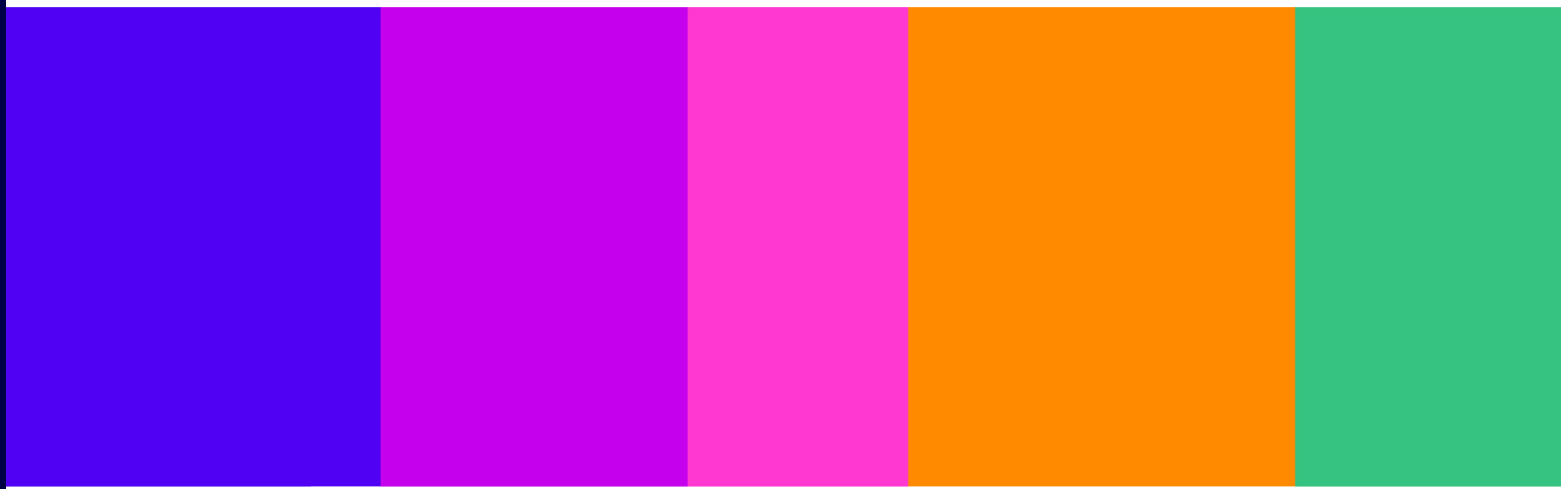


Impact assessment guidance

Published 19 July 2023



Contents

Section

1. Overview	3
2. What is an impact assessment?	4
3. When will Ofcom do an impact assessment?	8
4. Developing the impact assessment	13

1. Overview

- 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 legal obligations as well as best practice and experience.
- 1.7 We will keep our guidance under review and will update it periodically as considered appropriate, for example when our duties change. Whether we consult on an updated version of this 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.

2. What is an impact assessment?

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

Introduction

- 2.1 At Ofcom we use our annual plan of work to set out what we expect to achieve over the year taking into account our duties. To achieve our objectives, we make a wide range of policy decisions that fulfil our duties. These duties include:
- a) our principal duty to further the interests of citizens and consumers, where appropriate by promoting competition;¹
 - b) our relevant sector-specific duties;² and
 - c) duties to consider impacts on specific groups of persons, including the need to eliminate discrimination against persons sharing protected characteristics and promote equality of opportunity.³
- 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 licences.
- 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 potential impacts, including:
- a) general impacts on citizens and consumers;
 - b) impacts on the industries we regulate;
 - c) impacts on specific groups of persons, including persons sharing protected characteristics identified in equality legislation.⁴
- 2.4 We consider the potential impact of our decisions 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 impacts, or use a mix of both.
- 2.5 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

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

² We give examples of these sector-specific duties in footnote 11 below.

³ We discuss our duties to consider impacts on specific groups of persons in paragraphs 3.9 – 3.23 below.

