Ofcom

Online Safety – fees and penalties

Consultation on implementing fees and penalties under the Online Safety Act 2023

Consultation

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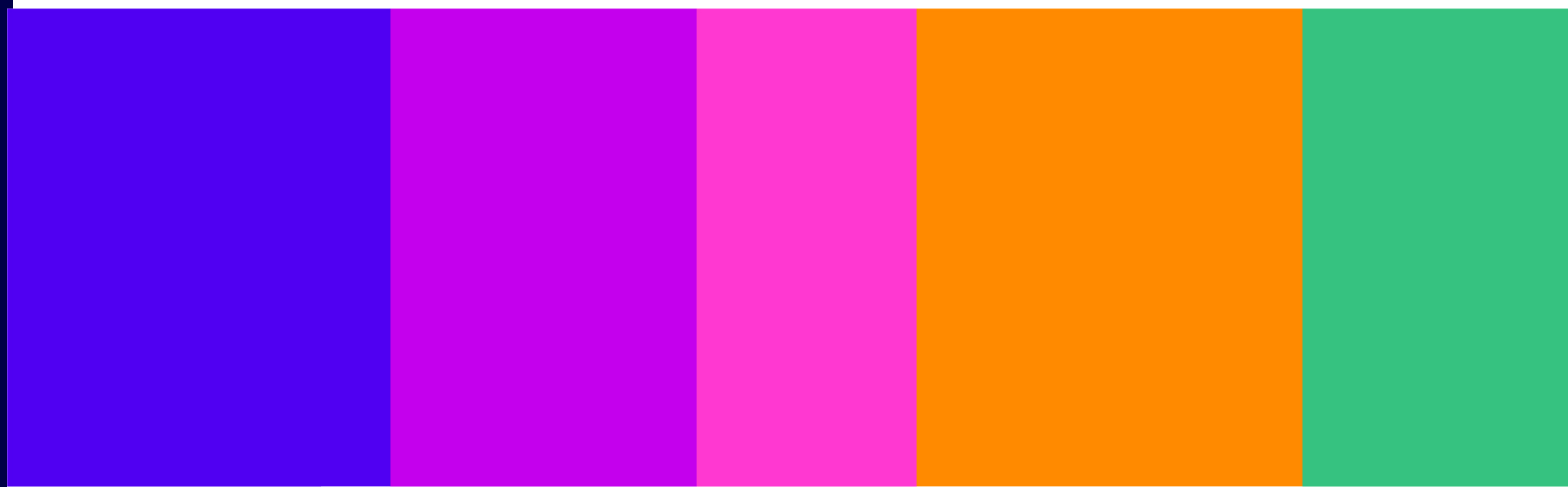

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1. Overview

1.1 The Online Safety Act 2023 (‘the Act’) received Royal Assent on 26 October 2023, creating a new regulatory framework which makes platforms – including social media, search, and pornography services – legally responsible for keeping people, especially children, safer online.[1] These services have new duties to protect users in the UK by assessing risks of harm and taking steps to address them. As the UK’s online safety regulator, Ofcom has been working to establish the new regime, including this consultation on implementing the fees regime, and the approach to setting the maximum level of penalties under the Act.

1.2 Ofcom's new online safety responsibilities require significant resources to, amongst other things:

i) Consult on and deliver many regulatory documents required by the Act;
ii) Undertake research into the causes of, and mitigations for, harms online; and
iii) Engage effectively with online services and other interested stakeholders to drive compliance, including undertaking enforcement activity where necessary.

1.3 The UK Government’s longstanding policy position is that Ofcom's costs to deliver these responsibilities should be funded by industry through a fees regime.

1.4 Under the Act, both Ofcom and the Secretary of State for the Department for Science, Innovation and Technology (DSIT) are responsible for implementing the fees regime.

1.5 This consultation sets out Ofcom’s proposals on aspects of the fees regime which must be put in place before Ofcom can start charging fees from providers of regulated services. In addition, as explained below, some of our proposals are also relevant to the maximum level of penalties that can be imposed for breaches of requirements under the Act.

What we are consulting on – in brief

Determining ‘qualifying worldwide revenue’ for fees and penalties

The Online Safety Act stipulates that revenue should be the primary factor in determining the amount of fees providers will be liable to pay. In this document, we are consulting on draft secondary legislation[2] in which we set out the definition of ‘qualifying worldwide revenue’ (QWR) for a provider, which will be used for the calculation of the fees. The same definition is also used to calculate the maximum penalty that we can impose when we find a provider in breach of its duties under the Act.

We propose to define QWR as the total revenue of a provider referable to the provision of regulated services anywhere in the world. This definition of QWR will apply when: (i) calculating fees; and (ii) calculating the maximum amount for a penalty that we may impose on a provider which has been found in breach of its duties.

[1] Online Safety Act 2023.
[2] See Annex 9 for the draft Statutory Instrument setting out our QWR definition proposals, referred to as the ‘QWR Regulations’.

Where we find a provider and one or more of its group undertakings jointly and severally liable for a breach of the duties under the Act, the maximum amount of the penalty is calculated on the basis of the QWR of the entire group. In this case, we propose to determine that the QWR of the group is the worldwide revenues that the group generated in the most recent accounting period of the undertakings liable to pay the penalty (whether or not the revenues relate to regulated services).

We also propose to define the 'qualifying period' for a charging year as the second calendar year preceding the one within which the charging year begins, i.e. the calendar year two years prior to the one within which the charging year begins.

The QWR threshold for paying fees and proposed exemption

Providers of regulated services will be liable to pay fees if their QWR meets or exceeds a threshold that will be set by the Secretary of State within regulations, having taken advice from Ofcom. We propose to advise the Secretary of State to set the QWR threshold, at or above which providers of regulated services will be required to pay fees, at £250m. We consider that any threshold figure within a £200m to £500m range could be appropriate.

Subject to the Secretary of State's approval, we also propose to exempt from the fees duties under the Act providers of regulated services whose UK referable revenue[3] is less than £10m.

Fee notification requirements and the Statement of Charging Principles

The Act enables Ofcom to make regulations requiring providers of regulated services to notify Ofcom if their QWR meets or exceeds the QWR threshold. We are consulting on draft 'Notification Regulations'[4] which set out the "evidence, documents or other information" providers must supply to Ofcom for the purposes of fees notifications and the way in which these should be supplied. See Chapter 4 for more detail on our proposed notification requirements.

Ofcom is required to issue a Statement of Charging Principles (SoCP), which will include, amongst other things, details relating to the computational model used to calculate fees payable.[5] We are consulting on our proposed approach to the SoCP, namely to calculate fees using a single percentage approach, so that in a charging year, each provider liable to pay fees would pay the same percentage of their QWR. See Chapter 3.4 for our proposed charging approach. We intend to consult separately on the draft SoCP itself next year.

Structure of this document

This consultation document is structured as follows:

[3] The revenues of a provider which may arise anywhere in the world but are attributable to the provision of a regulated service to UK users.
[4] See Annex 10 for the draft Statutory Instrument on notification (the draft 'Notification Regulations').
[5] Section 88(3)(a) of the Act.

i) **Chapter 2** covers why there is a fees regime for online safety; how the fees regime will be implemented; the recovery of Ofcom's initial costs (the subject of a separate DSIT-led consultation); and QWR for penalties.
ii) **Chapter 3** set out our proposals for QWR, exemptions and SoCP, which are referenced above.
iii) **Chapter 4** provides details of the notification requirements and our proposals relating to supporting evidence, documents and information.
iv) **Chapter 5** contains our impact assessment under section 7 of the Communications Act.
v) **Annexes 1 to 12** cover a range of supplementary information:
   - Annexes 1 - 4 explain our consultation process and how you can respond.
   - Annex 5 - the legal framework.
   - Annex 6 - summary of the evidence base informing our QWR proposals.
   - Annex 7 - the Equality Impact Assessment and Welsh language impact assessment of our proposals.
   - Annex 8 - Fees decision tree.
   - Annex 9 - Draft Online Safety Act 2023 (Qualifying Worldwide Revenue) Regulations, the 'QWR Regulations'.
   - Annex 10 - Draft Online Safety Act 2023 (Notification) Regulations, the 'Notification Regulations'.
   - Annex 11 - Draft Manner of Notification document.
   - Annex 12 - Definitions and abbreviations used in this consultation.

What happens next

1.6 We are inviting stakeholders' views on our proposals, and specifically the questions set out in Annex 4 to this consultation. The deadline for responses is 9 January 2025. Following the end of this consultation period we will carefully consider and analyse all responses received.

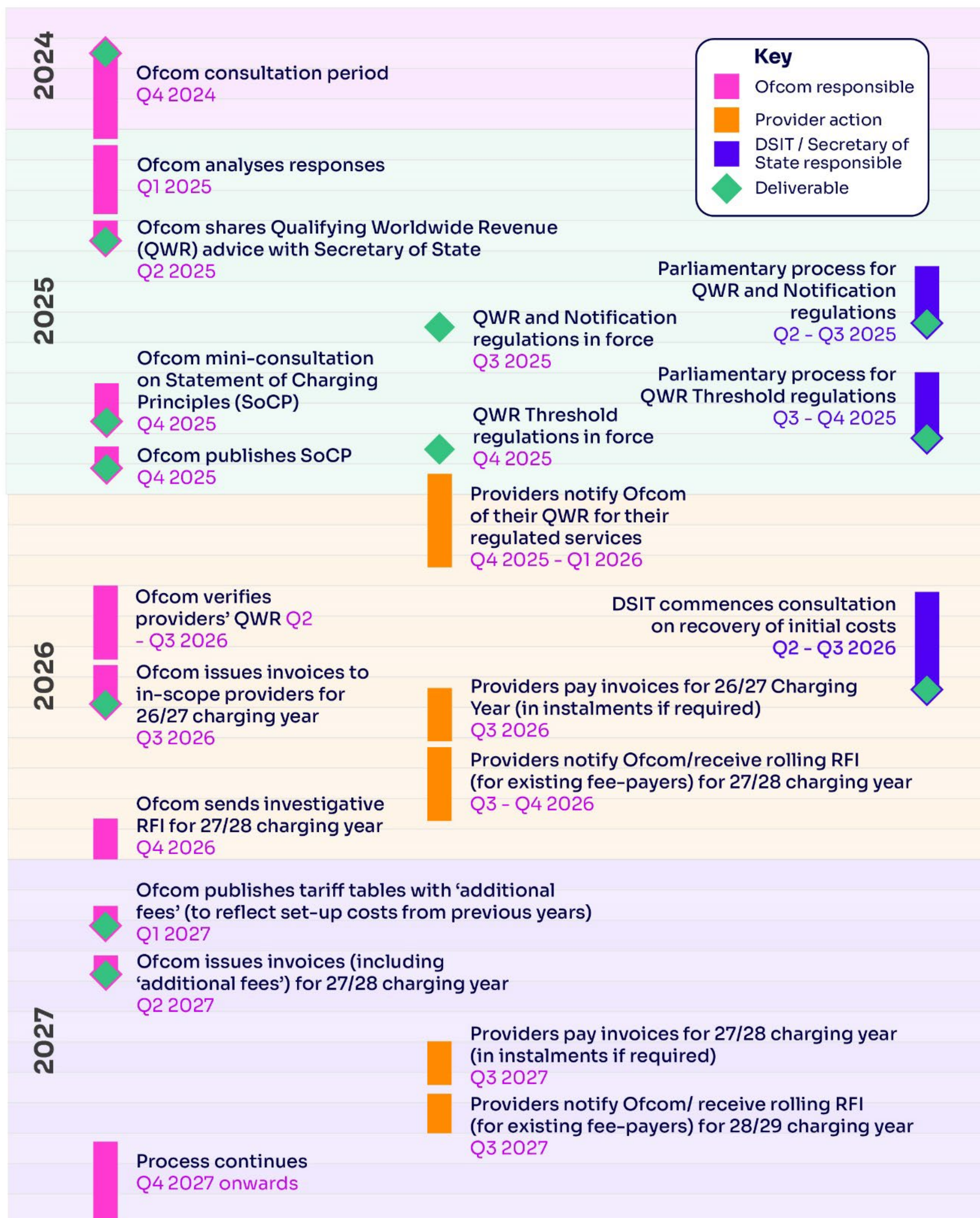
1.7 Before Ofcom can charge fees, there are several stages of implementation that need to take place, which are outlined in Chapter 2 of this consultation document. We expect the fees regime to be in place for the 26/27 financial year. The timeline below sets out the expected implementation timetable in detail. In brief:

i) In Q2 2025, we aim to publish our statement, including finalising our QWR Regulations and Notification Regulations. We will also formally advise the Secretary of State on QWR threshold.
ii) In Q3 2025, we expect the QWR Regulations and Notification Regulations to come into force.
iii) In Q4 2025, we expect the QWR Threshold Regulations to come into force. Stakeholders will then be notified that the relevant regulations have come into effect and will be advised on next steps.
iv) By Q3 2026, we will issue invoices to providers who are liable to pay fees for the 26/27 financial year.

1.8 Throughout this process, we will continue developing relationships with regulated services and provide an orderly introduction to the fees regime.

1.9 We will also continue engaging with DSIT to ensure appropriate alignment regarding our respective responsibilities during the implementation process.

Figure 1: High-level implementation timeline for the online safety fees regime



2. Background

Summary

This chapter sets out the background to our proposals both in relation to the fees and penalties regimes, and how the fees regime will be implemented.

