



HM TREASURY



HM Revenue  
& Customs

**BIS**

Department for Business  
Innovation & Skills

# Implementing a landline duty: consultation response

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**March** 2010





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# Foreword

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The Digital Britain White Paper published in June 2009 outlined the Government's approach to maximising the benefits for the UK of dramatic developments in digital technology. One of the key policies was a new landline duty to help fund the roll-out of Next Generation Access – super-fast broadband – to 90 per cent of the country by 2017.

Following the Pre-Budget Report in December 2009, Government consulted on the draft legislation and impacts of the new duty. This has allowed opportunity for industry to help ensure that the new duty can be delivered and will pave the way for investment in important digital infrastructure. Without this support, the UK risks falling behind other countries who are investing in Next Generation Access.

Budget 2010 confirms the Government's intention to make a significant investment in infrastructure to ensure strong, sustainable economic growth.

A handwritten signature in black ink, reading 'Stephen Timms'.

Rt. Hon. Stephen Timms MP

Financial Secretary to HM Treasury

March 2010





# 1

## Introduction

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**1.1** HM Treasury (HMT), HM Revenue & Customs (HMRC) and the Department for Business, Innovation and Skills (BIS) ran the joint consultation “Implementing a landline duty: consultation on draft legislation and impacts” from 11 December 2009 to 12 February 2010.

**1.2** The consultation received 40 written responses from telecoms firms, industry representative groups, consumer groups and members of the public. A list of respondents is available at Annex A. Government has had a number of meetings with major firms and industry representative groups. Government has also met with Ofcom, the independent industry regulator, on a number of occasions.

**1.3** The consultation asked specific questions about the practical details of the administration of the duty, as well as inviting general comments about the legislation and the likely impacts of the duty. This document provides a summary of responses, issues raised and Government’s response.

**1.4** Chapter 2 summarises answers to the consultation questions; Chapter 3 addresses responses to the draft legislation and explains changes that have been made; Chapter 4 provides more detail on the impacts of the duty; and Chapter 5 summarises those responses that related to the duty but were outside of the scope of the consultation.

**1.5** Some responses provided information that has been used to update estimates of the costs and impacts of the duty in the final Impact Assessment, published in Budget 2010: Impact Assessments. Responses commenting on government spending to aid the rollout of Next Generation Access (NGA) have been forwarded to BIS so that they can be included in the separate “Consultation on proposals for a Next Generation Fund” to inform the delivery of NGA.<sup>1</sup>

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<sup>1</sup> Available online at: <http://www.berr.gov.uk/files/file54154.pdf>



# 2

## Consultation questions

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**2.1** The consultation asked three specific questions. Of the responses received, six provided direct answers to these questions. These answers are summarised below.

**Question 1: The first tax return will cover the period from 1 October 2010 to 31 March 2011. Does this cause line owners any problems?**

Most respondents indicated that this would be achievable provided confirmation of the start date and the scope of the duty was given in the current Parliament. Owners of business fibre networks were more likely to express concern about their ability to put in place the necessary systems to administer the duty by this date.

**Question 2: Are there any reasons why line owners will not be able to deliver a return and payment to HMRC on or before 30 April 2011?**

Most responses indicated that this would not cause problems. Again, early confirmation of the proposals would help firms to plan.

**Question 3: Are there any problems caused for line owners if the accounting period for the duty is annual? Would owners find it helpful to have any other accounting schemes available?**

Most line owners found an annual accounting period preferable. One response mentioned that not all firms' accounting years would necessarily match that of the duty, and that this may cause complications.

**2.2** The Government confirms that the landline duty will be implemented on 1 October 2010. In line with the proposals outlined in the consultation: the first tax return will cover the period from 1 October 2010 to 31 March 2011; the first return will be due to HMRC on or before 30 April 2011; and an annual accounting period will be applied thereafter.



# 3

## Draft legislation

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**3.1** The consultation requested views on the draft legislation, specifically whether the definitions in the draft legislation were clear and if they captured Government intentions. All relevant responses have been taken into consideration. Some amendments have been made to the legislation, mostly to provide clarity and to confirm certain exemptions.

