

Annex 7. Equality impact assessment & Welsh language assessment

Equality impact assessment

1. Section 149 of the Equality Act 2010 (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. Section 75 of the Northern Ireland Act 1998 (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.¹

Our assessment of the proposals and stakeholder responses

3. To help us comply with our duties under the 2010 Act and the 1998 Act, we assessed the impact of our consultation 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. As explained in paragraphs 9 to 15, we do not consider that our proposals will have such an adverse impact on equality groups or good relations.
4. We received one response to our assessment of the proposals. The respondent noted that Ofcom should continue monitoring the impact on equality groups to avoid unintended consequences among vulnerable or underserved communities. They also said that they were not aware of any providers targeting specific equality groups that would meet or exceed the proposed QWR threshold.²

Our assessment of the decisions

5. When thinking about equality we think more broadly than persons that share protected characteristics identified in equalities legislation and think about potential impacts on various groups of persons (see paragraph 4.7 of our impact assessment guidance).³

¹ [Revised Northern Ireland Equality Scheme for Ofcom.](#)

² Hammy Media Ltd, page 5.

³ [Impact assessment guidance.](#)

6. In particular, section 3(4) of the CA03 also requires us to have regard to the needs and interests of specific groups of persons when performing our duties, as appear to us to be relevant in the circumstances. These include:
 - i) the vulnerability of children and of others whose circumstances appear to us to put them in need of special protection;
 - ii) the needs of persons with disabilities, older persons and persons on low incomes; and
 - iii) the different interests of persons in the different parts of the UK, of the different ethnic communities within the UK and of persons living in rural and in urban areas.
7. We examined the potential impact our decisions are likely to have on equality groups, depending on their personal circumstances. This also assists us in making sure that we are meeting our principal duty of furthering the interests of citizens and consumers, regardless of their background and identity.
8. We also considered whether our decisions may have an adverse impact on equality groups that are likely to be affected in a different way to the general population. For example, if providers of regulated services that target and/or support equality groups were liable to pay fees (e.g. where individuals with protected characteristics are the main users of the service), whether this could lead to these services being ceased or limited or the potential increased costs of fees being passed on to UK users. If providers of such regulated services were due to pay fees, we consider that the benefits and diversity offered by these providers to equality groups, could be reduced, particularly if the potential barriers to entry or expansion for these providers increase, due to the requirement to pay fees.
9. However, similar to our assessment at the consultation stage, we consider it likely that the revenues of the majority of providers of these types of services (i.e. services that specifically target or cater for equality groups) will be under the proposed threshold and, as a result, there will be little or no impact on such equality groups. This is due to the fact our proposed QWR threshold range of £200-£500 million and recommended threshold figure of £250 million have in part been influenced by our policy intent to limit the impact on SMEs and public interest services from fees. We have not identified any reasons or evidence suggesting otherwise. We have also noted the stakeholder's response above that they are not aware of any providers targeting specific equality groups that would meet or exceed the proposed QWR threshold.
10. Furthermore, in the event the provider of this type of service met or exceeded the recommended £250 million threshold for fees (or indeed any threshold Secretary of State chose in the recommended £200-500 million threshold range), we assess their revenues are such that the fees would be proportionate and of a level that would be unlikely to disrupt the stability of their service provision or materially impact costs to users.
11. Further, we have considered the specific possibility that a large global provider offering services to equality groups but with no or limited UK presence⁴ could be dissuaded from entering or developing their service to UK equality groups. This situation, should it arise, could potentially deprive equality groups of such services or result in the passing of increased costs to UK equality groups to recover the cost of UK specific fees. Whilst we are not currently aware of any such regulated services, we assess the UK referable revenue exemption ensures that the UK market remains attractive to new entrants and ensures only

⁴ In this context, by 'UK presence', we mean UK users and/or UK referable revenues.

higher revenue services are liable for fees. We assess this significantly decreases the likelihood of equality groups being negatively affected.

12. Our decisions in respect of the determination of QWR when calculating maximum penalties are informed by our central objective of deterrence, namely to secure that the undertakings who may be subject to a penalty comply with their obligations under the Act. This should benefit UK users of regulated services, including equality groups. We do not consider that there are relevant equality impacts arising from the imposition of penalties. This is because our decisions only relate to the calculation of the maximum cap for a penalty; the actual penalty amount that we impose in a given case is calculated in line with our Penalty Guidelines and must be appropriate and proportionate.
13. We therefore do not consider that our decisions will have a significant adverse impact, directly or indirectly, on providers of such services. We have not identified any adverse impacts on specific groups of persons that are likely to be affected in a different way to the general population.

Northern Ireland

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

Overall provisional conclusion about equality impact

15. To summarise, we do not consider that our decisions will have either direct or indirect adverse impacts on equality groups. After a careful assessment, we have concluded that our decisions, including our proposed advice on the QWR threshold and exemption proposal, mitigate the risk of potential adverse impacts on equality groups as noted above.

Welsh language assessment

16. The Welsh language has official status in Wales.⁵ To give effect to this, certain public bodies, including Ofcom, are required to comply with Welsh language standards.⁶ Accordingly, we have considered:
 - i) The potential impact of our policy proposals on opportunities for persons to use the Welsh language;
 - ii) The potential impact of our policy proposals on treating the Welsh language no less favourably than the English language; and
 - iii) How our proposals could be formulated so as to have, or increase, a positive impact; or not to have adverse effects or to decrease any adverse effects.
17. Ofcom's powers and duties in relation to online safety regulation are set out within the Act and must be exercised in accordance with our general duties under section 3 of the CA03. In our consultation, we said that we expect these proposals are likely to have positive effects or increased positive effects, on the use of the Welsh language and treating Welsh no less favourably than the English language. This is because stakeholders will be able to contact Ofcom about these proposals in Welsh and fulfil any notification obligations on

⁵ [The Welsh Language \(Wales\) Measure 2011](#).

⁶ [The Welsh language standard](#) with which Ofcom is required to comply.

them in Welsh should they wish to do so. One stakeholder agreed with our Welsh language assessment.⁷

18. Our view remains the same as that set out in our consultation. Where relevant and to the extent we have discretion to do so in the exercise of our functions, we have considered the potential impacts on opportunities to use Welsh and treating Welsh no less favourably than English. We remain satisfied that the decisions set out in this statement are likely to have positive effects or increased positive effects, on the use of the Welsh language and treating Welsh no less favourably than the English language.

⁷ Hammy Media Ltd, page 5.