Why there is a fees regime for online safety

2.1 Ofcom is the UK's independent regulator for communications services. We have regulatory responsibilities for the telecommunications, post and broadcasting sectors, as well as for online services. These include user-to-user and search services and online services that publish pornography, which are all in scope of the Act. These also include online video services with the required connection with the UK, referred to as video-sharing platforms (VSPs), which are regulated currently under Part 4B of the Communications Act 2003 (CA03). The CA03 places a number of duties on Ofcom that we must fulfil when exercising our regulatory functions, including our online safety functions.[6]

2.2 Ofcom has two main funding sources to fund our regulatory activities: fees levied on industry in accordance with various legislative provisions that enable us to put in place charging regimes, and retention of spectrum fees collected by Ofcom under the Wireless Telegraphy Act 2006 (WTA).[7]

2.3 Ofcom currently levies industry fees on providers of regulated services in the broadcasting, telecoms, post and video-on-demand sectors.[8] In our non-licensed sectors, fees are only levied on providers that exceed a specified turnover or revenue threshold and are calculated and charged in accordance with our Statements of Charging Principles.[9] Ofcom's charges are based on relevant providers' revenues as specified in the relevant Statement of Charging Principles and the costs of our regulatory functions in each relevant regulated sector.

2.4 In each financial year, Ofcom is required to balance its expenditure with its income,[10] and Ofcom operates within an overall financial cap set by HM Treasury and the Department for Science, Innovation and Technology (DSIT), which acts as a ceiling as to how much Ofcom can spend in any given year. Ofcom's fees and charges are subject to audits by Ofcom's internal auditors and the National Audit Office.

2.5 Ofcom's new online safety responsibilities under the Act require ongoing resources to implement and oversee the regulatory regime. To date, Ofcom's costs relating to online safety have been covered by Ofcom retaining WTA receipts. However, the Act includes

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[6] See Annex 5 for further details about Ofcom's general duties under the Communications Act 2003, in particular Ofcom's duties under section 3 of the CA03.
[7] This happens in accordance with a statement of retention principles under section 401 of the CA03.
[8] Telecoms – section 38 CA03; Network Infrastructure Security – Network and Information Systems Regulations 2018; Post – Postal Services Act 2011; TV & Radio Broadcasters – Broadcasting Act 1990 and 1996; BBC – BBC Charter; Video On Demand – section 368NA CA03.
[9] Statement of Charging Principles for the Telecoms sector.
[10] Paragraph 8(1) of the Schedule to the Office of Communications Act 2002.

provisions that mean Ofcom's costs will in future be covered by providers of regulated services through a fees regime, in line with what already applies in other regulated sectors.

2.6 The fees regime established under the Act will:

i) Enable Ofcom to charge fees which, in aggregate, are sufficient to meet – but do not exceed – the annual cost to Ofcom of the exercise of our online safety functions; and
ii) Also provide for Ofcom to charge additional fees to recover the initial costs of setting up the online safety regime once the Secretary of State has made regulations to put in place a regime to recover initial costs.

How the fees regime will be implemented

2.7 As set out in the Overview of this document, a number of steps need to be fulfilled before the fees regime becomes operational and Ofcom can start charging fees. This consultation includes proposals on a number of these steps, as explained further below.

Qualifying worldwide revenue (QWR)

2.8 Ofcom must make regulations that set out how the QWR of a provider of a regulated service is to be determined and define 'the qualifying period' to which QWR relates (the 'QWR Regulations').[11] These regulations must be laid before Parliament by the Secretary of State.[12]

QWR threshold

2.9 Ofcom must also, following consultation, advise the Secretary of State on where to set the QWR threshold figure at or above which providers of regulated services will be required to pay fees. The Secretary of State will then make regulations that will set the QWR threshold figure, which will be laid before Parliament.[13]

Notifications

2.10 Providers of regulated services are required to notify Ofcom in particular circumstances, including where they are liable to pay fees as their QWR meets or exceeds the QWR threshold, unless exempt.[14] Ofcom may make regulations that specify the "evidence, documents or other information" providers must supply to Ofcom for relevant QWR notifications, and the way in which these should be supplied ('Notification Regulations').[15] Again these regulations must be laid before Parliament by the Secretary of State.

[11] Section 85(1) of the Act.
[12] These regulations are subject to the 'affirmative resolution procedure' meaning before they are made a draft must be approved by a resolution of each House of Parliament.
[13] Section 86(2) of the Act. These regulations are subject to the 'negative resolution procedure' meaning that they are subject to annulment by a resolution of either House of Parliament.
[14] See section 83(1)(a), subsections (b)(i) and (b)(ii) of the Act.
[15] Section 85(2) of the Act. These regulations are also subject to the 'negative resolution procedure'.

Exemptions

2.11 Ofcom also has a power to exempt particular descriptions of providers of regulated services from the duty to notify and the duty to pay fees where Ofcom considers this to be appropriate, and subject to the approval of the Secretary of State.[16] Ofcom must publish details of any such exemption.

Statement of Charging Principles

2.12 Before Ofcom can start charging fees, Ofcom must put in place a Statement of Charging Principles[17] ('SoCP') containing the principles that Ofcom will apply in setting fees. The SoCP must include among other things details about the computation model used by Ofcom to calculate the fees payable.[18] The fees payable will be set by reference to the provider's QWR for the qualifying period for the relevant charging year, as well as any of other factors that Ofcom consider appropriate.[19]

QWR for penalties

2.13 The Act grants Ofcom a range of enforcement powers where a provider fails to comply with its duties under the Act. Where we find a provider has contravened its obligations, we have the power to impose a penalty of up to 10% of its QWR or £18 million (whichever is the greater).

2.14 The concept of QWR as set out in Part 6 of the Act is also used to calculate the maximum penalty that we can impose when we find a provider in breach of its duties under the Act. The Act provides that the QWR Regulations that explain how QWR is to be determined for the purposes of the fees regime will also apply for calculating the maximum penalty on the provider of a regulated service in an enforcement context.

2.15 Separately, the Act also enables us to set out in regulations a definition of QWR for a group, which applies when we are calculating the maximum penalty that we can impose when we find a provider and one or more undertakings within its group jointly and severally liable for a breach. The definition of QWR for these purposes may be different to the definition of QWR for the purposes of calculating fees or when used to impose a penalty only on the provider of a regulated service.

[16] Section 83(6) of the Act.
[17] Section 88 of the Act.
[18] Section 88(3)(a) of the Act.
[19] Section 84(2) of the Act.

Ofcom's general duties and Secretary of State's guidance

2.16 We set out in Annex 5 the legal framework for the proposals in this consultation. In making these proposals, we must act in accordance with our general duties in section 3 of the Communications Act 2003 ('CA03'). In addition to our principal duty to further the interests of citizens and consumers, these include our duties to:

i) secure the adequate protection of citizens from harm by the appropriate use by providers of regulated services of systems and processes to reduce the risk of harm from content on their services;[20]
i) have regard to the principles 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;[21] and
ii) have regard to the desirability of promoting competition in relevant markets and encouraging investment and innovation.[22]

2.17 In addition, in developing the principles to be included in the SoCP and exercising other functions in relation to the fees regime, we are required to have regard to principles set out by guidance issued by the Secretary of State.[23] In May 2024, the then Secretary of State published guidance[24] setting out three overarching principles to which we have had regard in developing our proposals for the fees regime:

i) **Proportionality** – fees must be applied proportionately to the range of regulated providers, considering revenue and other relevant factors (including the number of services in scope, the revenue spread and the variety of functions across regulated providers), as well as recognising the potential burden on providers. The Guidance also highlights that this principle is important to the UK Government's intention to limit the impact on small and medium enterprises of online safety regulation. We consider ensuring objectivity and avoiding unfairness in our approach to be part of proportionality in this context.
ii) **Transparency** – it should be clear to firms what fees they are paying and why they are paying them. We consider that transparency in relation to the fees regime will primarily be secured through Ofcom consulting transparently on our policy proposals, as outlined in this consultation. We will also transparently present Ofcom's proposed approach in our subsequent statement and final advice, as well as through the secondary legislation and SoCP.
iii) **Stability** – the principles used to set fees should be clear and consistent so that providers are able to understand how fees will be calculated so they are able to incorporate this into long term plans. This principle of stability aligns with

[20] Section 3(2)(g) of the CA03.
[21] Section 3(3) of the CA03.
[22] Section 3(4)(b) and (d) of the CA03.
[23] Section 87 of the Act.
[24] Department for Science, Innovation and Technology, Guidance to the regulator about fees relating to the Online Safety Act 2023, 24 May 2024.

Ofcom's general duty under section 3(3) of the CA03 that regulatory activities should be consistent and accountable.

2.18 We consider that a relevant consideration linked to these principles and our general duties is seeking to avoid unnecessary complexity, which could increase compliance burdens for fee-paying service providers, increase the costs to Ofcom of implementing the fees regime and, in the context of calculating maximum penalties, lead to an inefficient use of limited enforcement resources. In the rest of this document, we refer to this consideration as the 'workability' principle.

2.19 We recognise that it will be necessary to make trade-offs between the above principles and exercise regulatory judgment in deciding on the appropriate approach. We have identified these trade-offs in discussing the options we have considered in this consultation.

Future consultation by the Secretary of State on additional fees – recovery of Ofcom's initial costs

2.20 Providers of regulated services who are liable to pay fees as set out above will also be required to pay additional fees over a number of years to recover the initial costs of setting up the online safety regime.[25]

2.21 Before Ofcom can charge these additional fees, the Secretary of State must consult on, and make, regulations which set out how these additional fees will be calculated and the period over which Ofcom should recover them (which may be a period of between three to five years, and which cannot start until after the 'initial charging year' – i.e. the first year that Ofcom charges providers fees). The recovery of initial costs is not covered by this consultation - DSIT will separately consult on the regime to recover initial costs. See the implementation timeline in Chapter 1 for more detail.

Impact Assessments

2.22 Impact assessments provide a valuable way of evaluating the options for regulation and showing why the chosen option(s) was preferred. They form part of best practice policy making and regulatory practice. This is reflected in section 7 of the CA03, which requires Ofcom to carry out and publish an assessment of the likely impact of implementing a proposal which would be likely to have a significant impact on businesses or the general public, or when there is a major change in Ofcom's activities. As a matter of policy, Ofcom is committed to carrying out impact assessments in a large majority of our policy decisions. Our impact assessment guidance[26] sets out our general approach to how we assess and present the impact of our proposed decisions.

2.23 Ofcom's impact assessment for the proposals covered in this consultation is set out in Chapter 5.

[25] Schedule 10 to the Act.
[26] Impact assessment guidance.

Equality impact assessment

2.24 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.

2.25 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.[27]

2.26 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.

2.27 Our equality impact assessment is set out at Annex 7.

Welsh language

2.28 The Welsh Language (Wales) Measure 2011 made the Welsh language an officially recognised language in Wales. This legislation also led to the establishment of the office of the Welsh Language Commissioner who regulates and monitors our work. Ofcom is required to take Welsh language considerations into account when formulating, reviewing or revising policies which are relevant to Wales (including proposals which are not targeted at Wales specifically but are of interest across the UK).[28]

2.29 Where the Welsh Language Standards are engaged, we consider the potential impact of a policy proposal on (i) opportunities for persons to use the Welsh language; and (ii) treating the Welsh language no less favourably than the English language. We also consider how a proposal could be formulated so as to have, or increase, a positive impact, or not to have adverse effects or to decrease any adverse effects.

2.30 Our Welsh language impact assessment is set out at Annex 7.

[27] Ofcom, 2014. Revised Northern Ireland Equality Scheme for Ofcom.
[28] See Standards 84-89 of Hysbysiad cydymffurfio (in Welsh) and compliance notice (in English). Section 7 of the Welsh Language Commissioner's Good Practice Advice Document provides further advice and information on how bodies must comply with the Welsh Language Standards.

3. Proposals for qualifying worldwide revenue (QWR), exemptions and Statement of Charging Principles

3.1 Determining QWR for fees and maximum penalties for a provider

Summary

What we are proposing – in brief

In this section, we explain our proposed approach to determining the qualifying worldwide revenue (QWR) of a provider of a regulated service for the purpose of calculating fees. We also explain our proposed definition of the 'qualifying period' for a charging year.

We propose that QWR is determined as the total amount of revenue (calculated in sterling) of a provider referable to a regulated service. An amount of revenue counts as referable to regulated service if it arises in connection with the provision of the service, comprising all of its parts, anywhere in the world (we refer to this below as the 'worldwide revenue approach').

We explain why the proposed worldwide revenue approach for determining QWR is also appropriate for calculating penalty caps for a non-compliant provider. This should have a greater potential to have a material financial impact on the business in question, and therefore be more likely to achieve our central objective of deterring the provider from non-compliance.

Where it is not possible to separately identify revenues arising in connection with a regulated service from those arising from other activities, we propose that providers should apportion revenue pertinent to the QWR calculation on a just and reasonable basis.

Where a provider provides two or more regulated services in the qualifying period, we propose that their QWR is determined by adding together the amount of referable revenue for each regulated service.

We are proposing to include a provision in the QWR Regulations to cater for circumstances where the entity within a group providing a regulated service is not the same entity within the group receiving all (or any) of the QWR relating to that regulated service. In this case, we propose that when determining the QWR, revenues received by another group undertaking that are referable to the provider's regulated service must be included in the calculation.

We propose to define 'qualifying period' for a charging year as the second calendar year preceding the one within which the charging year begins, i.e. the calendar year two years prior to the calendar year within which the charging year begins. For example, 1 January to 31 December 2024 would be the qualifying period for charging year 2026/27.

Based on the powers Ofcom has under the Act, we are proposing to make a set of regulations which reflect our QWR proposals – see the draft QWR Regulations at Annex 9.

We explain our reasoning for proposing not to issue a statement relating to Video Sharing Platforms, about the circumstances in which amounts do, or do not, count as being wholly referable to a relevant VSP service.

