EXPLANATORY MEMORANDUM TO

THE ONLINE SAFETY ACT 2023 (FEES NOTIFICATION) REGULATIONS 2025

2025 No. 747

1. Introduction

1.1 This explanatory memorandum has been prepared by the Office of Communications ('Ofcom') and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Oliver Griffiths, Group Director for Online Safety at Ofcom, confirms that this Explanatory Memorandum meets the required standard.

2.2 Richard Wronka, Director for Online Safety at Ofcom, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Michelle Brostoff at Ofcom Telephone: 020 7981 3000 or email: OSFeesRegime@ofcom.org.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 Providers of regulated services, unless they are exempted by Ofcom under section 83(6) of the Online Safety Act 2023[1] ('the Act'), have a statutory duty to notify Ofcom in particular circumstances set out in the Act. The Online Safety Act 2023 (Fees Notifications) Regulations 2025 (the 'legislation') have been drafted by Ofcom and describe the evidence, documents or other information that such providers must supply to Ofcom for the purposes of section 83(1) of the Act and describe the way in which it should be supplied to Ofcom.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland, and Northern Ireland.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, Scotland, and Northern Ireland. However, the duty to notify in accordance with the Act and this legislation may apply to the providers of services based outside the United Kingdom (as well as to services provided from within the United Kingdom).

[1] https://www.legislation.gov.uk/ukpga/2023/50/contents/enacted

5. Policy Context

What is being done and why?

5.1 The Act received Royal Assent on 26 October 2023, creating a new regulatory framework which makes online services with links to the United Kingdom – including social media, search, and pornography services – legally responsible for keeping people, especially children, safer online.

5.2 The providers of these services have new duties to protect users in the UK by assessing risks of harm and taking steps to address them. When certain conditions are met, they also have a duty to notify Ofcom (as the regulator for online safety) about their 'qualifying worldwide revenue' (QWR) and to pay fees, as set out in Part 6 of the Act.

5.3 Section 83(1) of the Act puts the onus on a provider to notify Ofcom in relation to:

- its first fee-paying year (i.e., the first year in which they are eligible to pay fees);
- any charging year after its first fee-charging year where the previous charging year was not a fee-paying year, and the charging year in question is a fee-paying year; and
- any charging year after its first fee-charging year where the previous charging year was a fee-paying year, and the charging year in question is not a fee-paying year.

5.4 All notifications made to Ofcom under section 83(1) of the Act must include details of all the provider's regulated services. When a provider notifies Ofcom in relation to the first and second bullets in paragraph 5.3 above, section 83(3)(a) requires that the notification must also include details of the providers QWR for the relevant qualifying period.

5.5 Section 85(2) of the Act gives Ofcom the power to make regulations setting out the supporting evidence, documents or other information required to verify providers' QWR.

5.6 To draft the legislation, Ofcom had regard to the Secretary of State for Science, Innovation and Technology's guidance about fees[2] (which was presented to Parliament pursuant to section 87 of the Act) and, in particular, to the principles of proportionality, stability and transparency. The legislation is intended to be sufficiently flexible to account for the variation in providers' accounting practices while also ensuring that the administrative burden on both providers and Ofcom remains proportionate. As the onus is on providers to identify whether they are liable to pay fees on an annual basis and calculate their own QWR, the legislation also emphasises the importance of providing accurate and complete supporting evidence.

5.7 As such, it was considered appropriate and proportionate that those notifications referenced in the first and second bullets in paragraph 5.3 above must include:

- evidence substantiating the provider's QWR figure, which will include details of any regulated services provided by the provider and where possible, refer to financial statements and other accounting documents;
- a declaration affirming the accuracy and completeness of the evidence in all material aspects, which should be signed by a senior manager as defined by

[2] https://www.gov.uk/government/publications/online-safety-act-2023-guidance-to-the-regulator-about-fees/guidance-to-the-regulator-about-fees-relating-to-the-online-safety-act-2023

section 103(4) of the Act 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; and

- where a provider is notifying Ofcom in relation to its initial fee-paying year, their notification should also contain a statement to this effect.

5.8 With regards to the way this information must be submitted to Ofcom, the legislation provides that this will be set out in a separate document published by Ofcom. This is the Manner of Notification document, which was consulted on alongside this legislation, and provides that notifications must be submitted through an online portal. If this is not available, providers will be given an alternative secure way to submit their data to Ofcom (e.g. via Ofcom's secure Managed File Transfer mechanism that is used by other Ofcom sectors and elsewhere in the online safety regime).

