EXPLANATORY MEMORANDUM TO

THE ONLINE SAFETY ACT 2023 (QUALIFYING WORLDWIDE REVENUE) REGULATIONS 2025

2025 No. 1032

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 The Online Safety Act 2023 (Qualifying Worldwide Revenue) Regulations 2025 (the 'legislation') have been drafted by Ofcom and provide for how the qualifying worldwide revenue ('QWR') of a provider of a regulated service is to be determined.

4.2 QWR is a key concept in the Online Safety Act 2023[1] ('the Act') as it will be used to (a) assess a provider's liability to pay fees to Ofcom to cover the costs of it exercising its regulatory functions under the Act, and (b) set maximum penalty caps in respect of breaches of the Act.

4.3 Only providers of regulated services under the Act whose QWR is above a certain threshold figure (to be set by the Secretary of State in separate regulations under section 86(2) of the Act) and are not otherwise exempt under section 83(7) of the Act, will face fees-related duties (i.e., the duty to notify their QWR to Ofcom and to pay fees to Ofcom).

4.4 The legislation also defines the 'qualifying period' to which QWR should relate for the purposes of assessing a provider's liability to pay fees in a particular charging year.

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

Where does the legislation extend to, and apply?

4.5 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.

4.6 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, Scotland, and Northern Ireland. However, fees or penalties imposed by Ofcom under the Act may apply to the providers of regulated services based outside the United Kingdom (as well as to the providers of regulated services based in the United Kingdom).

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 QWR and to pay fees, as set out in Part 6 of the Act. Ofcom also has enforcement powers where the providers of these services are found to have breached their duties under the Act, including the power to impose financial penalties.

5.3 Ofcom is required to take certain steps to implement the fees regime established in the Act. This is because, when requiring the provider of a regulated service to pay a fee in respect of a charging year, Ofcom is required to set that fee by reference to that provider's QWR for the 'qualifying period' relating to that charging year. The Act does not define QWR or qualifying period but instead provides in section 85 that Ofcom may do so by regulations.

5.4 Ofcom is also required to take certain steps to implement the penalty regime established in the Act. This is because Ofcom cannot impose a penalty that exceeds whichever is the higher of £18m or 10% of a provider's QWR (or, where it finds a provider and one or more undertakings within its group jointly and severally liable for a breach, 10% of the QWR of that 'group of entities'). The Act provides that the definition of QWR used for the purpose of setting fees should also apply when identifying the maximum penalty cap for the provider of a regulated service. However, Ofcom can adopt a different definition of QWR for the purposes of identifying the maximum penalty cap in cases of joint and several liability.

5.5 The ultimate policy objective of this legislation is the one set out in the Act, i.e., the general purpose of making the use of internet services regulated by this Act safer for individuals in the United Kingdom.[2]

5.6 The Act sets out that companies raising revenue from online services should cover the costs of regulation to keep the online environment safe for users. However, without the legislation, the online safety fees regime cannot be implemented, and Ofcom will not be able to recover its regulatory costs from companies raising revenue from online services. There would also be significant regulatory uncertainty about the maximum penalty cap to which providers may be subject if they are found to have breached the Act, and Ofcom would not be able to levy a penalty greater than £18m.

[2] Section 1(1) of the Act.

5.7 To draft the legislation, Ofcom had regard to *the Secretary of State's guidance about fees*[3] (which was laid before Parliament on 23 May 2024 pursuant to section 87 of the Act) and, in particular, to the principles of proportionality, stability and transparency. Ofcom has also taken into account the link between the definition of QWR used for fees and for penalties (other than in cases of joint and several liability), and Parliament's legislative intent that any penalties should have a deterrent effect.

5.8 In light of the above, the legislation has been drafted to define QWR (for the purposes of fees and penalties other than in cases of joint and several liability) as follows:

- QWR should be defined as the total amount of revenue the provider receives that is referable to those parts of its regulated service on which regulated user-generated content, search content and regulated provider pornographic content may be encountered by users. We refer to these parts as the 'relevant parts' of the provider's regulated service, and to such revenue as 'referable revenue'.
- QWR should be defined by reference to worldwide referable revenue.
- where a person provides more than one regulated service, QWR should include referable revenue for all their regulated services.
- providers should apportion revenues using a just and reasonable approach where referable revenues cannot be separately identified from revenues referable to other parts of regulated services (or non-regulated services).
- QWR must include referable revenues which are received by other group undertakings.
- revenue must be converted to Great Britian Pound (GBP) using a just and reasonable exchange rate.

5.9 The legislation also defines the 'qualifying period' for fees as the second calendar year preceding the one within which the charging year begins.