How we propose QWR is to be determined

3.1.1 We propose that the QWR of a provider is to be determined as the total amount of revenue the provider receives that is referable to a regulated service under the Act. This means revenue that arises in connection with the provision of the service, comprising all of its parts, anywhere in the world (i.e. regardless of whether or not such revenue may be attributable to the use of the service in the UK). For fees, this revenue would be calculated over the 'qualifying period' (see further below).

3.1.2 We have considered two possible approaches to the determination of QWR – worldwide revenues arising in connection with the regulated service (the 'worldwide revenue approach') and an approach which focuses on revenues attributable to the provision of regulated services to UK users (the 'UK referable revenue approach'). We explain these options in more detail below.

3.1.3 The determination of QWR in our regulations is relevant to both the fees regime and for the maximum penalty cap for a provider found to have breached a requirement under the Act. This is because the provisions made by Ofcom in regulations for the determination of QWR to set fees also apply when determining the QWR for calculating the maximum amount of a penalty which can be imposed on a provider.[29] In reaching our preferred option, we have considered in the round the implications of the two approaches for the setting of fees under the Act and the maximum penalties we would be able to impose.

3.1.4 In the following paragraphs, we explain our proposals in relation to how QWR is to be determined. We address the following issues:

i) The types of revenue that may arise in connection with a regulated service;
ii) Which geographic revenues are to be brought into account;
iii) When apportionment is required;
iv) The treatment of revenues arising from two or more regulated services;
v) The inclusion of certain revenues received by other group undertakings; and
vi) The basis on which revenues reported in other currencies should be converted into sterling.

3.1.5 We also set out our proposals for the definition of the 'qualifying period', which is the period for which a determination of QWR is to be made, for the purposes of setting fees.

[29] The Act provides that the maximum cap for a penalty imposed on providers of regulated services for breaching requirements of the Act is the greater of: (i) £18 million or (ii) 10% of the provider's qualifying worldwide revenue for their most recent complete accounting period. See Paragraph 4(1) of Schedule 13 to the Act.

What types of revenues are relevant for QWR determination

3.1.6 The Act says that fees are to be calculated by reference to QWR and other factors we consider appropriate. The Act gives us the power to make regulations which set out how QWR is to be determined.

3.1.7 The fees we set will meet the costs of regulating services within scope of the Act. Therefore, we consider it is appropriate that revenues on which these fees are based are those a provider receives in respect of a regulated service. This additionally has the benefit of ensuring that our fees proposals are proportionate for providers receiving revenues from activities not connected with the provision of the regulated service(s).[30] On this basis, we propose that 'qualifying' revenue is revenue referable to a regulated service. By this we mean revenue that arises in connection with the provision of a regulated service.

3.1.8 Responses to our information requests indicated that, in aggregate, the majority of revenue associated with regulated services was derived from 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. We consider each of these sources of revenue would be captured by our proposed definition of QWR. Our draft QWR Regulations say that referable revenue includes amounts generated from advertising and from the supply of goods or other services (which would include amounts like subscriptions and one-off payments) – but this is intended to be illustrative only of the types of things which are meant by referable revenue and is not meant to be an exhaustive list.

3.1.9 We do not propose to define 'revenue' itself given it is a generally understood accounting term, to be interpreted in line with generally accepted accounting practices. This is reflected in our draft QWR Regulations which require that for the purposes of the QWR determination, revenue amounts brought into account must conform to generally accepted accounting practices. This means providers must include in their determination of QWR amounts that they would account for as 'revenue' in the ordinary course of business - such as the advertising and subscription examples from the previous paragraph, but also potentially other things like grants, and providers should exclude items that usually aren't reported in revenue, such as sales taxes, VAT and commissions.

The worldwide revenue approach

3.1.10 We have considered two options for determining which geographic revenues referable to the regulated service are to be brought into account when determining QWR:

i) **The worldwide revenue approach:** total worldwide revenues of a provider arising in connection with the provision of a regulated service anywhere in the world.

[30] We expect there to be situations where providers operate in-scope online services which contribute only a small amount to the provider's total revenues - in such situations we think it would be disproportionate to charge fees based on the provider's total revenue.

ii) **The UK referable revenue approach:** the revenues of a provider which may arise anywhere in the world but are attributable to the provision of a regulated service to UK users.

Determining QWR for fees

3.1.11 Determining QWR on the basis of the worldwide revenue approach is more likely to be aligned with the way revenues are generated and accounted for in practice. Many providers of regulated services offer the same services both inside and outside the UK, generating revenues on a global basis from activities that may not be clearly connected to use of the service by UK users. Given the global nature of these services and the way revenues are generated, providers may not account separately for revenues attributable to use of the service by users in the UK and users in the rest of the world. Responses to our information requests indicated that this was often the case, with UK revenues not routinely accounted for separately. Reflecting the global nature of many in-scope services, determining QWR using worldwide (rather than UK) revenues arising in connection with the service may therefore make it simpler for providers to calculate QWR and assess whether or not they are above the threshold and need to notify and pay fees, thereby reducing the compliance burden.

3.1.12 On the other hand, we recognise that some providers may have large global revenues but relatively small revenues attributable to UK users. Requiring such providers to pay fees based on worldwide revenues could dampen the incentive for large global providers to enter and invest in the UK market, or to remain in the UK market if they are already present (but only have a small user base). In turn, this could affect levels of competition, investment, innovation and variety for UK users. Defining QWR in relation to UK revenues could limit this potential impact and mean that fees paid by a provider would reflect the relative size of its UK revenues.

3.1.13 However, we think there are other ways to limit the risk of any such distortive effect in respect of services with high worldwide revenues but a relatively small UK user base and revenues associated with them. As set out in Chapter 3.4, we propose a UK revenue-based exemption to mitigate this risk. We also note that a small number of large providers would be liable to pay most of our fees irrespective of which option is chosen. We estimate that, based on responses to our information requests, the largest 5 providers represent around 90% of total QWR of providers in our sample, whether it is calculated using a worldwide revenue approach or a UK referable revenue approach.[31] For these reasons, we consider the worldwide revenue approach for fees to be proportionate.

Determining QWR for maximum penalties imposed on the provider of a regulated service

3.1.14 We have also taken into account that the determination of QWR in our regulations is the basis for calculating the maximum penalties we may impose on a provider.[32]

[31] See Figure A6.1 in Annex 6.

[32] Note that the actual penalty amount that we impose in a given case within the penalty maximum is calculated in line with our Penalty Guidelines and must be appropriate and proportionate.

3.1.15 As set out in our Penalty Guidelines, the central objective of imposing a penalty is deterrence. The level of the penalty must be sufficient to deter the business from contravening regulatory requirements, and to deter the wider industry from doing so.[33] It is therefore important that the approach we take to determining QWR means that the maximum penalties we can impose on providers for breaching a requirement of the Act will function as an effective deterrent to non-compliance.[34]

3.1.16 We consider that this would not be the case if we were to determine QWR on the basis of a provider's revenue referable to a regulated service which solely relates to the use of the service by UK users. Responses to our information requests indicated that the penalty cap for several of the largest providers within scope of the Act would be relatively low if calculated on this basis, even though they are global businesses with substantial revenues.[35] We estimate that UK revenues typically represent less than 10% of worldwide revenues associated with regulated services.[36] Accordingly, applying the statutory cap of 10% of QWR determined in this way (or £18 million, whichever is the higher) would appear to result in a penalty maximum amounting to less than 1% of the provider's worldwide revenue, which we consider is too low to provide an effective deterrent to breaching the duties in the Act.

3.1.17 Conversely, by determining QWR as the worldwide revenues connected to the provision of the provider's regulated service, we more accurately capture the economic strength of the regulated service.[37] A penalty cap of 10% of such revenues would allow us to impose financial penalties that have a greater potential to have a material financial impact on the business in question and therefore be more likely to achieve our central objective of deterring the provider from non-compliance.

3.1.18 In addition, we note that the calculation of the penalty cap should, as far as possible, be a straightforward exercise so that we are able to focus limited enforcement resources on more complex aspects of an investigation, such as the analysis of evidence and the overall assessment of a proportionate penalty within the applicable cap.

3.1.19 Given this, we have also taken account of the fact that information about worldwide revenues connected to the regulated service is more likely to be readily available than information enabling the identification of revenues from the regulated service which are attributable to UK users. In this regard, it is relevant that not all providers that may be subject to enforcement action and a potential penalty, will be required to routinely submit information to Ofcom about their QWR as providers who are liable to pay fees will have to do. Further, the penalty cap is calculated by reference to the most recent complete accounting period. This is different to the qualifying period,

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[33] Paragraph 4.2, Penalty Guidelines.

[34] It is important to note that this section focuses on the definitions of QWR that would apply for the calculation of the **maximum** cap for a penalty imposed on a provider of a regulated service in breach of a requirement under the Act. 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.

[35] We estimate that most providers for which we obtained UK revenue estimates would not have sufficient QWR under the UK users revenue approach to generate a penalty cap in excess of £18 million.

[36] See Annex 6.

[37] As set out in paragraph 3.1.24, where the provider has two or more regulated services, we are proposing that the revenues referable to all the regulated services it provides are taken into account in determining the provider's QWR.

which applies when determining and notifying QWR for the purpose of setting fees.[38] We anticipate that providing information about QWR determined on the basis of the worldwide revenue approach should be less burdensome for providers.

3.1.20 For these reasons, we consider the worldwide revenue approach, as described at paragraphs 3.1.11 to 3.1.13 above, is appropriate for the determination of QWR for calculating the maximum penalty that may be imposed on a provider.

Provisional conclusion on the worldwide revenue approach

3.1.21 We therefore propose that QWR for fees and penalties should be determined by reference to the worldwide revenues approach described in paragraph 3.1.10.

Apportionment of revenue to a regulated service

3.1.22 We proposed above that an amount of revenue is referable to a regulated service if it arises in connection with the provision of the service. Sometimes a provider will be able to separately identify revenue arising in connection with the provision of a regulated service, but sometimes revenue will arise in connection with both regulated and unregulated services and will therefore need to be apportioned to the regulated service. Where an apportionment is required, we propose that providers should use a just and reasonable approach.

3.1.23 There may be a number of just and reasonable approaches that could be taken depending on the information available to the provider. However, our expectation is that a just and reasonable apportionment will be one where the amount apportioned to the regulated service reasonably reflects the relative contribution of the regulated service to the revenue in question. We provide an illustrative example below.

[38] Paragraph 4(1)(b) of Schedule 13 to the Act. See paragraph 3.1.32 for the explanation of the qualifying period.

Case study 1

An online music service also provides a service where users can share playlists and discuss music with friends (a 'chat service'). The chat service is a regulated service in scope of the Act whereas the rest of the music service is not. The music service generates revenue from subscription revenues which give access to the music service and the associated chat service, and from advertising revenue. The provider can separately identify the advertising revenue that is shown in the chat service and on other parts of the music service (e.g. as it knows where advertisements are displayed). However, subscription revenues need to be apportioned as the provider cannot identify which subscription revenues arise in connection to the chat service and which revenues arise due to other elements of the music service. The provider has the following data available:

- The proportion of time users spent on the chat service in the relevant period.
- The proportion of advertising revenue related to adverts displayed in the chat service in the relevant period.
- The proportion of the provider's operating costs related to maintaining the chat service in the relevant period.

In this example, it may not be appropriate to apportion subscription revenues to the chat service on the basis of the relative cost of maintaining this service, as this may not reflect the relative contribution of the chat service to the subscription revenue of the music service overall, especially given the other information available (such as the proportion of advertising revenue derived from the chat service). The provider could reasonably consider apportioning subscription revenues using the proportion of time users spent on the chat service (as it reflects what subscribers are using the site for) or the proportion of advertising revenue derived from the chat service (as it could reflect the relative value of the chat service using advertising revenue as a proxy).

Determining QWR where a provider has two or more regulated services

3.1.24 Where a provider provides two or more regulated services in the qualifying period, we propose that their QWR is determined by adding together the referable revenue for each regulated service. In other words, the provider's QWR is to be determined in aggregate across all regulated services provided by the provider.

3.1.25 We consider it is more straightforward for providers to pay fees based on the total QWR across their regulated services rather than based on the QWR for each individual service. This would mean providers with comparable total QWR would pay similar fees, regardless of how many regulated services they provide. As some providers supply multiple regulated services, we consider this approach would also simplify the administrative processes for providers and make it simpler for Ofcom to calculate fees (for example with a single invoice per provider).

Case Study 2

A provider identifies that their social media platform and file sharing platform both constitute a regulated service under the Act.

The provider calculates that their social media platform generates £200m of QWR during the qualifying period and their file-sharing service generates £150m of QWR over the same period.

Under our proposals, the provider is assessed to have generated £350m of QWR during the qualifying period. This single combined QWR figure should be considered against the QWR threshold figure [see chapter 3.3].

Revenues from the regulated service received by another group undertaking

3.1.26 Where a provider is a member of a group, section 85(3) of the Act enables Ofcom to make provision to include in the determination of its QWR, the QWR of another group undertaking that receives any amount referable to the provider's regulated service(s). For these purposes, an undertaking may be a company, a partnership or an unincorporated association carrying on a trade or business with or without a view to profit.[39] And a 'group' means a parent undertaking and its subsidiary undertakings.[40] [41]

3.1.27 We are proposing to include such a provision in our QWR Regulations to cater for circumstances where the entity providing a regulated service is not the same entity receiving (and accounting for) all (or, in some cases, any) of the QWR relating to that regulated service (e.g. because the commercial/contractual relationship in respect of a relevant revenue stream is between revenue payers and another group company, rather than with the corporate entity that is the provider of the regulated service). Our proposals are designed to take account of the range of business structures and accounting arrangements that apply to providers within the Act's scope while still ensuring that revenues relating to the provision of regulated services can properly be brought into account even where they may not be directly received by the service provider.