### Lines and circuits

**3.2** Some definitions have been strengthened in response to comments that the legislation would benefit from using terminology that is more technical in nature.

**3.3** The term “twisted metallic pair” replaces reference to “copper” lines to reflect the technical nature of the connection and to recognise that wires may be made of metals other than copper.

**3.4** The term “fibre-optic” has been replaced with “fibre-optic cable” to clarify that the duty is to be payable once on each fibre-optic cable connecting an end user to the public network. Responses had indicated that this intention had not been entirely clear.

**3.5** The definition of a “single physical circuit” has been amended such that a combination of a single twisted metallic pair and a single co-axial cable or a combination of a single twisted metallic pair and a single fibre-optic cable will attract only one charge of the duty. A combination of twisted metallic pairs will be treated as more than one physical circuit.

**3.6** The above definition is to avoid double charging in situations where, for historic reasons, one end user receives two services over two lines from the same provider, where other providers would provide both services over the same line. As explained in the consultation document, Government’s intention is to ensure that there is no double liability under these circumstances.

**3.7** Some responses requested clarification of the term “made available for use” as they were concerned that the duty may capture dormant lines. The legislation has been amended so that landline duty will be charged “in respect of the making available of a local loop with a view to its being used”. A dormant line is not made available with a view to being used, so will not be charged the duty.

### Networks

**3.8** Responses confirmed that the legislation was well drafted to cover residential and standard telephony networks. Some amendments have been made to improve the clarity of the application of the duty to fibre networks and to better align the legislation with the policy aims described in the consultation document.

**3.9** Reference to a “main distribution frame” has been removed. Some respondents had questioned its applicability to fibre networks.

**3.10** The term “public telephone network” has been replaced with “public electronic communications network”, to clarify that the duty will apply to data services as well as traditional telephony networks.

**3.11** Therefore a “local loop” is now defined as “a single physical circuit connecting a network termination point to a public electronic communications network”. The network termination point is “the point at which an end-user is provided with access to a public electronic communications network”.

**3.12** These changes have been made to clarify the scope of the landline duty and to ensure that the terminology is suitable to capture fibre and business networks.

**3.13** Some respondents were concerned that the duty would apply to network interconnections. The legislation defines a local loop as a point of connection between an end user and the public electronic communications network. As network interconnections do not serve an end user, they will not be liable for the duty.

## **Services**

**3.14** The duty will apply to all local loops, whether they are used to supply voice, data or other services. The only exemption will be for television and radio services. The legislation specifies that a local loop that is made available with a view to “being used only for television programme services or radio programme services (or both)” will not be charged the duty.

# 4

## Impacts of the duty

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**4.1** The consultation invited views on the likely impacts of the duty and on how the duty might be passed through the supply chain. Some comments were made on the consultation stage Impact Assessment. These comments have been taken into account in the final stage Impact Assessment, published in Budget 2010: Impact Assessments.

### Costs to industry of implementing the duty

**4.2** Several responses from network owners and retailers indicated that the consultation stage Impact Assessment underestimated the costs to business of familiarisation with the duty and the costs of developing systems and procedures to administer the duty.

**4.3** Some business network owners expressed concern that it would be costly to collect the necessary information to account for the duty. Business services are most commonly delivered and billed as a package, not as individual lines. Some network owners indicated that they do not have information on the number of individual lines and that new systems and procedures would need to be developed to gather this information. There was some concern that the costs of doing so would be large in proportion to the tax revenue. However, other responses were clear about the number of business lines they expected to be subject to the duty.

**4.4** There was some indication that administrative costs for business networks would be relatively low once systems have been put in place to administer the duty.

**4.5** A few responses provided new estimates of the costs of familiarisation, administration and compliance. This new information has been used to revise these costs in the final Impact Assessment which now reflects that costs to industry are likely to be significantly larger than had originally been estimated.

### Pass-through of the duty

**4.6** The consultation asked for some indication of how the duty might be passed along the supply chain. No network owners and very few retailers gave an indication of how or whether they expected to pass the duty on, although some did anticipate that the duty would be passed down the supply chain via wholesale price increases. Some retailers indicated that they intended to account for the duty separately in billing.

