

A5. Legal framework

Summary

This annex explains key aspects of the legal framework for the online safety fees regime, including the duty to pay fees and the duty to notify; determining QWR and defining qualifying period; the QWR threshold; the Secretary of State guidance and the Statement of Charging Principles; fee collection process; and recovery of initial costs and additional fees.

This annex also outlines the legal framework in relation to the financial penalty cap based on QWR; our enforcement powers; and transitional arrangements for Video Sharing Platforms.

Ofcom's general duties and online safety functions

- A5.1 The Communications Act 2003 ('CA03') places a number of duties on Ofcom that we must fulfil when exercising our regulatory functions, including our online safety functions. Section 3(1) of the CA03 states that it shall be our principal duty, in carrying out our functions:
- i) to further the interests of citizens in relation to communication matters; and
 - ii) to further the interests of consumers in relevant markets, where appropriate by promoting competition.
- A5.2 In performing that principal duty, Ofcom is required to have regard to principles set out in the CA03 under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, as well as any other principles appearing to Ofcom to represent best regulatory practice.¹
- A5.3 In carrying out our functions Ofcom is required to secure, in particular, the adequate protection of citizens from harm presented by content on regulated services, through the appropriate use by providers of such services of systems and processes designed to reduce the risk of such harm (section 3(2)(g) of the CA03 as amended by section 82 of the Act).
- A5.4 Section 3(4A) of the CA03 further provides that in relation to matters to which section 3(2)(g) is relevant, we must have regard to the following as they appear to us to be relevant in the circumstances:
- The risk of harm to citizens presented by content on regulated services;
 - The need for a higher level of protection for children than for adults;
 - The need for it to be clear to providers of regulated services how they may comply with their duties under the Act;
 - The need to exercise our functions so as to secure that providers may comply with such duties by taking or using measures, systems or processes which are proportionate to the size or capacity of the provider and the level of risk of harm presented by the service; and
 - The desirability of promoting the use by providers of technologies which are designed to reduce the risk of harm to citizens presented by content on regulated services and the

¹ Section 3(3) of the CA03.

extent to which providers demonstrate, in a way that is transparent and accountable, that they are complying with their duties.

- A5.5 Section 3(4) of the CA03 sets out other matters to which Ofcom must, to the extent they appear to us relevant in the circumstances, have regard, in performing our duties. They include the desirability of promoting competition and encouraging investment and innovation in relevant markets; the vulnerability of children and of others whose circumstances put them in need of special protection; the needs of persons with disabilities, the elderly and of those on low incomes; the desirability of preventing crime and disorder; the opinions of consumers and of members of the public generally; and the different interests of persons in the different parts of the United Kingdom and of the different ethnic communities within the United Kingdom.
- A5.6 The statutory duties and functions are particularly relevant to the establishment and implementation of the OS fees regime and are explained further below.

Duty to pay fees

- A5.7 The online safety fees regime, as set out in Part 6 of and Schedule 10 to the Act,² applies to providers³ of regulated services, unless exempted by Ofcom under section 83(6) of the Act.
- A5.8 Regulated services⁴ include regulated user-to-user services and regulated search services (these are known as ‘Part 3 services’ as many of the key duties on these services are set out in Part 3 of the Act). They also include internet services that publish or display ‘regulated provider pornographic content’ which are subject to the duties set out in Part 5 of the Act (these are known as ‘Part 5 services’). All these categories of regulated services must have links with the UK,⁵ regardless of where they are based or registered.⁶

² Also, note sections 131 and 141 of the Act, which relate to enforcement in respect of duties relating to fees, and Part 3 of Schedule 17 to the Act, which relate to the application of Part 6 to video sharing platforms (VSPs).

³ For the definition of providers, please refer to section 226 of the Act.

⁴ Section 4(4) of the Act.

⁵ For how links to the UK are established please refer to: section 4(5) and section 4(6) of the Act for user-to-user or search services and section 80(2) to section 80(4) of the Act for service providers that display or publish pornographic content; see, also, [an overview of regulated services](#).

⁶ There are also a number of exemptions for services of the kind set out in Schedules 1 and 9 of the Act.

