

- We have decided to proceed with our proposal to update our impact assessment guidance. The updated guidance will apply to Ofcom projects starting on or after 19 July 2023.
- Taking into account responses to our consultation, we have decided to make some changes to our proposed guidance.
- In particular, we have listened to stakeholders' concerns around the prominence of our public sector equality duties. In the text of our updated guidance, we have more explicitly recognised our duty to promote equality of opportunity and integrated discussion of our public sector equality duties into the main body of the guidance rather than in a separate section dedicated to 'other statutory duties'.

1.1 In Section 3 of this document we summarise consultation responses and our decisions. In Section 4 we summarise the changes we have made. In the Annex we summarise our conclusions on the impact of our changes. Our updated guidance is published alongside this Statement.

2. Introduction

Our approach to assessing impacts

- 2.1 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.
- 2.2 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.
- 2.3 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.
- 2.4 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

- 2.5 The context in which we produce impact assessments has changed since we last published guidance in 2005.¹
- 2.6 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.
- 2.7 While the fundamental principles of impact assessments 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.
- 2.8 We have also continued to develop our approach to understanding the impact of our work. For instance, since the 2005 guidance was published, we have introduced periodic ex-post evaluations to review the impact of certain policies once they have had a chance to embed.
- 2.9 We consulted on our proposals in March this year and the changes we have made as a result of this consultation are presented below.

¹ Better policy making: Ofcom's approach to impact assessments (<https://www.ofcom.org.uk/consultations-and-statements/better-policy-making-ofcoms-approach-to-impact-assessment>)

What we proposed in the consultation

2.10 The key changes on which we consulted were:

- a) **Recognising how our duties range across an increasingly wide range of sectors.** Our proposed guidance reflected some of the specific nuances of different regimes and reflected our increasing range of duties. We proposed this change to ensure we have the flexibility to decide on the most appropriate way to assess impacts, considering the relevant policy context and our statutory duties.
- b) **Maintaining our bias against intervention while clarifying that the law may require us to intervene.** We proposed to clarify that in some instances the law may require us to intervene. Where the law does not require us to intervene, we proposed that we would maintain our bias against intervention and that, where we do intervene, we would maintain the principle of ensuring any intervention is the least intrusive means to achieve our objectives.
- c) **Updating how we present our impact assessments to stakeholders.** We proposed to remove the guidance that impact assessments will generally be published in a separate annex. We proposed instead 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, though noting that generally our documents would clearly lay out the findings of any impact assessment in an appropriate place.
- d) **Increased recognition that qualitative impacts are an important part of policy decisions.** We proposed to place greater emphasis in our guidance on qualitative assessments being as important as quantitative assessments. We explained that we need to give appropriate weight to all impacts when we are carrying out an assessment whether we have quantified these impacts or not.
- e) **Recognising that impact assessments are an important input for ex-post evaluations.** We proposed to update the guidance to reflect how impact assessments help form the basis for future ex-post evaluations and monitoring. Our proposed guidance recognised the importance of impact assessments in our wider programme of monitoring and evaluation.
- f) **Updating how we develop an impact assessment in light of new assessment approaches and resources.** We proposed to focus our guidance on how we develop an impact assessment as part of an iterative process. This reflected the increased emphasis we want to place on thinking about potential impacts throughout a project. We also explained that we may use new guidance and assessment methods when carrying out impact assessments.
- g) **Updating the guidance to reference our current public sector equality duties and obligations in relation to the Welsh language.** We proposed to update our guidance to reflect our current equality duties, our duties to consider the potential impacts on the needs and interests of groups of persons identified in section 3(4) of the Communications Act 2003, and our Welsh language duties. We proposed to add a new section at the end of our guidance to cover these duties.

Consultation responses

- 2.11 We have received responses from Belong, Better Media, BT, the Communications Consumer Panel (CCP), Leicester Community Radio (LCR), Openreach, Vodafone, and two individuals. Non-confidential versions of each of these responses are published on our website.²
- 2.12 Generally, stakeholders welcomed our proposal to update our impact assessment guidance, and provided specific comments on how our proposed updated guidance could be improved. We set out these responses and what we have decided in more detail in Section 3.

² <https://www.ofcom.org.uk/consultations-and-statements/category-1/draft-impact-assessment-guidance?showall=1>

3. Consultation responses and Ofcom decisions

General principles and statutory duties

Stakeholder views

- 3.1 Both Vodafone and Openreach welcomed our intention to maintain our bias against intervention. Openreach also welcomed our intention to ensure any intervention we do make is in the least intrusive way possible. Vodafone added that when considering whether to intervene, we should give a high weighting to the likely *“ripple effect impacting competition, investment and innovation elsewhere in the organisation subject to the intervention”*.
- 3.2 Responses from Better Media, the CCP and Belong focused on the lack of reference to our public sector equality duties in the overarching principles that guide how we operate – they generally suggested that these equality duties should be given more prominence in our guidance, considered in the early stages of policy development and that we should be more proactive in our interventions. For example, Better Media suggested that in order to comply with our public sector equality duties, we should have a demonstrable bias towards intervention and intervene in the most effective (rather than least intrusive) way to achieve our objectives.
- 3.3 Vodafone commented that Ofcom should take the opportunity to align with the Government’s approach to regulation in the Better Regulation Framework.
- 3.4 Better Media suggested that we should introduce a hierarchy of needs and interests that prioritises the citizen first, then the consumer, then the content producer, then the platform and technology supplier. It also queried why there was no mention of net-carbon or social economy assessments in our guidance.