**4.7** Some retailers and members of the public were concerned about how the duty would be passed on to them. There were several calls for the legislation to specify the extent and method of pass-through of the duty. One suggested option was for the inclusion of a mandatory line on bills showing the costs attributable to the duty. It was felt that this would provide clarity and prevent the pass-through of other costs.

**4.8** Retailers in particular were keen for the legislation to specify the pass-through of the duty, as this would allow them greater certainty when billing customers. Some were concerned that in the situation in which two providers use the same line to supply different services to the same end user, they did not know how a wholesaler would pass on the costs of the duty. These respondents wanted the legislation to specify how the duty should be passed on to help to clarify this situation.

**4.9** The Government's view is that the pass-through of the duty is a commercial decision for the network owners. The duty is a tax on the physical asset – the local loop – that is owned by a network owner; it is not a tax on the end user of this asset. In addition, to legislate the extent and method of pass-through would impose further costs on industry.

**4.10** Owners and retailers of business lines thought it could be difficult to pass on the costs of the duty when invoicing business customers. The legislation makes provision for billing adjustments to existing contracts in order to allow the cost of the duty to be added.

### **Ofcom charge controls**

**4.11** Ofcom apply a system of charge controls to network owners of significant market power. It was queried whether these network owners would be able to pass on the cost of the duty without a specific mandate to do so from an Ofcom charge control review. One response wanted the charge control to limit the extent of pass through of the duty.

**4.12** Ofcom's next charge control is due on 1 April 2011. Government has worked with Ofcom to find a legislative solution to this problem so that conditions relating to price controls do not prevent network owners passing the duty through to retailers.

## **Further impacts of the duty**

### **Fixed-to-mobile substitution**

**4.13** Some responses, particularly from owners of fixed networks, expressed concern that the introduction of the duty could 'tip the balance' for some consumers, prompting substitution from fixed-line to mobile usage. It was suggested that the Impact Assessment had under-estimated the extent of fixed-to-mobile substitution. Whilst this view was stated, no new evidence was provided to that considered by Government when producing the Impact Assessment.

**4.14** The Impact Assessment, published as part of the consultation document, explained that Government does not believe that there will be a significant substitution effect between use of fixed and mobile communications. The evidence for this includes:

- Ofcom research showing fixed line voice services have remained resilient to rising mobile take up;
- the bundled nature of many services received by consumers meaning a fixed line forms part of a telephone, television and broadband package;
- the limited scope for mobile broadband to deliver a comparable level of speed and service as fixed broadband in the time for which the tax is planned to be in force; and
- the small level of the new duty compared with levels of household and business expenditure on communications.

**4.15** Although the number of fixed lines has shown a slight decline in recent years, Ofcom have stated that:

*"the resilience of fixed-line voice is a noteworthy characteristic of the UK market".<sup>1</sup>*

Ofcom have stated elsewhere that recent trends in the use of fixed line and mobile services are:

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<sup>1</sup> <http://www.ofcom.org.uk/research/cm/cmr08/telecoms/telecoms.pdf> p295



*"consistent with consumers taking advantage of the falling absolute and relative price of mobile phones by increasingly purchasing both mobile as well as fixed line access rather than substituting away from fixed lines."*<sup>2</sup>

**4.16** Further Ofcom research has found that demand for landlines is driven primarily by non-price factors.<sup>3</sup> This suggests that an increase in the price of fixed lines would not fundamentally change the decisions made by consumers between fixed and mobile provision. The duty represents a very small proportion (just over 1 per cent) of average total household expenditure on telephone and telefax services.<sup>4</sup>

**4.17** Some responses predicted that the duty could prompt consumers to move to mobile broadband connections. However, wider comments made to media show that some industry representatives view fixed and mobile broadband to be complements, not substitutes.<sup>5</sup> A spokesperson from a provider of fixed and mobile services commented:

*"We've always said that mobile broadband is complementary to fixed line not a replacement".*<sup>6</sup>

**4.18** There was some concern that substitution effects would be most pronounced amongst low-income consumers, who could be the most price sensitive. It was asserted that socially disadvantaged communities had demonstrated a greater rate of substitution towards mobile connections in recent years than had been seen in other areas.