- A5.10 To be liable to pay fees with respect to a specific charging year,⁷ the provider of a regulated service: (a) must have a QWR, as defined by Ofcom in regulations to be laid before Parliament, that meets or exceeds the QWR threshold that has effect for that charging year and (b) must not be exempt.⁸ The QWR threshold figure will be determined by the Secretary of State, after considering Ofcom’s advice, in relevant regulations.⁹
- A5.11 Under the Act, Ofcom has a discretion to exempt particular descriptions of providers of regulated services from the duty to notify under section 83 and from the duty to pay fees under section 84.¹⁰ To do this, Ofcom will need to consider that an exemption for such providers is appropriate, and the Secretary of State must have approved the exemption. Similarly, Ofcom may revoke such an exemption when it considers it is no longer appropriate, and the Secretary of State approves the revocation.¹¹ Except in respect of the initial charging year, details of an exemption or revocation must be published by Ofcom at least six months before the beginning of the first charging year for which the exemption or revocation is to have effect.¹²

Duty to notify

- A5.12 Providers of regulated services, unless they are exempted by Ofcom under section 83(6) of the Act, have a statutory duty to notify Ofcom in particular circumstances set out in the Act. The requirement to notify us applies in relation to a charging year, which is:
- a) the first fee-paying year in relation to that provider (section 83(1)(a) of the Act), or
 - b) any charging year after the first fee-paying year where:
 - i) the previous charging year was not a fee-paying year in relation to the provider, and the charging year in question is a fee-paying year in relation to the provider (section 83(1)(b)(i)); or
 - ii) the previous charging year was a fee-paying year in relation to the provider, and the charging year in question is not a fee-paying year in relation to the provider (section 83(1)(b)(ii) of the Act).¹³

Notification requirements

- A5.13 Notifications under section 83(1) of the Act in relation to a charging year must include details of all the provider’s regulated services.¹⁴ Notifications under section 83(1)(a) or

⁷ ‘Initial charging year’ (i.e. the first year in which providers will be liable to notify and pay fees) means the 12-month period beginning with 1 April specified by Ofcom in a notice under Part 6, and ‘charging year’ means any 12-month period beginning with 1 April specified by Ofcom in such a notice (in other words, any subsequent 12 month period following the initial charging year). See section 90 of the Act.

⁸ Section 83(2) of the Act.

⁹ Section 86 of the Act.

¹⁰ Section 83(6) of the Act.

¹¹ Section 83(7) of the Act.

¹² Section 83(9) and section 83(10) of the Act.

¹³ Section 83(2) defines a ‘fee paying year’ and a ‘fee paying year’ is a charging year where the provider’s QWR meets or exceeds the QWR threshold; and where the provider is not exempt. Section 83(1) and section 83(2) of the Act should be read in conjunction.

¹⁴ Section 83(3) of the Act.

(b)(i) must also include details of the provider’s QWR for the qualifying period that relates to that charging year, and any supporting evidence, documents or other information as required in the Notification Regulations made by Ofcom.¹⁵

A5.14 Ofcom’s Notification Regulations will specify the “evidence, documents or other information” that providers must supply to Ofcom for the purposes of section 83(1) of the Act and describe the way in which this evidence, documents or information should be supplied.

A5.15 In relation to timings for notification, for the initial charging year, a notification must be provided to Ofcom within four months of the date on which the first QWR Threshold Regulations come into force. For subsequent charging years, a provider of a regulated service will need to notify Ofcom at least six months before the beginning of the charging year to which the notification relates.¹⁶

A5.16 Under Part 7 of the Act, Ofcom has information gathering powers to require additional information from providers if so required to exercise any of our online safety functions, including for the purpose of ascertaining the amount of a person’s QWR.¹⁷

Qualifying Worldwide Revenue and qualifying period

A5.17 Ofcom may by regulations make provision about how the QWR of a provider of a regulated service is to be determined; and define the ‘qualifying period’ in relation to a charging year.¹⁸ Before making these regulations under section 85(1) of the Act Ofcom must consult the Secretary of State, the Treasury, and such other persons as Ofcom consider appropriate.¹⁹

A5.18 Such regulations made by Ofcom under section 85(1) may make provision for matters including:

- i) The circumstances in which amounts do, or do not, count as being referable (to any degree) to a regulated service for the purposes of determining the QWR of the provider or of an entity that is a group undertaking in relation to the provider;²⁰
- ii) For cases or circumstances in which amounts that are of a kind specified or described in the regulations and are not referable to a regulated service, are to be brought into account in determining the QWR of the provider or of an entity that is a group undertaking in relation to the provider;²¹
- iii) For providers of a regulated service who are part of a corporate group, their QWR may be defined so as to include the QWR of any entity that is a group undertaking²² in relation to the provider where: (a) the entity has been a group undertaking in relation to the provider for all or part of the qualifying period; *and* (b) the entity receives or is due to receive, during that period, any amount referable (to any

¹⁵ Section 83(3) of the Act.

¹⁶ Section 83(5) of the Act.

