

Consultation: Ofcom's general policy on information gathering

Under our statutory information gathering powers in the Communications Act 2003, Wireless Telegraphy Act 2006 and the Postal Services Act 2011

Consultation

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1. Overview

- 1.1 As an evidence-based regulator, the ability to obtain information to inform our work is fundamental to our ability to deliver on our duties. This document sets out our proposed update to our general information gathering policy, which explains to stakeholders how we will exercise these powers.
- 1.2 We are required by the Communications Act 2003, Wireless Telegraphy Act 2006 and Postal Services Act 2011¹ to publish a statement of general policy on the exercise of our statutory information gathering powers.
- 1.3 Our existing policy on information gathering was published in March 2005. We consulted on changes in 2015² which led to significant adjustments in our practical processes including the establishment of the Information Registry, our dedicated team to deal with the coordination of our information gathering activities. Since 2005, we have also been given additional information gathering powers under legislation which requires us to publish a statement of general policy (including in relation to post and telecoms security). We consider now is an appropriate time to update our policy to reflect our new processes and additional powers.
- 1.4 We have various other information gathering powers under other legislation where we are not required to publish a policy and we may choose to follow this policy when exercising those powers, where considered appropriate.
- 1.5 This policy will not apply where we have separately set out how we intend to exercise our information gathering powers under another regime. For example, we have published separate guidance in relation to our information gathering powers under the Network and Information Systems Regulations 2018 and do not therefore propose for this draft policy to apply to those powers. We also intend to consult shortly on separate standalone guidance on how we will exercise our new information gathering powers under the Online Safety Act 2023. We are not therefore proposing for this draft policy to apply to these new powers.
- 1.6 Our draft updated policy is set out in Annex A1.

What we are proposing – in brief

- **To expand the general policy to cover additional information gathering powers we have acquired since 2005** under legislation which requires us to publish a statement of general policy (including in relation to post) and clarify the scope of the policy under other legislation.
- **To update and clarify the text to reflect our experience of issuing statutory information notices³ in practice**, having regard to the responses to our 2015 consultation.

¹ Section 145 of the Communications Act, section 34 of the Wireless Telegraphy Act and Schedule 8, paragraph 14 of the Postal Services Act.

² We consulted but did not subsequently publish a statement.

³ Different legislation describes requests for information in different ways, but our draft policy generally refers to them throughout as statutory information notices for simplicity and consistency.

- **To provide further detail on how we will handle statutory information notices including:**

- the role of the Information Registry and how it coordinates information gathering for Ofcom;
- where we may make use of information provided voluntarily;
- typical processes including the issuing of draft statutory information notices;
- use of information including disclosure and confidentiality;
- record retention and personal data; and
- information security.

- **To clarify our approach to enforcement and what we expect from stakeholders when responding to a statutory information notice.**

1.7 We welcome feedback from stakeholders on the draft policy in Annex A1 by **30 September 2024**. We intend to publish the updated policy by the end of 2024.

2. Introduction and background

- 2.1 In exercising our statutory functions, Ofcom typically needs to obtain information held by stakeholders to develop evidence-based proposals and to regulate effectively and proportionately. Parliament has given Ofcom broad powers under statute to require stakeholders to provide information to Ofcom in the areas we regulate.
- 2.2 The rest of this section provides further background on the purpose of our statutory information gathering activities and why we are consulting now.
- 2.3 Section 3 summarises the key changes we are proposing to make to our current policy. It explains the intended purpose and scope of the updated policy, as well as how we have taken into account the points raised by stakeholders in response to the 2015 consultation. We have also set out our assessment of the likely impact of the proposed changes.
- 2.4 Annex A1 sets out our proposed updated draft policy. Annexes A2 and A3 summarise our information gathering and enforcement powers respectively under legislation which requires us to publish this policy.

The purpose of our statutory information gathering powers

- 2.5 Our statutory information gathering powers are an important tool by which we can obtain information for the purpose of exercising our functions. It is important that our regulatory decisions are founded on a robust evidence base so that we exercise our functions in a way that is effective and proportionate. Obtaining access to information held by the stakeholders that we regulate, and certain others, is fundamental to ensuring Ofcom has a proper appreciation of the factual, economic and legal context within which we exercise our regulatory functions.
- 2.6 Our information gathering powers help us to address the information asymmetry that exists between Ofcom and regulated stakeholders and to discover, obtain and use the information we need, including for monitoring and understanding market developments and investigating suspected compliance failures.
- 2.7 Where we need to rely on information provided to us in the context of our regulatory decision-making – particularly where we intend to rely on that information in published documents, in the context of an investigation or in a decision that imposes requirements on a stakeholder – we will generally seek to obtain that information using our statutory information gathering powers.
- 2.8 The importance of our statutory information gathering powers is reflected in the seriousness of the sanctions that can be applied for non-compliance. Failure to comply with a statutory information notice can result in a significant financial penalty or, in some cases, in the suspension of a stakeholder’s right to provide a service. It can also be a criminal offence to fail to comply with a statutory information notice or knowingly or recklessly provide false or misleading information, which can result in a fine and/or imprisonment.

Why we are consulting

- 2.9 We have statutory obligations to prepare and publish a statement of our general policy on how we intend to exercise our statutory information gathering powers.
- 2.10 Our existing [statement of general policy on information gathering](#) was published in March 2005. At the time, we only had a statutory obligation to publish a statement of our general policy under the Communications Act and the predecessor to the Wireless Telegraphy Act, the Wireless Telegraphy Act 1949.
- 2.11 Since our 2005 policy, we have become the regulator for postal services and now have a statutory obligation to publish a statement of our general policy on how we intend to exercise our statutory information gathering powers under the Postal Services Act 2011.
- 2.12 We have also been given additional information gathering powers under legislation which requires us to publish a statement of general policy, including in relation to telecoms security.
- 2.13 We [consulted](#) on a new consultation on general policy on information gathering in 2015 but did not publish a statement at that time. Responses to the 2015 consultation suggested Ofcom could be more coordinated and consistent in how it issued statutory information notices across different teams. We subsequently carried out an internal review which led to the creation of the Information Registry, our dedicated team to deal with the coordination of information notices.⁴
- 2.14 Taking into account these internal changes and the expansion of our statutory information gathering powers, we consider that now is an appropriate time to ensure that our approach to the exercise of these powers remains fit for purpose and reflects current practice, as well as minimising the burden placed on stakeholders.

⁴ Ofcom December 2023: [Information requests from Ofcom: why you have one and what you need to do](#)

3. Summary of key changes

- 3.1 This section summarises the key changes we are proposing to make to our 2005 statement of general policy on how we exercise our information gathering powers.
- 3.2 We are proposing to make the following key changes:
 - a) To expand the general policy to cover additional information gathering powers we have acquired since 2005 under legislation which requires us to publish a statement of general policy (including in relation to post) and clarify the scope of the policy under other legislation.
 - b) To update and clarify the text to reflect our experience of issuing statutory information notices in practice.
 - c) To provide further detail on how we will handle statutory information notices including:
 - i) The role of the Information Registry and coordination of information gathering;
 - ii) Where we may make use of information provided voluntarily;
 - iii) Typical processes including the issuing of draft statutory information notices;
 - iv) The use of information including disclosure and confidentiality;
 - v) Record retention and personal data; and
 - vi) Information security.
 - d) To clarify our approach to enforcement and what we expect from stakeholders when responding to a statutory information notice.
- 3.3 We have set out below:
 - a) more detail on the proposed purpose and scope of our draft updated policy including the information gathering powers we intend to be within its scope; and
 - b) our consideration of responses to the 2015 consultation and how we have taken them into account in the draft updated policy.
- 3.4 We then set out our assessment of the likely impact of our proposed changes.