Ofcom response

Bias against intervention / least intrusive means

- 3.5 Ofcom is independent of Government, and our duties are set out in statute, making us accountable to Parliament and the courts. Our statutory duties guide the direction of our work.
- 3.6 Our principal duty in section 3(1) of the Communications Act 2003 (the “2003 Act”) is to further the interests of citizens and consumers, where appropriate by promoting competition. In performing our duties and carrying out our functions, we must:
 - a) Have regard to the principles of transparency, accountability, proportionality and consistency, as well as ensuring that our actions are targeted only at cases in which action is needed (section 3(3)(a) of the 2003 Act).
 - b) Have regard to the desirability of promoting and facilitating the development and use of effective forms of self-regulation, where relevant (section 3(4) of the 2003 Act).
 - c) Keep our work under review to ensure we are not introducing or maintaining unnecessarily burdensome regulations (section 6(1) of the 2003 Act).

- 3.7 We are more generally bound by the public law duty of fairness meaning any action we take should be proportionate. When deciding what action is proportionate, the Courts have explained that considering whether a less intrusive measure could have been used is a relevant consideration.³
- 3.8 In order to comply with our statutory duties in the 2003 Act as well as public law, we have therefore decided to maintain our bias against intervention and that any intervention is made in the least intrusive way possible to achieve our objectives. Moreover, and as explained in paragraph 1.4 of our guidance, we recognise that our decisions can impose significant costs on our stakeholders and that it is therefore important for us to think carefully before deciding whether a particular policy intervention may be appropriate.
- 3.9 We only intervene where we are satisfied that our intervention will be effective in achieving our objectives, and we do so in the least intrusive way. Determining our overall objectives at the start of a project will often involve taking into account a number of different statutory duties that apply to a given case (including our principal duty to further the interests of citizens and consumers, sector-specific duties and duties to consider impacts on specific groups of persons).
- 3.10 What may be the most effective solution to satisfy one duty will not necessarily be the most effective solution to satisfy another. In these cases, we carry out a balancing exercise and make a decision on our overall objectives taking into account these competing duties. Having a bias against intervention and choosing the least intrusive means does not prevent us from making major decisions with potentially very high costs, where we consider that decision to be the most effective and proportionate means to achieve our objectives. We have decided to add new paragraphs at 4.16 - 4.18 of our guidance to clarify the above points.

Prominence of public sector equality duties

- 3.11 We recognise that we have public sector equality duties⁴ to have due regard to the need to:
- a) eliminate discrimination, harassment, victimisation and other prohibited conduct related to protected characteristics;
 - b) advance equality of opportunity and foster good relations between persons who share protected characteristics and persons who do not.
- 3.12 We also agree with the responses that identified the importance of considering these public sector equality obligations in the early stages of a project when deciding whether and how to intervene and that they should be given more prominence in the guidance. To address the concerns that complying with our equality duties may be perceived as a secondary assessment, we have decided to amend our guidance to:
- a) clearly identify our duties to consider impacts on specific groups of persons (including our equality duties) up-front in Section 2 of the guidance; and
 - b) remove Section 5 of our guidance which had identified our other statutory duties (including our equality duties) and integrate the relevant parts into Section 3 (where we identify the relevant legal obligations) and Section 4 (where we explain how we will take into account the needs and interests of specific groups of persons and assess their impacts as part of our overall impact assessment).

³ See, for example, paragraph 20 in [Bank Mellat v HM Treasury \(No 2\)](#) [2013] UKSC 39.

⁴ See section 149 of the Equality Act 2010 and section 75 of the Northern Ireland Act 1998.

Other statutory duties

- 3.13 In relation to Vodafone’s comment on potential impacts on competition, innovation and investment, we recognise that in performing our duties, sections 3(4)(b) and (d) of the 2003 Act require us to have regard to the desirability of promoting competition and encouraging investment and innovation in relevant markets, where relevant. We have decided to amend paragraph 2.17 of our guidance to make these obligations clearer and have also amended Section 4 of our guidance to refer to potential impacts on investment and innovation (see paragraphs 4.32 and the box at 4.33.)
- 3.14 In relation to net carbon assessments, while we recognise the importance of climate change and sustainability across the economy, we do not currently have any explicit statutory duties concerning the environment. In cases where the environmental impact is likely to be significant, we would however expect to consider such impacts as part of a wider assessment of a policy taking into account our principal duty to citizens and consumers.⁵

Better Regulation Framework

- 3.15 We note that Government published a [policy paper](#) in relation to its Better Regulation Framework on 10 May 2023. We understand that Government is planning to launch a reformed Better Regulation Framework shortly and Professor Dame Angela McLean is reviewing the economic regulators’ (including Ofcom) duties.
- 3.16 We note the Government’s vision in that paper includes ensuring regulation is a last resort, not a first choice; ensuring earlier and more holistic scrutiny of regulatory proposals; and ensuring earlier and more consistent evaluation of whether a regulation is achieving its aims.
- 3.17 We consider our updated guidance to be consistent with these principles, in particular:
- a) Our bias against intervention and choosing the least intrusive means to achieve our objective means we consider the option of self-regulation and where we do resort to regulation, we ensure any intervention is proportionate.
 - b) Our revised focus on qualitative as well as quantitative costs (including impacts on competition, innovation and growth, where relevant) coupled with our commitment to considering impacts on the needs and interests of a variety of specific groups of persons means we will take a holistic approach to assessing the impacts of a proposal.
 - c) Our revised approach to monitoring and evaluation should improve our policy-making by allowing us to see when things have not worked out as we expected and learn from these cases.
- 3.18 We will nonetheless consider the findings from the review and incorporate these into future revisions of our guidance where appropriate.