⁴ We identify specific groups of persons that may be impacted by our decisions in paragraph 4.7 below.

we do not think is working well and will consider intervening to achieve our duties and objectives.

- 2.6 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.
- 2.7 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.

Role of impact assessments in our policy decisions

- 2.8 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;⁵
 - d) they help us ensure our decision-making process is transparent;⁶ and
 - e) they help us comply with our statutory duties, including in relation to equality.
- 2.9 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.
- 2.10 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,⁷ and a variety of different impacts, from consumer harm to competition and investment concerns.
- 2.11 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.
- 2.12 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

⁵ Our principal duty is set out in section 3(1) of the Communications Act. Section 3(3)(a) of the Communications Act states that *“our regulatory activities should be ... proportionate, consistent and targeted only at cases in which action is needed”*.

⁶ Section 3(3)(a) of the Communications Act states that our *“regulatory activities should be transparent”*.

⁷ We identify different types of stakeholders that may be affected by a proposal in paragraph 4.7 below.

can respond. By doing this we ensure that the impact assessment can be scrutinised and adjusted as appropriate.

- 2.13 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 consider to be most closely aligned with our duties (including our principal duty to further the interests of citizens and consumers, relevant sector-specific duties and our duties to consider impacts on specific groups of persons).
- 2.14 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.
- 2.15 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

- 2.16 As explained above, we will consider and review the potential impacts of a proposed 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.
- 2.17 Our principal duty is to further the interests of citizens and consumers, where appropriate by promoting competition.⁸ In doing so, we must have regard to relevant matters identified in the Communications Act.⁹ These include considering the desirability of promoting competition and encouraging investment and innovation in relevant markets, where relevant.¹⁰ To fulfil our duties, an impact assessment will generally:
- specify the outcome we want to achieve, in some cases balancing multiple objectives;
 - identify the general impacts of a proposal on citizens and consumers as well as impacts on the industries we regulate and any impacts on specific groups of persons;
 - identify any impacts the proposal could have on competition or the wider market;
 - identify and, where possible and proportionate, quantify the costs and benefits we expect the proposal to have;
 - assess the key potential risks of the proposal; and

⁸ See section 3(1) of the Communications Act.

⁹ 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. The Online Safety Bill, as currently drafted, will also insert a new sub-section 4A into section 3 of the Communications Act and require us to have regard to the various matters identified in that sub-section, as appear to us to be relevant in the circumstances.

¹⁰ Sections 3(4)(b) and (d) of the Communications Act.

- f) where appropriate, consider how the success of the policy might be monitored or evaluated.
- 2.18 When deciding on the appropriate content of an impact assessment, we will also take into account any sector-specific duties we consider to be relevant¹¹ and any statutory obligations which set specific requirements relating to when or how we must conduct impact assessments (see paragraph 3.8 below). Further information on the content of an impact assessment is in section 4 below.
- 2.19 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 may be defined by legislation in which case the impact assessment would be integrated into that framework.¹² 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.
- 2.20 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.

¹¹ 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; (f) our duty to ensure compliance with security duties in section 105M of the Communications Act; and (g) our duties in Article 45(2) of the BBC Charter.

¹² We identify examples of where legislation sets out specific requirements for when and how we must conduct impact assessments in paragraph 3.8 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 relating to 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 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. We provide examples below of when, as a general rule, an impact assessment may be unnecessary.

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. While whether a proposal is “important” within the meaning of the Communications Act may be open to debate, we recognise that impact assessments form part of good policy making and therefore expect to carry them out in relation to a large majority of our proposals (including new or amended policies and processes).
- 3.6 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. Examples of scenarios where, as a general rule, an impact assessment will not be required include:

- a) when legislation requires us to intervene in a particular way¹³ (although we may carry out an impact assessment where we have discretion over the precise manner in which we intervene);
- b) when we are considering individual applications which we are required to determine either (i) in accordance with statutory criteria; ¹⁴ or (ii) having regard to an instrument made under legislation where that instrument limits the matters to be taken into account in determining the application; ¹⁵
- c) 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; ¹⁶
- d) 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; ¹⁷ and
- e) when publishing guidance relating to how we will undertake investigations. Such guidance will generally just flesh out procedural matters relating to how we will fulfil obligations created by legislation which came into force following the carrying out of an impact assessment.