¹⁷ Section 100(6)(d) of the Act.

¹⁸ Section 85(1) of the Act.

¹⁹ Section 85(7) of the Act.

²⁰ Section 85(4)(a) of the Act.

²¹ Section 85(4)(b) of the Act.

²² It has the meaning given by section 1161(5) of the Act; See, section 85(10) of the Act.

degree) to a regulated service provided by the provider.²³ However, where the entity is a group undertaking in relation to a provider for part (not all) of a qualifying period, the QWR Regulations may provide that only amounts relating to the part of the qualifying period for which the entity was a group undertaking may be brought into account in determining the entity's QWR.²⁴

- iv) Making the provisions subject to such exemptions and exceptions as Ofcom considers appropriate.²⁵

Setting the QWR threshold

- A5.19 Under the Act, Ofcom is required to advise the Secretary of State on the QWR threshold at or above which providers of regulated services will be required to pay fees. Before doing so, Ofcom needs to consult to inform the setting of the QWR threshold figure.²⁶
- A5.20 After completion of the consultation and having taken advice from Ofcom, the Secretary of State must make regulations specifying the threshold figure (the QWR Threshold Regulations).²⁷ In accordance with the Act, the Secretary of State must keep the threshold figure under review and if it considers it will be appropriate to revise it, the Secretary of State may request that Ofcom conduct a further consultation.²⁸

Secretary of State's guidance about fees

- A5.21 Ofcom may not require a provider of a regulated service to pay a fee under section 84 of the Act unless there is in force a statement of charging principles ('SoCP') principles that Ofcom propose to apply in determining fees payable under that section.²⁹ The Secretary of State must issue guidance to Ofcom on funding principles to be included in the SoCP that Ofcom proposes to apply in determining fees under section 84 of the Act. The Secretary of State is required to consult Ofcom before issuing, revising or replacing such guidance. In exercising its functions under Part 6 of the Act, Ofcom must have regard to the guidance for the time being published.³⁰ In accordance with section 87 of the Act, the Secretary of State has issued guidance to Ofcom about the principles to be included in the SoCP.³¹

²³ Section 85(3) of the Act.

²⁴ Section 85(5) of the Act.

²⁵ Section 85(9) of the Act.

²⁶ Section 86(1) of the Act

²⁷ Section 86(2) of the Act.

²⁸ Section 86(3) and Section 86(4) of the Act.

²⁹ Section 88(1) of the Act.

³⁰ Section 87(6) of the Act.

³¹ [Online Safety Act 2023: guidance to the regulator about fees.](#)

Statement of Charging Principles and the amount of fees payable

- A5.22 The principles in Ofcom’s SoCP, must be such as appear to Ofcom to be likely to secure, on the basis of estimated likely costs as it is practicable for Ofcom to make:
- i) That on a year-by-year basis, the aggregate amount of the fees payable to Ofcom under section 84 *is sufficient to meet, but does not exceed*, the annual cost to Ofcom of the exercise of our online safety functions;³²
 - ii) That the fees under section 84 are *justifiable* and *proportionate*, having regard to the functions in respect of which they are imposed; and
 - iii) That the relationship between meeting the cost of the exercise of those functions and the amounts of the fees is *transparent*.³³
- A5.23 The SoCP must (among other things) include details relating to the computational model used to calculate fees payable under section 84 of the Act. This computation must be made by reference to the provider’s QWR for the qualifying period related to that charging year, as well as any other factors which Ofcom considers appropriate.³⁴ The SoCP must also include details about the meaning of ‘QWR’ and ‘qualifying period’ and specify the threshold figure contained in the QWR Threshold Regulations.
- A5.24 The SoCP may make different provision in relation to different kinds of regulated services.³⁵ Ofcom must consult on and publish such a SoCP (and any revised or replacement statement).³⁶
- A5.25 We will be consulting separately on the SoCP document itself, in a later consultation.

Fees collection process

- A5.26 Following receipt of notifications from providers of regulated services and having calculated the fees due in accordance with the SoCP (see above), Ofcom will issue invoices to all applicable providers.
- A5.27 As soon as reasonably practicable after the end of each charging year, Ofcom must publish a statement setting out, in respect of that year:
- i) The aggregate amount of the fees payable for that year that has been received by Ofcom;
 - ii) The aggregate amount of the fees payable for that year that remains outstanding and is likely to be paid or recovered; and
 - iii) The cost to Ofcom of the exercise of their online safety functions.³⁷

³² As described in section 88(9) of the Act, “OFCOM’s costs of the exercise of their online safety functions during a charging year include the costs of preparations for the exercise of their online safety functions incurred during that year”.

