

## SCHEDULES

### SCHEDULE 10

Section 89

#### RECOVERY OF OFCOM’S INITIAL COSTS

##### *Recovery of initial costs*

- 1 (1) This Schedule concerns the recovery by OFCOM of an amount equal to the aggregate of the amounts of WTA receipts which, in accordance with section 401(1) of the Communications Act and OFCOM’s statement under that section, are retained by OFCOM for the purpose of meeting their initial costs.
- (2) OFCOM must seek to recover the amount described in sub-paragraph (1) (“the total amount of OFCOM’s initial costs”) by charging providers of regulated services fees under this Schedule (“additional fees”).
- (3) In this Schedule—
  - “initial costs” means the costs incurred by OFCOM before the first day of the initial charging year on—
    - (a) preparations for the exercise of their online safety functions, or
    - (b) the exercise of their online safety functions;
  - “WTA receipts” means the amounts described in section 401(1)(a) of the Communications Act which are paid to OFCOM (certain receipts under the Wireless Telegraphy Act 2006).

##### *Recovery of initial costs: first phase*

- 2 (1) The first phase of OFCOM’s recovery of their initial costs is to take place over a period of several charging years to be specified in regulations under paragraph 7 (“specified charging years”).
- (2) Over that period OFCOM must, in aggregate, charge providers of regulated services additional fees of an amount equal to the total amount of OFCOM’s initial costs.
- (3) OFCOM may not charge providers additional fees in respect of any charging year which falls before the first specified charging year.
- (4) OFCOM may require a provider to pay an additional fee in respect of a charging year only if the provider is required to pay a fee in respect of that year under section 84 (and references in this Schedule to charging providers are to be read accordingly).
- (5) The amount of an additional fee payable by a provider is to be calculated in accordance with regulations under paragraph 7.

##### *Further recovery of initial costs*

- 3 (1) The second phase of OFCOM’s recovery of their initial costs begins after the end of the last of the specified charging years.

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- (2) As soon as reasonably practicable after the end of the last of the specified charging years, OFCOM must publish a statement specifying—
  - (a) the amount which is at that time the recoverable amount (see paragraph 6), and
  - (b) the amounts of the variables involved in the calculation of the recoverable amount.
- (3) OFCOM's statement must also specify the amount which is equal to that portion of the recoverable amount which is not likely to be paid or recovered.

The amount so specified is referred to in sub-paragraphs (4) and (5) as “the outstanding amount”.
- (4) Unless a determination is made as mentioned in sub-paragraph (5), OFCOM must, in aggregate, charge providers of regulated services additional fees of an amount equal to the outstanding amount.
- (5) The Secretary of State may, as soon as reasonably practicable after the publication of OFCOM's statement, make a determination specifying an amount by which the outstanding amount is to be reduced, and in that case OFCOM must, in aggregate, charge providers of regulated services additional fees of an amount equal to the difference between the outstanding amount and the amount specified in the determination.
- (6) Additional fees mentioned in sub-paragraph (4) or (5) must be charged in respect of the charging year immediately following the last of the specified charging years (“year 1”).
- (7) The process set out in sub-paragraphs (2) to (6) is to be repeated in successive charging years, applying those sub-paragraphs as if—
  - (a) in sub-paragraph (2), the reference to the end of the last of the specified charging years were to the end of year 1 (and so on for successive charging years);
  - (b) in sub-paragraph (6), the reference to year 1 were to the charging year immediately following year 1 (and so on for successive charging years).
- (8) Any determination by the Secretary of State under this paragraph must be published in such manner as the Secretary of State considers appropriate.
- (9) Sub-paragraphs (4) and (5) of paragraph 2 apply to the charging of additional fees under this paragraph as they apply to the charging of additional fees under that paragraph.
- (10) The process set out in this paragraph comes to an end in accordance with paragraph 4.

*End of the recovery process*

- 4 (1) The process set out in paragraph 3 comes to an end if a statement by OFCOM under that paragraph records that—
  - (a) the recoverable amount is nil, or
  - (b) all of the recoverable amount is likely to be paid or recovered.