5.9 Further detail about the policy on notifications can be found in Chapter 8 of Ofcom's final statement dated 26 June 2025 ('Statement').[3]

What was the previous policy, how is this different?

5.10 This legislation does not represent a policy change as there was no preceding policy in place, and it is necessary for the purpose of implementing the online safety fees regime.

6. Legislative and Legal Context

How has the law changed?

6.1 This legislation sets out the supporting evidence, documents or other information that notifying providers of regulated services must submit to Ofcom as well as the way in which it should be supplied to Ofcom. It therefore complements the fees notification duty that was established in the Act.

6.2 Ofcom drafted this legislation in exercise for the first time of the power conferred by section 85(2) of the Act.

6.3 This legislation is part of a series of other instruments that need to be in force for the fees regime to operate. These other instruments are:

- Regulations under section 85(1), (3), (4) and (5) of, and paragraph 5(9) and 5(11) of Schedule 13 to, the Act that provide how QWR is to be determined and the definition of the 'qualifying period'. These regulations have been made by Ofcom and laid in Parliament by the Department for Science, Innovation and Technology ('DSIT') on behalf of Ofcom at the same time as this legislation;
- Regulations under section 86(2) that will set the QWR threshold figure (i.e., beyond which fees become payable by the providers of regulated services). These regulations are expected to be made and laid by DSIT soon after the legislation to which this explanatory memorandum relates is laid in Parliament; and
- Regulations under paragraph 7 of Schedule 10 to the Act that will make provision for the recovery of Ofcom's initial costs when setting up the online safety regime. These regulations are to be made and laid by DSIT.

[3] https://www.ofcom.org.uk/online-safety/illegal-and-harmful-content/consultation-online-safety-fees-and-penalties

6.4 For purposes of completeness, it is noted that at the time this explanatory memorandum was drafted there was no relevant domestic judicial activity (such as judicial review(s) or judgments) that informed the approach taken in this legislation.

Why was this approach taken to change the law?

6.5 Ofcom is given the power to make this legislation under the Act and no alternative way is available to Ofcom that could lead to this outcome.

7. Consultation

Summary of consultation outcome and methodology

7.1 Ofcom consulted the public on the legislation as part of a wider consultation regarding its proposals to implement the fees regime, which ran from 24 October 2024 to 9 January 2025. The consultation was published on the Ofcom website,[4] and stakeholders were invited to respond either via email or post in accordance with standard consultation procedures.

7.2 Ofcom received 26 responses to the consultation from stakeholders across a range of sectors, including large social media providers, search services, digital identity providers, civil society organisations and other regulators. Non-confidential copies of all responses to the consultation are available on Ofcom's website, and the Statement also contains a summary of responses.[5]

7.3 Responses mainly requested that Ofcom provide more detail about the required documentation. Ofcom does not however consider that further prespective detail is needed in the legislation. This is because the intent is for the legislation to remain flexible given the range of different providers and regulated services that may be in scope of fees, and the early stages of implementation of the fees regime. Ofcom is, however, planning to consult on supporting guidance that will provide examples of the evidence, documents and other information mentioned above as well as guidance on the process of notification.

7.4 In view of the above, Ofcom has not made any substantive changes to the legislation as consulted. The Statement sets out Ofcom's final decisions and reasoning on notification requirements.[6]

8. Applicable Guidance

8.1 Ofcom intends to publish guidance to assist providers with the notification process and provide examples of the evidence, documents and other information. This guidance will be consulted on and published in Q3-Q4 2025, ahead of the fees regime coming into force and it will be made available on Ofcom's website.

[4] https://www.ofcom.org.uk/online-safety/illegal-and-harmful-content/consultation-online-safety-fees-and-penalties
[5] https://www.ofcom.org.uk/online-safety/illegal-and-harmful-content/consultation-online-safety-fees-and-penalties
[6] https://www.ofcom.org.uk/online-safety/illegal-and-harmful-content/consultation-online-safety-fees-and-penalties

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this legislation as Ofcom does not consider that an Impact Assessment is required under the Better Regulation Framework (the 'Framework').

