How does the EU Framework for Electronic Communications affect regulation of UK telecoms today - and what does that imply about tomorrow?

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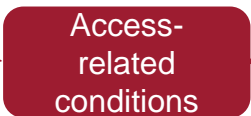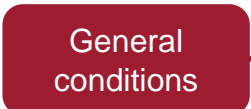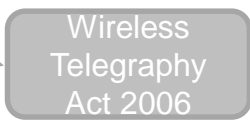# Regulating UK electronic communications is a legally complex process...

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| European legislation | UK legislation | UK regulatory rules | UK enforcement | Commercial outcomes |

Regulatory Framework for Electronic Communications
- Framework Directive
- Authorisation Directive
- Access Directive
- Privacy Directive
- Universal Service Directive

Comms Act 2003
Ofcom Act 2002

General conditions
SMP conditions
Access-related conditions

Regulatory enforcement
Enquiry phase
Regulatory dispute resolution

Wireless Telegraphy Act 2006 → Spectrum licence conditions → Spectrum licence enforcement

Cons Rights Directive
UTCCR
Consumer Rights Act
Comp Act 98
Ent Act 02

Consumer law enforcement
Competition law enforcement
Undertakings

TFEU

Commercial outcomes
- *Bundled terms of supply*
- *Regulated consumer contract*
- *Regulated wholesale content supply*
- *Outsourcing/asset sharing*
- *Regulated wholesale network access*

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… and the effect of CRF is felt at <u>every</u> stage of the 'supply chain'

European legislation	UK legislation	UK regulatory rules	UK enforcement	Commercial outcomes
CRF sets…	*CRF sets…*	*CRF sets…*	*CRF sets…*	
• Basic structure	• Detailed rules	• Many rules 'hard-coded' into the regime	• Binding objectives and duties that must be in mind during enforcement	• *Bundled terms of supply*
• Overarching principles	• Core building blocks (definitions)	• Closed list of categories for new rules		• *Regulated consumer contract*
• Roles of different actors	• Each of the main processes (market reviews)	• Limits on when a rule can be set	• Limits on actions (proportionate, reasonable)	• *Regulated wholesale content supply*
• Link to competition law concepts		• Limits on *why* a rule can be set (purpose)		• *Outsourcing/asset sharing*
• Oversight and quality control	• Processes for peer-review, consultation, appeals			
				• *Regulated wholesale network access*