³³ Section 88(2) of the Act.

³⁴ Section 84(2)(a)(i) and (ii) of the Act.

³⁵ Section 88(5) of the Act.

³⁶ Section 88(4) and (6) of the Act.

³⁷ Section 88(7) of the Act.

- A5.28 If there is a deficit or surplus shown by the statement above, it must be carried forward and taken into account in determining what is required to satisfy the requirement imposed by Act in relation to the following year that the aggregate amount of fees is sufficient to meet, but does not exceed, the annual costs of Ofcom’s online safety functions.³⁸
- A5.29 In the event of disagreement between a regulated provider and Ofcom in relation to the amount of QWR for a qualifying period, the amount of a fee to be paid to Ofcom, or of an instalment of such a fee, it will be Ofcom who determines the amount.³⁹

Recovery of Ofcom’s initial costs and additional fees

- A5.30 Ofcom must seek to recover the total amount of its initial costs by charging providers of regulated services additional fees under Schedule 10 to the Act.⁴⁰ The initial costs are the costs incurred by Ofcom, before the first day of the initial charging year, on preparations for the exercise of the online safety functions or the exercise of such functions.⁴¹
- A5.31 Ofcom’s initial costs are currently being funded through the retention of WTA⁴² receipts. Ofcom must recover these via fees, which are additional to the fees referred to above. The amount to be recovered in respect of the initial costs should be equal to the aggregate of the amounts of the WTA receipts which are retained by Ofcom for the purposes of meeting their initial costs.⁴³
- A5.32 The Secretary of State must make regulations making such provision as they consider appropriate, in connection with the recovery by Ofcom of their initial costs and consult Ofcom (among others) before making them.⁴⁴ Once Regulations to recover initial costs are in force, Ofcom will start to charge additional fees from providers so as to recover the initial costs, as set out in the Regulations.

Ofcom’s enforcement powers in relation to fees

- A5.33 Ofcom may take enforcement action if a provider:
- i) Fails to comply with the duty to notify under section 83 of the Act; or
 - ii) Fails to comply with the duty to pay fees under section 84 or Schedule 10 in full.
- A5.34 The provisions in relation to the duty to notify under section 83 are ‘enforceable requirements’ and a failure to comply with them can trigger enforcement action.⁴⁵
- A5.35 Ofcom has consulted on draft Enforcement Guidance under the Act, which will set our approach to enforcement under the Act.⁴⁶ We will publish the final version of this

³⁸ Section 88(8) of the Act.

³⁹ Section 84(3) of the Act.

⁴⁰ Additional fees will be returned by Ofcom to the Consolidated Fund, see Section 400(1)(k) of the CA03.

⁴¹ Paragraph 1(3), Schedule 10 to the Act.

⁴² [Wireless Telegraphy Act 2006](#). See para 2.2, Chapter 2 for more details.

⁴³ Paragraph 1, Schedule 10 to the Act.

⁴⁴ Paragraph 7, Schedule 10 to the Act.

⁴⁵ Section 131 of the Act.

⁴⁶ See Annex 11 of Ofcom’s consultation on [protecting people from illegal harms online](#).

alongside our statement on protecting people from illegal harms. The Guidance will apply in relation to a provider which fails to comply with the duty to notify under section 83 of the Act or to pay fees that are due.

Transitional Arrangements and VSPs

- A5.36 Following a transition period, the UK Video Sharing Platform ('VSP') regime in Part 4B of the CA03 will be repealed. It is anticipated that the VSP regime will be repealed before the online safety fees regime is implemented, and therefore we only briefly mention the transitional arrangements below.
- A5.37 The transition period began on 10 January 2024. During the transition period all pre-existing VSPs with the required connection with the UK (in other words, platforms that meet the scope and jurisdiction criteria under Part 4B of the CA03) continue to be regulated under the VSP regime during the transition period. During this period, most of the duties under the Act do not apply to VSP providers, subject to certain exceptions, as outlined in Schedule 17 to the Act.
- A5.38 Pre-existing VSPs will be exempt from the requirement to pay fees contained in the Act during the transition period. If the regulated VSP element of the service is a dissociable section (in other words, a separable part) of a larger service, another part of which qualifies as a regulated service under the Act, then the exemption will only apply to the VSP part of the service.⁴⁷ The online safety fees notification duty under section 83 of the Act does apply to VSP providers during the transition period.⁴⁸
- A5.39 When the transition period ends, VSPs with the required UK links will be regulated in the UK under the Act as user-to-user services, and the fees regime will apply to them in the same way as to other providers of regulated services under the Act.⁴⁹
- A5.40 More information on the repeal of the VSP regime is set out on Ofcom's website.⁵⁰ The date at which the transition period ends and the VSP rules are repealed will be decided by the Secretary of State and set out in secondary legislation.

