
DRAFT – STATUTORY – INSTRUMENTS

2024 No. ****

**FEES AND CHARGES
ELECTRONIC COMMUNICATIONS**

The Online Safety Act 2023 (Qualifying Worldwide Revenue)
Regulations 2024

Made - - - - - [NNth Month Year]

Laid before Parliament - - - [NNth Month Year]

Coming into force - - - - - [NNth Month Year]

The Office of Communications (“OFCOM”) in exercise of the powers conferred by sections 85(1), (3), (4), (5) and (6), and paragraphs 4(9) and 5(9) to (11) of Schedule 13 to the Online Safety Act 2023¹ (“the Act”) makes the following Regulations.

Before making these Regulations, OFCOM consulted the Secretary of State, the Treasury and such other persons as they considered appropriate [*and have considered the representations made to them before the time specified in accordance with section 85(7) of the Act*].

**Part 1
General**

Citation, commencement and extent

1. These Regulations may be cited as [The Online Safety 2023 (Qualifying Worldwide Revenue) Regulations 2024] and shall come into force on [date, month, and year].

Interpretation: general

2. In these regulations—

- (a) “the Act” means the Online Safety Act 2023; and
- (b) any reference to a provider of a regulated service is to be construed in accordance with sections 83(11) and 226 of the Act;

¹ 2023, Ch 50

- (c) “group” means a parent undertaking and its subsidiary undertakings, reading those terms in accordance with section 1162 of the Companies Act 2006;
- (d) “group undertaking” has the meaning given by section 1161(5) of that Act.

Interpretation: revenue that is referable to regulated service

3. —(1) Any reference in Parts 2 and 3 to revenue that is referable to a regulated service (however expressed) is to be construed in accordance with this regulation.
- (2) An amount of revenue counts as referable to a regulated service only if, and so far as, it arises in connection with provision of the service.
- (3) Reference in paragraph (2) to provision of the service includes reference to its provision—
- (a) comprising all of its parts, whether or not including—
 - (i) the user-to-user part (in the case of user-to-user services);
 - (ii) parts where search content may be encountered (in the case of search services);
 - (iii) parts where regulated provider pornographic content may be encountered;
 - (b) anywhere in the world.
- (4) Circumstances where revenue arises in connection with the provision of a regulated service include those where amounts are generated as a result of—
- (a) any advertising (including via paid-for advertisements);
 - (b) the supply of goods or other services.
- (5) Where, in respect of an amount of revenue (R) to which paragraph (2) does not apply—
- (a) R comprises revenue that is an aggregation of—
 - (i) an amount arising in connection with provision of a regulated service (RA), and
 - (ii) an amount arising in connection with other things (RB), but
 - (b) it is not possible to separately identify RA from RB (such that paragraph (2) would otherwise apply in relation to RA),
- R is to be apportioned on a just and reasonable basis.
- (6) Any amount apportioned under paragraph (5) as revenue arising in connection with provision of a regulated service counts as an amount referable to the regulated service (and, accordingly, any amount apportioned as revenue arising in connection with other things does not count as referable to the service).

Determination of qualifying worldwide revenue: general principles

4. —(1) This regulation applies for the purposes of determining qualifying worldwide revenue (whether for the purposes of Part 2 or 3).
- (2) Amounts brought into account must conform to generally accepted accounting practices.
- (3) If an amount that is relevant for the purpose of determining qualifying worldwide revenue is expressed in a currency other than sterling—
- (a) the amount must be converted into its sterling equivalent, and
 - (b) the conversion must be made by applying a just and reasonable exchange rate.

Part 2

Qualifying worldwide revenue for purposes of Part 6 of the Act

Provider of a regulated service

5. —(1) This regulation applies for the purposes of determining the qualifying worldwide revenue of a provider of a regulated service in respect of a qualifying period (where the provider provides no other regulated services).

(2) The provider's qualifying worldwide revenue is the total amount of revenue the provider receives during the qualifying period that is referable to the regulated service.

Provider of two or more regulated services

6. —(1) This regulation applies for the purposes of determining the qualifying worldwide revenue of a provider of more than one regulated service in respect of a qualifying period.

(2) The provider's qualifying worldwide revenue is determined by—
(a) finding, in respect of each regulated service, the total amount of relevant revenue, and
(b) adding together those amounts.

(3) Revenue is "relevant" for that purpose if—
(a) the provider receives it during the qualifying period, and
(b) it is referable to the regulated service in question.

Group undertakings in receipt of revenue that is referable to one or more regulated services

7. —(1) This regulation applies where a provider of one or more regulated services is a member of a group during any part of a qualifying period.

(2) The qualifying worldwide revenue of that provider is to include the qualifying worldwide revenue of any entity (E) that:
(a) is a group undertaking in relation to the provider for all or part of the qualifying period; and
(b) receives during that period, any amount referable to a regulated service provided by the provider.

(3) Where E is a group undertaking in relation to a provider for part (not all) of a qualifying period, only amounts relating to the part of the qualifying period for which E was a group undertaking may be brought into account in determining E's qualifying worldwide revenue.

(4) For the purposes of this regulation, the qualifying worldwide revenue of E is the total amount of revenue that E receives during the qualifying period that is referable to the regulated service or regulated services provided by the provider (as the case may be).

Determination of qualifying period

8. —(1) The qualifying period in respect of a charging year is the second calendar year preceding the one within which the charging year begins.

(2) In this regulation—
"charging year" has the same meaning as in section 90 of the Act;
"calendar year" means the period of 12 months beginning with the 1 January.

Part 3

Qualifying worldwide revenue for purposes of paragraph 5 of Schedule 13 to the Act

Maximum amount of penalty: two or more entities in group jointly and severally liable

9. —(1) This regulation applies for the purposes of paragraph 5 of Schedule 13 to the Act (maximum amount of penalties: group entities) regarding the qualifying worldwide revenue of a group of entities that consists of—

(a) an entity that is the provider of a regulated service (entity "E"), and
(b) every other entity that is a group undertaking in relation to entity E.

(2) The qualifying worldwide revenue of the group of entities is determined by—

(a) finding, in respect of each entity within paragraph (1)(a) and (b), the total amount of relevant revenue, and

(b) adding together those amounts.

(3) For the purposes of paragraph (2)(a) an amount of revenue is “relevant” if—

(a) the entity receives it during the most recent complete accounting period (whether or not it is referable to any regulated service), and

(b) it is not attributable to payment in consideration for goods or services provided to another entity within paragraph (1)(a) or (b).

(4) For the purposes of paragraph (3)(a), if the first accounting period of an entity has not yet ended, the amount is that which OFCOM estimate to be the likely amount of revenue for that period for that entity.

(5) Where an entity is a group undertaking in relation to entity E for part (not all) of the most recent complete accounting period, only amounts relating to the part of the accounting period for which the entity was a group undertaking may be brought into account in determining the total amount of relevant revenue.

[Name]
[Title]
[Department]

Date

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**[EXPLANATORY NOTE
(This note is not part of the Regulations)]**

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