Weighting of different impacts / hierarchy of needs

- 3.19 The way in which we assess the impact of our proposals is guided by our overarching principles as well as our statutory duties.
- 3.20 While our principal duty is to further the interests of citizens and consumers, there is no general requirement on us to place more weight on certain impacts over others. We will consider impacts on the different types of persons that may be affected by a proposal and how we balance competing impacts will depend on the nature of a policy proposal and any

⁵ Information on how we are working towards becoming a more environmentally sustainable organisation is [available on our website](#).

specific statutory duties that apply. This will allow us to decide whether and how to intervene in a way that will best achieve our objectives.

Circumstances when we will not carry out an impact assessment

Stakeholder views

- 3.21 Vodafone said that it should be exceptional for Ofcom not to publish an impact assessment and queried the circumstances in which we may not carry out an impact assessment when carrying out investigations.
- 3.22 Openreach asked if we could set out in a table examples of the sectors and regimes where we will not produce an impact assessment because legislation requires us to intervene.
- 3.23 LCR's response focused on equality issues and suggested that impact assessments may be needed for individual decisions, not just defining policies.
- 3.24 Better Media said that where Ofcom decides not to intervene we should be open and transparent about why, and regularly review those decisions.

Ofcom response

- 3.25 As explained in paragraph 3.5 of our guidance, impact assessments form part of good policy making and we expect to carry them out in relation to a large majority of our policy decisions. We have clarified in our guidance that this includes new or amended policies and processes.
- 3.26 To address Vodafone's concerns, we have amended the last example of when we would generally not carry out an impact assessment in paragraph 3.6(e) of our guidance (formerly 3.5(d) in the draft) to clarify that we will generally not carry out an impact assessment when publishing guidance relating to how we will undertake investigations. This is because such guidance will generally just flesh out procedural matters relating to how we will fulfil obligations created by legislation which will already have been the subject of an impact assessment.
- 3.27 We have also added a new paragraph 3.7 to clarify that where we do not carry out an impact assessment as part of a consultation process, we will explain why.
- 3.28 We note that in the context of an investigation into a regulated company, we would always provide that company with our provisional findings, and they would have an opportunity to provide written and oral representations in response.
- 3.29 We do not consider it necessary to amend our guidance to identify the sectors and regimes where we will not carry out an impact assessment because legislation requires us to intervene. Our role and obligations change over time and as noted above, where we do not carry out an impact assessment, we will explain why. Paragraph 1.19 of our consultation did however provide some examples of where legislation – such as the Network and Information Systems Regulations 2018 and the Online Safety Bill (as currently drafted) – requires us to

intervene.⁶ Paragraph 3.6(a) of our guidance also explains that we may carry out an impact assessment where we have discretion over the precise manner in which we intervene.

- 3.30 We have however decided to amend paragraph 3.6 of our guidance to clarify that whether we need to carry out an impact assessment will depend on the nature of the proposal we are putting forward, in particular (i) whether Ofcom is required to act in a particular way; and (ii) whether an individual proposal implements a policy or process on which an impact assessment has already been carried out. We have also included some additional examples of when we will not, as a general rule, carry out an impact assessment in paragraph 3.6(b).
- 3.31 In relation to LCR's suggestion that we should carry out equality impact assessments for individual decisions, we have added a new paragraph 3.19 to our guidance to similarly confirm that whether we need to carry out an equality impact assessment will depend on the nature of the proposal we are putting forward, in particular (i) whether Ofcom is required to act in a particular way; and (ii) whether an individual proposal implements a policy or process on which an equality impact assessment has already been carried out. We have confirmed that the examples of scenarios where, as a general rule, we will not carry out an impact assessment are also examples of when we will not, as a general rule, carry out an equality impact assessment.
- 3.32 In response to Better Media, where we are carrying out a consultation process and proposing not to intervene, we will explain why in the consultation and statement. In some cases we may consider it appropriate to explain a decision not to intervene outside of a consultation process.
- 3.33 It would not however be appropriate or proportionate for us to publicly explain every decision we make not to intervene including where our initial understanding and scoping of a situation resulted in us deciding not to continue with a project and embark on a consultation process. As discussed above, any decision we take is based on our statutory duties.

Scope of guidance

Stakeholder views

- 3.34 Vodafone said we should draw a clear distinction between how we will apply our impact assessment guidance in decisions we make as an economic regulator and where we are working as a content regulator.
- 3.35 Better Media said that our impact assessment processes "*must be suited to the needs of each area of regulation, technology, economic activity and social impact.*"

Ofcom response

- 3.36 The principles in our impact assessment guidance are common to all areas of our work, and we will apply them as appropriate when making decisions across the full range of our work.

⁶ For example, Regulation 3(3)(b) of Network and Information Systems Regulations 2018 require us to take various actions, including publishing guidance for the digital infrastructure subsector. Our obligations in section 36(1) of the Online Safety Bill (as currently drafted) would also require us to intervene, including by issuing various codes of practice.

We agree with Better Media that the impact assessment process must be shaped to the needs of the decision we are making, and our guidance is flexible enough to support this.