Scope of updated policy

- 3.5 As noted above, we have statutory obligations to prepare and publish a statement of our general policy on how we intend to exercise certain statutory information gathering powers. We also have statutory information gathering powers under various other legislation where there is no equivalent duty.
- 3.6 The updated policy intends to achieve three main goals:

- a) To fulfil our statutory obligations under the Communications Act, the Wireless Telegraphy Act and the Postal Services Act to prepare and publish a statement of our general policy.⁵
 - b) To set out our general policy we may decide to follow when exercising our statutory information gathering powers under other legislation, unless we have separately set out how we intend to exercise our powers under that other legislation.
 - c) To set out the legal requirements on recipients of a statutory information notices, including how we expect recipients to respond and the potential civil and criminal consequences of not doing so.
- 3.7 We have published separate guidance in relation to our information gathering powers under the Network and Information Systems Regulations 2018 and do not therefore propose for this draft policy to apply to those powers.⁶ As is the case for the current policy, it will also not apply to our statutory information gathering powers under the Competition Act 1998 as we have published information on how we intend to exercise those powers in our Enforcement Guidelines for Competition Act investigations.⁷
- 3.8 We intend to consult shortly on separate standalone guidance on how we will exercise our new information gathering powers under the Online Safety Act 2023.⁸ We are not therefore proposing for this draft policy to apply to these new powers.
- 3.9 We also have various other information gathering powers under other legislation where we are not required to publish a policy. While this policy does not apply to those other powers, we may choose to follow this policy as best practice when exercising those powers, where considered appropriate.
- 3.10 The draft policy in Annex A1 also explains the intended scope of the policy. We encourage stakeholders to read the draft policy in full. Annex A2 also summarises our information gathering powers under legislation which requires us to publish this policy, and which the draft policy applies to.

Consideration of responses to our 2015 consultation

- 3.11 As noted above, in 2015 we [consulted](#) on a refresh of our general policy on information gathering although we did not issue a statement.
- 3.12 In developing the draft policy, we have had regard to issues raised by stakeholders in response to the 2015 consultation which relate to areas stakeholders continue to raise in our ongoing engagement in relation to statutory information notices. The main areas of concern were:

⁵ Section 145 of the Communications Act, section 34 of the Wireless Telegraphy Act and Schedule 8, paragraph 14 of the Postal Services Act.

⁶ See section 8 of our “Guidance for the digital infrastructure subsector” which is part of our broader [guidance for operators of essential services](#).

⁷ Ofcom has statutory information gathering powers under the Competition Act in our capacity as a concurrent competition authority. Information on the exercise of our information gathering powers under the Competition Act can be found in our [Enforcement Guidelines for Competition Act investigations](#).

⁸ This is to help the large number of stakeholders who will be unfamiliar with Ofcom’s information gathering policy and to reflect and provide further detail on the use of broader information gathering powers under the online safety regime.

- the burden placed on stakeholders and whether this would increase as a result of our proposal to issue more statutory information notices;
- our proposal in the 2015 consultation not to issue draft notices as default;
- the need for greater transparency; and
- the appropriateness of a ‘one size fits all’ policy.

Burden on stakeholders

- 3.13 Following an internal review of our information gathering practices, the Information Registry was established in 2020 to address comments received during the 2015 consultation and subsequent focused engagement with relevant stakeholders. The purpose of the Information Registry is to manage and reduce the burden on stakeholders by providing a central contact point for stakeholders, streamlining our activities and ensuring better oversight and coordination of our information gathering. We have received positive feedback on the Information Registry’s ability to improve the information gathering process, including ensuring that stakeholders have a clearer view of upcoming requests and managing response deadlines for stakeholders to minimise overlapping requests. The Information Registry also engages regularly with stakeholders to raise any issues and offers support and introductory meetings to smaller or new stakeholders where required.
- 3.14 We note concerns in relation to Ofcom relying on statutory powers, particularly around proportionality and discouraging voluntary engagement. However, we may need to rely on information provided to us on an informal basis (including statements that information is not available) to make certain decisions, including where we intend to rely on that information in published documents, in the context of an investigation or in a decision which imposes requirements on a stakeholder. Where that is the case, we consider it appropriate for us to use our statutory powers to ensure the information we obtain is accurate and complete and so that stakeholders have confidence that Ofcom’s evidence base is robust and non-biased. We are proposing to clarify in our draft policy the circumstances when we may consider it appropriate to use our statutory powers (including when we need to rely on information provided to us voluntarily). We are also proposing to clarify the types of circumstances where we may consider it appropriate to engage informally. More broadly, our draft policy identifies a range of factors we will generally take into account before reaching a decision about whether to exercise an information gathering power.

Transparency

- 3.15 One of the roles of the Information Registry is to regularly engage with stakeholders about upcoming requests and generally provide more transparency and early sight of different upcoming requests across Ofcom. We have also published information on our website in relation to how we issue statutory information notices and how we will handle information gathered.⁹

Draft statutory information notices

- 3.16 Our updated draft policy explains that we will generally issue statutory information notices in draft form first. We acknowledge that in many instances it will be appropriate to issue notices in draft to ensure our questions are sufficiently clear and appropriately targeted and that the stakeholder can provide the information in the proposed timescales. Draft notices

⁹ Ofcom December 2023: [Information requests from Ofcom: why you have one and what you need to do.](#)

are likely to be particularly helpful when we require more complex or technical information. This approach should ensure that statutory information notices are targeted at the most useful information for the purpose required and should reduce the burden on stakeholders when responding. We have however found that in some cases issuing draft notices can be disproportionate, leading to delays to our work and lengthening the process unnecessarily for Ofcom and stakeholders, including where we require basic information or have requested the same information previously. There may also be other cases where it is appropriate to move straight to a final notice. We are therefore proposing to set out examples of where we may issue statutory information notices without issuing a draft first.

“One size fits all”

- 3.17 As noted above, we have statutory information gathering powers to request information under a wide range of legislation in a variety of sectors. We consider that having a general policy across sectors will help ensure consistency and fairness in how we handle statutory information notices and provide clarity to stakeholders.
- 3.18 We do however recognise that there can be differences in relation to the type of powers we have under different legislation as well as the legal requirements relating to how we exercise those powers and restrictions on the disclosure of information we have obtained under those powers. In particular, the Online Safety Act 2023 provides Ofcom with additional and novel information gathering powers in relation to a significant number of new and smaller stakeholders. We will always have regard to our powers and legal requirements under the relevant legal framework under which we are gathering information.
- 3.19 For these reasons, we are proposing for our updated policy to apply in relation to our information gathering powers under legislation where we are required to publish this policy (as summarised in Annex A2). Where considered appropriate, we may choose to follow this policy as best practice when exercising our information gathering powers under other legislation where we are not required to publish this policy, and provided we have not separately set out how we intend to exercise our information gathering powers under that other legislation. As noted above, we are not therefore proposing for our draft policy to apply to our information gathering powers under the Network and Information Systems Regulations 2018 (where we have published separate guidance) or our new information gathering powers under the Online Safety Act (where we are intending to consult on separate standalone guidance shortly).