3.7 Where we do not carry out an impact assessment as part of a consultation process, we will explain why.

Sector-specific obligations

3.8 As noted in paragraph 2.18 above, we will take into account any sector-specific duties we consider to be relevant when deciding on the appropriate content of an impact assessment. We may also 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 and require us to consider the likely impact of our interventions relating to our online safety functions on small- and micro-businesses specifically; ¹⁸
- 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

¹³ We would also expect an impact assessment to have been carried out prior to that legislation being introduced.

¹⁴ For example, if a person applies for a television licensable content service (TLCS) licence, Ofcom must grant the licence unless any of the criteria set out in section 235(3) of the Communications Act are met.

¹⁵ For example, if a person applies to Ofcom for the allocation of telephone numbers, Condition B1.11 of the General Conditions of Entitlement (set in accordance with our power under section 45 of the Communications Act) requires Ofcom to determine the application taking into account the provisions in the National Telephone Numbering Plan (published under section 56 of the Communications Act).

¹⁶ An example would be where we are taking enforcement action under section 96A of the Communications Act where we have reasonable grounds for believing that there has been or is a contravention of a condition identified in section 45 of the Communications Act.

¹⁷ An example would be where we are resolving a dispute under section 188 of the Communications Act relating to the provision of network access.

¹⁸ We expect the Online Safety Bill to become law later in 2023 and references to the Bill should be read as references to the Online Safety Act if and when it becomes law. We may also subsequently update this guidance without consultation to reflect the fact the Bill has become law.

- Communications Code to a provider of electronic communications networks or infrastructure systems;
- 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.

Obligations to consider impacts on specific groups of persons

- 3.9 We also have statutory obligations which require us to consider the impact on specific groups of persons when formulating policy proposals. These are:
- a) our public sector equality duties 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;¹⁹ and
 - c) where the Welsh Language Standards are engaged, potential impacts on opportunities to use Welsh and treating Welsh no less favourably than English.

Public sector equality duties

- 3.10 Section 149(1) 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.
- 3.11 Section 149(1) 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.
- 3.12 Section 149(3) of the Equality Act explains that having due regard to the need to advance equality of opportunity involves considering the need to:
- a) remove or minimise disadvantages suffered by people due to their protected characteristics;
 - b) meet the specific needs of people with protected characteristics; and
 - c) encourage people with protected characteristics to participate in public life or in other activities where their participation is disproportionately low.
- 3.13 Section 149(5) of the Equality Act explains that having due regard to the need to foster good relations involves considering the need to tackle prejudice and promote understanding between people who share a protected characteristic and those that do not.
- 3.14 Section 75(1) of the NI Act imposes a separate duty on Ofcom, when carrying out its functions relating to Northern Ireland, to have due regard to the need to promote equality

¹⁹ As noted above, the Online Safety Bill, as currently drafted, will insert new sub-sections 4A and 4B into section 7 of the Communications Act and require us to consider the likely impact of our interventions relating to our online safety functions on small- and micro-businesses specifically.

of opportunity between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation; men and women generally; persons with a disability and persons without; and persons with dependents and persons without.

- 3.15 Section 75(2) of the NI Act also requires Ofcom to have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.
- 3.16 Ofcom's [Revised Northern Ireland Equality Scheme](#) explains how we comply with our statutory duties under the NI Act.²⁰

Section 3(4) of the Communications Act

- 3.17 In addition to our public sector equality duties, section 3(4) of the Communications Act requires us to have regard to the needs and interests of specific groups of persons when performing our duties, as appear to us to be relevant in the circumstances. These include:
- 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 persons with disabilities, older persons 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.

Equality impact assessments

- 3.18 We explain how we assess the impact of proposals on specific groups of persons in paragraphs 4.34 – 4.37 below.
- 3.19 To help us comply with our legal obligations, we will generally carry out equality impact assessments in relation to new or amended policies and processes. 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. The examples of scenarios in paragraph 3.6 above where, as a general rule, we will not carry out an impact assessment are also examples of where, as a general rule, we will not carry out an equality impact assessment.