5.10 The rationale for this policy is set out in detail in Chapter 3 of Ofcom's final statement dated 26th June 2025 ('Statement').[4] By way of summary, Ofcom considers that:

- defining QWR with regard to revenue referable to relevant parts of a regulated service is proportionate (particularly in the context of imposing fees) and differentiates between services that comprise largely (or entirely) of relevant parts and services where only a small part comprises a relevant part.
- defining QWR with regard to worldwide revenue is proportionate and in accordance with the legislative intent of the Act. The Act requires the same definition of QWR to be used for both fees and penalties and must therefore balance the needs of both. Ofcom's view is that defining QWR using the worldwide revenue approach is more consistent with the objective of deterring providers from non-compliance with their duties in the Act. In turn, this will contribute to the overall purpose of the Act of making the use of regulated internet services safer for individuals in the UK.
- defining QWR to include referable revenue for all a provider's regulated services allows for a proportionate approach to penalties and fees, supports fairer outcomes and allows for a maximum penalty cap that more effectively deters non-compliance among providers with similar levels of referable revenue.

[3] https://www.gov.uk/government/publications/online-safety-act-2023-guidance-to-the-regulator-about-fees
[4] https://www.ofcom.org.uk/online-safety/illegal-and-harmful-content/consultation-online-safety-fees-and-penalties

- a just and reasonable approach to apportionment allows providers flexibility, opportunity to tailor to their specific circumstances and avoid unduly prescriptive rules.
- including referable revenues received by other group undertakings in group QWR helps avoid discrepancies in QWR due to different accounting practices within groups, contributing to a fairer fee regime.
- allowing providers to convert revenue to GBP using a just and reasonable exchange rate allows flexibility based on circumstance whilst avoiding the limitations of specifying a single source.
- the definition of qualifying period gives providers time to plan for fees, is in line with the approach taken by Ofcom in other sectors and enables notification and verification of QWR to draw on audited accounts.

5.11 In cases where Ofcom calculates the maximum penalty that it can impose in cases of joint and several liability, the definition of QWR in the legislation is the total worldwide revenue of those group entities, regardless of whether that revenue is referable to a regulated service.

5.12 The rationale for this policy is set out in detail in Chapter 6 of the Statement. By way of summary however, Ofcom has chosen this wider definition of QWR for cases where joint and several liability is found on the basis that a narrow focus on revenues from regulated services (and particularly from only 'relevant parts' of those services) in this case could impede significantly Ofcom's ability to effectively deter wrongdoing, drive compliance and in turn protect UK users. Ofcom's view is that, in appropriate circumstances, this approach ensures the best incentives for the parent company to exercise control or authority over the service provider to ensure that it complies with its regulatory obligations under the Act, while also deterring subsidiaries/sister undertakings from playing a role in contraventions by service providers.

What was the previous policy, how is this different?

5.13 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 how QWR is to be determined, enabling Ofcom to calculate the maximum amount of penalties under Schedule 13 to the Act, and paving the way for Ofcom to charge fees under Part 6 of the Act. The legislation thus complements the provisions in the Act and enables its implementation.

6.2 Ofcom drafted this legislation in exercise for the first time of the powers conferred by section 85(1), (3), (4) and (5) of, and paragraph 5(9) and 5(11) of Schedule 13 to, the Act.

6.3 Without this legislation, Ofcom will not be in a position to impose fees on the providers of regulated services or calculate the maximum amount of penalties under the Act. However, 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(2) of the Act that that specify the "evidence, documents or other information" providers must supply to Ofcom as part of their QWR notifications, and the way in which these should be supplied. 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 the legislation to which this explanatory memorandum relates;
- 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;
- 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.

6.4 Whilst this legislation will enable Ofcom and service providers to understand the maximum penalty that may be applied in cases of non-compliance with the Act, it does not follow that any penalties imposed by Ofcom will be at this level. The actual penalty amount that Ofcom impose in any given case will be calculated in line with its Penalty Guidelines[5] and must be both appropriate and proportionate to the failure or failures in respect of which it is imposed.[6]

6.5 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?

6.6 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 evidence base for these proposals was also annexed to this consultation.

7.2 The consultation was published on the Ofcom website,[7] and stakeholders were invited to respond either via email or post in accordance with Ofcom's standard consultation procedures.

7.3 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.[8]

[5] https://www.ofcom.org.uk/siteassets/resources/documents/about-ofcom/policies/penalty-guidelines/penalty-guidelines-september-2017.pdf?v=322695
[6] Paragraph 2(4) of Schedule 13 to the Act.
[7] https://www.ofcom.org.uk/online-safety/illegal-and-harmful-content/consultation-online-safety-fees-and-penalties
[8] https://www.ofcom.org.uk/online-safety/illegal-and-harmful-content/consultation-online-safety-fees-and-penalties

7.4 Many respondents challenged the proposals defining QWR as set out in the draft legislation. Some of the main challenges raised by such respondents were that:

- QWR should only include UK referable revenue (i.e., revenues referable to the use of regulated services by UK users), rather than worldwide referable revenues;
- providers of multiple regulated services should not be required to aggregate all of their referrable revenues; and
- QWR for a 'group of entities' (in cases of joint and several liability) should only include revenue referable to regulated services, rather than all revenues.