Assessment of impact of proposals

- 3.20 Overall, we consider that our proposed changes are likely to improve the transparency, efficiency and robustness of our regulatory practices and will not create significant new burdens for our stakeholders. We note some stakeholders’ concerns that statutory information notices can be burdensome which is why we consider the proportionality of each statutory information notice, while also having regard to our statutory duties. This includes, amongst other things, taking account of the resources required by the service in providing the information to ensure we exercise our powers in a reasonable and proportionate way.
- 3.21 Our proposals will bring our policy up to date to reflect our current powers and experience of issuing statutory information notices in practice. To that extent, we consider any impact of our proposals on stakeholders is likely to be low and any impact there may be is likely to be positive. In particular, we consider that our proposals will provide further transparency,

add clarity and promote certainty for stakeholders around how we issue statutory information notices, what we expect from stakeholders when responding and how we may use their information. These proposals should help us obtain the information we need, by the time we require it, to facilitate the exercise of our functions. By setting clear expectations for stakeholders, our proposals should also reduce the scope for non-compliance with statutory information notices. These potential impacts should ultimately benefit citizens and consumers.

- 3.22 Our proposals should also reduce the overall costs of our information gathering activities by streamlining our administrative processes (and therefore reducing the level of our administrative fees overall), taking into account the role of the Information Registry in coordinating the process.
- 3.23 Our legal obligations relating to impact assessments are set out in Annex A4.

Consultation questions:

1. Do you have any comments on our proposed policy and approach to our information gathering powers under the legislation within the scope of the policy?
2. Do you have any comments on our assessment of the likely impact of our proposed update to our policy?

A1. Draft general policy on information gathering

Purpose and scope of the policy

- A1.1 This is Ofcom’s draft statement of general policy regarding our approach to using our statutory information gathering powers.
- A1.2 This policy is intended to achieve three main goals:
- a) To fulfil our statutory obligations under the Communications Act 2003 (the ‘Communications Act’), the Wireless Telegraphy Act 2006 (the ‘Wireless Telegraphy Act’) and the Postal Services Act 2011 (the ‘Postal Services Act’) to prepare and publish a statement of our general policy.¹⁰
 - b) To set out our general policy that we may decide to follow when exercising our statutory information gathering powers under other legislation unless we have separately set out how we intend to exercise our powers under that other legislation.
 - c) To set out the legal requirements on recipients of a statutory information notice,¹¹ including how we expect recipients to respond and the potential civil and criminal consequences of not doing so.
- A1.3 The Communications Act, Wireless Telegraphy Act and Postal Services Act impose an obligation on Ofcom to prepare and publish a statement of our general policy with respect to:
- a) the exercise of the statutory information gathering powers under sections 135, 136 and 137A of the Communications Act, sections 32 and 32A of the Wireless Telegraphy Act and paragraphs 1 and 3 of Schedule 8 of the Postal Services Act; and
 - b) the uses to which we are proposing to put information obtained under those sections (except information obtained under section 137A of the Communications Act).
- A1.4 We are required to have regard to this statement of policy when exercising these information gathering powers. We reserve the right to deviate from this policy in appropriate circumstances. Where we consider it appropriate to do so, we will generally explain our reasons.
- A1.5 We have various other information gathering powers under other legislation where we are not required to publish a policy. While this policy does not apply to those other powers, we may choose to follow this policy as best practice when exercising those powers, where considered appropriate.
- A1.6 This policy will not apply in relation to how we intend to exercise our statutory information gathering powers under other legislation where we have separately set out how we intend

¹⁰ Section 145 of the Communications Act, section 34 of the Wireless Telegraphy Act and Schedule 8, paragraph 14 of the Postal Services Act.

¹¹ Different legislation describes requests for information in different ways, but this policy generally refers to them throughout as statutory information notices for simplicity and consistency.

to exercise our information gathering powers under that other legislation. For example, this policy does not apply in relation to the exercise of our information gathering powers under:

- a) the Online Safety Act 2023.¹²
- b) the Network and Information Systems Regulations 2018.¹³
- c) the Competition Act 1998.¹⁴

A1.7 This policy also does not apply when we are carrying out our information gathering activities as part of a criminal investigation or prosecution relating to the use of wireless telegraphy stations or apparatus.

A1.8 Our statutory information gathering and enforcement powers under legislation which requires us to publish this policy, and to which this policy applies, are summarised in Annexes A2 and A3 respectively below.

Why Ofcom uses statutory information gathering powers

A1.9 In order to exercise our functions in a way that is effective and proportionate, we need to ensure that our regulatory decisions are founded on a robust evidence base. Our experience is that information held by stakeholders is often fundamental to a proper appreciation of the factual, economic and legal context within which we exercise our regulatory functions.

A1.10 The statutory information gathering powers conferred on Ofcom by Parliament are an important tool by which we can obtain information from stakeholders in support of our functions. These powers enable us to address the information asymmetry that may exist between Ofcom and stakeholders active in the sectors we regulate and to discover, obtain and use information from stakeholders to take what we consider to be the best possible decisions. Our information gathering powers also allow us to compel the provision of certain information that stakeholders might not otherwise wish to provide, for instance when considering the case for regulation in the interests of citizens and consumers or enforcing regulatory obligations.

A1.11 Wherever possible, Ofcom will draw from existing information sources to avoid unnecessary duplication of effort and to minimise the burden placed on those from whom information is requested. However, there will remain specific areas where it is necessary to collect additional information. Where our regulatory activities are dependent on information held by stakeholders, using our statutory information gathering powers helps us obtain information and gain an evidence base which is accurate, robust and complete.

A1.12 We must also have regard to sections 3(3) and (4) of the Communications Act (to the extent relevant in the circumstances). These include a requirement to have regard to the principles

¹² [We recognise that at the time of this consultation, we have not published separate guidance in relation to the exercise of information gathering powers under the Online Safety Act. If we decide to publish this separate guidance then we intend to include a link to that separate guidance in the final version of this policy.]

¹³ See section 8 of our “Guidance for the digital infrastructure subsector” which is part of our broader [guidance for operators of essential services](#).

¹⁴ Ofcom has statutory information gathering powers under the Competition Act in our capacity as a concurrent competition authority. Information on the exercise of our information gathering powers under the Competition Act can be found in our [Enforcement Guidelines for Competition Act investigations](#).

under which our regulatory activities are transparent, accountable, proportionate, consistent, and targeted only at cases in which action is needed.

- A1.13 Ofcom's powers to require information do not apply to information in respect of which a claim to legal professional privilege, or (in Scotland) to confidentiality of communications,¹⁵ could be maintained in legal proceedings.

How we will use these powers

We will exercise our powers in a reasonable and proportionate way

- A1.14 We will consider on a case-by-case basis whether exercising an information gathering power would be reasonable and proportionate, in line with our regulatory principles to seek the least intrusive regulatory methods of achieving our objectives.¹⁶ This decision will be taken by a person with appropriate delegated authority from Ofcom's Board.
- A1.15 In reaching our decision about whether to exercise an information gathering power, we will generally take account of a range of factors in the round including:
- a) the regulatory purpose for which we need the information;
 - b) the feasibility and cost on the stakeholder involved in collating the information including for example, the size or capacity of that stakeholder and the resources required to provide the information;
 - c) the use for which we intend to rely on the information and the extent to which we need to be able to rely on robust and reliable evidence;
 - d) the resources Ofcom will need to gather and process the information;
 - e) whether the information is available from other sources or could be provided voluntarily; and
 - f) any other potential costs involved.
- A1.16 However, in relation to certain decisions, where we intend to rely on information provided by a stakeholder, we will generally obtain it using statutory powers, including:
- a) information provided by a stakeholder that we intend to rely on in published documents such as consultations and statements; and
 - b) information that we intend to rely on in the context of an investigation or a decision that imposes requirements on a stakeholder.

