

Reference: 1620467

Information Rights
Information.requests@ofcom.org.uk

13 June 2023

Freedom of Information: Right to know request

Thank you for your request for information about the impact of Brexit on the UK regulatory landscape.

We received this request on 16 May 2023 and have considered it under the Freedom of Information Act 2000 (“the Act”).

Ofcom is the independent communications regulator for television, radio, video on demand, fixed line and mobile telecoms, post and the airwaves over which wireless devices operate. Before we make changes to regulations within our remit, we are required to carry out public consultations in the vast majority of cases. Our consultations (and subsequent decisions) are published on the Ofcom website.¹

Your request and our response

You asked: *‘We are interested in finding out about the impact of Brexit on the UK regulatory landscape, including what regulations or rules that your regulator has amended or repealed or considered repealing as a result of Brexit. Under the Freedom of Information Act 2000 (FOIA), I would like to know the following information.*

Please could you tell me:

1. Has your regulatory body been contacted by the Government with a request for suggestions for post-Brexit regulatory changes?

Yes.

2. If you have responded to request how many regulatory changes have you proposed.

As you are likely aware, the Government is currently considering which EU laws and regulations to retain. To this end the Retained EU Law (Revocation and Reform) Bill was introduced into Parliament

¹ <https://www.ofcom.org.uk/consultations-and-statements>

in September 2022 and the current version of the Bill is available on the Parliament website.² In particular, the Government recently published further amendments to the Bill, one of which is to identify in a Schedule all subordinate legislation and retained direct EU legislation to be revoked at the end of 2023.

Details of changes that Ofcom has made to regulations within our remit as a result of Brexit is set out in response to questions 4 and 5 below.

To the extent we hold information in response to this question which is not covered by the above, we consider it is exempt from disclosure under section 36 of the FOI Act. Section 36(2)(b)(ii) and (c) of the FOI Act provide that information held by a public authority is exempt from disclosure if, in the reasonable opinion of a qualified person, disclosure of the information:

- would, or would be likely to, inhibit the free and frank exchange of views for the purposes of deliberation; and
- would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

Section 36 is a qualified exemption, which means that Ofcom is required to consider whether or not the public interest in disclosing the information you have requested outweighs the public interest in withholding the information. In this case, we consider that the public interest favours withholding the information for the reasons set out in **Annex B** to this letter. In **Annex A** of this letter, the qualified person, the Corporation Secretary for Ofcom, has confirmed that the exemption applies.

Please note that other exemptions may apply to this information.

3. What are those regulatory changes that you have suggested.

We consider this information is exempt from disclosure under section 36 of the FOI Act, as under question 2.

4. The number of regulations that relate to your regulatory body which have already been amended or repealed due to Brexit.

5. The titles of these regulations that relate to your regulatory body which have been amended or repealed as a result of Brexit.

In response to questions 4 and 5, the Government has made a number of changes to UK law/regulations via secondary legislation under the EU Withdrawal Act 2018. The relevant statutory instruments (and explanatory memoranda) are available on legislation.gov.uk.

Ofcom has made changes to the following regulations within our remit as a result of Brexit:

² <https://bills.parliament.uk/bills/3340>

Broadcasting

- broadcast licence conditions;³
- Ofcom Broadcasting Code and the Code on the Scheduling of Television Advertising;⁴

Telecoms/General Conditions

- numbering;⁵
- General Condition A1.2 (general network access and interconnection obligations);⁶

Spectrum

- Wireless Telegraphy (Automotive Short Range Radar) (Exemption) Regulations;⁷ and
- Spectrum licences.⁸

6. *The number of regulations that relate to your regulatory body which are in anyway under review as a result of Brexit.*

7. *The titles of these regulations which are under review as a result of Brexit.*

In response to questions 6 and 7, we consider this information is exempt from disclosure under section 36 and/or section 22 of the FOI Act. Section 22 relates to information intended for future publication. As explained above, Ofcom carries out public consultations before we make changes to regulations within our remit.

I hope this information is helpful. If you have any further queries, then please send them to information.requests@ofcom.org.uk quoting the reference number above in any future communications.

Yours sincerely,

Information requests

³ https://www.ofcom.org.uk/_data/assets/pdf_file/0020/207821/brexit-avms-statement.pdf

⁴ https://www.ofcom.org.uk/_data/assets/pdf_file/0014/210173/statement-broadcasting-codes-avmsd.pdf

⁵ <https://www.ofcom.org.uk/consultations-and-statements/category-2/proposed-changes-general-conditions-numbering-plan>; https://www.ofcom.org.uk/_data/assets/pdf_file/0020/209504/eccc-statement-dec-20.pdf

⁶ https://www.ofcom.org.uk/_data/assets/pdf_file/0034/249586/GC-statement.pdf

⁷ https://www.ofcom.org.uk/_data/assets/pdf_file/0029/209747/srr-statement.pdf

⁸ See, for example, https://www.ofcom.org.uk/_data/assets/pdf_file/0024/227292/statement-800-mhz-variation.pdf (page 28) and https://www.ofcom.org.uk/_data/assets/pdf_file/0022/230647/general-notice-aircraft-licences.pdf (paragraph 2.9).