Optimism vs realism

Civil service staff numbers (FTE) by department, December 2015
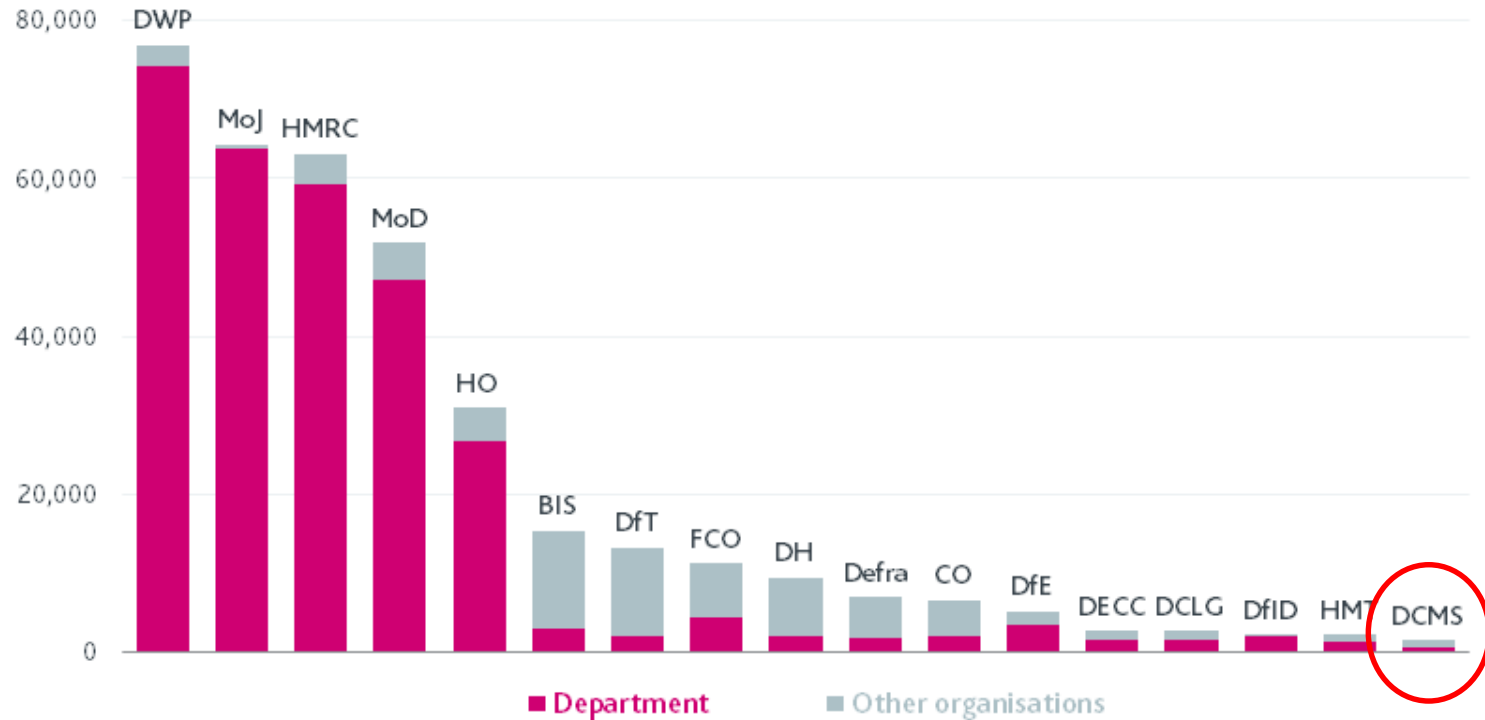
Source: Institute for Government analysis of ONS, Public Sector Employment (table 9), 2015 Q4.

- DG CNECT has 754 people doing electronic communications regulation
- DCMS has around 30, most of whom are not experts in regulation *per se*

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Specific risks: less accountability and a less expert, more politicised system

- Critical long-term question: how will this complex system change when 'European legislation' is replaced by 'UK Government policy'? Will it be worse or better?
  - The answer is likely to be '*it will change in a variety of unpredictable ways*'
- UK Gov't is likely to be <u>better</u> than the European Commission at:
  - **Responsiveness to UK-specific issues**: this has been an issue in the past
  - **Coordination across different regulated sectors**: this hasn't, really
- But UK Gov't is <u>at material risk of being worse</u> than the European Commission at:
  - **Basic system design**: UK was the pioneer but the UK civil service hasn't needed these skills for decades
  - **Economics**: Does the Department have the resources in regulatory economics to be good at this?
  - **Legislating flexibly**: UK/common law model had to become flexible to accommodate Europe. What now?
  - **Avoiding political influence**: inherently more likely (inevitable) with Ministers making decisions
  - **Consistency with other jurisdictions UK operators care about**: e.g. IRE, FRE, GER, NED, SPA, ITA
  - **Responding to global trends**: inefficiencies of dealing with one market, risk of 'going it alone' on issues
  - **Spectrum**: particularly international harmonisation and bargaining as a bloc
  - **Expert accountability and peer review**: in effect, Ofcom will answer to no one but the CAT
- These problems are replicated in other parts of the system affecting UK telecoms:
  - **Competition**: CMA has to do extra work to handle international mergers, big antitrust cases (Google, Apple)
  - **Privacy/DP**: Safe harbours, managing cross-border enforcement, etc