**4.19** The duty has been designed to exempt low-income consumers on social telephony tariffs to protect the most vulnerable and price sensitive; this is discussed below.

## **Low-income consumers**

**4.20** Some responses were concerned about the impact of the duty on low-income consumers. These responses felt that more provision could be made to ensure that low-income consumers were not subject to the duty. It was commented that although 3-4 million people in the United Kingdom are eligible for social telephony schemes, which are exempt from the duty, only about 850,000 are registered to one.

**4.21** Conversely, one response, from a provider of a telephony product that is popular with low-income consumers, wanted the exemption for social telephony schemes removed. This respondent felt that exempting only officially recognised social telephony schemes that are provided as part of a Universal Service Obligation (USO) would be unfair.

**4.22** Although the duty is charged on the network owners who own the physical asset – the local loop – the Government anticipates that the duty may be passed through to the end user and therefore has taken steps to protect the most vulnerable. The Digital Britain White Paper stated that lines used to provide a social telephony service should be exempt from the duty. The legislation exempts telephony schemes provided as part of a universal service obligation, and allows for amendment by statutory instrument should any other operator choose to offer a tariff or package that departs from normal commercial conditions.

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<sup>2</sup> Paragraph 4.31: [http://www.ofcom.org.uk/consult/condocs/retail\\_markets/fnrsm\\_condoc.pdf](http://www.ofcom.org.uk/consult/condocs/retail_markets/fnrsm_condoc.pdf)

<sup>3</sup> Paragraph 4.30: [http://www.ofcom.org.uk/consult/condocs/retail\\_markets/fnrsm\\_condoc.pdf](http://www.ofcom.org.uk/consult/condocs/retail_markets/fnrsm_condoc.pdf)

<sup>4</sup> Source: ONS Family Spending: 2008 Edition. Table A8, pp98, Annex A.

Alternative data, based upon information from Ofcom, operators and the ONS, suggests that the duty would represent less than 1 per cent of average monthly spending on telecommunications services (broadband, telephone and telefax).

<sup>5</sup> See article: <http://www.guardian.co.uk/business/2009/oct/08/dongles-wifi-broadband-smartphones>

<sup>6</sup> Source as above.

**4.23** Some responses asserted that low-income consumers are more likely to rely only on mobile telephones, and may not use a fixed line. Although these consumers would not pay duty, the concern was raised that they would not benefit from future upgrades to the fixed-line network. The delivery of NGA will be addressed through the Next Generation Fund; responses on this subject have been forwarded to BIS to inform their consultation on this matter.

## **Business impacts**

**4.24** Some responses were concerned that small businesses would be disproportionately affected by the duty. Small businesses are more likely to rely on several metallic lines for their telecommunications services as this has been a popular and cheaper alternative to fibre. Each line will be charged the duty.

**4.25** Larger businesses are more likely to have bespoke telecoms solutions, typically delivered by a small number of high capacity fibre lines. They are also likely to have a number of metallic lines for emergency lines and as a contingency, and will be exposed to the duty via these lines as well as through their fibre connections. Although exposure to the duty may not be directly proportional to business size, larger businesses will make a contribution.

**4.26** Additional information on business exposure to the duty has been recognised in the final Impact Assessment.

## **Working capital**

**4.27** Retailers were concerned that the duty will provide a working capital advantage to network owners. If network owners choose to pass on the cost of the duty to retailers through their monthly billing, this will increase their working capital as the duty is payable to HMRC on an annual basis.

**4.28** The duty is charged on the physical asset – the local loop – that is owned by network owners. Whether and how the cost of the duty is passed on in billing is a matter for industry.

## **Bad debt**

**4.29** Some network owners called for introduction of a bad debt facility. One response felt that:

*“it seems inequitable that [the network owner] should have to absorb the cost of the landline duty”*

**4.30** However, the duty is charged on the owners of the local loops – i.e. the network owners. Although the Government anticipates that network owners may choose to pass on the duty, any pass through is a commercial decision. Therefore no bad debt facility will be provided, as is the case with other duties of excise.

# 5

## Wider issues raised

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### Scope of the duty

**5.1** The consultation outlined Government's intention that the landline duty will be charged on fixed lines used to provide telephony, broadband or data services to an end user. Although not part of the consultation, several responses expressed opinions about the scope of the duty.