Information gathering and stakeholder engagement

Stakeholder views

Stakeholder engagement

- 3.37 BT welcomed our use of Call for Inputs and other engagement with stakeholders. It recommended that where we use surveys or other behavioural insights techniques we also engage with stakeholders on their view of the results.
- 3.38 Belong and Better Media emphasised the importance of Ofcom engaging with a range of stakeholders, including people in disadvantaged communities and civic society organisations. Better Media specifically said Ofcom is too reliant on information from economic actors within the industries we regulate. Both also suggested we establish partnerships with an independent reviewing body, and with stakeholders in local government, civil society etc. to develop or assess our impact assessments.
- 3.39 Better Media and an individual both highlighted the need for us to engage proactively with consumers, especially members of disadvantaged groups, and support them in communicating their views to us. More generally, Better Media said we should consider ourselves to have a duty to improve the media literacy, data and analytical skills of stakeholders who may have concerns but not the skills to evidence or articulate them.

Data and monitoring

- 3.40 Belong and Better Media both asked for more information about how Ofcom collects data.
- 3.41 Better Media also said we should develop monitoring systems that can track social changes in close to real time and concentrate on those least able to afford or access the media services we regulate. They would like us to share our data and research publicly and promote open data principles.

Ofcom response

Stakeholder engagement

- 3.42 We are committed to engaging with a range of stakeholders to understand their views on our proposals and welcome engagement from anyone with a view on our consultations. This includes industry stakeholders and individuals as well as consumer groups and advisory bodies that help us understand the experiences of people who may not engage with us directly.
- 3.43 Outside of our consultation processes, we look to talk to a wide range of stakeholders and obtain a broad range of views. We have a programme of market research which enables us to understand consumer behaviours and attitudes in relation to the sectors we regulate. This research is commissioned on a regular basis through annual tracking surveys as well as bespoke research to gauge consumer reactions on a specific issue or proposal. Hearing from disadvantaged and underrepresented groups and communities that may be particularly affected by a proposal is an important part of our market research and scoping and we have updated paragraph 4.8 of our guidance to reflect this.

- 3.44 We use a range of quantitative and qualitative research techniques, such as surveys and focus groups to learn more about citizens’ and consumers’ experiences and preferences. Recent examples include our [affordability of communications](#) work and our [postal review of user needs](#). Some of our research focuses specifically on persons with [impacting / limiting conditions](#),⁷ which provides us with evidence of the experiences of persons with protected characteristics and increases our organisational awareness and understanding of these consumer groups.
- 3.45 Other ways in which we reach out to different types of stakeholders include:
- a) hosting events such as conferences, for example [Small Screen: Big debate](#) and our Broadcast licence holder events;⁸
 - b) regular, ongoing engagement with charities representing a range of disadvantaged and under-represented groups, including disabled people, and organisations with expertise in social inequality; and
 - c) working with civil society organisations (such as Citizens Advice) and engaging with [advisory bodies](#) including the Communications Consumer Panel (CCP) and the Advisory Committee for Old and Disabled Persons (ACOD).⁹ The CCP and ACOD consist of independent experts from a variety of backgrounds with particular expertise in understanding potential impacts of our consumer-focused work on specific groups of persons.
- 3.46 Moreover, our Making Sense of Media programme of work aims to help improve the online skills, knowledge and understanding of UK adults and children. We do this in various ways including by carrying out research, supporting organisations working directly in communities and sign-posting available resources to help people engage in the work that we do.
- 3.47 To reflect the importance of ensuring our consultations are inclusive, we have decided to amend our guidance to emphasise this point (see paragraph 4.8) and are continually working on improving our communications and consultations. In particular, we will continue to consider how we can best engage with, and seek the views of, specific groups of persons (including under-represented and disadvantaged groups and communities) likely to be particularly affected by our proposals. As explained in our [Diversity and Inclusion Strategy dated 12 January 2021](#), teams will be encouraged to trial new, innovative approaches to hear from those who are affected, such as by direct engagement through social media. We might explore how emerging technology can play a part in our regulatory work, such as artificial intelligence. And we may include targets to look back on regulatory interventions we’ve made – completing in-depth evaluations on our policies with a specific focus on the communities affected.¹⁰
- 3.48 We will also consider whether there may be further opportunities to engage with external organisations and advisory bodies but do not consider it necessary to set up an independent panel for reviewing our impact assessments more generally. This is also likely to be a disproportionate expense for much of Ofcom’s work.

⁷ We update this dataset every other year.

⁸ For example Radio Today reported on our events in [Cardiff](#) and [Edinburgh](#).

⁹ Cross membership of the CCP and ACOD was established in 2012. This means that CCP members, in their ACOD capacity, also provide advice to Ofcom on issues relating to older and disabled people.

¹⁰ See page 18. Our Diversity and Inclusion Strategy (which includes a foreword from our CEO) also demonstrates the importance our senior leaders place on diversity and inclusion which includes ensuring our consultation process are as inclusive as possible.

3.49 We will continue to rely on information from industry stakeholders as a key source of evidence of the costs and benefits of our proposal on an industry.¹¹ We use this evidence alongside other evidence to help us understand the full impacts of our proposals.

Data and monitoring

3.50 We currently use a variety of data sources in our work, including our own market research which is published on our website, or as an annex in the specific consultation. We understand the importance of a variety of data and carefully considering the most vulnerable consumers and citizens. Examples include our [affordability of communications tracker](#); annual [Connected Nations](#) and [Media Nations](#) reports;¹² our new use of customer level mobile use data [to review the effect](#) of end of contract notifications; and our [annual report on the BBC](#).¹³ We also have an [open data policy](#), where stakeholders can find links to our public data sets as well as links to various [statistics](#) we publish.

3.51 As we sometimes rely on commercially sensitive data when making our decisions, not all our work can be shared publicly. However, we do publish redacted versions of our analysis to accompany our consultations and statements. We are always considering how we can improve our understanding of the sectors we regulate.