3.1.28 Ofcom may also include provision, under section 85(5) of that Act, that in the case of an entity that 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 the entity was a group undertaking may be brought into account in determining the entity's QWR.

3.1.29 We are proposing the inclusion of such a provision in the QWR Regulations in acknowledgement of changes to group structures arising from transactions such as

[39] See section 1161(1) of the Companies Act 2006.

[40] The expressions 'undertaking', 'parent undertaking' and 'subsidiary undertaking' are defined in sections 1161 and 1162 of the Companies Act 2006.

[41] See section 1161(5) of the Companies Act 2006. See also section 1162 of the Companies Act 2006 which explains the circumstances in which a company will be considered a parent undertaking or member of another undertaking. For example, a company may be considered a parent undertaking based on holding the majority of voting rights in the undertaking, having the right to appoint or remove a majority of its board of directors or exercising dominant influence or control over it.

mergers and acquisitions or other organisational changes. A provider may become part of a group during a qualifying period or be divested from a group during a qualifying period. In those circumstances, a provider will need to calculate its QWR taking account of any such organisational changes (i.e. it should be clear that it need only take account of revenues it receives during the part of the charging year where it is a member of the same group).[42]

Case study 3
A global search engine provider has a large source of revenue from advertising on its platform, where advertisers bid to display brief advertisements, service offerings, product listings, and videos to users of the search engine. The provider offers the advertising service in conjunction with its search engine on a worldwide basis.

For administrative, accounting and tax purposes, the provider has a number of subsidiary companies in different geographic locations for business development, sales, and marketing purposes.

This means in practice, whilst an advertiser or their intermediary will place their advertising requirements via the provider's platform, other aspects such as post advertising evaluation, finance and billing are undertaken by a separate subsidiary incorporated in the UK.

In its determination of QWR, the provider includes the revenues from the provision of advertising on the search engine platform referable to the regulated service. Therefore, regardless of which group undertaking receives the revenues in question, they should be included in the determination of the provider's QWR.

Currency conversion

3.1.30 In Chapter 3.3, we are consulting to inform our advice to the Secretary of State on the setting of the QWR threshold figure, which the Secretary of State will specify in regulations. Our proposed advice on the threshold will state figures in pound sterling (GBP).

3.1.31 Providers will often have functional currencies in currencies other than sterling, e.g. USD or EUR. Consequently, if an amount that is relevant for determining QWR, is expressed in a currency other than pounds sterling (GBP), providers will need to convert that amount into its pound sterling equivalent. Therefore, we propose that providers convert revenue to pound sterling using a just and reasonable exchange rate. In most cases, we expect this will mean using an average exchange rate over the

[42] In relation to where QWR is being calculated for the provider of a regulated service or services only, section 84(5) of the Act provides that: 'Where a person is the provider of a regulated service for part of a charging year only, Ofcom may refund all or part of a fee paid to Ofcom under this section by that provider in respect of that year.' Therefore, we do not consider it necessary to include an equivalent provision in relation to persons who are only providers of regulated services for part of a charging year; instead we propose to cover this scenario in our SoCP by explaining there may be circumstances, such as this, where we may refund part of a fee.

qualifying period from a source such as a central bank like the Bank of England.[43] We do not consider it is appropriate to specify a particular source for the exchange rate to be used as it may not be the case that any one given source would be appropriate to cover the range of circumstances where currency conversations may need to be made – for example the Bank of England does not publish exchange rates for all currencies.

Proposed definition of 'qualifying period'

3.1.32 The requirement to pay fees applies on the basis of the provider's QWR in the 'qualifying period'[44] – in other words the period over which QWR needs to be calculated. We define the 'qualifying period' in relation to a charging year in our QWR Regulations.[45] A charging year is defined under section 90 of the Act as running from 1 April to 31 March each year.

3.1.33 We propose that the qualifying period for a charging year is the second calendar year preceding the one within which the charging year begins, i.e. the calendar year two years prior to the calendar year within which the charging year begins. This is also reflected in our draft QWR Regulations. For these purposes, a calendar year means the period of 12 months beginning on 1 January.

For example, if you are ascertaining the qualifying period in respect of the charging year running from 1 April 2026 to 31 March 2027, the qualifying period would be 1 January 2024 to 31 December 2024.

3.1.34 We propose defining the qualifying period in this way because:

i) Given that financial periods can vary, we think defining qualifying period by reference to calendar years is preferable as it will allow us to set fees by reference to revenue generated by different providers over the same time period, which will secure consistency.

ii) Companies prepare annual financial statements and will need time to prepare and review their financial statements after the relevant financial period has ended. Therefore, asking providers to calculate their QWR over a calendar year that has ended two years prior to the start of the relevant charging year – as opposed to, for example, the year immediately prior to the relevant charging year – should allow time for a provider's QWR to be based, where possible, on the providers' annual financial statements which should be available for that financial period by the point the relevant charging year starts.

iii) This is also consistent with our approach to qualifying periods in other sectors we regulate such as broadcasting and telecoms networks.[46]

[43] Exchange rates published by the Bank of England are available here: Exchange Rates. For example, a provider might calculate the amount relevant for determining QWR for a qualifying period is $300m (USD). If the average USD to pound sterling (GBP) exchange rate for that period is 0.75, the provider's QWR in pound sterling would be £225m.
[44] Section 84(2)(a) of the Act.
[45] Section 85(1)(b) of the Act.
[46] For example, Amendment to the Statement of Charging Principles, 20 December 2011 and Notice of Designation under Section 38 and 34 of the Communications Act 2003 .

Transitional arrangements for Video-Sharing Platforms (VSPs)

3.1.35 Following a transition period, the UK Video Sharing Platform (VSP) regime in Part 4B of the CA03 will be repealed (see Legal Framework Annex 5 for details). 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 online safety fees regime will apply to them in the same way as to other providers of regulated services under the Act. For more information about VSP repeal and timings please see our website.[47]

3.1.36 During the transition 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. However, the online safety fees notification duty under section 83 of the Act does apply to pre-existing VSPs[48] during the transition period,[49] although they will be exempt from the requirement to pay fees.

3.1.37 If the regulated VSP element of the service is a dissociable section (in other words, a separable part) of a wider regulated service under the Act, then the exemption from paying fees will only apply to the VSP part of the service.[50]

3.1.38 To assist these particular providers, Ofcom may produce a “statement giving information about the circumstances in which amounts do, or do not, count as being wholly referable to a relevant Part 4B service".[51] However, we propose not to issue such a statement because we consider it would only be relevant and useful to a very limited number of providers, if any, and it is anticipated that the VSP regime is likely to be repealed before the online safety fees regime is implemented.

3.1.39 However, in the event that the VSP regime is not repealed before the fees regime is implemented and a VSP provider does need assistance in ascertaining the circumstances in which amounts do, or do not, count as being wholly referable to a relevant Part 4B service, we would intend to provide such assistance as needed by engaging with the VSP provider concerned, such as through the supervision arrangements that we already have in place.

[47] Repeal of the VSP regime: what you need to know, 11 January 2024.
[48] In other words they meet the scope and jurisdiction criteria under Part 4B of the CA03.
[49] Paragraph 16(2) of Schedule 17 to the Act.
[50] Paragraphs 18, 19 and 24 of Schedule 17 to the Act.
[51] Under paragraph 21 of Schedule 17 to the Act.

Consultation Question 1: Do you agree with our proposed approach to determining QWR? We would welcome comments in particular on:

a) Our proposal to define QWR by reference to worldwide revenues.

b) Our proposals in relation to apportioning revenue to the regulated service.

c) Our proposed approach to requiring QWR to be aggregated across all regulated services provided by the provider.

d) Our proposal to take account of revenues received by another group undertaking in the determination of QWR.

Consultation question 2: Do you agree with our proposed definition of 'qualifying period'?

Consultation question 3: Do you have any views on our proposal not to issue a statement to Part 4B services (VSPs) (under paragraph 21 of Schedule 17 to the Act)?

Please provide evidence to support your responses.

3.2 How we will determine QWR to calculate maximum penalties where two or more group undertakings are jointly liable for a breach

Summary

What we are proposing – in brief

As set out in Chapter 3.1, the Act specifies a common definition of QWR for the calculation of fees and the maximum penalty for a provider in the event of non-compliance with the Act. However, we are able to define QWR differently when calculating the maximum penalty which we may impose on a provider and one or more group undertakings which we find jointly and severally liable for a breach. In this case, we propose to define QWR as the total worldwide revenues of all the undertakings in the provider's group in the most recent accounting period (i.e. not restricted to revenues generated by regulated services).

Joint and several liability: our powers to take a different approach to QWR

3.2.1 We explain in Chapter 3.1 the approach to determining the QWR for calculating the maximum amount of a penalty that can be imposed on a provider. The Act provides that Ofcom has discretion to define QWR differently for the purposes of calculating the maximum penalty cap where we have found the provider and one or more undertakings in its group jointly or severally liable for non-compliance. This section explains what we mean by 'joint and several liability' and how we propose to define QWR in these instances.

3.2.2 Our consideration of the appropriate definition for QWR in this section applies to the calculation of the maximum cap for a penalty for group undertakings found jointly and severally liable for a breach. 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.

Finding joint and several liability

3.2.3 In certain situations, Ofcom may issue a provisional notice of contravention or a confirmation decision to both the service provider and one or more undertakings in its group, such as its parent company or a subsidiary company.[52] Where we do so, the group undertaking will be jointly and severally liable with the service provider for any contravention that we find in a confirmation decision and the payment of any financial penalty.

3.2.4 In our draft Online Safety Enforcement Guidance, we set out the factors we may take into account when deciding whether it might be appropriate to pursue enforcement action on this basis. These include concerns that the QWR of the service provider would not allow us to set a penalty which was reflective of the seriousness of the contravention found or provide a sufficient deterrent.[53]

3.2.5 Where a penalty is imposed on the provider and one or more group undertakings found to be jointly and severally liable for a breach, the maximum penalty that may be imposed is the greater of:

i) £18 million; or
i) 10% of the QWR of the provider and every other entity which is a group undertaking in relation to the provider at the time the relevant notice imposing the penalty is given.[54]

Our proposals

3.2.6 The Act provides that Ofcom may make regulations on how we determine QWR for the purposes of calculating the maximum penalty that may be imposed in these circumstances.[55] This is in addition to specifying that the maximum penalty is to be calculated as 10% of QWR for the provider's group (or £18 million if greater). Accordingly, the power in the Act enables us to set out an approach to determining QWR for the calculation of the maximum penalty when we find joint and several liability which differs from that which applies when setting the maximum penalty for a service provider alone.

3.2.7 To enhance the deterrent effect of the maximum penalty that we may impose when we find joint and several liability, we are proposing to take a different approach to the determination of QWR of a group (which we refer to as 'Group QWR').

3.2.8 Specifically, we are proposing to determine Group QWR as the total of the worldwide revenues received by the provider and its group undertakings in the most recent completed accounting period. We consider that a penalty cap calculated on this basis reflects the economic strength of the group as a whole, not just the regulated

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[52] Paragraphs 1 – 5, Schedule 15 to the Act. Group undertaking has the meaning in section 1161 of the Companies Act 2006 and encompasses parent undertakings and subsidiary undertakings, as defined in section 1162 of the Companies Act 2006.
[53] Paragraph A7.19, Protecting people from illegal harms online – Annex 11: Enforcement guidance, November 2023
[54] Paragraph 5(3) of Schedule 13 to the Act.
[55] Para 5(9), Schedule 13 to the Act.

provider. As such, it is more likely to provide an effective deterrent for other group undertakings by:

i) incentivising the parent undertakings to exercise control over the provider to ensure it complies with its regulatory obligations; and
ii) deterring subsidiary and sister undertakings from playing a role in a contravention by the provider.[56]

3.2.9 For the same reasons, we consider that this is proportionate. The approach also has the advantage of consistency, one of our regulatory principles, in that it takes the same approach to all groups to the calculation of the penalty maximum, in that the global revenues of all undertakings within the group are taken into account, regardless of the nature of their business activities. It therefore should have a similar deterrent effect, regardless of how group revenues are generated.

3.2.10 Second, as explained, we consider that the calculation of the penalty cap should, as far as possible, be a straightforward exercise. We consider the identification of Group QWR on the basis of worldwide revenues should be a relatively simple matter, which may often be accessible from publicly available information. Note that we propose to exclude intragroup transactions from Group QWR, consistent with how revenue in group accounts is prepared and presented.

3.2.11 Calculating maximum penalties on the basis of worldwide group revenues is the approach taken in other regulatory regimes which often apply to global undertakings. For example, this approach is taken in relation to the calculation of the cap on penalties imposed by the European Commission for competition law breaches[57] and also for the statutory cap on penalties under the Competition Act 1998, where applicable turnover is defined as the amounts derived from the sale of products or the provision of services within the undertaking's 'ordinary activities'.[58] It is also the approach taken in the draft turnover order under the Digital Markets, Competition and Consumers Act in respect of the calculation of global turnover for the purposes of setting a maximum penalty.[59]

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[56] A subsidiary undertaking may be held jointly and severally liable for a breach if Ofcom is satisfied that its acts or omissions contributed to the failure in question (paragraph 3(3)(b) of Schedule 15 to the Act). There is a similar provision in respect of sister undertakings (referred to as "fellow subsidiary entity") in paragraph 4(3)(b) of Schedule 15 to the Act.

[57] Article 23(2), Council Regulation (EC) 1/2003 of 16 December 2002 on the implementation of rules on competition laid down in Articles 81 and 82 of the Treaty [2003] OJ L1/1.

[58] Competition Act 1998 (Determination of Turnover for Penalties) Order 2000, Schedule 1, para 3.