7.5 Whilst no respondents disagreed that that it may be necessary to apportion revenue to regulated services, some requested more guidance on what a just and reasonable approach could mean in practice.

7.6 The definition of 'qualifying period' was non-contentious and did not receive any challenge from respondents.

7.7 Ofcom has carefully assessed these responses and decided not to depart from its consultation positions, however Ofcom has clarified certain aspects and decided to consult on additional guidance to help providers determine their QWR (see 8.1 below). Further detail on Ofcom's reasoning can be found in the Statement at Ofcom's website (and is also summarised in paragraphs 5.10 to 5.12 above).[9]

7.8 Since its public consultation, the legislation has been subject to a few changes. These were mainly made to add clarity and assist with the reading of the legislation, including in light of comments received from the Joint Committee on Statutory Instruments as part of its pre-laying scrutiny of the legislation.

8. Applicable Guidance

8.1 Ofcom intends to publish guidance to aid providers in the process of calculating their QWR, especially with regards to the apportionment of referable revenue. This guidance will be consulted on and published by Q4 2025, ahead of the fees regime coming into force and it will be made available on Ofcom's website. It is intended to be an iterative document which is periodically updated to ensure that it remains relevant and provides practical guidance to providers.

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

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 assessment. 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.[10]

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 providers of regulated services to pay fees to Ofcom, which are set by reference to their QWR, is imposed by the Act rather than this legislation. Whilst this legislation defines QWR for this purpose (and does so by reference to the worldwide revenues of providers), Ofcom can only recover its costs from the exercise of its online safety functions through the fees regime. The aggregate costs to be recovered by Ofcom through this regime are therefore the same irrespective of the definition of QWR. Further, based on information gathering conducted by Ofcom, the distribution of estimated revenue per provider in 2023 is comparable on both a worldwide and UK revenue basis, and the five largest revenue generating providers represent around 90% of total revenues in both cases.

9.6 Notwithstanding the above, Ofcom considers briefly below the impact of the online safety fees regime, which is in part implemented by this legislation and which Ofcom recognises will impact certain providers of regulated services.

9.7 The fees regime will directly impact a subset of providers (i.e., those that meet or exceed the QWR threshold set by the Secretary of State for Science, Innovation and Technology and are not exempt) and require them to pay fees that are expected to be equal to approximately 0.02-0.03% of their QWR. Ofcom's view is that the fee amounts will be relatively small compared to the revenues and resources available to these providers, which should mitigate any adverse impacts.

9.8 Ofcom acknowledges that the costs associated with the fees regime could be disproportionate and material enough to discourage providers that meet the QWR threshold (but only have a small presence in the UK) from entering, or continuing to operate in, the UK. However, subject to approval by the Secretary of State, Ofcom intends to create an exemption from the fee-related duties for providers whose UK referable revenue is less than £10m in a qualifying period.

9.9 The legislation (and fees regime more broadly) is not expected to have any material direct impact on small or micro businesses, charities or voluntary bodies. This is because Ofcom has recommended a QWR threshold of £250m and explained that any threshold between £200m to £500m could be appropriate. Charities, voluntary bodies and small and micro providers of regulated services are therefore extremely unlikely to be required to pay fees to Ofcom. However, should evidence be received in the future suggesting that an exemption from the requirement to pay fees would be of benefit to charities or public interest bodies, Ofcom has explained that it may reconsider this.

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

9.10 Businesses which are not required to pay online safety fees could still be indirectly affected by the fees regime. However, as it is necessary to levy fees on some providers to fund the cost of Ofcom's online safety functions, such impacts are unavoidable and do not arise from this legislation. Further, the expected level of fees indicates that these impacts are unlikely to be large and the use of a percentage fee ensures that the burden is spread across providers in a proportionate way.

9.11 The definition of QWR in the legislation also applies to calculate the maximum penalty that can be imposed by Ofcom under Schedule 13 of the Act. However, this is not expected to have any direct impacts on businesses. A financial penalty may only be imposed by Ofcom under the Act if it finds the provider of a regulated to have breached its duties under the Act. Further, Ofcom recognises that it is theoretically possible that a higher cap (as a result of defining QWR using relevant worldwide revenues) - 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, the actual penalty amount that Ofcom impose in any given case will be calculated in line with our Penalty Guidelines and must be both appropriate and proportionate to the failure or failures in respect of which it is imposed, which mitigates this risk.

9.12 There is no, or no significant, impact on the public sector because the definition of QWR in the legislation is relevant for the providers of regulated services under the Act. 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 regime. Ofcom may consider amending the legislation in future if it considers it appropriate to do so based on its experience of applying the online safety fees (and penalties) regime.

10.2 The legislation 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"*.[11] 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:

[11] 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.

- 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 and duty to pay fees 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 such duties, 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:

"In Ofcom's view the provisions of the Online Safety Act 2023 (Qualifying Worldwide Revenue) 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").