Impacts on Welsh Language

- 3.20 The Welsh language has official status in Wales.²¹ 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.
- 3.21 The standards issued to Ofcom are listed in Ofcom's compliance notice effective from 25 January 2017²² and cover a wide range of matters including our policy proposals.²³

²⁰ <https://www.ofcom.org.uk/about-ofcom/how-ofcom-is-run/nations-and-regions/northern-ireland>

²¹ Section 1(1), Welsh Language (Wales) Measure 2011.

²² [Hysbysiad cydymffurfio](#) (in Welsh) and [compliance notice](#) (in English).

²³ 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](#).

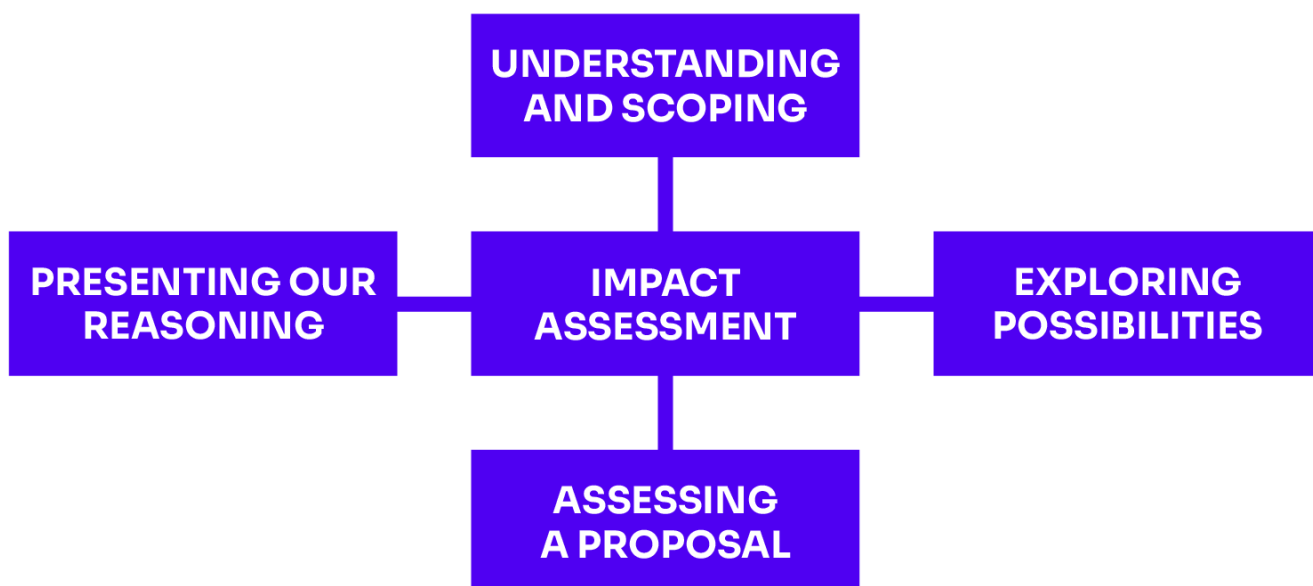
- 3.22 We consider whether the Welsh Language Standards are engaged when formulating policy proposals which are relevant to Wales (including proposals which are not targeted at Wales specifically but are of interest across the UK).
- 3.23 Where the Welsh Language Standards are engaged, we consider the 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. We also consider how a proposal 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.

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 analytical 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:
 - a) understanding more about the situation and the scope of the project;
 - b) exploring possibilities and formalising our thinking;
 - c) assessing a proposal; and
 - d) presenting our reasoning and evidence.