[59] See Digital Markets, Competition and Consumers Act 2024 turnover and control regulations: consultation (Regulation 3, The Digital Markets, Competition and Consumers Act 2024 and Consumer Rights Act 2015 (Turnover and Control) Regulations (Draft)).

The relevant period for assessing the QWR of a group

3.2.12 As is the case for the QWR determination for calculating a maximum penalty which can be imposed on a provider, the calculation of Group QWR is to be determined on the basis of the most recent completed accounting period of the undertakings liable to pay the penalty.[60] Where this period differs for the group undertakings in question, Group QWR is to be calculated on the basis of the most recent accounting period of one of the liable undertakings, as selected by Ofcom.[61] If the first accounting period of the group undertakings liable to pay has not yet ended, Ofcom will estimate the likely amount of revenue for that period.[62] Where an entity is only a group undertaking for part of the most recent accounting period, we are proposing in the QWR Regulations that only revenues received during the time it was a group undertaking will be taken into account.[63]

Consultation question 4: Do you agree with our proposal for determining the QWR of a group, when calculating the maximum penalty that may be imposed on a provider and one or more group undertakings which are jointly and severally liable for a breach under the Act, i.e. that it is determined as the sum of the worldwide revenues of the provider and each of its group undertakings, whether or not attributable to the provision of a regulated service? Please provide evidence in support of your response.

[60] Paragraph 5(4), Schedule 13 to the Act.
[61] Paragraph 5(5)(a) of Schedule 13 to the Act.
[62] Paragraph 5(4)(b) of Schedule 13 to the Act. See also paragraph 5(5)(b), Schedule 13 to the Act, which applies where the group undertakings liable to pay have different accounting periods and none of them have completed their first accounting period.
[63] Regulation 9(5), QWR Regulations.

3.3 Proposed QWR threshold and UK revenue exemption

Summary

What we are proposing – in brief

In this section we set out our proposed advice to the Secretary of State on the QWR threshold, at or above which providers of regulated services will be required to pay Online Safety fees, unless they're exempt from fees duties.

We propose to advise the Secretary of State to set a QWR threshold figure of £250m but consider that any threshold figure within a £200m to £500m range could be appropriate.[64]

We propose to exempt[65] providers whose UK referable revenue is less than £10m in a qualifying period.

Objectives for proposing a QWR threshold

3.3.1 As set out in paragraph 2.17 of the Background chapter, we have had regard to the principles of proportionality, transparency and stability when developing our proposals for the fees regime. In considering a QWR threshold, we consider that the principle of proportionality is particularly relevant, as well as ensuring overall workability.[66]

3.3.2 We think the principles of proportionality and ensuring workability support the following objectives:

i) Limit the impact on Small and Medium Enterprises (SMEs), which is consistent with the Secretary of State's Guidance.

ii) Reduce compliance burdens and administrative complexity for providers. The scope of the Act is broad, and we estimate that it is possible more than 100,000 services could be in scope.[67] It would not be proportionate to levy fees on a very large number of service providers, as this would create significant compliance burdens for many relatively small providers and would also create significant administrative complexity (and managing this would ultimately increase the costs of regulation).

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[64] As noted above, we propose to determine QWR for the purposes of the fees regime, as the total amount of worldwide revenues a provider receives during the qualifying period that is referable to a regulated service (i.e. revenue that arises in connection with the provision of the regulated service), comprising of all of its parts, anywhere in the world.

[65] Ofcom has a discretion, subject to Secretary of State approval, to exempt certain types of providers from fees related duties under Section 83(6) of the Act.

[66] In relation to the other principles set out above, once the Secretary of State has determined the QWR threshold figure, this will be transparent and stable until the Secretary of State decides to review it.

[67] See for example Consultation: Protecting people from illegal harms online, paragraph 3.30.

iii) Ensure fees are paid by a reasonable number and range of providers. Given the breadth of scope of the Act, we think it would be proportionate to avoid placing all of the burden of paying fees on the very largest providers only, and a reasonable number of providers of regulated services should in principle be liable to pay fees.

3.3.3 While this consultation will inform our advice to the Secretary of State about setting the QWR threshold figure, setting the QWR threshold figure will ultimately be a matter of judgement for the Secretary of State to determine, and there are likely to be some trade-offs between these objectives. We set out below how we have taken account of these objectives in our proposed QWR threshold.

3.3.4 We recognise there could also be a concern that some providers captured by the proposed QWR threshold could have a relatively small UK presence.[68] We consider the appropriate way to address this is through the UK revenue exemption proposed in paragraphs 3.3.22 to 3.3.26.

Evidence base informing our proposal

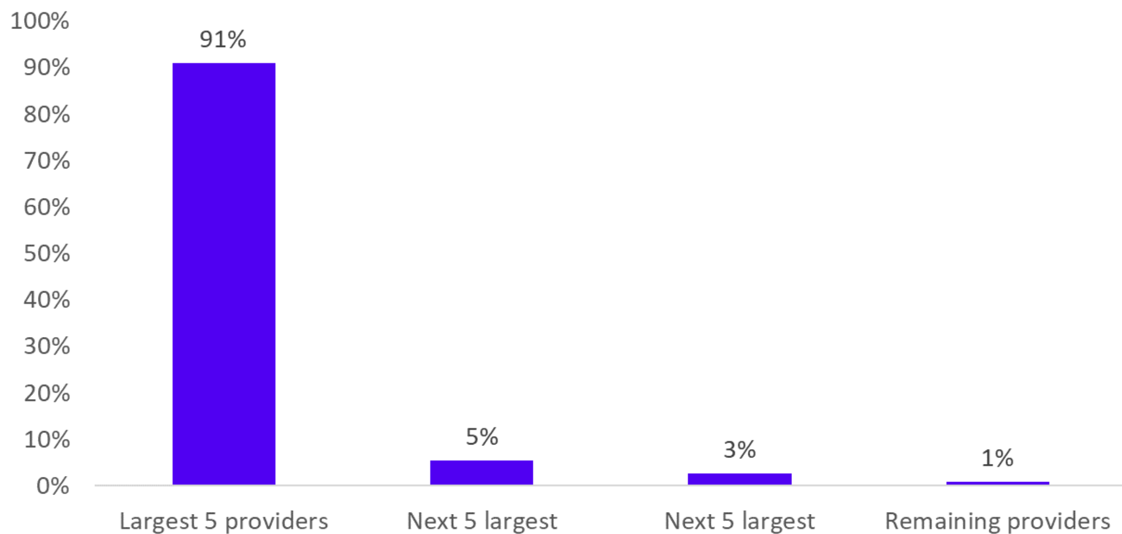
3.3.5 As set out in Annex 6, to inform our proposals on the QWR threshold and tariff structure, we sent information requests to a range of providers of regulated services.

3.3.6 Based on this information, we estimate that total QWR (calculated broadly in line with the worldwide revenue approach outlined in Chapter 3.1) for these providers for their financial years ending in 2023 was between £350bn and £400bn.[69]

3.3.7 Figure 2 illustrates the distribution of this revenue by provider in their financial years ending in 2023. It illustrates that over 90% of revenue is represented by the largest five providers in our sample.[70]

[68] By 'UK presence' in this context, we mean by reference to UK users and/or UK revenues. 'UK user' has the same meaning as 'United Kingdom users' in section 227 of the Act.
[69] Annex 6, paragraph A6.5.
[70] We note this distribution is comparable to the percentage of revenue represented by the largest payers of the Digital Services Tax. A 2022 National Audit Office report 'Investigation into the Digital Services Tax' found that 90% of DST revenues in 2020/21 were paid by five business groups (paragraph 7 of that report).

Figure 2: Distribution of estimated qualifying worldwide 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.

3.3.8 Figure 3 below illustrates the distribution of estimated QWR by revenue bracket in financial years ending in 2023. It illustrates that around 10% of providers responding to our information requests had regulated worldwide revenues below £50m, around 30% up to £1bn and around 60% over £1bn. However, as our requests for information were typically targeted at larger providers, this sample is primarily representative of higher QWR providers. When considering all providers of regulated services, we would expect the majority of providers to appear on the left-hand side of the chart (i.e. with revenues of less than £50m).[71]

Figure 3: Distribution of estimated qualifying worldwide 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.

[71] See Annex 6: Summary of revenue information informing our QWR proposals for more detail.

3.3.9 As one of the objectives of the QWR threshold set out above is to limit the impact on SMEs, we also considered evidence on what revenue thresholds are typically associated with SMEs. There does not appear to be a single definition of revenue associated with SMEs but the following reference points suggest revenue thresholds of £25m to £50m are typically associated with SMEs:

i) In the Companies Act 2006, large companies are defined as those generating more than £36m per annum (alongside other financial metrics).[72] The UK Government at the time announced a consultation on increasing relevant thresholds by 50% (in which case the large company revenue threshold would increase to £54m).[73]
ii) For UK Government procurement activities, the revenue threshold for medium companies is 50m Euros (c. £43m).[74]
iii) The coronavirus business interruption loan scheme applied to small and medium sized businesses with revenues up to £45m.[75]
iv) The Digital Services Tax (DST)[76] introduced in the Finance Act 2020 applies to firms with digital services revenues of more than £25m in UK (and more than £500m globally).[77] The intention was that the DST would apply to 'large' digital businesses.[78]

Proposed QWR threshold

Our proposed advice to the Secretary of State

3.3.10 Based on the evidence presented above, we consider a QWR threshold that limits the impact on SMEs would be £25m to £50m or higher. We do not think setting a QWR threshold as low as £50m would be proportionate for two reasons. First, it would capture many relatively small providers of regulated services. This could increase the administrative and financial burden on such providers, which may be less able to bear the associated costs compared to larger providers, while also increasing our administrative costs as it would bring significant numbers of providers into the fee-paying regime. Second, while a QWR threshold as low as £50m would significantly increase the number of providers paying fees, it is likely to only have a small impact on total QWR (i.e. the £350bn – £400bn estimate in paragraph 3.3.6)[79] and would not reduce, to any significant extent, the share of fees payable by each of the larger qualifying providers.

[72] Other criteria relate to value of assets and number of employees. See sections 465-467 Companies Act 2006. Any companies that do not meet the criteria for small, medium or micro entities are large companies.
[73] Prime Minister to announce major reform package to boost apprenticeships and cut red tape for thousands of small businesses, 18 March 2024.
[74] BEIS small and medium enterprises (SMEs) action plan: 2022 to 2025, January 2023.
[75] Apply for the Coronavirus Business Interruption Loan Scheme, March 2020.
[76] The DST is levied on groups that provide the following 'digital services activity' in the UK: an internet search engine, a social media service and an online marketplace.
[77] Section 46, Finance Act 2020.
[78] For example, see page 105 of the explanatory notes on the Finance Bill 2020 and section 1, paragraph 6 of the Committee of Public Accounts report The Digital Services Tax (April 2023).
[79] For example, if it brought into the regime an additional 100 providers earning £50m, this would equate to an additional £5bn of QWR, increasing total QWR from all providers by 1% - 2%.

3.3.11 We therefore consider an appropriate QWR threshold would be higher than £50m. Given this, and based on the evidence available to us, we consider a QWR threshold in the range £200m to £500m would limit the impact on SMEs and would be consistent with our objectives to reduce compliance burdens and administrative complexity, and ensure fees are paid by a reasonable number and range of providers.

3.3.12 Evidence collected from responses to our information requests suggest that around 20 providers could be required to pay fees if the threshold was set in this range. Our information requests were not sent to all providers that could feasibly have QWR above this threshold range, so we expect the eventual number of providers that will need to pay fees to be higher than 20 - perhaps up to 40 - though how much higher is difficult to predict. We consider that this would capture a reasonable number and range of providers to avoid placing all of the burden of paying fees on the very largest providers only. There is a risk that the number of providers exceeding the QWR threshold could increase significantly if it was set below £200m, potentially resulting in a substantial number of providers liable to pay fees, which would significantly increase compliance burdens and could also create difficulties for administering the fees regime.

3.3.13 Within this range, we believe a QWR threshold of £250m would strike a reasonable balance between our objectives. A threshold figure of £250m, i.e. towards the lower end of the range, puts slightly more weight on ensuring fees are paid by a reasonable number and range of providers and limiting the potential burden on the largest firms, and slightly less weight on limiting the total number of providers paying fees to reduce compliance burdens and administrative complexity. We consider this would result in a proportionate outcome where a reasonable and manageable number of providers of regulated services are paying fees. We therefore propose to advise the Secretary of State to set the QWR threshold at £250m.

The option to impose a different QWR threshold for different kinds of service

3.3.14 Under section 224 of the Act, regulations under the Act, which includes the Secretary of State's Threshold Regulations, may make different provision with regard to different types of regulated service. This means that the Secretary of State, following Ofcom's advice, may set different QWR threshold figures for different categories of regulated services (e.g. user-to-user, search and Part 5 services).

3.3.15 Where the amount of QWR generated from different categories of regulated service varies significantly, different QWR threshold figures for different categories of services could be appropriate to ensure fees are paid by a range of providers while limiting the overall number of providers liable to pay fees.

3.3.16 However, many providers offer multiple types of regulated services, and some regulated services could be a mixture of different categories (e.g. user to user and Part 5 services), so this approach could add additional complexity for both providers and Ofcom to administer.

3.3.17 Therefore, at this stage, we do not consider this is an appropriate approach for the Secretary of State to take in setting the QWR threshold figure as, based on our assessment above, we think our proposed QWR threshold of £250m would ensure fees are paid by a reasonable number and range of providers of regulated services.

3.3.18 In future, once we have further advanced our understanding of the resources required to regulate different categories of service and which providers are liable for fees, should the Secretary of State consider it appropriate to revise the threshold figure and request Ofcom to carry out a further consultation, we may revisit this option.