Assessing costs and benefits

Stakeholder views

3.52 Stakeholder responses highlighted types of costs they would like Ofcom to weigh more heavily in our decisions, and discussed our assessment of qualitative (non-quantified) benefits and costs.

3.53 BT, Vodafone and Openreach all suggested that we should place a higher importance on costs to industry in our assessments. This is because our regulation can have indirect effects on consumers due to the wider impact on individual businesses (e.g. costs associated with new systems and management time) and wider industry (e.g. impacts on competition, investment and innovation). Openreach said these indirect costs mean that cost estimates in impact assessments are often a lower-bound figure. BT said assessing potential effects on competition, investment and innovation should be included as one of our key principles.

3.54 Some stakeholders also expressed views on how we assess qualitative benefits and costs. BT and Openreach emphasised the importance of presenting clear evidence to support our assessment of the impact of qualitative benefits, including an estimate of scale or other information to allow stakeholders to comment on the proposed approach. Better Media said that we should explain why we have chosen a certain method to assess a qualitative benefit in a consultation, and have those decisions independently reviewed. It also noted that the

¹¹ We note that stakeholders are required by law to provide complete and accurate information in response to our statutory requests for information and we can take enforcement action (which may include a financial penalty) if they do not.

¹² Our Connected Nations and Media Nations research reports explore key trends in the communications and broadcast industries, including separate reports for the four UK nations. The latest reports have included research on rural broadband, micro businesses' access to broadband, and local radio.

¹³ Our annual report on the BBC includes a comprehensive interactive performance report which enables the user to look at the range of data we use as part of that assessment, including consumption data split by age as well as data on how the BBC serves the diverse communities in the UK.

current guidance does not mention an ethics framework. BT said we must be sure we are measuring incremental consumer benefits from the particular policy we are considering, and do not include other changes consumers may experience that are unrelated to the policy.

- 3.55 Better Media also raised a specific concern about potential issues with biases and assumptions in “behaviourist modelling”.

Ofcom response

- 3.56 We recognise the importance of carefully considering the potential effects of our policy proposals on costs to businesses, and this is reflected in our guidance. We have now included assessing effects on competition, investment and innovation where appropriate in our key principles in paragraph 4.32 of the guidance. We are explicit about the importance of investment and have also expanded the text on considering “business impact” in the box below paragraph 4.33 of the guidance to emphasise this.
- 3.57 We agree with BT that impact assessments should measure the incremental effects of a specific intervention, and this is stated in key principle (g) in paragraph 4.32 of the guidance where we say we will “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)”.
- 3.58 The updated guidance emphasises the importance of presenting our evidence and reasoning clearly (see also “Presentation of impact assessments” below). We have amended the guidance to clarify the importance of evidence to support our qualitative assessments, and ensuring this evidence is presented clearly in consultations and statements (see paragraphs 4.32(c) and 4.48). Our consultations and statements also state the sources of our evidence, though they may not explain methodological choices in detail for brevity.
- 3.59 We accept and take into account comments on our methodologies during the consultation process. Independent reviews of all of our methodological decisions would not be proportionate, but where relevant we do consult with the CCP and ACOD, independent academics and/or research agencies. We do not currently publish a research ethics framework but Ofcom assesses risks associated with the use of models and we always seek to ensure that our data is of the highest quality and is representative of the populations or issues being analysed.
- 3.60 In response to Better Media’s concerns, Ofcom does not use behaviourist modelling. The reference in the impact assessment guidance is to behavioural insights techniques, sometimes referred to as behavioural economics. We recognise that consumers are subject to cognitive limitations and biases and so do not always behave rationally when making decisions. As a result it is important to take account of these limitations (e.g. users cannot analyse all the information available to them and make use of heuristics) and biases (e.g. status quo biases, myopia or over-confidence bias) and take that into account when assessing the potential impact of a policy, particularly when it comes to the design of potential interventions. That can mean harnessing certain behavioural techniques (e.g. defaults or other forms of nudges or adjustments to the “choice architecture” users face) to help direct users in particular directions that are likely to be to their benefit (but at the same time leaving them free to make other choices).

Options and counterfactuals

Stakeholder views

Options

- 3.61 Vodafone asked us to both consider a wider range of options in our policy making process, especially those proposed by industry, and to give more information on the different approaches we consider in our impact assessments and consultations.

Counterfactuals

- 3.62 BT and Openreach responded to the increased focus on counterfactuals in the proposed guidance. BT suggested that counterfactuals should be considered at an earlier stage, while scoping a project, and in engagement with stakeholders. Openreach asked us to consider assessing impacts against multiple counterfactuals where there is uncertainty about the state of a market and plausible counterfactuals support different approaches.

Ofcom response

Options

- 3.63 We do consider a range of approaches at the early stages of projects, as appropriate to the particular objective of each project. Our work exploring these approaches is proportionate to the importance of the decision we must make, and will not always be published in the consultation. However, we agree that giving stakeholders sufficient information to question our proposed approaches is important, and we have added language in paragraph 4.48 of the 'Presenting our reasoning' section of our guidance to reflect that.