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



Understanding and scoping

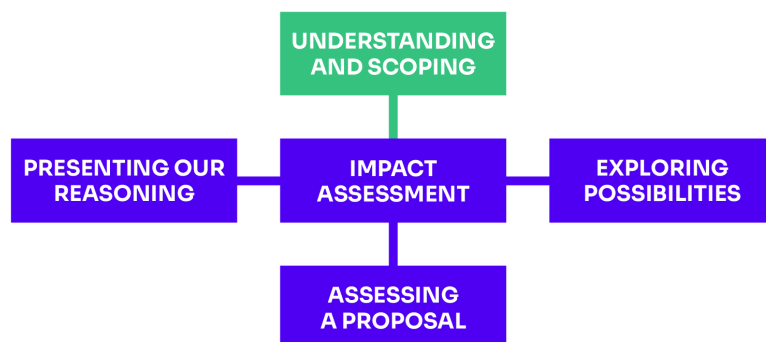
4.5 In the first stage of a project we seek to understand the situation and why we are thinking about intervening. In particular, we will consider what legal duties may be engaged, the type of stakeholders that may be affected and the type of information we may need to better understand the situation.

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 significantly differ in scale and scope. In some cases, legislation may require us to intervene, for example requiring us to carry out a periodic review of a market or implement new legislation. In other cases, we have discretion over whether and 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 and whether they are likely to be affected differently to the general population. This may include identifying particular sub-groups, such as:

- a) different types of industry stakeholders including people running different types and size of business, in particular small and micro businesses;
- b) different types of consumers of all ages;
- c) people with a disability or long-term health condition including people considered disabled by barriers in society²⁴ or disabled by a particular health condition;²⁵
- d) people sharing one or more of the other protected characteristics identified in equality legislation;
- e) vulnerable persons including children;
- f) people of different socio-economic groups;
- g) people in different nations, regions and communities; and
- h) people in urban and rural areas.

4.8 We are committed to ensuring our consultation processes are as open and inclusive as possible so that we obtain a broad range of views and different groups of persons have the opportunity to share their thoughts on any changes we are proposing before we make them. To achieve this, we will consider how best to make people likely to be particularly affected by a proposal (including under-represented or disadvantaged groups and communities) aware of a potential intervention and encourage them to engage in our consultation process.²⁶ In doing so, we may consider it appropriate to discuss a proposal with relevant internal and external representative bodies and communities.²⁷ We may also undertake



²⁴ For example, physically inaccessible buildings, stigma about health conditions or negative attitudes about neurodivergent people.

²⁵ For example, lived experience of mental health conditions, chronic pain conditions, neurodivergence or learning difficulties.

²⁶ To stay up-to-date with our work, we also encourage people to sign up to our [email updates](#).

²⁷ Examples of internal bodies are our Nations Advisory Committees, Advisory Committee for Older and Disabled People and the Communications Consumer Panel. Examples of external bodies include charities and Citizens Advice.

market research to get the views of specific groups of persons or communities that we think may be particularly affected.

- 4.9 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.
- 4.10 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. A good understanding of the current 'state of the world' is vital for designing the counterfactual we use to measure impact later.
- 4.11 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.
- 4.12 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.²⁸

- 4.13 As indicated above, we expect to carry out impact assessments in relation to a 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

²⁸ [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)

Exploring possibilities

4.14 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.

4.15 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. We will also consider:

- a) Whether and how we may be able to use a project to eliminate discrimination or advance or promote equality of opportunity or good relations.
- b) Where the Welsh Language Standards are engaged, how a proposal could be formulated so as to have, or increase, a positive impact, or not to have adverse effects or to decrease any adverse effects.

4.16 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 our duties to consider impacts on specific groups of persons).

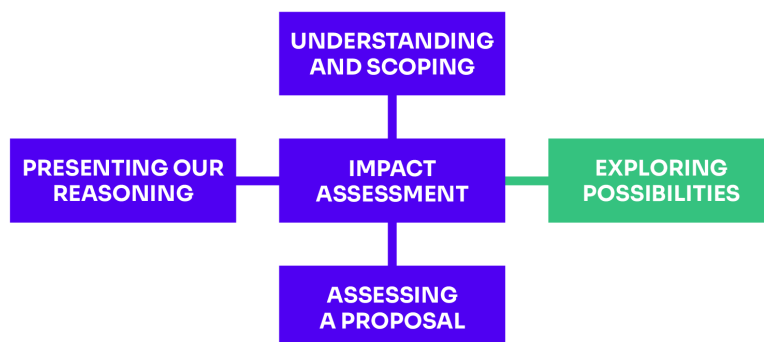
4.17 What may be the most effective solution to satisfy one duty is not necessarily the most effective solution to satisfy another. In these cases we will carry out a balancing exercise and make a decision on our overall objectives taking into account these competing duties.