QWR in relation to penalties

- A5.41 The definition of QWR which applies in relation to the determination of fees also applies when we are calculating the maximum penalty that we can impose on a provider of a regulated service, which has been found in breach of its duties under the Act.⁵¹ The maximum penalty that Ofcom may impose on a provider may be no more than the greater of:

- i) £18 million; and

⁴⁷ Paragraphs 18, 19 and 24, Schedule 17 to the Act.

⁴⁸ Paragraph 16(2), Schedule 17 to the Act.

⁴⁹ Paragraph 20(2), Schedule 17 to the Act.

⁵⁰ [Repeal of the VSP regime: what you need to know - Ofcom.](#)

⁵¹ Paragraph 4(9) of Schedule 13 to the Act.

iii) 10% of the provider's QWR for the provider's most recently completed accounting period.⁵²

A5.42 However, where Ofcom finds two or more entities jointly and severally liable for a penalty, the maximum amount of the penalty that may be imposed is the greater of:

- i) £18 million; and
- ii) 10% of the QWR of the group of entities which consists of the provider and every other entity which is a group undertaking in relation to the provider, for the most recent complete accounting period.⁵³

A5.43 The Act provides that Ofcom may make regulations about how the QWR of a group of entities is to be determined for these purposes.⁵⁴ Ofcom therefore has the power to take a different approach to the determination of the QWR of a group of entities to that which applies when calculating the maximum penalty that may be imposed on the provider of the service alone.

A5.44 We may also, following consultation, make regulations in respect of the QWR of a group of entities subject to exemptions and exceptions as we consider appropriate.⁵⁵

⁵² Paragraph 4(1) of Schedule 13 to the Act.

⁵³ Paragraph 5(3) of Schedule 13 to the Act.

⁵⁴ Paragraph 5(9) of Schedule 13 to the Act.

⁵⁵ Paragraph 5(10) and (11) of Schedule 13 to the Act.

A6. Summary of revenue information informing our QWR proposals

Overview

- A6.1 To inform our QWR proposals within this consultation document, in March 2024 we sent requests for information (RFI) to 30 companies which we considered could be providing regulated services to a large number of users in the UK and which would hold, or were able to generate or obtain, information which would help inform how Ofcom implements the fees regime under the Act.⁵⁶ This annex provides an aggregated summary of the information received so it is not possible to identify confidential financial information relating to any individual company. For the purposes of our analysis, we have treated each company as if they were the provider of all relevant regulated services that they told us they, or other companies in their group, provided, and therefore refer to them in the rest of this annex, and in the rest of the consultation, as ‘providers’.

Summary of revenue data from information requests

- A6.2 We requested information on worldwide and UK revenues referable to regulated services as well as a breakdown of that revenue (for example between advertising revenue, subscription revenue and one-off payments). The information requested was for financial years ending in 2021, 2022 and 2023 but, for the purposes of this consultation, we present summary information in this annex for financial years ending in 2023, as this is the most up to date information available to us.
- A6.3 Some providers told us they do not routinely track revenue per service or separately identify revenues associated with their services in the UK, and estimating such revenues could be time consuming. As such, in responding to the RFI, in some cases, providers i) estimated revenues associated with regulated services, by apportioning revenue between regulated and unregulated services and ii) estimated UK revenues for regulated services by apportioning relevant revenue between the UK and other geographic regions. Such apportionments relied on assumptions and judgement by providers.
- A6.4 A small number of providers submitted that they were unable to provide revenue information for regulated services.⁵⁷ In such cases, we have generally estimated revenues for their regulated services based on information provided in response to this request for information and from public sources. Where information was missing for the 2023 financial year (e.g. because financial statements were not yet ready), we

⁵⁶ We sent information requests because published financial statements (where available) do not generally provide granular revenue information on regulated services and not all companies have an obligation to publish financial statements.