¹⁵ This covers 'legal advice privilege' (which attaches to a particular communication or document if the dominant purpose of that communication or document was to obtain or give legal advice) and 'litigation privilege' (which relates to communications between a person and their lawyer (or between the person or their lawyer and a third party) made at the stage when litigation is pending or in contemplation, and only when made for the sole or dominant purpose of conducting that litigation). Information is not legally privileged solely because it has been sent to or from a lawyer.

¹⁶ The Communications Act, Wireless Telegraphy Act and Postal Services Act also contains a specific requirement for statutory information notices to be proportionate.

- A1.17 Where this type of information we intend to rely on as part of our decision-making has been provided on a voluntary basis, we generally expect to use our statutory powers to confirm the information is accurate and complete. This should ensure that our evidence base is robust and non-biased.
- A1.18 When exercising our information gathering powers we will, to the extent possible, take account of any legislation which may restrict the ability of a stakeholder to provide certain information to us. However, it will be the responsibility of the person subject to the information power to draw any such legislation to our attention and explain how it restricts the recipient's ability to respond.

Central management of statutory information notices

- A1.19 In most cases, our statutory information notices (and significant informal requests) are managed and coordinated by a central team, the Information Registry,¹⁷ which is overseen by Ofcom's Enforcement Director. Although the Information Registry handles most requests, there will be occasions where teams undertake their own requests or go direct to stakeholders.

Role of the Information Registry

- A1.20 The Information Registry supports Ofcom in preparing, issuing and tracking statutory information notices and significant informal requests for information.
- A1.21 The Information Registry coordinates the issuing of statutory information notices for many project teams across the organisation, acting as a central contact point for stakeholders on information gathering matters, working with stakeholders in a constructive and cooperative way to give advance sight of upcoming requests and manage timeframes for response in a coordinated way. To ensure efficiency and to minimise the regulatory burden placed on stakeholders to the extent possible, the Information Registry will record and have oversight of the number of statutory information notices which have been sent to a recipient at any one time. This helps ensure we set reasonable deadlines for stakeholders to respond.
- A1.22 It maintains up-to-date external stakeholder information, including contact details and corporate structure information. It also keeps records on whether a stakeholder has consented to the service of documents electronically, to avoid repeatedly requesting consent, where relevant and possible.
- A1.23 The Information Registry also supports project teams across Ofcom to prepare and issue requests for information, ensuring requests use clear and consistent terminology and are prepared to a high standard.
- A1.24 Finally, the Information Registry is responsible for collating and tracking responses, ensuring that responses to statutory information notices are complete, accurate and submitted within the stipulated deadline. This ensures we are able to make effective decisions based on accurate, reliable and complete information while minimising the burden placed on stakeholders wherever possible. The Information Registry may escalate failures to respond to statutory information notices to Ofcom's Enforcement team for further action where appropriate.

¹⁷ The Information Registry was launched in 2020. Further information on the Information Registry and our statutory information gathering processes can be found on the [Ofcom website](#).

How the Information Registry works with stakeholders

- A1.25 As a central point of contact between external stakeholders and project teams, the Information Registry stays up to date with information gathering activities to identify peaks and manage them effectively where it is possible to so.
- A1.26 The team continuously seeks to ensure that Ofcom’s information gathering activities are transparent and consistent. Where necessary, the Information Registry will meet regularly with external stakeholders¹⁸ to provide visibility of the timing of upcoming statutory information notices.
- A1.27 The Information Registry acts as a central point of contact for all stakeholders for general advice on information gathering and queries about specific notices. It will also support new stakeholders unfamiliar with the process.

Information provided voluntarily

- A1.28 It is not always appropriate for us to gather information using our statutory powers. We often benefit from the provision of information from stakeholders on an informal or voluntary basis and from a constructive dialogue in relation to a range of issues. We particularly welcome engagement from stakeholders in what are often complex, technical matters. Examples of when we may consider it appropriate to obtain information on an informal or voluntary basis include but are not limited to:
- a) When gathering information for more general or monitoring purposes where we do not intend to rely on the information in a published document, in the context of an investigation or in a decision that imposes requirements on a stakeholder.
 - b) When gathering background or preliminary information to help facilitate our understanding of a particular area or issue, in particular where we welcome the views or opinions of stakeholders rather than require the provision of information or documentary evidence (or explanations of documentary evidence) based on objective facts.
- A1.29 As explained in paragraphs A1.16 - A1.17 above, if we intend to rely on information provided by a stakeholder on a voluntary basis in relation to certain decisions, we generally expect to use our statutory powers to confirm that information is accurate and complete. This should ensure our decisions are based on robust and non-biased evidence. Additionally, if we have been told informally that certain information is not available (or, where relevant, cannot be generated), we may also use our statutory powers to obtain formal confirmation of this (or, where relevant, require stakeholders to generate or obtain the requested information).¹⁹

¹⁸ The Information Registry generally meets regularly with those external stakeholders who receive significant numbers of statutory information notices each year, and on a more ad hoc basis with stakeholders receiving fewer statutory information notices.

¹⁹ Some legislation gives us the power to require stakeholders to produce, generate or obtain relevant information. See, for example, sections 135(3C)(a) and 137A(2) of the Communications Act.

Typical process

Draft statutory information notices

- A1.30 Ofcom will, as a general rule, issue statutory information notices in draft form to the stakeholder holding the relevant information to ensure that the notice is appropriately worded and targeted and sufficiently clear for the recipient to respond within the proposed timeframe.
- A1.31 Where Ofcom issues a statutory information notice in draft, we will allow an appropriate period of time for comment on the information or data required by the notice, as well as the practicality of providing the information in the proposed timescales. We will take into account any comments on the draft statutory information notice and decide whether we consider it appropriate to confirm or amend the draft notice before issuing it as a final version.
- A1.32 However, there are times when it is likely to be appropriate to issue statutory information notices without engaging with the recipient first. These include but are not limited to:
- a) where it is a simple request or the request is for standard information known to be held by stakeholders, such as turnover numbers or basic customer information;
 - b) when we are exercising our enforcement functions, where prior notice of a statutory information notice (i.e., a notice in draft) may not be appropriate due to concerns relating to the destruction of documents;
 - c) where we are exercising our dispute resolution functions, where the tight timescales within which we are required to reach a determination may mean it is not possible to issue a statutory information notice in draft;
 - d) where information has been provided to Ofcom previously on an informal/voluntary basis;
 - e) where we are asking for updates to information previously provided, where questions are the same as, or very similar to, questions previously asked;
 - f) where we are issuing a similar statutory information notice to a large number of stakeholders, such that preliminary engagement is not practicable; and
 - g) any other scenario in which Ofcom does not consider it appropriate to issue a statutory information notice in draft in the specific circumstances of the case.