Counterfactuals

- 3.64 Designing the counterfactual (i.e. the baseline state of the world we use to compare the potential impacts of our intervention), is reliant on the specific nature of the intervention we are considering. We therefore believe 'Assessing a proposal' is the appropriate stage for us to give full consideration to designing a counterfactual. However, because designing the counterfactual also relies on detailed knowledge of the market we may intervene in, we have amended paragraph 4.10 of the guidance to indicate we may also consider the information needed to help us understand the current 'state of the world' earlier in the 'Understanding and Scoping' stage.
- 3.65 Designing the most plausible and appropriate counterfactual is a matter of judgement for Ofcom. Presenting multiple counterfactuals will rarely be appropriate. Where there is significant uncertainty over the state of the market and how it may develop we will instead use sensitivity testing and other techniques, and be explicit about contingencies (e.g. new technology being widely adopted or not). We have added a new paragraph 4.31 to guidance to reflect this. We may take a cautious approach to regulation when there is particularly high uncertainty because of the risk of unintended consequences. Depending on the circumstances, we may decide to monitor the situation, or make a lighter intervention and subsequently review our approach in an appropriate time period.

Assessing impacts on specific groups of people

Stakeholder views

- 3.66 The general view of respondents is that they wanted us to go further in the way we think about and assess equality impacts, in particular how we can promote equality of opportunity.
- 3.67 The CPP said that no consumer, citizen or microbusiness will have identical needs and that we should not only focus on the impact on people with individual protected characteristics but should also consider intersectionality.
- 3.68 The CCP also commented that the guidance should more explicitly refer to the potential impact on UK nations and the UK's smallest businesses. It noted: *"Micro business owners can face layers of detriment and the same challenges as individual consumers as they are consumer themselves as well as providing services to consumers. Barriers to opportunities in this sector can be compounded by other factors such as living in a remote or rural location, interactions between UK and devolved government policies and human factors such as requiring additional access or communications support."*
- 3.69 Belong, Better Media and LCR highlighted the importance of local context in our media and broadcasting decisions. LCR added that we should consider smaller units of geography when making decisions.
- 3.70 Belong also commented that the guidance should consider the way in which different communities and groups relate to each other.

Ofcom response

- 3.71 As explained in paragraph 3.12 above, we have made various changes to Sections 2, 3 and 4 of our draft guidance to give our public sector equality obligations more prominence and to make clear that we consider these duties in the early stages of a project when deciding whether and how to intervene. We have also integrated our assessment of impacts on specific groups of persons into our overall assessment of the impact of a project to address concerns it may be perceived as a secondary assessment.
- 3.72 The changes to Section 4 include a new sub-section on "Assessing impacts on specific groups of persons" where we say we will, as far as possible, consider intersectionality and how a proposal may have a cumulative or different impact on persons belonging to one or more specific group. We have also explained that we will consider direct as well as indirect impacts.
- 3.73 The specific groups of persons identified in paragraph 4.7 of the guidance now also refer to persons in UK nations as well as microbusiness.
- 3.74 We recognise the importance of local context when we are making local decisions, and that experiences can differ across the UK when we are making national decisions. We have therefore decided to add geography as an example of an area to consider when assessing impacts in Section 4 of the guidance (see the box under paragraph 4.33). Where relevant we will consider how the effects of a policy may differ between different areas of the country and we have included a reference to considering the impact on the nations, regions and communities of the UK in paragraph 4.7 of the guidance. We will consider what may be

appropriate and possible on a case-by-case basis noting that it will not be possible for us to consider the impact of a proposal on every local community in the UK.

- 3.75 In light of our duty to foster good relations between persons sharing protected characteristics and those that do not we will, where possible, consider the way in which a proposal may affect the interaction between different groups.

Presentation of impact assessments

Stakeholder views

- 3.76 Stakeholders agreed with us that clearly presenting the reasoning and evidence supporting our decisions, consultations and statements is very important.
- 3.77 Openreach and Vodafone agreed with our principle that a clear summary of the impact assessment should be included in our consultations.
- 3.78 Vodafone suggested that we should use a standardised template for our impact assessments, similar to the one used by Government departments.
- 3.79 Better Media suggested that our impact assessment models and processes should be held in the public domain.
- 3.80 Better Media also said that when we produce simplified documents, this should not mean reducing support for people from minority groups, or assume that UK citizens and consumers cannot understand the complex issues we may discuss. It recommended we run an ongoing review of how public sector organisations ensure documents are simple to understand and accessible to people with different needs.

Ofcom response

- 3.81 We agree that clearly presenting our evidence and reasoning in consultation documents is important for stakeholders to be able to engage with our impact assessments. We have decided to add a new paragraph (4.48) to our guidance to reflect its importance.
- 3.82 Due to the variety of types of decisions Ofcom makes - from interventions that affect a whole market to individual licensing decisions - we do not feel a standard template is appropriate. However, including a clearly-labelled section summarising the impact we expect an intervention to have and directing readers to more detail in the document should allow stakeholders to better understand our reasoning (see paragraph 2.20 of our guidance).
- 3.83 We publish the redacted models and data we have used in our impact assessments as annexes to the consultation where possible. Our use of commercially sensitive material means that not all of our analysis work can be published. We are committed to open data principles, as discussed in the section on information gathering and stakeholder engagement above.
- 3.84 [Our consultation principles](#) set out our commitment to making consultations easy to understand and respond to, and for each consultation we consider how best to ensure our documents are accessible. This includes providing a short overview, clear section headers, and ensuring our published documents meet the public sector bodies [accessibility standards](#). People can also request documents from us in different formats like accessible PDF, large

print, easy read, audio recording or braille.¹⁴ Where information is particularly important to specific groups we may produce our work in alternative formats, such as the British Sign Language video [explaining our emergency video relay statement](#).¹⁵ We do not intend to run an ongoing review, but welcome comments on the accessibility of our documents. To request documents in different formats, or report accessibility issues with our website people [can contact us here](#).