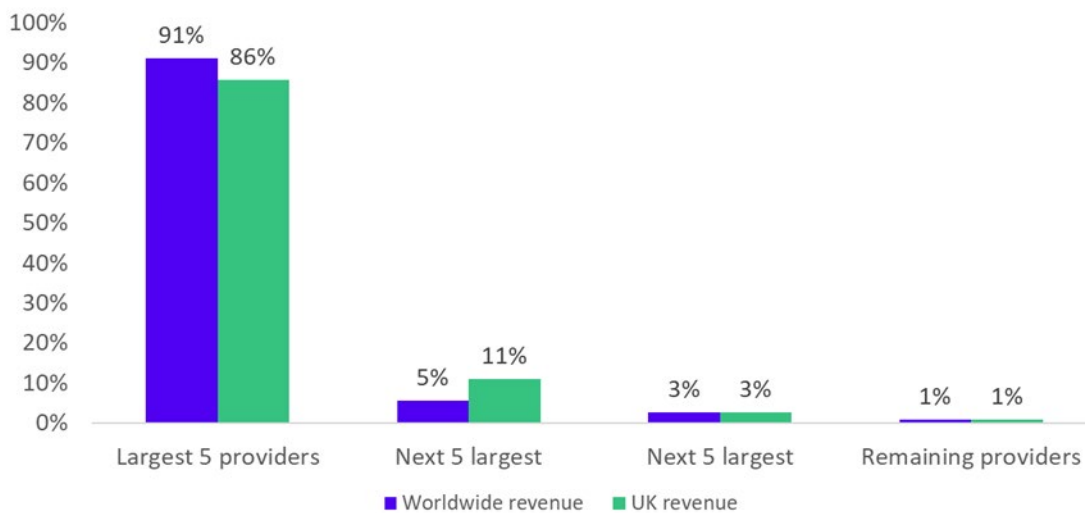
⁵⁷ For example, sometimes revenue estimates provided included revenues for both regulated and non-regulated services.

generally estimated 2023 revenues based on the growth rate in previous years. Following this exercise, we had worldwide and UK revenue estimates for 27 providers of regulated services.

A6.5 Based on this information, we estimate that total worldwide revenue associated with regulated services from these providers for financial years ending in 2023 was between £350bn and £400bn, and total UK revenue was between £20bn and £30bn.⁵⁸ In Chapter 3.1, we set out proposals for how QWR should be estimated (e.g. using a worldwide revenue approach and using an apportionment methodology where revenues associated with regulated services cannot be separately identified). In some cases, revenue estimates for individual providers may not fully align with our proposals, but we consider the estimate of total worldwide revenue of £350bn to £400bn gives a reasonable indication of the magnitude of total QWR likely to be associated with these providers.

A6.6 Figure A6.1 illustrates the distribution of revenue by provider in financial years ending in 2023. The distribution of revenue is comparable on both a worldwide and UK revenue basis, and the five largest revenue generating providers represent around 90% of total revenues in both cases.

Figure A6.1: Distribution of estimated regulated service revenue by provider



Source: Ofcom analysis of responses to information requests. Figures based on revenues in financial years ending 2023 and may not sum due to rounding.

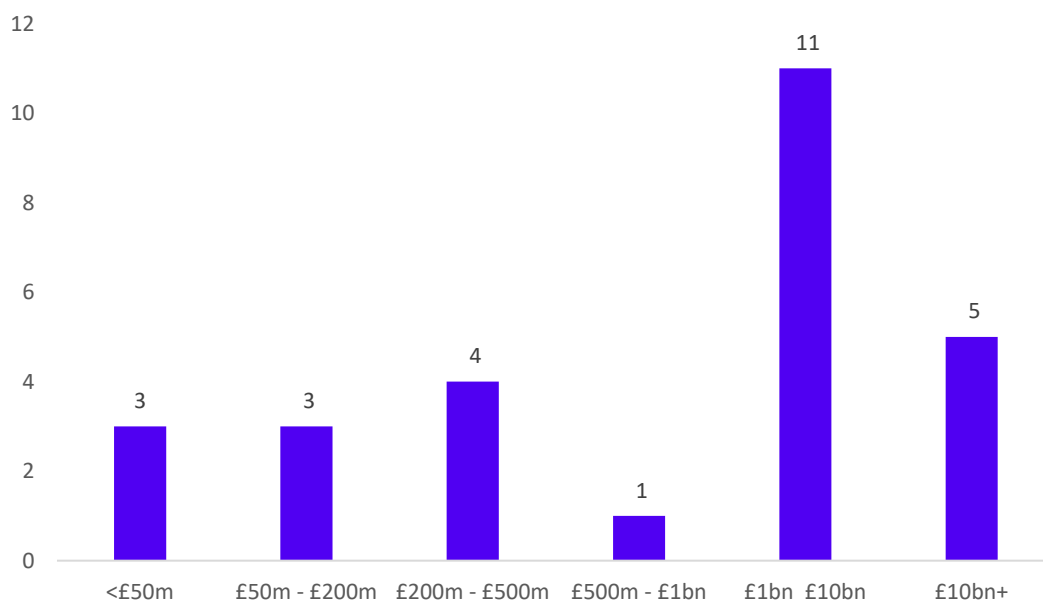
A6.7 We estimate that UK revenues typically represented less than 10% of worldwide revenues in financial years ending in 2023, though for a small number of providers UK revenues represented a higher proportion of worldwide revenues.