Exemptions from fees-related duties

3.3.19 Under the Act, Ofcom may exempt "particular descriptions of providers of regulated services" from the duty to notify[80] and the duty to pay fees (collectively referred to as 'fees duties').[81]

3.3.20 These exemptions may be provided where Ofcom considers that an exemption for such providers is appropriate, and the Secretary of State approves the exemption.

3.3.21 In the below paragraphs, we explain that we are proposing one exemption, based on UK referable revenue. We also explain that we considered the possibility of proposing another exemption, but we do not think it is required at this time.

Exemption proposal – UK referable revenue

Background

3.3.22 We recognise that some providers of regulated services may generate much of their QWR from countries or regions other than the UK and the revenues associated with the use of regulated services by UK users could therefore be low.

3.3.23 Requiring providers with relatively small UK revenues to pay fees could dampen the incentive for large global providers to enter and invest in the UK market, or to remain in the UK market if they are already present (but only have a small user base). In turn, this could affect levels of competition, investment, innovation and variety for UK users. Therefore, in the context of funding a UK regulatory regime, we consider it may not be proportionate for such providers to have the same liability to pay fees as providers with a relatively large UK presence, irrespective of the scale of their global revenues.

3.3.24 We are therefore proposing an exemption based on UK referable revenue – or in other words, revenues from provision of their regulated services to their UK user base – to mitigate this.

3.3.25 Our proposal means that where a provider's QWR is £250m or more for a qualifying period and they would therefore otherwise be liable to pay fees in the relevant charging year, if they calculate their UK referable revenues are less than £10m in that qualifying period, the exemption would apply and they would not be liable to pay fees for that charging year.

[80] Where the charging year in question is not a fee-paying year for a provider but the previous charging year was a fee-paying year, providers have to notify under s83(1)(b)(ii) of the Act, a 'non-fee-paying year notification'. The exemption discussed here is not relevant in such circumstances as providers in this scenario are not required to pay fees as their QWR is below the threshold.

[81] Section 83(6) of the Act.

Our Exemption proposal – 'UK referable Revenue'

Proposed section 83(6) exemption:

A provider of a regulated service shall be exempt for the purposes of section 83 (duty to notify) and section 84 (duty to pay fees) of the Act where that provider's UK referable revenue is less than £10m in a qualifying period.

Interpretation:

A provider's 'UK referable revenue' is revenue arising in connection with the provision of regulated services to UK users.[82]

All other terms referred to in this exemption are to be construed in accordance with the Act and (to the extent set out below) the QWR Regulations.

Determination of UK referable revenue

A provider's UK referable revenue should be calculated in accordance with Parts 1 and 2 of the QWR Regulations, save that: (i) revenue shall count as UK referable revenue (and, for these purposes, therefore 'referable to a regulated service') only if, and so far as, it arises in connection with the provision of the service to UK users (rather than where revenue arises in connection with the provision of the service to users anywhere in the world outside of the UK); and (ii) any reference to the provider's 'qualifying worldwide revenue' should be read as referring to the provider's UK referable revenue.

This means that in particular the following applies when calculating UK referable revenue:

- Where a provider has two or more regulated services, UK referable revenues for each regulated service should be added together.
- Where another group undertaking receives any UK referable revenues relating to a regulated service, these should be taken into account.
- Where it is not possible to separately identify revenues arising in connection with the provision of regulated services to UK users and revenues arising in connection with other things, such revenues should be apportioned on a just and reasonable basis, with the relevant apportionment of revenues to be taken into account.
- Amounts brought into account must conform to generally accepted accounting practices.
- Where UK referable revenues are received in a currency other than pound sterling, these should be converted into pound sterling using a just and reasonable exchange rate.
- The period over which the provider's UK referable revenue must be calculated is the qualifying period.

3.3.26 While providers may be able to directly associate some QWR with UK users (e.g. subscription revenue received from UK users), in other cases the provider will have to apportion revenues. Where an apportionment is required to estimate UK referable revenue, we propose that this must be done on a just and reasonable basis and we

[82] A 'UK user' has the same meaning as 'United Kingdom user' in section 227 of the Act. A user is a 'UK user' if: (a) where the user is an individual, the individual is in the UK; (b) where the user is an entity, the entity is incorporated or formed under the law of any part of the UK.

may request evidence from providers to validate they benefit from the proposed exemption. We recognise that estimating UK referable revenues could be challenging, but this exercise would only be required by providers wishing to make use of the UK revenue exemption.

Other exemption option considered

3.3.27 We recognise that given the broad scope of the Act, some regulated services may be operated for charitable purposes or public interest objectives, and may be funded wholly or mainly by donations. Our broad policy intent is to minimise the potential impact of the fees regime on not-for-profit and charitable organisations on the basis that we do not wish to compromise the ability of providers of such kinds of regulated services to continue provision of their services in the UK. We recognise that there may be a risk that if providers of such services had to use donations to pay fees, this could have a negative impact on the provision of such charitable or public interest services, and may in some cases mean that providers of such services would withdraw the service from the UK. Therefore, we considered whether providers of regulated services which fall into the above categories should be exempted from fees duties.

3.3.28 Our provisional view is that, if the Secretary of State proceeds to set a QWR threshold figure within the range proposed by Ofcom, that QWR threshold and the proposed UK revenue exemption should mean that providers of this type are unlikely to be liable to pay fees. We are therefore minded to consider that an exemption of this type is not objectively justifiable at present. However, should evidence be received either in response to this consultation or at a later point in the future, suggesting that an exemption would be of benefit to providers of this type, we may reconsider this. Such a situation could arise, for example, if the Secretary of State sets a QWR threshold that is lower than Ofcom’s proposed recommended range, or in the event that we find there are examples of such charitable or public interest services that meet or exceed the QWR threshold in future due to revenue growth.

Consultation question 5: Do you have any comments on our proposed advice to the Secretary of State to set a QWR threshold figure within the range of £200m to £500m, with a preferred figure of £250m, for all types of regulated services?

Consultation question 6: Do you have any comments on our proposed exemption for providers with UK revenue less than £10m in a qualifying period?

Consultation question 7: Do you agree that an exemption for services contributing to the public interest is not required at this time given the proposed QWR threshold and UK revenue exemption?

Please provide evidence to support your responses.

3.4 Approach to the Statement of Charging Principles

Summary

What we are proposing – in brief

- Ofcom must put in place a Statement of Charging Principles (SoCP) that will apply in determining fees payable by providers whose QWR exceeds or meets the QWR threshold figure, and are not exempt from fees duties.
- In this section, we consult on our proposed *approach* to the SoCP, the 'computation model' that will be used to calculate fees payable. We intend to consult separately on the draft SoCP next year, after matters including QWR, qualifying period are determined and the QWR threshold figure is set.
- Our proposed approach is to calculate fees using a single percentage approach, so that, in a charging year, each provider liable to pay fees[83] would pay the same percentage of their QWR, meaning providers with a higher QWR pay higher fees in absolute terms. The precise percentage will be set out each year in Ofcom's tariff tables[84]and will be calculated as our annual costs of regulating online safety divided by the total QWR of all providers liable to pay fees (the 'total QWR base') in that charging year. On the basis of information currently available to us, we expect, under our proposed approach the percentage would be in the region of 0.02%.
- We do not propose to vary fees by types of service[85] or take account of additional factors other than QWR.

[83] To be liable to pay fees with respect to a specific charging year, the provider of a regulated service: (a) must have a QWR that meets or exceed the QWR threshold figure; and (b) must not be exempt from fees duties.
[84] The latest Ofcom tariff table is published here: Tariff tables.
[85] Under section 224(1) of the Act, Ofcom may also make different provision in relation to different kinds of regulated services.

Requirements of a Statement of Charging Principles

3.4.1 For us to levy fees, the Act requires that a Statement of Charging Principles (SoCP) is in force.[86]

3.4.2 The principles in our SoCP must be such as appear to us to be likely to secure, on the basis of estimated likely costs, the following:[87]

i) That on a year-by-year basis, the aggregate amount of the fees payable to Ofcom is sufficient to meet, but does not exceed, the annual cost to Ofcom of the exercise of their online safety functions;

ii) That the fees 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.

3.4.3 The SoCP must also:[88]

i) Include details relating to the computation model used to calculate fees payable, which 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 that we consider appropriate;
ii) Include details about the meaning of "QWR" and "qualifying period"; and
iii) Specify the threshold figure contained in regulations set by the Secretary of State.

3.4.4 The fees must be calculated to be equal to a computation made by reference to the provider's QWR for the qualifying period relating to that charging year (and, if included, any other factors that we consider appropriate) and made in a manner that we consider appropriate.[89]

Objectives for calculating fees

3.4.5 For calculating fees, we think the principles of proportionality, workability and stability are particularly relevant[90] and support the following objectives:

i) Avoiding placing the fees burden on a limited number of providers; and
ii) Preferring a simple fee structure over a more complex one.

Setting fees based on factors other than QWR

3.4.6 Fees must be set by reference to QWR, but the Act also allows us to take account of other factors we consider appropriate.

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[86] Section 88(1) of the Act.
[87] Section 88(2) of the Act
[88] Section 88(3) of the Act
[89] Section 84(2) of the Act
[90] We consider the principle of transparency is more relevant to the contents of the SoCP on which we will consult at a later date.

3.4.7 We consider it is simpler to calculate fees solely by reference to QWR and not differentiate between types of service or take account of additional factors for the reasons set out below.

3.4.8 We have considered the following potential approaches to taking account of factors other than QWR:

i) **Providers of services which drive more of our regulatory effort through supervision and enforcement actions should pay higher fees.** We do not consider it would be practicable to vary fees depending on the extent to which different types of services demand regulatory activity and thereby increase our regulatory costs. The types of services, or particular features of services, attracting regulatory attention is likely to vary over time, such that setting fees on this basis would not align with the principle of stability. Such an approach is also likely to be more complex as, for example, some providers supply multiple regulated services which could each be associated with different levels of fees.

ii) **Providers of riskier services should pay higher fees.** We do not consider it would be practicable to vary fees depending on the riskiness of the service. The risk assessment duties in the Act require providers of regulated services to carry out 'suitable and sufficient' risk assessments which include an assessment of a number of different kinds of risks posed by their service relating to illegal harms and harms to children but which do not result in a single 'overall' risk level across a regulated service as a whole. In addition, the drivers of risk and the likelihood and impact of different risks arising will vary considerably across different types of regulated services.[91] This makes it challenging to develop an overall measure of risk that is objective, transparent and comparable across services. Service risk assessments may also change frequently (e.g. when new features or safety measures are launched) which could undermine the stability of the fee regime if risk levels were included as a factor. Further, linking fees to risk assessments could discourage providers from accurately assessing risks.

iii) **Providers of categorised services should pay higher fees.** The Act places additional obligations on 'categorised' services – known as Category 1, 2a and 2b services – if they meet certain thresholds to be set out in secondary legislation by the UK Government.[92] We do not propose to vary fees by service categorisation as it is not clear that categorised services should pay higher or lower fees compared to non-categorised services. For example, Ofcom resources associated with categorised and non-categorised services is likely to change from year to year, especially where our work spans across categorised and non-categorised services. Further, service categorisation could change over time which could affect the stability of the fee regime and make it more difficult for providers to anticipate the fees they would be liable to pay in future.

iv) **Providers with a lower capacity to pay fees (e.g. where they are loss-making) should pay lower fees**. We recognise that smaller providers may be less able to bear the costs of paying fees compared to larger providers and have taken that into account when proposing a QWR threshold of £250m. We consider that providers with a QWR at or above £250m would have the means to pay fees,

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[91] See Ofcom's draft illegal harms and children's risk assessment guidance, including the associated risk profiles

[92] We published our 'Categorisation' advice to the Secretary of State in March 2024.

especially at the relatively low indicative percentage we set out below. Further, our proposed approach set out below to set fees using a single percentage fee approach would mean providers with QWR closer to the threshold would pay less in absolute terms than providers with a higher QWR. We recognise that some providers liable to pay fees could be loss making now or in the future but note that the Act stipulates that fees should be based on revenues rather than profits, and consider that complying with the requirements of the Act, including paying fees where relevant, is a necessary cost of providing regulated user to user, search and Part 5 services. Therefore, we do not propose to calculate fees by reference to factors other than QWR.

Proposed approach to calculating fees

3.4.9 Given our preference for a simple fee structure, we have considered the following two approaches to calculating fees and assess which we consider more proportionate:

i) Single absolute fee – all providers at or above the QWR threshold figure pay the same absolute fee (i.e. the same amount of fees);

ii) Single percentage fee – all providers at or above the QWR threshold figure pay the same percentage of QWR.

3.4.10 For the purposes of illustrating the impact of these options we have assumed annual costs relating to online safety regulation of £70m.[93] We have also used the revenue data obtained through our Request For Information (RFI) exercise described in Annex 6. We estimate that 20 respondents to our information requests would be liable to pay fees based on our proposals, representing an estimated total QWR base of £350bn to £400bn (i.e. the total QWR of all providers liable to pay fees within our sample).[94] However, the actual number of providers liable to pay fees, and consequently the total QWR base, could be higher than this.

Single absolute fee approach

3.4.11 Under a single absolute fee approach, the fee paid by each provider would be calculated as the total Ofcom cost to be recovered divided by the number of providers liable to pay fees. Using our illustrative figures, this would represent a fee of around £3.5m for each provider.[95]

3.4.12 We do not consider a single absolute fee approach would be proportionate as the fee for the largest providers would represent a very low proportion of their QWR (less than 0.05%) while the fee for the smallest providers would represent around 1% of their QWR. The RFI analysis reported in Annex 6 identified that the largest five providers in our sample represented around 90% of the total QWR base. Under a single absolute fee approach the largest five providers in our sample would be paying

[93] This is consistent with the costs associated with online safety work in 2024/25 as per chart 2 on page 4 of Ofcom Tariff Tables 2024/25. Our annual costs will vary dependent on the level of regulatory activity we undertake in any given financial year. To date, our costs associated with online safety have been funded by retaining WTA receipts.