Reviewing our decisions and guidance

Stakeholder views

Reviews of our policies and impact assessments

- 3.85 Vodafone and BT supported our use of ex-post evaluation of policies. BT suggested we should work closely with stakeholders on these evaluations to make best use of the available data and check our methodology. Better Media called for regular, frequent reviews of our policies, and said that our impact assessments should state when the policy will be reviewed.
- 3.86 Vodafone suggested that we should follow Government's use of the Regulatory Policy Committee and have our impact assessments independently reviewed where costs exceed a certain amount.
- 3.87 Vodafone, BT and LCR also said we should review and monitor the aggregate impact of our decisions as a whole, rather than considering the effect of a decision in isolation.
- 3.88 LCR added Ofcom should carry out new impact assessments in a few areas, in particular to ensure the decision to pursue small scale digital audio broadcasting (SSDAB) exclusively is still robust in light of the new policy to periodically review impact assessments.

Reviews of our impact assessment guidance

- 3.89 Vodafone and Better Media called for a regular review of our impact assessment processes. Better Media said this should be a rolling-review working with independent research-led organisations.

Ofcom response

Reviews of our policies and impact assessments

- 3.90 We welcome support for our ongoing programme of ex-post evaluation. We will continue to develop our approach with stakeholder input. We have added a new paragraph 4.39 to our guidance to explain that "If we are proposing to review our decision in a set period we will state this in our consultation and statement documents." We have also emphasised our duties under sections 3(4) and 6(1) of the 2003 Act to promote and facilitate the development and use of effective forms of self-regulation and to keep our policies under review (see paragraph 4.42).

¹⁴ See [our accessibility statement](https://www.ofcom.org.uk/about-ofcom/website/accessibility) for our website (<https://www.ofcom.org.uk/about-ofcom/website/accessibility>)

¹⁵ We also require communications providers to provide a range of services designed to benefit disabled people: <https://www.ofcom.org.uk/phones-telecoms-and-internet/advice-for-consumers/accessibility/services-for-disabled-people>

- 3.91 It would be disproportionate to regularly review every decision we make, but what we consider to be our most significant interventions are regularly reviewed either as a statutory requirement or as we consider appropriate. Examples include our periodic telecoms market reviews, strategy consultations, and annual reports in the media and telecoms sectors. We also monitor the markets we regulate using both consumer research and industry data, and review our policy approaches where we see changing market conditions or new features.
- 3.92 As an independent regulator our impact assessments are not within the duties of the Regulatory Policy Committee. Establishing an independent committee would require significant funding which would be passed on to the companies we regulate, and potentially consumers. Clearly setting out the potential impact we expect a policy to have in the consultation does however allow any stakeholder to raise concerns about the methodology or evidence used.
- 3.93 We do not currently report on the aggregate impact of our decisions taken as a whole. We have a general interest in understanding the value of our work and we will keep our approach under review. We do however consider wider industries in our research and strategy work, in addition to the specific policy interventions we consult on. As explained in paragraph 4.32(j) of our guidance, when we are proposing an intervention we will “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”.
- 3.94 In response to LCR’s specific comment relating to SSDAB, we note that our [Statement on Licensing small-scale DAB](#) dated 7 April 2020 explained that after successive rounds of licensing we would review our licensing policy and consider whether to continue to prioritise SSDAB taking into account the level of demand (see paragraphs 3.18 and 7.24 of that statement). On 12 May 2022, we published a [review of demand in the first three licensing rounds](#) and decided to continue to prioritise SSDAB. As explained in that document, we continue to keep the matter under review.
- 3.95 We also note that our impact assessment guidance explains that (i) we will continually consider and review potential impacts throughout a project and, where appropriate, revise our impact assessment as our thinking progresses (paragraph 2.11); and (ii) where considered appropriate, we will monitor and evaluate the actual outcome of a policy in a proportionate way (paragraph 4.38).

Reviews of our impact assessment guidance

- 3.96 We will keep our guidance under review and will update it periodically as we consider appropriate, for example when our duties change. Whether we consult on an updated version of our guidance will depend on the nature of the update. For example, we may not consult on changes that only update the guidance to identify new duties or amend references to legislation (for example, if and when the Online Safety Bill becomes law). We have added a new paragraph 1.7 to reflect this in the guidance.
- 3.97 While preparing the updated guidance we have sought to learn from other organisations and established best practice, and we will continue to do so. We do not consider it necessary or appropriate to establish a continuous independent review, but welcome engagement with research-led organisations on best practice in the areas we regulate.

Ongoing compliance with public sector equality duties

Stakeholder views

- 3.98 Better Media said we should continually review how we assess potential equality impacts through the use of regular and inclusive forums with independent research-led and public policy organisations. It also suggested we should invite the Equality and Human Rights Commission (EHCR) to review our guidance and more generally how we comply with our equality duties.
- 3.99 LCR commented that Ofcom staff should undertake training on the Equality Act 2010 and that Ofcom should publish an annual equalities report.
- 3.100 Better Media and LCR also queried whether the fact we are only consulting on updating our guidance now means we have not previously been complying with our public sector equality duties in the Equality Act 2010.