**5.2** Some responses noted that, since the publication of the Digital Britain White Paper, the duty has been expanded to include fibre and business networks. This is for reasons of fairness. Investment in broadband infrastructure will benefit the whole of the UK, including businesses, so it is fair that business should make a contribution.

**5.3** By charging the duty on both residential and business lines, Government will raise additional funds that can be used to help to fund the rollout of NGA to 90 per cent of the UK by 2017.

### Leased lines

**5.4** The consultation document made clear that the policy intent was for the duty to be charged on fixed lines, including leased lines and fibre networks. The Government has taken into account comments about the definitions used in the draft legislation to ensure that the legislation is clear on this account.

**5.5** Some respondents agreed with the Government's intention to include all fixed lines, and recognised the policy rationale for including leased lines and business networks. Several responses recognised the importance to business of the internet and accepted that business should be expected to contribute to the duty.

**5.6** Other responses wanted business fibre networks to be exempted. They felt that charging the duty on fibre networks failed to recognise the private investment that had taken place. The Government's view is that it is fair for those who are already fortunate to gain from super-fast broadband to contribute to its wider provision. Large-scale rollout of NGA will have wide-reaching benefits across the economy.

**5.7** Another suggested reason for exempting business fibre networks was that the burden of accounting for each line liable for the duty would be greater than for traditional residential lines. This could make the cost of administering the duty proportionally higher for leased lines. One response said that:

*"The cost and complexity involved [in systems adjustments to report the duty] are significant, particularly in proportion to the likely return"*

**5.8** The Government recognises that the costs of information collection may be proportionally higher for business networks than for residential lines. However, as all users of fixed lines stand to gain from the roll-out of NGA it is fair for all fixed line users to contribute. Further information about the costs of administering the duty has been used to provide updated cost estimates in the final Impact Assessment.

## Mobile networks

**5.9** Responses from fixed network owners expressed the opinion that the duty should be charged on mobile networks as well as on fixed lines. They also expressed that the reasons for mobile exclusion were not clear. These responses generally focused on the spending decisions regarding the technological scope of the roll-out of NGA. Spending on the provision of NGA is being examined in a separate BIS consultation and does not directly form part of considerations about the duty.

**5.10** A typical response supporting mobile inclusion stated:

*"Given that satellite and mobile solutions may well play a part in the rollout of NGA in the final third, mobile operators ... should pay into the fund".*

**5.11** Other responses took the opposing view. One response stated that:

*"there are fundamental differences not only in how mobile and fixed networks were built, but also how they are currently funded and operated".*

**5.12** Mobile telecoms networks are underpinned by a system of spectrum licensing. These licences typically attach coverage obligations to provide for the continued roll-out of mobile broadband and ensure the sector's contribution to the UK's digital infrastructure.

**5.13** Ofcom do not consider fixed and mobile narrowband calls to be in the same market. Several industry representatives have indicated that they do not consider fixed and mobile broadband to be substitutes.

## End date

**5.14** Some responses wanted an end date for the duty to be specified in the legislation; they thought that failure to do this could reduce the market appetite for investment. Government has not specified an end date as this could put a limit on the funding available for NGA provision. Incentives for private sector investment are primarily an issue for the procurement of NGA to be delivered through the Next Generation Fund.



# List of respondents

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**A.1** A total of forty responses to the consultation were received.

**A.2** Responses were received in writing from representatives of:

- Argiva
- Avanti
- BBBritain
- Broadband Stakeholder Group
- BT
- Cable & Wireless
- CBI
- COLT
- Communications Consumer Panel
- Consumer Focus
- Federation of Small Businesses
- KCOM
- NATS
- O2
- Orange
- Post Office Limited
- Scottish and Southern Energy
- The Scottish Government
- Sky
- TalkTalk
- UKCTA (United Kingdom Competitive Telecoms Association)
- UKSpace
- Velocity
- Verizon
- Virgin Media

There were also several written responses from members of the public.





## HM Treasury contacts

This document can be found in full on our website at:

[hm-treasury.gov.uk](http://hm-treasury.gov.uk)

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