

EXPLANATORY MEMORANDUM TO
THE ONLINE SAFETY (LIST OF OVERSEAS REGULATORS) REGULATIONS
2024

2024 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Science, Innovation and Technology and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1 This Statutory Instrument (SI) specifies overseas regulators which the Office of Communications (“Ofcom”) may co-operate with, including by disclosing online safety information, for purposes set out under section 114 of the Online Safety Act 2023. Under section 114(1), Ofcom may co-operate with, including by disclosing online safety information to, overseas regulators (specified in regulations) for the purposes of facilitating that overseas regulator in exercising their online regulatory functions or for the purposes of criminal investigations or proceedings relating to the overseas regulator’s online regulatory functions. The terms “online regulatory functions”, “online safety information” and “overseas regulator” are defined in section 114(7).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State, Saqib Bhatti MP has made the following statement regarding Human Rights:

“In my view the provisions of The Online Safety (List of Overseas Regulators) Regulations 2024 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Ofcom is already able to share information with third parties (including overseas regulators) under section 1(3) of the Communications Act 2003 for the limited purposes of facilitating the carrying out of Ofcom’s functions. However, prior to the Online Safety Act 2023, there was limited ability for Ofcom to share information for the purposes of helping an overseas regulator to carry out their functions. This SI

specifies the overseas regulators which Ofcom can co-operate and share information with for the purposes given in section 114 of the Online Safety Act 2023, which addresses this legislative gap.

7. Policy background

What is being done and why?

- 7.1 Given the global nature of service providers regulated under the Online Safety Act 2023, it is important that Ofcom can cooperate with and share online safety information with overseas regulators. In certain circumstances, it may be beneficial for Ofcom to support their regulatory counterparts in other jurisdictions in effectively carrying out their functions. This may include information sharing for enforcement purposes, for example to inform an investigation by an overseas regulator. This could have direct or indirect benefits for UK users, such as reducing the harmful content available in the UK.

Explanations

- 7.2 Section 114 of the Online Safety Act 2023 builds on the existing information gateways available to Ofcom under the Communications Act 2003 by permitting Ofcom to cooperate with an overseas regulator, including by disclosing online safety information to that regulator, for the purposes of facilitating that overseas regulator in exercising their online regulatory functions; or for the purpose of any criminal investigations or proceedings related to the overseas regulator's online regulatory functions.
- 7.3 This SI specifies the first tranche of overseas regulators under section 114 of the Online Safety Act 2023, providing a statutory footing for Ofcom to co-operate with and disclose online safety information to them for these specific purposes. Note that Ofcom would retain full discretion over whether to cooperate and share information with the overseas regulators specified in this SI.
- 7.4 The overseas regulators designated under this instrument are as follows:
- a) l'Autorité de régulation de la communication audiovisuelle et numérique (established in France);
 - b) de Autoriteit Consument & Markt (established in the Netherlands);
 - c) die Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen (established in Germany);
 - d) Coimisiún na Meán (established in Ireland);
 - e) the eSafety Commissioner (established in Australia);
 - f) the European Commission.
- 7.5 In designating the list, the government has consulted with Ofcom and carefully considered their operational needs and established relationships, as well as the need to take a proportionate approach which promotes and protects our fundamental freedoms online. The government has also considered whether the overseas regulator to be specified in these regulations is a designated regulator of a bespoke online safety regulatory framework; whether its autonomy is protected in law; and whether the overseas regulator, and the jurisdiction that empowers them, upholds international human rights.

7.6 The government expects that Ofcom will collaborate and share information with a range of organisations in their capacity as the UK online safety regulator, including with non-designated overseas regulators where appropriate. As noted above, Ofcom can already share a narrower range of information with third parties (including non-designated overseas regulators) in certain circumstances under the Communications Act 2003 where it facilitates the carrying out of Ofcom's functions.

7.7 As new regulations are developed and operationalised around the world the government expects to update the list of regulators on this list through subsequent instruments.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 This Regulation does not amend another statutory instrument. Consolidation is therefore not necessary.

10. Consultation outcome

10.1 DSIT officials have consulted Ofcom in the development of this instrument.

11. Guidance

11.1 Guidance is not required.

12. Impact

12.1 There is low impact on business, charities or voluntary bodies. This instrument will enable Ofcom to disclose business information to designated overseas regulators which they have obtained through their information gathering powers. Ofcom is experienced in handling confidential and sensitive information obtained from regulated entities, and there are strong safeguards and limitations on the disclosure of such material. Under section 114(3), overseas regulators receiving information from Ofcom under this provision may only use it for the purpose for which it was disclosed and may not use it for another purpose or further disclose it without express permission from Ofcom or unless ordered by a court or tribunal. When disclosing information to overseas regulators Ofcom must also comply with UK data protection law and would need to show that the processing of any personal data was necessary for a lawful purpose. Ofcom is bound by the Human Rights Act 1998 so it will need to ensure that any disclosure of information to overseas regulators does not interfere with rights protected under the European Convention on Human Rights, including privacy and freedom of expression.

12.2 There may be positive benefits for regulated service providers as this co-operation will lead to international regulatory alignment, which could reduce the regulatory burden on businesses. There may also be positive benefits for charities and voluntary bodies resulting from Ofcom supporting overseas regulators to carry out their online safety regulatory functions and co-operating with relevant criminal investigations or proceedings, as this may address a source of harm for UK users, for example by preventing malign actors from disseminating suicide and self-harm content on regulated services.

12.3 There may be a positive impact on the public sector as a result of the co-operation and information sharing that this instrument will facilitate, as set out above. This may reduce strain on the NHS and other local government services.

12.4 A full Impact Assessment has not been prepared for this instrument because of the low impact to businesses, and the significant safeguards on the sharing of information, described above. In addition, only a small proportion of UK businesses will fall within scope of the online safety regulatory framework.

13. Regulating small business

13.1 This legislation does not directly apply to activities that are undertaken by small businesses. This instrument provides a statutory gateway for Ofcom to co-operate and share online safety information with designated overseas regulators, which may include information Ofcom has obtained in relation to small businesses.

14. Monitoring & review

14.1 As this instrument does not directly regulate businesses, no review clause is required. However, the government will monitor whether future instruments are required in consultation with Ofcom, for example to designate further overseas regulators as international online safety regulatory frameworks are established and operationalised, or to remove overseas regulators from the designated list where appropriate. Note that Ofcom would have autonomy over the co-operation and information sharing activity they undertake, and Ofcom is extremely unlikely to co-operate or share information with an overseas regulator should a change of circumstances mean it would be inappropriate for them to do so. In addition, under section 178 of the Online Safety Act 2023, the Secretary of State must review the operation of the regulatory framework between two and five years of the last of the provisions in Part 3 coming into force. This review must consider the effectiveness of the information gathering and information sharing powers available to Ofcom, including the section 114 power which relates to this statutory instrument.

15. Contact

15.1 Sam Green at the Department for Science, Innovation and Technology Telephone: 07826956900 or email: samuel.green@dsit.gov.uk can be contacted with any queries regarding the instrument.

15.2 Daniel Okubo, Deputy Director for Online Harms - Regulation, at the Department for Science, Innovation and Technology can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Parliamentary Under Secretary of State, Saqib Bhatti MP, at the Department for Science, Innovation and Technology can confirm that this Explanatory Memorandum meets the required standard.