[94] This figure is based on provider financial years ending in 2023.

[95] i.e. £70m divided by 20 = £3.5m.

just 25% of our total costs, which we do not consider to be a fair and proportionate distribution given their significantly greater financial resources.[96]

Single percentage fee approach

3.4.13 Under a single percentage fee approach, the percentage fee paid by each provider would be calculated as the total Ofcom cost to be recovered divided by the total QWR base (i.e. for those liable to pay fees based on our proposals, the total QWR for each provider across all of their regulated services). Using our illustrative figures, this would represent a fee of around 0.02% of QWR for each provider.[97]

3.4.14 Table 1 compares the share of total QWR base to the estimated share of Ofcom costs that different providers would have to pay under the two different approaches. It illustrates that fees payable under the single percentage fee approach are the same as providers' share of the total QWR base. Whereas, under the single absolute fee approach, larger providers would pay relatively less and smaller providers would pay relatively more than their share of the total QWR base.

Table 1: Comparison of fee approaches

		Share of Ofcom costs	
	Share of total QWR base	Single absolute fee approach	Single percentage fee approach
Largest 5 providers	91%	25%	91%
Next 5 largest	5%	25%	5%
Next 5 largest	3%	25%	3%
Smallest 5 providers	1%	25%	1%

Source: Ofcom analysis of information request responses

3.4.15 We believe a single percentage fee approach would be proportionate as all providers liable to pay fees would pay the same percentage of their QWR, meaning providers with a higher QWR pay higher fees in absolute terms. The fees payable by each provider would be aligned with their share of the total QWR base which we consider to be a fair outcome as it would align with the financial resources available to each provider.

3.4.16 We considered a variant of the percentage fee approach using 'revenue bands' where providers with different levels of QWR would pay a different percentage tariff (e.g. the largest providers might pay a slightly higher or lower percentage tariff than other providers). However, we have not identified an objective basis for adjusting the percentage tariff to be paid by those with a higher QWR compared to providers with a lower QWR.

3.4.17 We also considered a variant where fees would be calculated by reference only to QWR above the proposed £250m threshold (e.g. if a provider's QWR was £300m then they would pay fees on £50m rather than £300m). The effect of this would be that

[96] i.e. 5 x £3.5m divided by £70m = 25%.

[97] i.e. £70m divided by £350bn - £400bn = 0.0175% - 0.0200%.

providers with QWR closer to threshold would pay less and larger providers would pay more compared to the simple percentage fee approach set out above. An approach like this might be appropriate where the impact on fee payers just above the threshold limit could be significant. Given the relatively low expected percentage fee of around 0.02%,[98] we do not consider it would be proportionate to require larger providers to pay higher fees than they would do under the simple percentage fee approach. Such an approach may also increase administrative complexity (i.e. Ofcom could be billing some providers for very small amounts, where their QWR sits just above the threshold).

Proposed approach to calculating fees

3.4.18 Based on the analysis above we propose to calculate fees using a single percentage fee approach. The precise percentage will depend on our costs of regulating online safety for that specific charging year and the total QWR base of providers liable to pay fees,[99] but based on our RFI analysis, we expect the tariff to be in the region of 0.02%. To the extent the total QWR base grows more quickly than our regulatory costs (e.g. due to growth in the number of providers liable to pay fees and/or the growth in QWR amounts), the percentage tariff may reduce over time, though the fees paid by individual providers could increase should their share of the total QWR base increase. Similarly, the percentage tariff could increase over time if the total QWR base grew more slowly than our regulatory costs.

Consultation question 8: Do you agree with our proposed approach to setting the amount of fees payable by providers above the QWR threshold? Please provide evidence to support your response.

[98] A provider with QWR just over our proposed £250m threshold would pay around £50,000 in fees.
[99] I.e. To be liable to pay fees with respect to a specific charging year, the provider of a regulated service: (a) must have a QWR that meets or exceed the QWR threshold figure; (b) must not be exempt from fees duties.

4. Notification proposals

Our proposals about notifications under the fees regime

What we are proposing – in brief

We are proposing to make regulations that require providers to supply to Ofcom for the purposes of their fees notifications: a statement;[100] evidence substantiating regulated service details and QWR; and a declaration of accuracy and completeness in relation to the evidence supplied to Ofcom.

4.1 In this section, we explain our proposals and reasons for our approach in relation to the supporting evidence, documents, and other information that providers must supply to us for the purposes of making a fees regime notification under the Act, as set out in the draft Notification Regulations under section 85(2) of the Act (see Annex 10).

4.2 To assist providers in understanding what they need to do in relation to notification for fees, we intend to publish additional materials at a later date, which will provide guidance on the process of notification and include examples of the evidence, documents and other information which will need to be provided upon notification.

4.3 The draft Notification Regulations prescribe mandatory requirements about the manner (i.e. the way) in which evidence, documents and information must be provided to Ofcom and expressly refer to a binding document for this purpose.[101] We are consulting on this document entitled the 'draft Manner of Notification Document' (see Annex 11).

4.4 We are requesting this information so that Ofcom can verify a provider's calculation of their QWR to ensure the appropriate fees are levied and to ensure that a provider has met its notification obligations.

Notification details required to be provided to Ofcom

4.5 The Act requires providers of regulated services to notify Ofcom in particular circumstances relating to the payment of fees,[102] and those notifications must include particular details, which differ depending on the notification type, as explained in Table 2 below.

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[100] This requirement applies where the charging year is a provider's first fee-paying year.

[101] Further to section 85(2) of the Act, Ofcom can make provision within regulations about the way in which providers must supply the evidence, documents or information.

[102] Subject to the Secretary of State's approval, under section 83(6) of the Act, Ofcom may exempt particular descriptions of providers of regulated services from the duty to notify and the duty to pay fees. Please see Chapter 3.4.16 onwards, where we set out our proposed exemption.

Table 2

Type	Notification type	When it arises	Details to be included
1	**Initial notification** (Notification under section 83(1)(a) of the Act)	Where it is the first fee-paying year[103] for that provider	• Details of all the provider's regulated services • Details of the provider's QWR for the qualifying period that relates to that charging year • Supporting evidence, documents or other information as required in the Notification Regulations
2	**New fee cycle notification** (Notification under section 83(1)(b)(i) of the Act)	Where the previous charging year *was not* a fee-paying year, and the charging year in question *is* a fee-paying year[104]	• Details of all the provider's regulated services • Details of the provider's QWR for the qualifying period that relates to that charging year • Supporting evidence, documents or other information as required in the Notification Regulations
3	**Non fee-paying year notification** (Notification under section 83(1)(b)(ii) of the Act)	Where the previous charging year *was* a fee-paying year, and the charging year in question *is* not a fee-paying year[105]	• Details of all the provider's regulated services

4.6 As shown in the above table, all notifications under section 83(1) of the Act must include details of all the regulated provider's regulated services.

4.7 Where a provider is making an initial notification (see row 1) or new fee cycle notification (see row 2), these must also include details of the provider's QWR and any supporting evidence, documents or other information required under the Notification Regulations.

[103] A 'fee-paying year' is a charging year where the provider's QWR for the qualifying period that relates to the charging year is equal to or greater than the QWR threshold figure, and the provider is not exempt from the duty to notify and the duty to pay fees.
[104] Applies to any charging year after the first fee paying year.
[105] Applies to any charging year after the first fee paying year.

4.8 Where a provider has not notified us as and when they are required to do so under the Act, e.g. they have failed to notify or have provided incomplete or inaccurate information in their notification, we may take enforcement action, including opening an investigation and requiring the provision of information to obtain or verify information in relation to the provider's QWR.

Ofcom's proposals relating to supporting evidence, documentation and other information

4.9 In accordance with the powers given to us under the Act, Ofcom intends to make regulations setting out supporting evidence, documents, or other information for the purposes of making a fees regime notification.

4.10 As set out in our draft Notification Regulations, we propose that where a provider of a regulated service is making an initial notification or new fee cycle notification (see rows 1 and 2 of the table above), the notification must include:

i) Where the charging year is the provider's first fee-paying year, a statement of that fact;

ii) Evidence substantiating the details of all regulated services provided by the provider and the provider's QWR for the qualifying period that relates to that charging year; and

iii) A declaration affirming that the evidence provided is accurate and complete in all material respects. Where the provider is an entity, the declaration must be made by a senior manager[106] and in any other case, by an individual (whether acting as, or on behalf of, the provider) who is able to affirm the accuracy and completeness of the information in question. (See Annex 11.1, within the draft Manner of Notification Document at Annex 11)

4.11 In relation to i), this statement will be prepared by the regulated provider and submitted to Ofcom confirming that this is the provider's first fee-paying year under the Act.

4.12 In relation to ii), and in respect of the details of all regulated services which need to be provided, this will include information about the type of services provided, together with any additional supporting information. We are also proposing to require evidence verifying the QWR amounts stated by providers. Such evidence will likely include an explanation of the source of the data used (e.g. audited financial statements and management information); supporting calculations of QWR (e.g. by regulated service and type of revenue); a reconciliation of QWR and non-QWR amounts; annual financial statements (where possible); details of how revenue has been apportioned to regulated services (where relevant); and details of exchange rates used.

4.13 In relation to iii) we are proposing that providers use a prescribed form of declaration, i.e. a set form of wording, as set out within the draft Manner of Notification Document at Annex 11.

[106] This term has the meaning set out in section 103(4) of the Act.

4.14 We believe requesting the information and evidence above is important because it will allow us to verify the QWR information provided as part of the notification and identify situations where providers may be over- or under-reporting QWR.[107]

4.15 Our proposals are also designed to avoid placing an onerous administrative burden on stakeholders while allowing Ofcom to assess notifications promptly, verify the data provided and use this to calculate any fees payable and issue invoices accordingly.

Ofcom's Manner of Notification Document

4.16 We are consulting on the draft Manner of Notification Document in this consultation to assist providers in complying with the manner (i.e. the way) in which evidence, documents and information must be provided to Ofcom.

4.17 The draft Manner of Notification Document sets out the way in which the things noted at paragraph 4.10 above need to be supplied and specifies that this must be done by electronically completing an online submission.[108] The contents of each submission must be accompanied by a signed declaration verifying that the evidence provided is accurate and complete in all material respects. The steps within the draft Manner of Notification Document must be followed by providers who are under a duty to notify, unless exempt.

Requests for Information

4.18 Ofcom has information gathering powers under section 100 of the Act, which we may use to obtain information from providers if so required to exercise any of our online safety functions, including for the purpose of ascertaining the amount of a provider's QWR.[109]

4.19 Where providers of regulated services do not need to notify us under section 83(1) of the Act but are still liable to pay fees in a given charging year (i.e. because they remain above the QWR threshold in subsequent years following their first fee-paying year), Ofcom will issue requests for information on a rolling basis every charging year to ascertain their QWR so that we can invoice them accordingly.[110]

How will Ofcom treat confidential information?

4.20 We acknowledge that confidential information may be included in the fees regime notification or in response to any statutory information requests Ofcom makes relating to verifying QWR. Ofcom published a consultation in July 2024 on our online safety information gathering guidance,[111] which includes details about how Ofcom expects to treat confidential information in accordance with applicable statutory requirements,

[107] Section 84(3) of the Act.
[108] This is known as a 'QWR Return' which means the electronic form which includes the provision for QWR information together with supporting evidence to be supplied by the provider of a regulated service for the relevant Qualifying Period.
[109] Section 100(6)(d)(i) of the Act.
[110] As explained above, providers are only required to provide a fees regime notification to Ofcom in certain circumstances, and will not have to do this every charging year.
[111] Consultation on OS Information Guidance. See also Ofcom's draft general information gathering policy here: Consultation: Ofcom's general policy on information gathering - Ofcom.

and the circumstances and process of disclosing such information. Stakeholders may refer to the relevant consultation for further information in this area.

Consultation question 9: Do you agree with our proposals relating to supporting evidence, documentation and other information, and the manner of notification, as reflected in our Notification Regulations (Annex 10)?

Consultation question 10: Do you have any comments on the proposed Manner of Notification document in Annex 11 accompanying the Notification Regulations?

5. Impact assessment

Scope and purpose of this chapter

5.1 Section 7 of the CA03 requires us to carry out and publish an impact assessment with respect to proposals which would most likely have a significant impact on businesses or the general public. More information about our duty to carry out an impact assessment under Section 7 of the CA03 is set out in the legal framework section (see Annex 5).

5.2 An impact assessment provides a valuable way of assessing options for regulation and showing why the chosen option(s) was preferred. They form part of the best practice for policy making and we therefore expect to carry them out in relation to a large majority of our proposals.

5.3 We use impact assessments to help us understand and assess the potential impact of our policy decisions before we make them. They also help us explain our policy decisions and why we consider that these decisions best fulfil our applicable duties and objectives in the least intrusive way. Our impact assessment guidance[112] sets out our general approach as to how we assess and present the impact of our proposed decisions.

5.4 As set out in section 7(5) of the CA03, we have discretion as to the substance and form of an impact assessment, and this will depend on the particular proposals being made. As it is further explained in the legal framework (see Annex 5), the Act itself provides that we will recover our costs associated with its online safety functions through fees levied on providers. Therefore, this impact assessment is not assessing the impact of levying fees per se, as we do not have discretion over this.

5.5 This impact assessment assesses the impact of proposals over which we do have discretion – specifically those proposals concerning how the fees are levied, which would influence how different stakeholders are affected by the fees regime. In previous sections of this consultation, we have assessed different options against the principles of proportionality, transparency, stability and workability, as well as against our general duties, and explained the rationale for our proposed approach with respect to specific issues. We do not repeat this in detail here.