Annex A

Section 36 exemption

The information we hold that falls within the scope of your request is being withheld as it falls under the exemption in section 36 of the Freedom of Information Act 2000 (the Act). I am a "qualified person" as referred to section 36(2) of the Act and duly authorised by a Minister of the Crown for the purposes of that section. The limbs of section 36 that apply here are:

- (2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act—
 - (b) would, or would be likely to, inhibit—
 - (i) the free and frank provision of advice, or
 - (ii) the free and frank exchange of views for the purposes of deliberation, or
 - (c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

In my reasonable opinion, section 36 of the Act is engaged.

I have set out in Annex B the exemption in full, as well as the factors considered when deciding where the public interest lay in relation to the information concerned.

If you have any queries about his letter, please contact information.requests@ofcom.org.uk.

Date: 13 June 2023

Corporation Secretary

Annex B

Section 36: Prejudice to effective conduct of public affairs

Section 36 exempts information whose disclosure would, or would be likely to, have any of the following effects:

- inhibit the free and frank provision of advice,
- inhibit the free and frank exchange of views for the purposes of deliberation, or
- otherwise prejudice the effective conduct of public affairs.

Key points:

- Section 36 can only be used if, in the reasonable view of a “qualified person”, disclosure of the requested information would have one of the specified effects.
- In this case, it is considered that disclosure would:
 - inhibit the free and frank exchange of views for the purposes of deliberation, and
 - otherwise prejudice the effective conduct of public affairs.
- The application of section 36 is subject to a public interest balancing test.

Factors for disclosure

- Ofcom recognises that information regarding changes (and potential changes) made to regulations as a result of Brexit is a matter of interest to the wider public. Releasing information relating to this matter could be said to allow for discussion in a public forum.
- The general desirability that Ofcom’s activities as the UK’s communications regulator are transparent.

Factors for withholding

- Ofcom, as a sector regulator, depends heavily on its on-going relationship with stakeholders. Stakeholders would be less willing to come forward and discuss necessary policy issues with Ofcom employees, and would be less willing to be open in any discussions, if they knew that what they said to us would be made public.
- In order for colleagues in Ofcom to be able to review, analyse and in some cases carry out proposed changes as a result of Brexit, as well as engage with Government on retained EU law matters which are ongoing, they need to be able to discuss matters relating to particular changes to enable appropriate decisions to be made. To release this information to the public would potentially impair Ofcom’s ability to engage with Government and other stakeholders freely and this would have a knock-on effect on its ability to formulate and make decisions in the best interests of the public in the future. Disclosure of this information while discussions are ongoing would also create uncertainty for Ofcom’s stakeholders and in particular, our regulated entities.
- In addition, to regulate effectively, Ofcom needs to be able to think through all the implications of particular policy options

	<p>and undertake without prejudice rigorous and candid assessments.</p> <ul style="list-style-type: none"> • The threat of disclosure of these internal documents to the public would substantively inhibit the team’s ability to perform their roles effectively in future.
<p>Reasons why the public interest favours withholding information</p>	
<ul style="list-style-type: none"> • We consider that, on balance, the public interest in withholding disclosure of this information outweighs the public interest in disclosure. • Ofcom colleagues need to be able to engage externally (where needed) when carrying out work relating to the implications of Brexit in order to make appropriate decisions. Disclosure to the public would likely affect Ofcom’s relationships with stakeholders and this may result in less thorough policy assessments. In particular, Ofcom needs to be able to think through all the implications of particular policy options and undertake without prejudice rigorous and candid assessments. 	

If you are unhappy with the response you have received in relation to your request for information and/or consider that your request was refused without a reason valid under the law you may ask for an internal review. If you ask us for an internal review of our decision, it will be subject to an independent review within Ofcom.

The following outcomes are possible:

- the original decision is upheld; or
- the original decision is reversed or modified.

Timing

If you wish to exercise your right to an internal review **you should contact us within two months of the date of this letter**. There is no statutory deadline for responding to internal reviews and it will depend upon the complexity of the case. However, we aim to conclude all such reviews within 20 working days, and up to 40 working days in exceptional cases. We will keep you informed of the progress of any such review. If you wish to request an internal review, you should contact information.requests@ofcom.org.uk.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. Further information about this, and the internal review process can be found on the Information Commissioner's Office [here](#). Alternatively, the Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF