

Annex 2. Legal framework

Summary

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

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

Ofcom's general duties and online safety functions

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

¹ Section 3(3) of the CA03.

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

Duty to pay fees

- 7. The online safety fees regime, as set out in Part 6 of and Schedule 10 to the Act,² applies to providers³ of regulated services, unless exempted by Ofcom under section 83(6) of the Act.
- 8. Regulated services⁴ include regulated user-to-user services and regulated search services (these are known as ‘Part 3 services’ as many of the key duties on these services are set out in Part 3 of the Act). They also include internet services that publish or display ‘regulated provider pornographic content’ which are subject to the duties set out in Part 5 of the Act (these are known as ‘Part 5 services’). All these categories of regulated services must have links with the UK,⁵ regardless of where they are based or registered.⁶
- 9. To be liable to pay fees with respect to a specific charging year,⁷ the provider of a regulated service:
 - i) Must have a QWR, as defined by Ofcom in regulations to be laid before Parliament, that meets or exceeds the QWR threshold that has effect for that charging year and must not be exempt.⁸
 - ii) The QWR threshold figure will be determined by the Secretary of State, after considering Ofcom’s advice, in relevant regulations.⁹
- 10. Under the Act, Ofcom has a discretion to exempt particular descriptions of providers of regulated services from the duty to notify under section 83 and from the duty to pay fees

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

³ For the definition of providers, please refer to section 226 of the Act. See also section 83(11) of the Act which contains further provision about the meaning of a “provider” of a regulated service for the purposes of Part 6 of the Act.

⁴ Section 4(4) of the Act.

⁵ For how links to the UK are established please refer to: section 4(5) and section 4(6) of the Act for user-to-user or search services and section 80(2) to section 80(4) of the Act for service providers that display or publish pornographic content; see, also, [an overview of regulated services here: Volume 1](#).

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

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

⁸ Section 83(2) of the Act.

⁹ Section 86 of the Act.

under section 84.¹⁰ To do this, Ofcom will need to consider that an exemption for such providers is appropriate, and the Secretary of State must have approved the exemption. Similarly, Ofcom may revoke such an exemption when it considers it is no longer appropriate, and the Secretary of State approves the revocation.¹¹ Except in respect of the initial charging year, details of an exemption or revocation must be published by Ofcom at least six months before the beginning of the first charging year for which the exemption or revocation is to have effect.¹²

Duty to notify

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

Notification requirements

12. Notifications under section 83(1) of the Act in relation to a charging year must include details of all the provider's regulated services.¹⁴ Notifications under section 83(1)(a) or (b)(i) must also include details of the provider's QWR for the qualifying period that relates to that charging year, and any supporting evidence, documents or other information as required in the Notification Regulations made by Ofcom.¹⁵
13. Ofcom's Notification Regulations will specify the "evidence, documents or other information" that providers must supply to Ofcom for the purposes of section 83(1) of the Act and describe the way in which this evidence, documents or information should be supplied.¹⁶
14. In relation to timings for notification, for the initial charging year, a notification must be provided to Ofcom within four months of the date on which the first QWR Threshold Regulations come into force. For subsequent charging years, a provider of a regulated service will need to notify Ofcom at least six months before the beginning of the charging year to which the notification relates.¹⁷

¹⁰ Section 83(6) of the Act.

¹¹ Section 83(7) of the Act.

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

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

¹⁴ Section 83(3) of the Act.

¹⁵ Section 83(3) of the Act.

¹⁶ Section 85(2) of the Act.

¹⁷ Section 83(5) of the Act.

15. Under Part 7 of the Act, Ofcom has information gathering powers to require additional information from providers if so required to exercise any of our online safety functions, including for the purpose of ascertaining the amount of a person's QWR.¹⁸

Qualifying Worldwide Revenue and qualifying period

16. Ofcom may by regulations make provision about how the QWR of a provider of a regulated service is to be determined; and define the 'qualifying period' in relation to a charging year.¹⁹ Before making these regulations under section 85(1) of the Act Ofcom must consult the Secretary of State, the Treasury, and such other persons as Ofcom consider appropriate.²⁰
17. Such regulations made by Ofcom under section 85(1) may make provision for matters including:
- i) The circumstances in which amounts do, or do not, count as being referable (to any degree) to a regulated service for the purposes of determining the QWR of the provider or of an entity that is a group undertaking in relation to the provider;²¹
 - ii) For cases or circumstances in which amounts that are of a kind specified or described in the regulations and are not referable to a regulated service, are to be brought into account in determining the QWR of the provider or of an entity that is a group undertaking in relation to the provider;²²
 - iii) For providers of a regulated service who are part of a corporate group during any part of a qualifying period, their QWR may be defined so as to include the QWR of any entity that is a group undertaking²³ in relation to the provider where:
 - The entity has been a group undertaking in relation to the provider for all or part of the qualifying period; *and*
 - the entity receives or is due to receive, during that period, any amount referable (to any degree) to a regulated service provided by the provider.²⁴ However, where the entity is a group undertaking in relation to a provider for part (not all) of a qualifying period, the QWR Regulations may provide that only amounts relating to the part of the qualifying period for which the entity was a group undertaking may be brought into account in determining the entity's QWR.²⁵
 - iv) Making the provisions subject to such exemptions and exceptions as Ofcom considers appropriate.²⁶

¹⁸ Section 100(6)(d) of the Act.

¹⁹ Section 85(1) of the Act.

²⁰ Section 85(7) of the Act.

²¹ Section 85(4)(a) of the Act.

²² Section 85(4)(b) of the Act.

²³ It has the meaning given by section 1161(5) of the Companies Act 2006; See, section 85(10) of the Act.

²⁴ Section 85(3) of the Act.

²⁵ Section 85(5) of the Act.

²⁶ Section 85(9) of the Act.

Setting the QWR threshold

18. Under the Act, Ofcom is required to advise the Secretary of State on the QWR threshold at or above which providers of regulated services will be required to pay fees. Before doing so, Ofcom needs to consult to inform the setting of the QWR threshold figure.²⁷
19. After completion of the consultation and having taken advice from Ofcom, the Secretary of State must make regulations specifying the threshold figure (QWR Threshold Regulations).²⁸ In accordance with the Act, the Secretary of State must keep the threshold figure under review and if it considers it will be appropriate to revise it, the Secretary of State may request that Ofcom conduct a further consultation.²⁹

Secretary of State's guidance about fees

20. Ofcom may not require a provider of a regulated service to pay a fee under section 84 of the Act unless there is in force a SoCP, principles that Ofcom propose to apply in determining fees payable under that section.³⁰ The Secretary of State must issue guidance to Ofcom on funding principles to be included in the SoCP that Ofcom proposes to apply in determining fees under section 84 of the Act.³¹ The Secretary of State is required to consult Ofcom before issuing, revising or replacing such guidance.³² In exercising its functions under Part 6 of the Act, Ofcom must have regard to the guidance for the time being published.³³ In accordance with section 87 of the Act, the Secretary of State has issued guidance to Ofcom about the principles to be included in the SoCP.³⁴

Statement of Charging Principles and the amount of fees payable

21. The principles in Ofcom's SoCP, must be such as appear to Ofcom to be likely to secure, on the basis of estimated likely costs as it is practicable for Ofcom to make:
 - i) That on a year-by-year basis, the aggregate amount of the fees payable to Ofcom under section 84 *is sufficient to meet, but does not exceed*, the annual cost to Ofcom of the exercise of our online safety functions;³⁵
 - ii) That the fees under section 84 are *justifiable* and *proportionate*, having regard to the functions in respect of which they are imposed; and
 - iii) That the relationship between meeting the cost of the exercise of those functions and the amounts of the fees is *transparent*.³⁶
22. The SoCP must (among other things) include details relating to the computational model used to calculate fees payable under section 84 of the Act. This computation must be made

²⁷ Section 86(1) of the Act

²⁸ Section 86(2) of the Act.

²⁹ Section 86(3) and Section 86(4) of the Act.

³⁰ Section 88(1) of the Act.

³¹ Section 87(1) of the Act.

³² Section 87(2) of the Act.

³³ Section 87(6) of the Act.

³⁴ [Online Safety Act 2023: guidance to the regulator about fees.](#)

³⁵ As described in section 88(9) of the Act, OFCOM's costs of the exercise of their online safety functions during a charging year include the costs of preparations for the exercise of their online safety functions incurred during that year.

³⁶ Section 88(2) of the Act.

by reference to the provider's QWR for the qualifying period related to that charging year, as well as any other factors which Ofcom considers appropriate.³⁷ The SoCP must also include details about the meaning of 'QWR' and 'qualifying period' and specify the threshold figure contained in the QWR Threshold Regulations.³⁸

23. The SoCP may make different provision in relation to different kinds of regulated services.³⁹ Ofcom must consult on and publish such a SoCP (and any revised or replacement statement).⁴⁰

24. We will be consulting separately on the SoCP document itself, in a later consultation.

Fees collection process

25. Following receipt of notifications from providers of regulated services and having calculated the fees due in accordance with the SoCP (see above), Ofcom will issue invoices to all applicable providers.

26. As soon as reasonably practicable after the end of each charging year, Ofcom must publish a statement setting out, in respect of that year:

- i) The aggregate amount of the fees payable for that year that has been received by Ofcom;
- ii) the aggregate amount of the fees payable for that year that remains outstanding and is likely to be paid or recovered; and
- iii) the cost to Ofcom of the exercise of their online safety functions.⁴¹

27. If there is a deficit or surplus shown by the statement above, it must be carried forward and taken into account in determining what is required to satisfy the requirement imposed by the Act in relation to the following year that the aggregate amount of fees is sufficient to meet, but does not exceed, the annual costs of Ofcom's online safety functions.⁴²

28. In the event of disagreement between a regulated provider and Ofcom in relation to the amount of QWR for a qualifying period, or in relation to the amount of a fee to be paid to Ofcom, or of an instalment of such a fee, it will be Ofcom who determines the amount.⁴³

Recovery of Ofcom's initial costs and additional fees

29. Ofcom must seek to recover the total amount of its initial costs by charging providers of regulated services additional fees under Schedule 10 to the Act.⁴⁴ The initial costs are the costs incurred by Ofcom, before the first day of the initial charging year, on preparations for the exercise of the online safety functions or the exercise of such functions.⁴⁵

³⁷ Section 84(2)(a)(i) and (ii) of the Act.

³⁸ Section 88(3) of the Act.

³⁹ Section 88(5) of the Act.

⁴⁰ Section 88(4) and (6) of the Act.

⁴¹ Section 88(7) of the Act.

⁴² Section 88(8) of the Act.

⁴³ Section 84(3) of the Act.

⁴⁴ Additional fees will be returned by Ofcom to the Consolidated Fund, see Section 400(1)(k) of the CA03.

⁴⁵ Paragraph 1(3) of Schedule 10 to the Act.

30. Ofcom's initial costs are currently being funded through the retention of WTA⁴⁶ receipts. Ofcom must recover these via fees, which are additional to the fees referred to above. The amount to be recovered in respect of the initial costs should be equal to the aggregate of the amounts of the WTA receipts which are retained by Ofcom for the purposes of meeting their initial costs.⁴⁷
31. The Secretary of State must make regulations making such provision as they consider appropriate, in connection with the recovery by Ofcom of their initial costs and consult Ofcom (among others) before making them.⁴⁸ Once regulations to recover initial costs are in force, Ofcom will start to charge additional fees from providers so as to recover the initial costs, as set out in the regulations.

Ofcom's enforcement powers in relation to fees

32. Ofcom may take enforcement action if a provider:
- i) Fails to comply with the duty to notify under section 83 of the Act; or
 - ii) Fails to comply with the duty to pay fees under section 84 or Schedule 10 in full.
33. The provisions in relation to the duty to notify under section 83 are 'enforceable requirements' and a failure to comply with them can trigger enforcement action.⁴⁹
34. In December 2024, alongside a statement on protecting people from illegal harms, Ofcom published Enforcement Guidance under the Act. This set out our approach to enforcement under the Act⁵⁰ and applies in relation to a provider which fails to comply with the duty to notify under section 83 of the Act or to pay fees that are due.

Transitional Arrangements and VSPs

35. Following a transition period, the UK VSP regime in Part 4B of the CA03 will be repealed. It is our view that the VSP regime will be repealed before the online safety fees regime is implemented, and therefore we only briefly mention the transitional arrangements below.
36. The transition period began on 10 January 2024. During the transition period all pre-existing VSPs with the required connection with the UK (in other words, platforms that meet the scope and jurisdiction criteria under Part 4B of the CA03) continue to be regulated under the VSP regime during the transition period. During this period, most of the duties under the Act do not apply to VSP providers, subject to certain exceptions, as outlined in Schedule 17 to the Act.
37. Pre-existing VSPs will be exempt from the requirement to pay fees contained in the Act during the transition period. If the regulated VSP element of the service is a dissociable section (in other words, a separable part) of a larger service, another part of which qualifies as a regulated service under the Act, then the exemption will only apply to the VSP part of

⁴⁶ [Wireless Telegraphy Act 2006](#). See paragraph 2.2, chapter 2 for more details.

⁴⁷ Paragraph 1, Schedule 10 to the Act.

⁴⁸ Paragraph 7, Schedule 10 to the Act.

⁴⁹ Section 131 of the Act.

⁵⁰ See Annex 11 of Ofcom's consultation on [protecting people from illegal harms online](#).

the service.⁵¹ The online safety fees notification duty under section 83 of the Act does apply to VSP providers during the transition period.⁵²

38. When the transition period ends, VSPs with the required UK links will be regulated in the UK under the Act as user-to-user services, and the fees regime will apply to them in the same way as to other providers of regulated services under the Act.⁵³

39. More information on the repeal of the VSP regime is set out on Ofcom's website.⁵⁴ The date at which the transition period ends and the VSP rules are repealed will be decided by the Secretary of State and set out in secondary legislation.

QWR in relation to penalties

40. The definition of QWR which applies in relation to the determination of fees also applies when we are calculating the maximum penalty that we can impose on a provider of a regulated service, which has been found in breach of its duties under the Act.⁵⁵ The maximum penalty that Ofcom may impose on a provider may be no more than the greater of:

- i) £18 million; and
- ii) 10% of the provider's QWR for the provider's most recently completed accounting period.⁵⁶⁵⁷

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

- i) £18 million; and
- ii) 10% of the QWR of the group of entities which consists of the provider and every other entity which is a group undertaking in relation to the provider, for the most recent complete accounting period.⁵⁸

42. The Act provides that Ofcom, following consultation,⁵⁹ may make regulations about how the QWR of a group of entities is to be determined for these purposes.⁶⁰ Ofcom therefore has the power to take a different approach to the determination of the QWR of a group of entities to that which applies when calculating the maximum penalty that may be imposed on the provider of the service alone.

43. In that case, regulations may make provision subject to exemptions and exceptions as Ofcom consider appropriate.⁶¹

⁵¹ Paragraphs 18, 19 and 24, Schedule 17 to the Act.

⁵² Paragraph 16(2), Schedule 17 to the Act.

⁵³ Paragraph 20(2) of Schedule 17 to the Act.

⁵⁴ [Repeal of the VSP regime: what you need to know - Ofcom.](#)

⁵⁵ Paragraph 4(9) of Schedule 13 to the Act.

⁵⁶ Paragraph 4(1) of Schedule 13 to the Act.

⁵⁷ Paragraph 4(7) of Schedule 13 to the Act provides that the maximum penalty cap is applicable to both penalties of a single amount and those which are calculated by reference to a daily rate taken together.

⁵⁸ Paragraph 5(3) of Schedule 13 to the Act.

⁵⁹ Paragraph 5(10) of Schedule 13 to the Act.

⁶⁰ Paragraph 5(9) of Schedule 13 to the Act.

⁶¹ Paragraph 5(11) of Schedule 13 to the Act.