5.6 In this impact assessment, we have considered in the round the impact on providers of our proposals as a package, including:

i) A definition of QWR for the purposes of the fees regime and when determining the maximum penalty cap, as the total amount of revenue the provider receives worldwide (during the qualifying period, which is defined on a calendar year basis), that is referable to a regulated service (at Chapter 3.1).

i) A different, broader definition of QWR for the purpose of calculating the maximum cap on penalties, where we find two or more entities jointly and severally liable for a contravention, for example the provider and the parent company (at Chapter 3.2).

[112] Impact assessment guidance (ofcom.org.uk).

i) A proposed QWR threshold figure of £250m to determine which providers could be liable to pay fees, as well as our proposal that setting the threshold anywhere in the range of £200-500m could be appropriate (at Chapter 3.3).

ii) An exemption from fees duties (duty to notify and duty to pay fees) for providers whose UK referable revenue is less than £10m in a qualifying period (at Chapter 3.3).

iii) An approach to the SoCP such that all qualifying providers pay an amount equal to a single percentage of QWR (at Chapter 3.4).

5.7 Further, impact assessments which relate to proposals about the carrying out of our online safety functions under the Act must include an assessment of the likely impact of implementing the proposal on small and micro businesses.[113] We have therefore included our assessment of the impact of our proposals on small and micro businesses at paragraphs 5.9 to 5.11 below.

5.8 We have assessed the impacts of our proposals in the round as follows:

ii) Direct impacts on different kinds of regulated service providers, including micro and small providers, medium-sized providers, and large providers; and

iii) Potential indirect impacts and wider considerations.

Direct impacts on small and micro providers of regulated services

5.9 As noted, we have a specific duty to consider impacts on micro and small businesses, relying on the commonly used definitions across many government bodies. For simplicity, these are based on employee numbers only: a small business is defined as one with 10-49 full-time employees and a micro business is one with fewer than 10 full-time employees (in either case, this may include employees not based in the UK).[114]

5.10 Since our proposals suggest a QWR threshold of £250m, small and micro providers would be extremely unlikely to be required to pay fees. The same applies under any other threshold within the range of £200m to £500m which we would consider appropriate, as explained in Chapter 3.3. We therefore do not expect any material direct impacts on these providers.

5.11 We consider that limiting the impact on these providers is consistent with the proportionality principle and with our duties, including with respect to competition and innovation. We consider that small and micro companies can offer welcome diversity and innovation in the provision of online services, and that such benefits could be reduced if barriers to entry or expansion for these providers were to increase due to the introduction of fees. If such services were in scope, as well as incurring the cost of

[113] Section 7(4B) CA03, as inserted by section 93(4) of the Act.

[114] We recognise that not all government bodies use exactly the same definitions. For example, some also refer to revenue and assets. The definition we propose, which we also used in our consultations on draft Codes of Practice for regulated services, is consistent with that used by the Regulatory Policy Committee. It would not make a material difference to our impact assessment if another common definition of small and micro businesses (such as that consistent with the Companies Act 2006) were used instead. Source: Regulatory Policy Committee, 2019, [Small and Micro Business Assessments: guidance for departments, with case history examples](#).

paying fees, they may incur other additional costs associated with regulatory compliance (e.g. preparing information and submitting notices), which may affect smaller providers disproportionately if they lack relevant existing compliance functions and capabilities.[115]

Direct impacts on medium-sized providers of regulated services

5.12 As explained in Chapter 2, the Secretary of State's guidance to Ofcom sets out an intent to limit the impact on small and medium-sized businesses. Having already considered the impact on small providers above, in this subsection we consider the impact on medium-sized providers. In doing so, we consider the £36m revenue threshold used in the Companies Act 2006 (alongside other metrics),[116] noting that alternative revenue thresholds (but of the same order of magnitude) are sometimes used in other contexts such as UK Government procurement, as explained in Chapter 3.3.

5.13 Under our proposals, with a QWR threshold figure of £250m, medium-sized providers (i.e. those whose revenue is less than £36m) would not be required to pay fees. The same applies under any other QWR threshold within the range of £200m to £500m which we would consider appropriate, as explained in Chapter 3.3. Similar to the discussion on small and micro providers above, we consider this consistent with the proportionality principle and our duties with respect to competition and innovation. We consider that medium-sized and smaller companies alike can offer welcome diversity and innovation in the provision of online services, and that such benefits could be reduced if barriers to entry or expansion for these providers were to increase due to the introduction of fees.

5.14 Under the definition of medium-sized companies in Companies Act 2006, it is possible for a company to be classed as medium-sized even if its revenue is at least £250m, if it satisfies the balance sheet and employee criteria to qualify as a medium-sized company: it has less than £18m in assets and fewer than 250 employees. However, we expect that any such cases would be extremely unlikely in practice.

Direct impacts on large providers of regulated services

5.15 To assess impacts on large providers,[117] we consider large providers to be those that exceed the £36m revenue figure used in Companies Act 2006 (alongside other

[115] See e.g. Federation of Small Businesses, 2021.
[116] Other criteria relate to the value of assets and number of employees. See section 465 of the Companies Act 2006.
[117] Note that this is distinct from our proposed definition of "large" services included in our draft Codes of Practice, based on a service having more than 7 million monthly UK users. These definitions are unrelated, as one pertains to services and one to companies, although they are likely to be correlated, as large services are more likely to be operated by large companies than smaller companies. The focus on providers in this impact assessment reflects that fees are levied at *provider* level; in contrast, our draft Codes of Practice recommend safety measures based on the characteristics of individual services and therefore the impact assessments associated with our Codes of Practice proposals focus on assessing impacts based on the different kinds of *services* affected.

metrics),[118] noting that alternative revenue thresholds (but of the same order of magnitude) are sometimes used in other contexts, as explained in Chapter 3.3.

5.16 Under our proposals, a subset of large providers – those that meet or exceed the £250m QWR threshold and do not qualify for an exemption – would be required to pay fees, expected to be equal to approximately 0.02% of their QWR. Additionally, providers would have to pay additional fees to cover initial regulatory costs incurred prior to implementation of the fees regime, although proposals relating to additional fees will be consulted on separately by the Secretary of State and are not within the scope of this consultation.

5.17 In assessing the impact of our proposals, we recognise that large providers can themselves also be an important source of competition, investment and innovation in the UK. However, we consider that the fee amounts – as calculated using a percentage of QWR – would be relatively small, compared to the revenues and resources available to these providers. This should mitigate any adverse effects, ensuring that – even though a variety of providers would be in scope – those with the greatest resources account for a higher share of total fees collected.

5.18 We also acknowledge that providers who are liable to pay fees may incur some additional costs, other than paying the fees themselves. For example, providers may incur staff costs to familiarise themselves with the fees regime, to estimate revenues for the qualifying period (e.g. in cases where this does not align with the company's accounting periods), or to estimate revenues associated with regulated services specifically (e.g. where this entails developing a revenue attribution method). These costs are not readily quantifiable, as they are highly dependent on the circumstances of each provider and its services. In determining the form, frequency and scope of the additional notification requirements to be set out in the Notification Regulations, and any RFIs we issue, our approach is to limit these to the minimum necessary for us to administer the fees regime, to avoid imposing a disproportionate burden on businesses (see Chapter 4 for details about notification requirements).

5.19 Overall, we expect that providers who meet the QWR threshold will *typically* have the capacity to pay these fees and incur any additional costs of compliance without giving rise to material adverse effects, such as significantly reduced investment or withdrawal of regulated services from the UK.

5.20 However, we recognise that there may be exceptions to this, such as where providers meet the QWR thresholds but only have a small presence in the UK. In such cases, the costs could be disproportionate and material enough to discourage those providers from continuing to operate in the UK. Similarly, there could be a disincentive for large providers active in other geographies to enter the UK market. Such effects could ultimately harm UK users.

5.21 This risk of adverse effects is mitigated by the proposed exemption for providers whose UK referable revenue is less than £10m in a qualifying period. We recognise that providers seeking to make use of this exemption may incur some additional costs (to calculate UK revenues and provide evidence of this where we issue an RFI requesting this information), which will vary depending on each provider's circumstances, but this

[118] Other criteria relate to the value of assets and number of employees. See section 465 of the Companies Act 2006.

should be significantly less than the cost of paying fees. While we lack detailed evidence about large providers with a small UK user base, we consider it likely that an exemption threshold set at £10m is at an appropriate level to mitigate the risk of adverse effects.

5.22 We recognise that the proposed approach would mean that large providers with QWR of less than £250m, and large providers with QWR of at least or greater than £250m but who meet the exemption criteria, would not be liable to pay fees. Excluding these providers increases the fee burden for those providers who *are* liable. We consider this consistent with the principles of proportionality and workability for the reasons explained in Chapter 3.3. Assuming fees were around 0.02% of QWR, then any fee amounts collected from providers with QWR of less than £250m would be less than £50,000. We consider that the additional compliance and administrative costs for providers and for us in this scenario could become disproportionately high, given the relatively small incremental fee amounts being collected from these providers.

5.23 Although our analysis of direct impacts on a large provider has focused on the proposed QWR threshold value of £250m, we consider that the same points would broadly apply regardless of where the threshold is set within our proposed range of £200m to £500m. However, we acknowledge that the number of providers required to pay fees may vary somewhat depending on the exact threshold figure. The exact threshold figure chosen within this range would directly affect a small subset of large providers whose QWR is within this range, determining whether they are required to pay fees or not (and therefore whether they are subject to the impacts discussed in this subsection or not). As explained in paragraph 3.3.13, in selecting a proposed threshold of £250m we have placed slightly more weight on ensuring fees are paid by a reasonable number and range of providers than on limiting compliance burdens and administrative complexity.

Potential indirect impacts and wider considerations

5.24 The subsections above assess direct impacts on those providers who would be required to pay fees. In this section we summarise our assessment of potential indirect impacts and other relevant considerations.

5.25 With respect to competition, innovation and investment, as described above, we expect that our proposal should avoid material adverse impacts – to the benefit of UK businesses, consumers and citizens – by limiting the impact of the fees regime on micro businesses and SMEs, whilst ensuring that the fee amounts paid by larger providers are still manageable and small relative to their QWR. As part of this, the proposed exemption (for services with less than £10m UK referable revenue) mitigates the risk of adverse impacts on competition, innovation and investment with respect to large providers who may have limited or no presence in the UK.

5.26 We acknowledge that businesses which are not required to pay fees could still be indirectly affected by our proposals. For example, larger providers who are required to pay fees might pass through costs as price increases to their customers; this could affect smaller companies who pay for advertising or other B2B services offered by those providers. However, given that it is necessary to levy fees on some providers to fund the cost of our online safety functions, such impacts are not avoidable. The level of fees indicates that these impacts are unlikely to be large and the use of a percentage fee ensures that the fee burden is spread across providers in a proportionate way.

5.27 We acknowledge that the use of a single QWR threshold and single percentage fee could theoretically have an adverse effect on some incentives. Providers whose QWR is lower than the threshold could have somewhat weakened incentives to grow, as they would be required to pay a fee – of approximately £50,000, assuming £250m threshold and 0.02% fee – once they reach the QWR threshold. However, we consider such adverse impacts are unlikely to be material overall, because:

i) The level of the fee amount is unlikely to significantly affect incentives unless a provider is very close to the QWR threshold, and evidence on the distribution of QWR amounts suggests that very few, if any, providers are likely to be in this position currently; and

iv) Even where a provider is close to the QWR threshold, the size of potential fees is not large enough to represent a material deterrent to long-term growth.

5.28 For similar reasons, we consider that the £10m UK revenue threshold used as part of the proposed exemption is unlikely to create any material disincentive for growth, for providers whose UK revenues are less than, but close to £10m. For example, assuming fees were equal to 0.02% of QWR, a provider with £250m QWR and £10m UK revenue would be liable to pay £50,000, which we consider unlikely to undermine long-term incentives to expand in most cases.

5.29 We have also considered the impacts of our QWR proposals in relation to the calculation of penalty caps under the Act. The proposal to use the worldwide revenue approach when calculating the maximum penalty cap for a provider is intended to achieve higher penalty caps than would be the case if these caps were to be calculated on the basis of UK referable revenue. It is theoretically possible that a higher cap – and the implied possibility of facing higher financial penalties – could have adverse impacts on competition, innovation or investment, by dampening incentives for providers to provide regulated services to UK users. However, actual penalty amounts are determined on a case-by-case basis taking account in the round of relevant factors in our Penalty Guidelines, and must be proportionate, which mitigates this risk.

5.30 Similar reasoning applies in respect of our proposal for a different, broader QWR definition for the purpose of calculating the maximum penalty that may be imposed on group undertakings on the basis of joint and several liability. This means that the maximum cap may be higher than if it were calculated only from the revenues of group undertakings from the provision of regulated services (as discussed further in Chapter 3.2).

5.31 On balance, our assessment is that any risk of adverse effects from our proposals will be outweighed by the benefit of ensuring that the caps act as effective deterrents. We expect them to reduce the likelihood of non-compliance, which could otherwise cause material harm to UK users.

Provisional conclusion

5.32 We consider that our proposals would support the funding of our online safety functions in a way that is consistent with our duties and with the principles outlined in the Secretary of State's guidance to Ofcom, including by limiting impacts on micro businesses and SMEs, while ensuring that the cost to those providers who are required to pay fees is proportionate to their QWR. With respect to potential maximum penalty amounts, our assessment is that the proposals support our objective of effective

deterrence, which ultimately helps to protect users of regulated services. Therefore, we conclude that our proposals are justified and proportionate.

Consultation question 11: Do you agree with our assessment of the potential impact of our proposals? If you disagree, please explain why.