A6.8 Figure A6.2 below illustrates the distribution of worldwide revenue by revenue bracket in financial years ending in 2023. It illustrates that around 10% of providers responding to our information requests had estimated regulated worldwide revenues below £50m, around 30% up to £1bn and around 60% over £1bn. Note that the chart only illustrates

⁵⁸ We converted revenue information provided in currencies other than sterling to GBP using average exchange rates for the relevant financial years.

the distribution of estimated revenue associated with the providers responding to our information requests (which tended to be larger providers). Further, as noted above, the figures in this chart aggregate revenues in a way which may not fully align with our now proposed approach to determining QWR, and in some cases may overestimate the QWR attributable to individual providers. As noted elsewhere in this consultation, thousands of providers are likely to be in scope of the Act and we expect the worldwide revenue for many of these providers is likely to be below £50m. Therefore, a chart showing the distribution of worldwide revenue for all providers in scope of the Act is likely to be skewed such that most providers would have worldwide revenues below £50m, with significantly fewer providers towards the right-hand side of the chart with worldwide revenues above £1bn.

Figure A6.2: Distribution of estimated worldwide regulated service revenue by revenue bracket



Source: Ofcom analysis of responses to information requests. Figures based on revenues in financial years ending 2023 and may not sum due to rounding.

A6.9 Within the types of revenue generated by providers of regulated services, most revenue in financial years ending in 2023 related to advertising, subscription fees, and one-off payments. Other sources of revenue included commissions (for example on marketplace sales), donations, and payment processing fees, which, while relatively small sources of revenue overall, were more important for some providers.

A7. Equality impact assessment and Welsh language assessment

This annex sets out our equality impact assessment and a Welsh language assessment.

Equality impact assessment

- A7.1 Section 149 of the Equality Act 2010 ('the 2010 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. The 2010 Act 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.
- A7.2 Section 75 of the Northern Ireland Act 1998 ('the 1998 Act') also imposes a duty on Ofcom, when carrying out its functions relating to Northern Ireland, to have due regard to the need to promote equality of opportunity and have regard to the desirability of promoting good relations across a range of categories outlined in the 1998 Act. Ofcom's Revised Northern Ireland Equality Scheme explains how we comply with our statutory duties under the 1998 Act.⁵⁹
- A7.3 To help us comply with our duties under the 2010 Act and the 1998 Act, we assess the impact of our proposals on persons sharing protected characteristics and in particular whether they may discriminate against such persons or impact on equality of opportunity or good relations.
- A7.4 When thinking about equality we think more broadly than persons that share protected characteristics identified in equalities legislation and think about potential impacts on various groups of persons (see paragraph 4.7 of our impact assessment guidance).⁶⁰
- A7.5 In particular, section 3(4) of the CA03 also 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:
- i) the vulnerability of children and of others whose circumstances appear to us to put them in need of special protection;
 - ii) the needs of persons with disabilities, older persons and persons on low incomes; and
 - iii) 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.

⁵⁹ Ofcom, 2014. [Revised Northern Ireland Equality Scheme for Ofcom.](#)

⁶⁰ Ofcom, 2023. [Impact assessment guidance.](#)