9.2 This is because the latter applies to Regulatory Provisions as defined in paragraph 2.3 of the Framework. Paragraph 2.3 of the Framework states that *"provisions and their impacts are out of scope from the definition of Regulatory Provisions where they are in connection with: a) imposing, abolishing, varying or in connection with any tax, duty, levy or other charge;…"*. As the legislation is made in connection with an 'other charge', namely online safety fees, Ofcom considers that the provisions and their impact are out of scope of the Framework.

9.3 However, Ofcom has carried out an Impact Assessment under section 7 of the Communications Act 2003 of its policy decisions supporting the legislation (and its wider approach to fees) as well as an equality and Welsh language impact assessments. These include consideration of the impacts on small and micro, medium-sized and large providers of regulated services as well as potential indirect impacts and wider considerations. These can be found in Chapter 10 and Annex 8 of the Statement and are summarised (where relevant) briefly below.[7]

Impact on businesses, charities and voluntary bodies

9.4 There is no significant impact on businesses, charities or voluntary bodies arising from this legislation for the reasons set out below.

9.5 The obligation for certain providers of regulated services to notify Ofcom in accordance with section 83 of the Act is imposed by the Act rather than this legislation. Section 83(3) also prescribes the detail that must be included in a notification to Ofcom.

9.6 This legislation does however describe the evidence, documents or other information that providers must supply to Ofcom (and how they must supply it) for the purposes of section 83. Ofcom recognises it will therefore impact certain providers of regulated services; in particular, those that meet or exceed the QWR threshold set by the Secretary of State and are not otherwise exempt.

9.7 Ofcom does not however expect this legislation to have a significant impact on such providers. In determining the form and scope of the additional notification requirements to be set out in this legislation, Ofcom's approach is to limit this to the minimum necessary for us to administer the fees regime to avoid imposing a disproportionate cost on businesses. Further, whilst some respondents to Ofcom's consultation requested that the legislation provide more detail about the required documentation, Ofcom does not consider that further prescriptive detail is needed nor that this would be proportionate.

9.8 The legislation is not expected to have any material direct impact on small or micro businesses, charities or voluntary bodies. This is because it is only the providers of regulated services whose QWR is above the threshold set by the Secretary of State for Science, Innovation and Technology in regulations that will be required to provide

[7] https://www.ofcom.org.uk/online-safety/illegal-and-harmful-content/consultation-online-safety-fees-and-penalties

QWR notifications to Ofcom. Whilst the level of the threshold is ultimately a matter for the Secretary of State, Ofcom has recommended a QWR threshold of £250m and explained that any threshold within the range of £200m to £500m could be appropriate. Small and micro providers of regulated services, and charities and voluntary bodies would be extremely unlikely to be required to submit a QWR notification to Ofcom.

9.9 There is no, or no significant, impact on the public sector because the majority of regulated services are provided by private sector organisations, and there are exemptions to the scope of the Act already, for example certain services provided by public bodies, education or childcare providers will be exempt from the Act, as per Schedule 1 to the Act.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is to assess its impact as part of broader monitoring of implementation of the online safety fees and notification regime. Ofcom may consider amending the legislation in future if it considers it appropriate to do so based on its experience.

10.2 The instrument does not include a statutory review clause for the same reason as Ofcom considers that an Impact Assessment is not required. In particular, section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015 provides that the duty to include a statutory review clause does not apply if the secondary legislation is in connection with *"imposing, abolishing or varying any tax, duty, levy or other charge"*.[8] However, Ofcom will consider future amendments to the legislation if and to the extent they are required.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 Ofcom would like to bring to the Joint Committee on Statutory Instruments attention the following:

- This legislation forms part of a series of Statutory Instruments that need to be in place for the fees regime to be implemented. An overview of the other instruments is set out in paragraph 6.3 above.
- This legislation has been prepared in exercise of new powers conferred on Ofcom by the Act. The enabling powers are mentioned in paragraph 6.2 above.
- This legislation is linked to the duty to notify imposed on providers of regulated services under Part 6 of the Act, if their QWR is above the threshold figure to be set by DSIT in future regulations. The enforcement mechanisms, in cases of non-compliance with this duty, are set out in Part 7, Chapter 6 of the Act.

12. European Convention on Human Rights

12.1 The Group Director for Online Safety, has made the following statement regarding Human Rights:

[8] The requirement for a review provision under sections 28-32 of the Small Business, Enterprise and Employment Act 2015 applies to legislation made by a Minister of the Crown.

"In Ofcom's view the provisions of the Online Safety Act 2023 (Fees Notification) Regulations 2025 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").