4.18 We will only intervene where we are satisfied that our intervention will be effective in achieving our objectives, and will do so in the least intrusive way. This may still mean 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.

4.19 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 the approach that best meets our objectives. In other cases, our approach is determined by legislation. The appropriate approaches to explore will always depend on the context of the decision and our objectives.

4.20 We should also be able to explain how an approach will lead to desired outcomes. A ‘theory of change’ may be a useful tool for this.²⁹ 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.

4.21 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



²⁹ See section 2.2.1. of [the Magenta Book](https://www.gov.uk/government/publications/the-magenta-book) (<https://www.gov.uk/government/publications/the-magenta-book>)

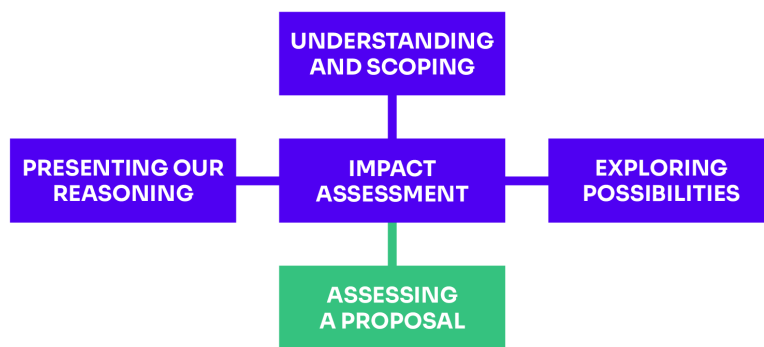
help us decide on the best approach to meet our objectives. We may also return to this element if the situation changes or new information emerges.

- 4.22 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

- 4.23 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.



- 4.24 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; (iii) assessing impacts on specific groups of persons; and (iv) how we expect to monitor and evaluate a particular approach.
- 4.25 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. However we assess the impact, we will focus on using a range of evidence and what we consider to be the most appropriate techniques.
- 4.26 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 minor change³⁰ or a single stakeholder,³¹ we may consider that a simpler impact assessment is sufficient.
- 4.27 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.

³⁰ 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.

³¹ 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.

Identifying a counterfactual

- 4.28 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.
- 4.29 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.
- 4.30 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.
- 4.31 Where there is significant uncertainty around a counterfactual we may use sensitivity testing or other techniques to test the robustness of our assessment to different assumptions about the world.

Key principles

- 4.32 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, 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 we consider to be relatively minor;
 - 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 evidence of 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 sub-groups of industry stakeholders and specific groups of persons;
 - 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) where possible, identify and account for the cost of complying with regulation e.g. costs associated with providing regulatory information or adopting new technical requirements;
- i) where appropriate, consider the likely impacts on competition, investment and innovation;
- j) 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
have regard to the key risks and potential side effects 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.

4.33 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](#)³² and [Magenta](#)³³ books, the Regulatory Policy Committee’s [review of impact assessments](#),³⁴ and the Competition and Markets Authority’s [Competition impact assessment guidelines](#).³⁵

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.
- **Business impact:** where relevant, we will ensure we understand the business models operating in a market and consider the direct and, where possible, indirect effects of our proposed policy on participants throughout the industry. We will consider how the policy may affect the ability and incentives of firms to make efficient investments and may also consider how it may affect competition, innovation and economic growth.
- **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.³⁶
- **Geography:** where relevant, we will consider how the effects of a policy may differ between different areas of the country. When making decisions about a local area we will consider the appropriate data to use in our assessment.