- A7.6 We have examined the potential impact our proposals are likely to have on equality groups, depending on their personal circumstances. This also assists us in making sure that we are meeting our principal duty of furthering the interests of citizens and consumers, regardless of their background and identity.
- A7.7 We have also considered whether our proposals may have an adverse impact on equality groups that are likely to be affected in a different way to the general population. For example, if providers of regulated services that target and/or support equality groups were liable to pay fees (e.g. where individuals with protected characteristics are the main users of the service), whether this could lead to these services being ceased or limited or the potential increased costs of fees being passed on to UK users. If providers of such regulated services were due to pay fees, we consider that the benefits and diversity offered by these providers to equality groups, could be reduced, particularly if the potential barriers to entry or expansion for these providers increase, due to the requirement to pay fees.
- A7.8 However, we consider it likely that the revenues of the majority of providers of these types of services (i.e. services that specifically target or cater for equality groups) will be under the proposed threshold and, as a result, there will be little or no impact on such equality groups. This is due to the fact our proposed QWR threshold range of £200-£500m and recommended threshold figure of £250m have in part been influenced by our policy intent to limit the impact on SMEs and public interest services from fees. Furthermore, in the event the provider of this type of service met or exceeded the recommended £250m threshold for fees (or indeed any threshold Secretary of State chose in the recommended £200-500m threshold range), we assess their revenues are such that the fees would be proportionate and of a level that would be unlikely to disrupt the stability of their service provision or materially impact costs to users.
- A7.9 Further, we have considered the specific possibility that a large global provider offering services to equality groups but with no or limited UK presence⁶¹ could be dissuaded from entering or developing their service to UK equality groups. This situation, should it arise, could potentially deprive equality groups of such services or result in the passing of increased costs to UK equality groups to recover the cost of UK specific fees. Whilst we are not currently aware of any such regulated services, we assess the proposed UK referable revenue exemption ensures that the UK market remains attractive to new entrants and ensures only higher revenue services are liable for fees. We assess this significantly decreases the likelihood of equality groups being negatively affected.
- A7.10 Our proposals in respect of the determination of QWR when calculating maximum penalties are informed by our central objective of deterrence, namely to secure that the undertakings who may be subject to a penalty comply with their obligations under the Act. This should benefit UK users of regulated services, including equality groups. We do not consider that there are relevant equality impacts arising from the imposition of penalties. This is because our proposals only relate to the calculation of the maximum cap for a penalty; the actual penalty amount that we impose in a given case is calculated in line with our Penalty Guidelines and must be appropriate and proportionate.
- A7.11 We therefore do not consider that our proposals will have a significant adverse impact, directly or indirectly, on providers of such services. We have not identified any adverse

⁶¹ In this context, by 'UK presence', we mean UK users and/or UK referable revenues.

impacts on specific groups of persons that are likely to be affected in a different way to the general population.

Northern Ireland

- A7.12 We do not consider that our proposals have equality impacts in Northern Ireland. We have not identified any adverse impacts on specific groups of persons within Northern Ireland, that are likely to be affected in a different way to the rest of the UK.

Overall provisional conclusion about equality impact

- A7.13 To summarise, we do not consider that our proposals will have either direct or indirect adverse impacts on equality groups. After a careful assessment, we have concluded that our proposals, including our proposed advice on the QWR threshold and exemption proposal, mitigate the risk of potential adverse impacts on equality groups as noted above. We welcome responses to our consultation on the potential impact on equality groups and other ways in which we may be able to mitigate or eliminate this impact.

Welsh language assessment

- A7.14 The Welsh language has official status in Wales.⁶² To give effect to this, certain public bodies, including Ofcom, are required to comply with Welsh language standards.⁶³ Accordingly, we have considered:
- i) The potential impact of our policy proposals on opportunities for persons to use the Welsh language;
 - ii) The potential impact of our policy proposals on treating the Welsh language no less favourably than the English language; and
 - iii) How our proposals could be formulated so as to have, or increase, a positive impact; or not to have adverse effects or to decrease any adverse effects.
- A7.15 Ofcom's powers and duties in relation to online safety regulation are set out within the Act and must be exercised in accordance with our general duties under section 3 of the CA03.
- A7.16 In formulating our proposals in this consultation, where relevant and to the extent we have discretion to do so in the exercise of our functions, we have considered the potential impacts on opportunities to use Welsh and treating Welsh no less favourably than English. Stakeholders will be able to contact Ofcom about these proposals in Welsh and fulfil any notification obligations on them in Welsh should they wish to do so. As a result, we expect these proposals are likely to have positive effects or increased positive effects, on the use of the Welsh language and treating Welsh no less favourably than the English language.

Consultation Question A1: In relation to our equality impact assessment, do you agree with our assessment of the potential impact of our proposals on equality groups? If you disagree, please explain why.

⁶² [The Welsh Language \(Wales\) Measure 2011](#).

⁶³ [The Welsh language standard](#) with which Ofcom is required to comply.

Consultation question A2: Are you currently aware of any providers of regulated services targeting or providing support in any way to specific equality groups that are likely to generate a QWR that meets or exceeds the proposed threshold?

Consultation question A3: In relation to our Welsh language assessment, do you agree that our proposals are likely to have positive, or more positive impacts on opportunities to use Welsh and treating Welsh no less favourably than English? If you disagree, please explain why, including how you consider these proposals could be revised to have positive effects or more positive effects, or no adverse effects or fewer adverse effects on opportunities to use Welsh and treating Welsh no less favourably than English.