Service of a statutory information notice

- A1.33 Requests made under our statutory powers must be set out in a notice and be served to the person from whom the information is requested.²⁰

²⁰ See, for example, section 137(5) of the Communications Act, section 32B(4) of the Wireless Telegraphy Act and paragraph 4(4) of Schedule 8 of the Postal Services Act. However, other appropriate methods may be used if the demand is for the purpose of determining who is liable to an administrative charge under section 38 of the Communications Act or under paragraph 1 of Schedule 8 of the Postal Services Act, and published in accordance with paragraph 4(6) of Schedule 8, for the purposes of ascertaining or verifying administrative charges payable for each charging year in carrying out postal services functions.

A1.34 Where possible, our preference is to issue statutory information notices by email or electronically to relevant regulatory contacts. Where necessary, we will seek consent from the relevant person to issue statutory information notice by email or electronically.²¹ If we have not agreed such arrangements with the relevant stakeholder, the statutory information notice will be issued in hard copy addressed to the Company Secretary (or other responsible person).²²

Content of a statutory information notice

A1.35 Statutory information notices issued by Ofcom must be proportionate²³ and must describe the information required and state the reasons why it is required.²⁴ A statutory information notice will specify or describe:

- a) the information being requested;
- b) why the information is needed in relation to our functions and the purpose for which we need it;
- c) the form and manner in which the information should be provided;
- d) the deadline by which the information should be provided; and
- e) the consequences of not complying with the notice.

Complying with a statutory information notice

Recipients must provide complete and accurate information

A1.36 The recipient of a statutory information notice is under a legal duty to act in accordance with the requirements of the notice. This includes the requirement to provide complete and accurate responses to all the questions by the deadline. If recipients do not do so, this could lead to civil and criminal consequences. We summarise the potential consequences of failing to comply with the relevant legal duties in Annex A3.

A1.37 On receipt of a statutory information notice, the recipient should:

- a) carefully **read the requirements of all questions** (including any applicable definitions) and ensure they understand what is being requested. If the recipient does not understand any aspect of the notice, or has questions about the notice or the obligations it places on the recipient, they should contact the Information Registry as soon as possible;

²¹ See section 395 of the Communications Act (which also applies to the Postal Services Act) and 113 of the Wireless Telegraphy Act.

²² See section 394 of the Communications Act (which also applies to the Postal Services Act) and section 112 of the Wireless Telegraphy Act.

²³ See, for example, section 137(3)(b) of the Communications Act, section 32B(3)(b) of the Wireless Telegraphy Act and paragraphs 1(4) and 3(4) of Schedule 8 of the Postal Services Act. We will in any event have regard to the requirement under section 3(3)(a) of the Communications Act for our regulatory activities to be proportionate and targeted only at cases in which action is needed.

²⁴ See, for example, section 137(3)(a) of the Communications Act, section 32B(3)(a) of the Wireless Telegraphy Act and paragraph 4(2) of Schedule 8 of the Postal Services Act.

- b) consider the response and **locate (or, where relevant, generate) any information required**, well in advance of the deadline to leave time for any issues to be resolved and for the information to be checked prior to sending it; and
- c) consider all systems and places where the requested information may be stored and **carry out appropriate searches** for the information.

A1.38 Before the recipient sends its response to Ofcom, they should make sure that:

- a) **a response has been provided to every question** (including all sub-parts to a question) and that their response answers the question asked. If the recipient does not have some or all the information requested, they should explain why and what searches have been carried out to check whether the information is available to them.
- b) the response is being **provided in the format requested**, for instance this might be a document in .docx format or a spreadsheet in .csv format. We generally only accept information returned in the format requested;
- c) the response provided is **clear, complete, and accurate**. If the recipient has any doubts about the accuracy of the information in their response, they should clearly explain any problems to Ofcom and provide the information with appropriate caveats. A response can refer to other documents held by Ofcom, but it should not require us to interpret a response by reference to other information/documents to understand the intended meaning.

A1.39 The recipient should check the completeness and accuracy of the information provided prior to responding to the notice. For established businesses, a governance check should also be completed to ensure all responses are properly interrogated, cross-checked, and reviewed through appropriate governance channels, including being signed off by an appropriate senior manager, prior to submission.

Response by the required deadline

A1.40 The recipient must send the response by the deadline given in a statutory information notice. If the recipient does not think it can provide a response by the deadline set, it should inform us immediately and explain why. We will only agree to extend deadlines where there is good reason for doing so, like the unexpected absence of a key employee responsible for obtaining the required information, technical difficulties, or other exceptional circumstances beyond the recipient's control. Every extension request will be considered on its own merits.

A1.41 There may be times where we require information quickly and so we may ask for the information to be provided in a phased approach. This will allow the recipient more time to provide information that may take longer to arrange (for instance, information that may need to be generated), and shorter timeframes for information that may be quicker to collect or produce.

Cancelling a statutory information notice

A1.42 We may cancel a statutory information notice by giving notice to the recipient. When doing so, Ofcom will confirm that no further action is needed.

Failure to comply with a statutory information notice

- A1.43 Failing to comply with a statutory information notice can result in significant consequences. Failing to comply can mean failing to respond by the given deadline or providing an inaccurate or incomplete response (to one or more questions or parts of questions).
- A1.44 This may result in Ofcom taking enforcement action, which can include opening a formal investigation and issuing a formal contravention decision. Possible consequences include a significant financial penalty and, in some cases, a daily penalty for each day on which the non-compliance continues (for example, for each day that required information remains outstanding). In the most serious circumstances, non-compliance can also result in Ofcom suspending a regulated business' entitlement to provide networks, services, or facilities.
- A1.45 When taking enforcement action for non-compliance of such requirements, we will follow our relevant enforcement procedures which will generally be those in our [enforcement guidelines for regulatory investigations](#). These Guidelines set out how we decide whether to take enforcement action, and the processes that we would typically follow.
- A1.46 It can also be a criminal offence to fail to comply with a statutory information notice or knowingly or recklessly provide false or misleading information. Further information is available in Annex A3.

Use of information obtained under our statutory information gathering powers

- A1.47 Where we exercise our information gathering powers, we will explain our reasons for requiring this information under the relevant legislation and how we intend to use such information.

Using information for a different purpose

- A1.48 Where we have obtained information for a specified purpose and wish to use that information for a different purpose, we will generally either:
- a) explain why we need to use the information for a different purpose and ask for the recipient's consent to use it for this new purpose; and/or
 - b) send the recipient another statutory information notice requiring the same information to be provided for the new purpose. We may also do this where we have informally asked for the recipient's consent to use the information for a different purpose and they have not given consent.
- A1.49 When seeking to use information previously provided for a different purpose, we may also ask the recipient to confirm the information previously provided remains up-to-date and, where relevant, to provide updated information. We will generally do this in another statutory information notice.

Confidential information

- A1.50 Where requested in a statutory information notice, recipients must provide the information requested, even if they consider that the information, or any part of it, is confidential. Recipients should clearly identify any such confidential information and explain in writing their reasons for considering it confidential, for example, the reasons why they consider disclosure of the information will seriously and prejudicially affect the interests of their business, a third party or the private affairs of an individual.
- A1.51 Ofcom will take into account any representations made by recipients that certain information should be considered confidential. However, it is for Ofcom to decide what is or is not confidential, taking into account any relevant common law and statutory definitions. Blanket claims of confidentiality covering entire documents or types of information are unhelpful and unlikely to be accepted. Recipients should therefore identify specific words, numbers, phrases or pieces of information they consider to be confidential.
- A1.52 Any confidential information provided to Ofcom is subject to restrictions on its further disclosure under the common law of confidence. In many cases, information provided to Ofcom is also subject to statutory restrictions relating to the disclosure of that information (regardless of whether that information is confidential information).²⁵ Our general approach to the disclosure of information is set out below.