Ofcom response

- 3.101 It is Ofcom's responsibility to ensure we comply with our public sector equality obligations in both the Equality Act 2010 and the Northern Ireland Act 1998. We are not required to consult with any third party such as the EHCR although we note that they provide various guidance on their website which we may refer to from time to time.
- 3.102 We take compliance with our public sector equality obligations seriously and staff are required to complete training on equality as part of mandatory learning that is generally completed annually.
- 3.103 We also provide annual updates on the work we are doing to improve the way we assess the equality implications of our work – see, for example, Section 3 of our [Diversity and Inclusion Strategy Progress Update 2022/22](#). We are considering how we may want to provide further reporting on equality impact assessments. Other links to our diversity and inclusion work are available on our [website](#).
- 3.104 We have been fully aware of our obligations in the Equality Act 2010 since they came into force, and have been taking them properly into account in projects since then.

4. Summary of the changes we have made

- 4.1 Based on the responses to the consultation and our decisions set out in Section 3, we have made several changes to our guidance. The key changes are summarised below.
- 4.2 **Raising the prominence of our discussion of our equality duties:** We have made clearer reference to our public sector equality duties earlier in the guidance. We have more explicitly recognised our duty to promote equality of opportunity, and integrated discussion of our public sector equality duties into the main body of the guidance rather than in a separate section dedicated to ‘other statutory duties’. We have also identified a wider range of specific groups of persons (including persons with protected characteristics; vulnerable persons including children; people of different socio-economic groups; people in different nations, regions and communities; and people in urban and rural areas) in our discussion of relevant sub-groups to consider as part of an impact assessment.
- 4.3 **Emphasising our commitment to inclusive consultations:** We have placed greater emphasis on the variety of experiences our stakeholders may have both in how we consider potential impacts and in presenting our thinking. We have made new references to considering different geographies where appropriate (including the nations, regions and communities across the UK), and to using market research to understand impacts on particular persons or communities most likely to be affected by our decisions.
- 4.4 **Emphasising impacts on investment, competition and innovation:** We have amended our guidance to make our obligations under the 2003 Act on investment, competition and innovation clearer, and to draw these issues out more explicitly when discussing example areas to consider when conducting an impact assessment. We have added considering investment, competition and innovation, where appropriate, as one of the key principles in our assessments. We have also clarified our legal obligation to review our regulation to ensure it is not unnecessarily burdensome.
- 4.5 **When we will not carry out an impact assessment / equality impact assessment:** We have clarified that whether we need to carry out an impact assessment will depend on the nature of the proposal we are putting forward, in particular (i) whether Ofcom is required to act in a particular way; and (ii) whether an individual proposal implements a policy or process on which an impact assessment has already been carried out. We have included some additional examples of when we will not, as a general rule, carry out an impact assessment and clarified that where we do not carry out an impact assessment as part of a consultation process, we will explain why. We have similarly explained when we will generally carry out an equality impact assessment.
- 4.6 **Developing the counterfactual:** We have included new text to explain that work to understand the current state of the world is important at the ‘understanding and scoping’ stage to help develop a later counterfactual, and that we may use sensitivity analysis to test the robustness of our assumptions where the counterfactual is uncertain.
- 4.7 **Presenting our reasoning:** We have emphasised the importance of clearly presenting our evidence and reasoning, including approaches we decided not to take, and evidence for qualitative impacts.

A1 Assessment of impact of the changes

Impact assessment

- A1.1 Section 7 of the 2003 Act requires us to carry out and consult on our 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. We included this assessment in section 4 of our consultation published on 17 March 2023.
- A1.2 Taking into account responses to our consultation, we have decided to update our impact assessment guidance, which explains how we consider the costs, benefits and risks of the important decisions we make. We have a legal duty to carry out impact assessments, and they are also a useful tool for making and explaining policy.
- A1.3 Our duties and assessment best practice have changed sufficiently that we decided to create a new document rather than simply editing our previous document. However, the main principles of our work are set out in legislation and explained in other Ofcom documents such as our Plan of Work and Annual Report. Our updated guidance places greater emphasis on some areas of our work, including our equality duties and how an impact assessment will be presented in consultation, but does not introduce fundamentally new principles.
- A1.4 The main benefits we expect the guidance to have are:
- 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.
- A1.5 The potential costs are increased costs for Ofcom while developing policy, and for stakeholders who engage with us. However, these are unlikely to be large, and will be proportionate to the importance of the decision we are making.
- A1.6 We expect that changing best practices and legal duties are the main risk to the value of our updated guidance. It is designed to be flexible and support the variety of needs we have across our work. We will review the use of the guidance, and any changes that may be needed, as appropriate.

Equality impact assessment

- A1.7 We have also considered whether our updated guidance 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.

- A1.8 We do not consider that any of the changes to our impact assessment guidance will in themselves have any adverse equality impacts (whether in Northern Ireland or the rest of the UK). To the extent we are ensuring our guidance reflects our current equality obligations and how we intend to comply with them, our updated guidance should have positive equality impacts. In particular, it should provide additional transparency and 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 help our consultation processes be more inclusive and improve our decision-making processes.
- A1.9 We also consider the changes we have made from the version of the guidance we consulted on are likely to have positive equality impacts, in particular by:
- a) giving our public sector equality duties more prominence by referencing them earlier on in the guidance and integrating references to those duties throughout the guidance rather than in a separate section at the end;
 - b) clarifying that we will consider our public sector equality obligations in the early stages of a project when deciding whether and how to intervene; and
 - c) more explicitly recognising our duty to promote equality of opportunity.

Welsh language assessment

- A1.10 Our updated guidance reflects our Welsh language obligations in relation to policy making. Our approach to considering the impacts of our policies in Wales on opportunities to use Welsh and treating Welsh no less favourably is set out in standards 84 – 89 of Ofcom’s compliance notice and is not altered by this guidance.

The overview section in this document is a simplified high-level summary only. The decisions we have taken and our reasoning are set out in the full document.