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- (2) Or the Secretary of State may bring that process to an end by making a determination that OFCOM are not to embark on another round of charging providers of regulated services additional fees.
- (3) The earliest time when such a determination may be made is after the publication of OFCOM’s first statement under paragraph 3.
- (4) A determination under sub-paragraph (2)—
  - (a) must be made as soon as reasonably practicable after the publication of a statement by OFCOM under paragraph 3;
  - (b) must be published in such manner as the Secretary of State considers appropriate.
- (5) A determination under sub-paragraph (2) does not affect OFCOM’s power—
  - (a) to bring proceedings for the recovery of the whole or part of an additional fee for which a provider became liable at any time before the determination was made, or
  - (b) to act in accordance with the procedure set out in section 141 in relation to such a liability.

*Providers for part of a year only*

- 5 (1) For the purposes of this Schedule, the “provider” of a regulated service, in relation to a charging year, includes a person who is the provider of the service for part of the year.
- (2) Where a person is the provider of a regulated service for part of a charging year only, OFCOM may refund all or part of an additional fee paid to OFCOM under paragraph 2 or 3 by that provider in respect of that year.

*Calculation of the recoverable amount*

- 6 For the purposes of a statement by OFCOM under paragraph 3, the “recoverable amount” is given by the formula—

$$C - (F - R) - D$$

where—

C is the total amount of OFCOM’s initial costs,

F is the aggregate amount of the additional fees received by OFCOM at the time of the statement in question,

R is the aggregate amount of the additional fees received by OFCOM that at the time of the statement in question have been, or are due to be, refunded (see paragraph 5(2)), and

D is the amount specified in a determination made by the Secretary of State under paragraph 3 (see paragraph 3(5)) at a time before the statement in question or, where more than one such determination has been made, the sum of the amounts specified in those determinations.

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### *Regulations about recovery of initial costs*

- 7 (1) The Secretary of State must make regulations making such provision as the Secretary of State considers appropriate in connection with the recovery by OFCOM of their initial costs.
- (2) The regulations must include provision as set out in sub-paragraphs (3), (4) and (6).
- (3) The regulations must specify the total amount of OFCOM’s initial costs.
- (4) For the purposes of paragraph 2, the regulations must specify—
- (a) the charging years in respect of which additional fees are to be charged, and
  - (b) the proportion of the total amount of initial costs which OFCOM must seek to recover in each of the specified charging years.
- (5) The following rules apply to provision made in accordance with sub-paragraph (4)
- (a)—
    - (a) the initial charging year may not be specified;
    - (b) only consecutive charging years may be specified;
    - (c) at least three charging years must be specified;
    - (d) no more than five charging years may be specified.
- (6) The regulations must specify the computation model that OFCOM must use to calculate fees payable by individual providers of regulated services under paragraphs 2 and 3 (and that computation model may be different for different charging years).
- (7) The regulations may make provision about what OFCOM may or must do if the operation of this Schedule results in them recovering more than the total amount of their initial costs.
- (8) The regulations may amend this Schedule or provide for its application with modifications in particular cases.
- (9) Before making regulations under this paragraph, the Secretary of State must consult—
- (a) OFCOM,
  - (b) providers of regulated user-to-user services,
  - (c) providers of regulated search services,
  - (d) providers of internet services within section 80(2), and
  - (e) such other persons as the Secretary of State considers appropriate.

### *Interpretation*

- 8 In this Schedule—
- “additional fees” means fees chargeable under this Schedule in respect of the recovery of OFCOM’s initial costs;
- “charging year” has the meaning given by section 90;
- “initial charging year” has the meaning given by section 90;
- “initial costs” has the meaning given by paragraph 1(3), and the “total amount” of initial costs means the amount described in paragraph 1(1);
- “recoverable amount” has the meaning given by paragraph 6;

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“specified charging year” means a charging year specified in regulations under paragraph 7 for the purposes of paragraph 2.