Disclosure of information

Circumstances in which we may disclose information that we have gathered

- A1.53 We will not disclose information we have gathered from stakeholders unless (1) we have consent; (2) we are required by a Court or Tribunal to disclose the information in relation to civil or criminal proceedings; or (3) there is another legal basis for us disclosing the information, and we consider it is proportionate to disclose the information in the circumstances. The specific circumstances in which we may disclose information will depend on the relevant legal framework under which we have gathered that information and any statutory or common law restrictions on the disclosure of information by Ofcom.
- A1.54 For example, where we have gathered information relating to a particular business using our information gathering powers in the Communications Act, section 393 of the Communications Act explains that Ofcom cannot disclose that information without the consent of the person carrying on that business, unless this is permitted for specific, defined purposes (and in many cases only to specific persons), as set out in sub-sections (2) to (7). One of those purposes is where we consider disclosure necessary for the purpose of facilitating the exercise of our relevant functions. It is a criminal offence for a person to disclose information in contravention of section 393.²⁶
- A1.55 Ofcom will generally redact information identified as confidential from our publications or withhold it from the disclosures we make. However, for the avoidance of doubt, where permitted by law, we may disclose such information. For example, it is sometimes permitted and necessary for Ofcom to disclose information to facilitate the carrying out of our

²⁵ For this reason, we do not generally consider it necessary to sign non-disclosure agreements.

²⁶ Section 111 of the Wireless Telegraphy Act and section 56 of the Postal Services Act contain statutory restrictions on the disclosure of information by Ofcom that are similar to the restrictions in section 393 of the Communications Act.

functions by ensuring stakeholders can properly understand the basis for our reasoning.²⁷ We set out from paragraph A1.56 below the process we expect to follow if we propose to disclose information, including information identified as confidential.

The process we expect to follow if we propose to disclose information

- A1.56 When deciding whether to disclose information, we will carefully balance the need to disclose the relevant information against any concerns or objections raised by the person who provided the information in relation to its disclosure.
- A1.57 If Ofcom proposes to disclose information, we will normally first explain our intention to disclose the information and give that person the opportunity to make representations about the proposed disclosure.
- A1.58 We will generally try and resolve any objections to a proposed disclosure through constructive dialogue. If we remain of the view that we need to disclose the information and the person concerned continues to object, we will give them advance warning prior to making the disclosure. This will give the person concerned an opportunity to challenge our decision or raise the issue with any Procedural Officer, where relevant.
- A1.59 Where in order to exercise our functions there is a need regularly to disclose information, a different process for disclosing information may be appropriate. Where we intend to take a different approach to that set out in this policy, we would expect to explain our approach to stakeholders in advance of disclosing any information.
- A1.60 Where Ofcom decides the information provided does not need to be disclosed in full but considers it appropriate to include some information in a proposed disclosure, we may ask the person concerned to provide a summary of information or a range of numbers for the purposes of including this in the relevant disclosure, rather than simply removing the information.

Freedom of information requests

- A1.61 As a public authority, Ofcom is subject to the Freedom of Information Act 2000 (the 'FOI Act') meaning it has a general duty to provide access to information that is requested by a third party. However, a number of exemptions may apply in which case Ofcom is not required to disclose the requested information.²⁸ The applicability of any exemption will depend on the nature of the information sought by any FOI request made.
- A1.62 In particular, section 44 of the FOI Act exempts information from disclosure if its disclosure is prohibited under another enactment.²⁹ This means that where we have gathered information relating to a particular business using our information gathering powers in certain legislation,³⁰ we are prohibited from disclosing that information in response to a FOI request, unless we have that business' consent.
- A1.63 Sometimes information provided to Ofcom may be considered to be "environmental information" within the scope of the Environmental Information Regulations 2004 (the

²⁷ Our regulatory activities should also be transparent and accountable (section 3(3)(a), Communications Act).

²⁸ The Information Commissioner's Office provides guidance on the [exemptions](#) that may apply.

²⁹ For example, where disclosure is prohibited under section 393 of the Communications Act, section 111 of the Wireless Telegraphy Act and section 56 of the Postal Services Act.

³⁰ This includes where information has been gathered using our information gathering powers in the Communications Act, the Wireless Telegraphy Act and the Postal Services Act.

‘EIR’). In that case, we would consider whether any of the exceptions in the EIR may apply in which case we would not be required to disclose the requested information.³¹

- A1.64 If we decide that we cannot disclose information because an FOI exemption / EIR exception applies, it is unlikely to be necessary to discuss this with the business that provided the information to us.
- A1.65 If we need more information to help us determine whether an FOI exemption / EIR exception applies, we will discuss the request with the business that provided the information to us. We are subject to statutory deadlines for responding to FOI requests and expect a prompt reply.

Record retention and personal data

- A1.66 As a public authority, we will need to retain information as part of the evidence base underlying any decision we reach. We will keep information in line with our [records and information management policy](#).
- A1.67 We may use our information gathering powers to obtain personal data if we consider that this information is necessary and relevant for the purpose of our functions. Personal data is defined in section 3 of the Data Protection Act 2018 as information relating to an identified or identifiable living individual.
- A1.68 In all cases, Ofcom will seek to limit the personal data which it requires under its information gathering powers to that which is necessary for the performance of our functions.³²
- A1.69 Those subject to our information gathering powers will be responsible for complying with their own obligations under relevant data protection legislation. Any personal data they process in responding to our request for information is processed by them on their own account, as a data controller, rather than as a processor of that data for Ofcom. Our information gathering powers are not capable of requiring a person to process personal data in a way that contravenes UK data protection legislation,³³ including the UK GDPR. However, in determining whether the processing of personal data would contravene UK data protection legislation, the duty to provide the requested information should be taken into account.³⁴
- A1.70 Under Article 14 of the UK GDPR, where we (as data controller) have obtained personal data other than from the data subject, we must provide the data subject with certain information.³⁵ However, there are various exceptions to this obligation, which we will consider on a case-by-case basis. These exceptions include where providing the data subject with the required information would seriously impair our ability to achieve the objectives of the processing, or would involve a disproportionate effort,³⁶ taking account of any measures

³¹ The Information Commissioner’s Office provides guidance on the [exceptions](#) that may apply.

³² This is consistent with Article 5(1) of the UK General Data Protection Regulation (the ‘GDPR’) which provides for ‘data minimisation’, including that personal data shall be ‘limited to what is necessary in relation to the purposes for which they are processed’.

³³ UK data protection legislation means the legislation identified in section 3(9) of the Data Protection Act 2018.

³⁴ Under the UK GDPR, a person has a lawful basis for processing personal data if that is necessary for compliance with a legal obligation to which the controller is subject: Article 6(1)(c).

³⁵ UK GDPR, Article 14(1)-(3).

³⁶ UK GDPR, Article 14(5).

to protect the data subject's rights, freedoms and legitimate interests.³⁷ In making that assessment we would take into account that we would not expect to disclose any personal data unless we were satisfied we have a legal basis to do so, for example, because one of the statutory gateways for disclosure applies.

A1.71 Ofcom's [General Privacy Statement](#) contains further information about how Ofcom will handle personal data.