³² <https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government/the-green-book-2020>

³³ <https://www.gov.uk/government/publications/the-magenta-book>

³⁴ <https://www.gov.uk/government/publications/impact-assessments-room-for-improvement>

³⁵ <https://www.gov.uk/government/publications/competition-impact-assessment-guidelines-for-policymakers>

³⁶ [How people are harmed online: testing a model from a user's perspective](#)

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

Assessing impacts on specific groups of persons

- 4.34 When assessing how a proposal may impact specific groups of persons, we will typically:
- a) Consider how a proposal may impact on equality of opportunity or good relations.
 - b) Consider potential impacts on persons sharing one or more protected characteristics.
 - c) More broadly consider potential impacts on the specific groups of persons identified in paragraph 4.7 above.
 - d) Consider whether and how a proposal may discriminate against or adversely affect specific groups of persons or whether it is likely to have a positive impact on such persons. In doing so, we will, as far as possible, consider:
 - i) Potential direct and indirect impacts. For example, we will consider how proposals relating to pricing or online literacy could have a particular impact on specific groups of persons.
 - ii) Intersectionality and how a proposal may have a cumulative or different impact on persons belonging to one or more specific group.
- 4.35 We will consider and review potential impacts throughout a project and, where appropriate, revise our assessment as our thinking progresses.
- 4.36 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 we consider it to be feasible, appropriate and proportionate to do so.
- 4.37 As explained in paragraph 4.15 above, where the Welsh Language Standards are engaged, we will consider how a specific proposal could be formulated so as to have, or increase, a positive impact, or not to have adverse effects or to decrease any adverse effects.

Monitoring and evaluation

- 4.38 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.
- 4.39 If we are proposing to review our decision at a particular point in time, we will state this in our consultation and statement documents.
- 4.40 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.
- 4.41 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.
- 4.42 Additionally, and where relevant, we have duties in the Communications Act to (i) have regard to the desirability of promoting and facilitating the development and use of effective

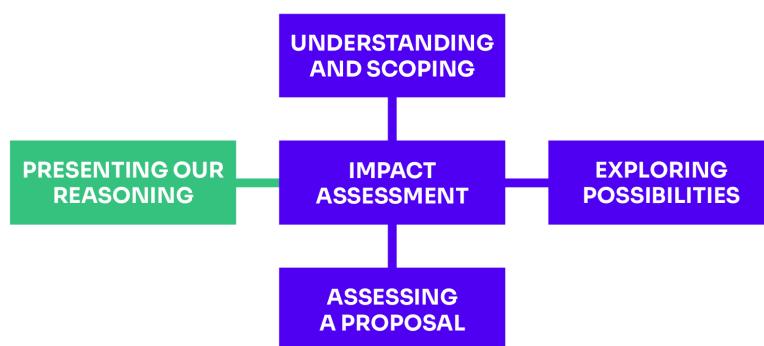
forms of self-regulation (section 3(4)); and (ii) keep our work under review to ensure we are not introducing or maintaining unnecessarily burdensome regulations (section 6(1)).

- 4.43 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 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

- 4.44 When we are satisfied that we have sufficiently assessed the impact of 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.



- 4.45 The form in which we present our impact assessment will differ depending on the situation, as discussed in section 2 above.
- 4.46 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.
- 4.47 Any assessment will also summarise our initial conclusions in relation to the potential impacts of our proposal on specific groups of persons. The form and detail of this assessment will depend on the nature of the policy proposal and what we consider to be proportionate in the circumstances. For example, where a proposal may potentially adversely impact a number of specific groups of persons, our assessment is likely to be more detailed. But where we consider a proposal is only likely to have positive impacts on specific groups of persons, or impact them in the same way as the general population, this assessment is likely to be much shorter.
- 4.48 However the impact assessment is presented, it is important that our evidence and reasoning is clearly set out. This is particularly important when discussing approaches we have decided not to pursue, any assumptions we have made, and the size and potential impact of non-quantified costs and benefits.

- 4.49 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.³⁷ 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

³⁷ See paragraphs 4.13-4.18 (<https://www.ofcom.org.uk/consultations-and-statements/category-2/modification-national-telephone-numbering>)