Information security

A1.72 Ensuring information is appropriately protected is central to Ofcom's work and our reputation as the UK's communications regulator.

A1.73 The security of commercially confidential and sensitive personal information provided to Ofcom is taken extremely seriously. We consistently test and monitor the efficacy of our systems to protect the data we hold and ensure data is only kept in accordance with our [records and information management policy](#).

A1.74 As noted above, we are also subject to both common law and statutory restrictions relating to the disclosure of information we have gathered and it is a criminal offence to disclose information in contravention of applicable statutory provisions. The safeguards provided by these statutory provisions apply to information that Ofcom has gathered using its statutory powers and apply to all information relating to a business that has been provided to us (regardless of whether it is confidential).

³⁷ When relying on the 'disproportionate effort' exception, it is necessary to assess whether there is a proportionate balance between the effort involved in providing the data subject with the required information and the effect that the use of their personal data will have on them. See ICO: [Are there any exceptions? | ICO](#)

A2. Summary of statutory information gathering powers

The following table summarises our statutory information gathering powers under legislation which requires us to publish this statement of general policy.

Legislation	Provisions
<p>The Communications Act 2003</p>	<p>The Communications Act includes the following statutory information gathering powers:</p> <ul style="list-style-type: none"> a) Under section 135, Ofcom has broad powers to require the persons identified in subsection (2) to provide us with information we consider necessary for the purpose of carrying out our relevant functions, including under Chapter 1 of Part 2 of the Communications Act (relating to electronic communications networks and services). These include the purposes in subsection (3) which include, but are not limited to, obtaining information to ascertain whether a provider may be in breach of our regulatory conditions, to carry out market reviews, to set general conditions, to carry out our telecoms security duties and to prepare our Connected Nations reports on telecoms infrastructure. b) Under section 136, Ofcom has the power to require communications providers and persons that make associated facilities available to others, to provide us with information we consider necessary for the purpose of carrying out comparative overviews of the quality and prices of communications services, or for statistical purposes. c) Under section 137A, Ofcom has the power to require communications providers to produce, generate or obtain information for publication in relation to our functions under Part 1 (relating to electronic communications) and Chapter 1 of Part 2 of the Communications Act (relating to electronic communications networks and services).
<p>The Wireless Telegraphy Act 2006</p>	<p>The Wireless Telegraphy Act includes the following statutory information gathering powers:</p> <ul style="list-style-type: none"> a) Under section 32, Ofcom has the power to require persons who are using or have established, installed or used wireless telegraphy stations or apparatus, to provide us with information relating to the establishment, installation or use of the station or apparatus, to provide us with information relating to the establishment, installation or use of the

	<p>station or apparatus and any related matters, for statistical purposes.</p> <p>b) Under section 32A, Ofcom has a broad power to require persons to provide us with information we consider necessary for the purpose of carrying out our radio spectrum functions.</p>
<p>The Postal Services Act 2011</p>	<p>The Postal Services Act includes the following statutory information gathering powers:</p> <p>a) Under Schedule 8, paragraph 1, Ofcom has a broad power to require persons to provide us with information we consider necessary for the purpose of carrying out our functions in relation to postal services.</p> <p>b) Under Schedule 8, paragraph 3, Ofcom has the power to require postal operators and persons who provide access points or other facilities for use in connection with a postal service, to provide us with information we consider necessary to carry out comparative overviews of the quality and prices of postal services.</p>

A3. Enforcement powers

The following table summarises our enforcement powers under legislation which requires us to publish this statement of general policy.

Information gathering power	Financial penalty for non-compliance ³⁸	Criminal offence(s) for non-compliance	Potential consequences of criminal offence
Sections 135, 136 and 137A of the Communications Act (except where Ofcom requested the information under section 135 for the purpose of carrying out any of its functions under sections 105L to 105Z of the Communications Act or preparing a report under section 105Z12).	Ofcom can impose a financial penalty of up to £2,000,000 for non-compliance with a statutory information notice. ³⁹ Ofcom can also impose a daily penalty of up to £500 per day for a continuing contravention. ⁴⁰	Offence A: It is an offence to fail to provide information in accordance with a statutory information notice. ⁴¹ Offence B: It is an offence to knowingly or recklessly provide or publish information that is materially false. ⁴²	Fine for Offence A ⁴³ Fine and/or imprisonment of up to 2 years for Offence B ⁴⁴
Section 135 of the Communications Act (where Ofcom requested the information for the purpose of carrying out any of its functions under sections 105L to 105Z of the Communications Act or preparing a report under section 105Z12).	Ofcom can impose a financial penalty of up to £10,000,000 for non-compliance with a statutory information notice. ⁴⁵ Ofcom can also impose a daily penalty of up to £50,000 per day for a continuing contravention. ⁴⁶	Offence A: It is an offence to fail to provide information in accordance with a statutory information notice. ⁴⁷ Offence B: It is an offence to knowingly or recklessly provide or publish information that is materially false. ⁴⁸	Fine for Offence A ⁴⁹ Fine and/or imprisonment of up to 2 years for Offence B ⁵⁰

³⁸ Any financial penalty we have the power to impose for non-compliance with a statutory information notice will be appropriate and proportionate and up to the maximum permitted by the relevant legislation. Non-compliance can mean failing to respond by the given deadline or providing an inaccurate or incomplete response (to one or more questions or parts of questions). In deciding whether to impose a financial penalty, and if so, the amount of any penalty, we will have regard to our [Penalty guidelines](#).

³⁹ Section 139(5), Communications Act.

⁴⁰ Section 139(4B), Communications Act.

⁴¹ Section 144(1), Communications Act.

⁴² Section 144(3), Communications Act.

⁴³ Section 144(1), Communications Act.

⁴⁴ Section 144(4), Communications Act.

⁴⁵ Section 139ZA(4)(b), Communications Act.

⁴⁶ Section 139ZA(4)(a), Communications Act.

⁴⁷ Section 144(1), Communications Act.

⁴⁸ Section 144(3), Communications Act.

⁴⁹ Section 144(1), Communications Act.

⁵⁰ Section 144(4), Communications Act.

<p>Sections 32 and 32A of the Wireless Telegraphy Act 2006</p>	<p>Ofcom can impose a financial penalty of up to £2,000,000 for non-compliance with a statutory information notice.⁵¹ Ofcom can also impose a daily penalty of up to £20,000 per day for a continuing contravention.⁵²</p>	<p>Offence A: It is an offence to fail to provide information in accordance with a statutory information notice.⁵³</p> <p>Offence B: It is an offence to knowingly or recklessly provide or publish information that is materially false.⁵⁴</p>	<p>Fine for Offence A⁵⁵</p> <p>Fine and/or imprisonment of up to 2 years for Offence B⁵⁶</p>
<p>Paragraphs 1 and 3 of Schedule 8 of the Postal Services Act 2011</p>	<p>Ofcom can impose a financial penalty of up to £50,000 for non-compliance with a statutory information notice.⁵⁷</p>	<p>Offence A: It is an offence to fail to provide information in accordance with a statutory information notice.⁵⁸</p> <p>Offence B: It is an offence to knowingly or recklessly provide or publish information that is materially false.⁵⁹</p>	<p>Fine for Offence A⁶⁰</p> <p>Fine and/or imprisonment of up to 2 years for Offence B⁶¹</p>

⁵¹ Section 32D(7), Wireless Telegraphy Act.

⁵² Section 32D(6) Wireless Telegraphy Act.

⁵³ Section 33(1), Wireless Telegraphy Act.

⁵⁴ Section 33(4) Wireless Telegraphy Act.

⁵⁵ Section 33(3), Wireless Telegraphy Act.

⁵⁶ Section 33(5), Wireless Telegraphy Act.

⁵⁷ Schedule 8, Part 2, paragraph 7(6), Postal Services Act.

⁵⁸ Schedule 8, Part 2, paragraph 13(1), Postal Services Act.

⁵⁹ Schedule 8, Part 2, paragraph 13(4), Postal Services Act.

⁶⁰ Schedule 8, Part 2, paragraph 13(2), Postal Services Act.

⁶¹ Schedule 8, Part 2, paragraph 13(5), Postal Services Act.

A4. Impact assessments

Impact assessment

- A4.1 Section 7 of the Communications Act requires us to carry out and publish an assessment of the likely impact of implementing a proposal which would be likely to have a significant impact on businesses or the general public, or when there is a major change in Ofcom's activities.
- A4.2 More generally, impact assessments form part of good policy making and we therefore expect to carry them out in relation to a large majority of our proposals. We use impact assessments to help us understand and assess the potential impact of our policy decisions before we make them. They also help us explain the policy decisions we have decided to take and why we consider those decisions best fulfil our applicable duties and objectives in the least intrusive way. Our [impact assessment guidance](#) sets out our general approach to how we assess and present the impact of our proposed decisions.
- A4.3 Our policy on information gathering on which we are consulting relates to our current statutory information gathering powers under which we are required to publish a policy. Those powers follow from the legislative process and have previously been consulted on by Government, during which one or more impact assessments were produced.
- A4.4 Overall, we consider that our proposed changes are likely to improve the transparency, efficiency and robustness of our regulatory practices and will not create significant new burdens for our stakeholders. We have assessed the impact on our proposed changes in more detail in paragraphs 3.20 to 3.23 above.

Equality impact assessment

- A4.5 We have given careful consideration to whether our proposal will have a particular impact on persons sharing protected characteristics (broadly including race, age, disability, sex, sexual orientation, gender reassignment, pregnancy and maternity, marriage and civil partnership and religion or belief in the UK and also dependents and political opinion in Northern Ireland), and in particular whether they may discriminate against such persons or impact on equality of opportunity or good relations. This assessment helps us comply with our duties under the Equality Act 2010 and the Northern Ireland Act 1998.⁶²
- A4.6 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](#)).
- A4.7 We do not consider that any of the proposals on which we are consulting will have any adverse equality impacts. As noted above, our proposals should provide additional certainty and transparency to stakeholders, in particular in setting clear expectations around the process of issuing and responding to statutory information notices. This may have a positive

⁶² Further detail is set out in section 149 of the Equality Act 2010 and section 75 of the Northern Ireland Act 1998.

impact on some equality groups that are involved in responding to statutory information notices, for example, individuals that are neurodiverse.

Welsh language

- A4.8 The Welsh Language (Wales) Measure 2011 made the Welsh language an officially recognised language in Wales. This legislation also led to the establishment of the office of the Welsh Language Commissioner who regulates and monitors our work. Ofcom is required to take Welsh language considerations into account when formulating, reviewing or revising policies which are relevant to Wales (including proposals which are not targeted at Wales specifically but are of interest across the UK).⁶³
- A4.9 Where the Welsh Language Standards are engaged, we consider the potential impact of a policy proposal on (i) opportunities for persons to use the Welsh language; and (ii) treating the Welsh language no less favourably than the English language. We also consider how a proposal could be formulated so as to have, or increase, a positive impact, or not to have adverse effects or to decrease any adverse effects.
- A4.10 We will continue to issue some statutory information notices in Welsh, where required by Welsh stakeholders. We do not intend to translate this policy into Welsh.

⁶³ See Standards 84 – 89 of [Hysbysiad cydymffurfio](#) (in Welsh) and [compliance notice](#) (in English). Section 7 of the Welsh Language Commissioner’s [Good Practice Advice Document](#) provides further advice and information on how bodies must comply with the Welsh Language Standards.

A5. Responding to this consultation

How to respond

- A5.1 Ofcom would like to receive views and comments on the issues raised in this document, by **5pm on 30 September 2024**.
- A5.2 You can download a response form <https://www.ofcom.org.uk/about-ofcom/corporate-policies/general-policy-on-information-gathering-24/>. You can return this by email or post to the address provided in the response form.
- A5.3 If your response is a large file, or has supporting charts, tables or other data, please email it to Generalinfogatheringpolicy@ofcom.org.uk as an attachment in Microsoft Word format, together with the cover sheet. This email address is for this consultation only and will not be valid after 30 September 2024.
- A5.4 Responses may alternatively be posted to the address below, marked with the title of the consultation:
- Enforcement Team
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- A5.5 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
- send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files; or
 - upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A5.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A5.7 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt of a response submitted to us by email.
- A5.8 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A5.9 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at A8. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.
- A5.10 If you want to discuss the issues and questions raised in this consultation, please contact Generalinfogatheringpolicy@ofcom.org.uk

Confidentiality

- A5.11 Consultations are more effective if we publish the responses before the consultation period closes. This can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish responses on the Ofcom website at regular intervals during and after the consultation period.
- A5.12 If you think your response should be kept confidential, please specify which part(s) this applies to and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A5.13 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A5.14 To fulfil our pre-disclosure duty, we may share a copy of your response with the relevant government department before we publish it on our website.
- A5.15 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further in our Terms of Use.

Next steps

- A5.16 Following this consultation period, Ofcom plans to publish a statement by the end of 2024.
- A5.17 If you wish, you can register to receive mail updates alerting you to new Ofcom publications.

Ofcom's consultation processes

- A5.18 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex A6.
- A5.19 If you have any comments or suggestions on how we manage our consultations, please email us at consult@ofcom.org.uk. We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A5.20 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:
- A5.21 Corporation Secretary
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA
Email: corporationsecretary@ofcom.org.uk

A6. Ofcom's consultation principles

Ofcom has seven principles that it follows for every public written consultation:

Before the consultation

A6.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. If we do not have enough time to do this, we will hold an open meeting to explain our proposals, shortly after announcing the consultation.

During the consultation

A6.2 We will be clear about whom we are consulting, why, on what questions and for how long.

A6.3 We will make the consultation document as short and simple as possible, with an overview of no more than two pages. We will try to make it as easy as possible for people to give us a written response.

A6.4 When setting the length of the consultation period, we will consider the nature of our proposals and their potential impact. We will always make clear the closing date for responses.

A6.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.

A6.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

A6.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish the responses on our website at regular intervals during and after the consultation period. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

A7. Consultation coversheet

Basic details

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

Confidentiality

Please tick below what part of your response you consider is confidential, giving your reasons why

- Nothing
- Name/contact details/job title
- Whole response
- Organisation
- Part of the response

If you selected 'Part of the response', please specify which parts:

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

Yes No

Declaration

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom aims to publish responses at regular intervals during and after the consultation period. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

A8. Consultation questions

A8.1 We welcome stakeholder responses on the following:

Question 1: Do you have any comments on our proposed policy and approach to our information gathering powers under the legislation within the scope of the policy?

Question 2: Do you have any comments on our assessment of the likely impact of our proposed update to our policy?