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To:

*Persons liable to pay administrative charges under  
section 38 of the Communications Act 2003*

27 July 2023

### **General Demand for financial (relevant turnover) information required by Ofcom under section 135 of the Communications Act 2003**

This is a formal demand for information under section 135 of the Communications Act 2003 (the "Act"). This demand takes the form of a General Demand for persons who are described below as the persons from whom the information is required. It is hereby published on Ofcom's website for the purpose of bringing it to the attention of such persons, in accordance with section 135(6) of the Act. This General Demand applies for the Charging Year commencing on 1 April 2024, with the specified information required under this General Demand to be provided for the calendar year of 2022 in respect of that Charging Year, and it shall continue to apply to subsequent Charging Years until further notice by Ofcom. As such, the General Demand dated 31 July 2017 will cease to have effect for those Charging Years.

#### ***Persons from whom the information is required***

This General Demand is addressed to each and every person who is liable to pay administrative charges under section 38 of the Act. You therefore need to consider carefully if you are a person liable to pay such administrative charges. The background information below describes persons with such liability.

#### ***Purposes for which the information required is to be used by Ofcom***

We are requesting the information in the manner and form specified below for two separate purposes—

- i. ascertaining or verifying the charges payable by a person under section 38 of the Act; and
- ii. confirming into which tier a person falls for the purposes of the Telecommunications Security Code of Practice made under section 105E of the Act (the "**Code of Practice**")<sup>1</sup> and Ofcom's associated compliance monitoring under the security framework. Background information on this tiering system is set out in Annex 2.

#### ***Background to Ofcom's administrative charges***

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<sup>1</sup> [The Telecommunications Security Code of Practice](#) (December 2022).

Ofcom is funded by (among other things) administrative charges payable by each and every person who is liable to charges under Ofcom's Notice of Designation pursuant to section 38 of the Act, as made by Ofcom from time to time. Paragraph 6 of the current Designation<sup>2</sup> provides that the following persons are liable to pay such charges—

*"During each Charging Year, the Electronic Communications Network, Electronic Communications Service or Associated Facility which is designed for the purposes of section 38 of the Act is any Electronic Communications Network, Electronic Communications Service or Associated Facility where the person providing the Network or Service, or making available that Associated Facility had a Relevant Turnover from Relevant Activities of £5 million or more in the last but one Calendar year prior to the charging year in question. (For example, if the relevant Charging Year commences on 1 April 2024, the relevant Turnover will be for the calendar year of 2022)."*

That Designation gives the following meanings to the expressions used therein—

- 'Charging Year' means a twelve month period ending 31 March;
- 'Relevant Activity' means any of the following:
  - a. The provision of Electronic Communications Services to third parties;
  - b. The provision of Electronic Communications Networks, Electronic Communications Services and Network Access to Communications Providers; or
  - c. The making available of Associated Facilities to Communications Providers;
- 'Relevant Turnover' means turnover made from carrying on any Relevant Activity after the deduction of sales rebates, value added tax and other taxes directly related to turnover.

In this context, we draw attention to our Guidelines on the definition of "relevant activity" for the purposes of administrative charging, which Guidelines are intended to help those persons liable to pay administrative charges to establish their gross turnover from relevant activities for the purposes of administrative charging.<sup>3</sup>

Ofcom's principles that apply in setting tariffs are set out in our Statement of Charging Principles as published from time to time. The tariff applicable will be a percentage of turnover from relevant activities as set out in the tariff tables, which are published by Ofcom on or before 31st March for the following charging year.<sup>4</sup>

### ***Provision of specified information***

You are required to provide Ofcom with the information specified or described in **Annex 1** hereto in the manner and form specified in that Annex. Any queries regarding this information should be directed to Ofcom Market Intelligence Team at [MID@ofcom.org.uk](mailto:MID@ofcom.org.uk)

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<sup>2</sup> See [Annex 1 to Ofcom's Final Statement entitled 'Designation and Relevant Activity Guidelines for the purposes of administrative charging' published on 31 March 2005](#).

<sup>3</sup> See Annex 2 to Ofcom's Final Statement published on 31 March 2005, *ibid*.

<sup>4</sup> See [the tariff tables for each Charging Year](#).

The information must reach Ofcom by **no later than 5pm on the last working day of September every year.**

### ***Personal data***

Ofcom will process any personal data provided in response to this General Demand in accordance with Ofcom's [General Privacy Statement](#).<sup>5</sup>

We consider that any personal data you process in responding to this General Demand will be processed by you on your own account, as a data controller, rather than as a processor of that data for Ofcom. You will be responsible for complying with your own obligations under relevant data protection legislation. You may also wish to inform any employees whose personal data you will be providing in response to this General Demand that their personal data is being provided to Ofcom and provide a link to Ofcom's General Privacy Statement.

### ***Offences***

We draw your attention to, in particular, sections 138 to 144 of the Act, as amended by the Electronic Communications and Wireless Telegraphy Regulations 2011 (SI 2011 No. 1210)<sup>6</sup> and the Telecommunications (Security) Act 2021, which set out, among other things, the offences created by the Act in connection with a failure to comply with a requirement under section 135 or in connection with the provision of false information and the relevant penalties associated with the offences.

You are therefore required to ensure that your response is **on time, complete and accurate**. Given the seriousness of the potential penalties and offences involved, you may want to seek your own independent legal advice about the contents of this General Demand.

Yours faithfully,

**Aneen Blackmore**  
**Finance Director**

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002.

Encl.

Annex 1: Specified Information

Annex 2: Background information on the tiering system under the security framework

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<sup>5</sup> <https://www.ofcom.org.uk/about-ofcom/foi-dp/general-privacy-statement>

<sup>6</sup> This legislation is accessible at: [www.legislation.gov.uk](http://www.legislation.gov.uk).

## Annex 1

### (Specified information)

This Annex accompanies, and forms part of, Ofcom's General Demand.

#### Part A: Definitions

In this Annex, except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them below.

**'Charging Year'** means every period of twelve months beginning on 1 April and ending on 31 March;

**'Relevant Activity'** means any of the following:

- a. the provision of Electronic Communications Services to third parties;
- b. the provision of Electronic Communications Networks, Electronic Communications Services and Network Access to Communications Providers; or
- c. the making available of Associated Facilities to Communications Providers;

**'Relevant Calendar Year'** means, in respect of a Charging Year, the twelve month period commencing on 1 January in the last but one calendar year prior to the Charging Year in question so that if, for example, the Charging Year commences on 1 April 2024, the Relevant Calendar Year will be the calendar year of 2022;

**'Relevant Person'** means a person (which includes a body of persons corporate or unincorporated) liable to pay the administrative charge under section 38 of the Act; and

**'Relevant Turnover'** means turnover made from carrying out activity after the deduction of sales rebates, value added tax and other taxes directly related to turnover.

#### Part B: Specified Information

The Relevant Person must for each Charging Year submit an annual certificate (see Part C. below) of turnover return providing details in relation to the following categories of information (known as an 'Annual Revenue Return')—

1. **Data Provider:** the full name of the Relevant Person;
2. **Return Schedule:** the Relevant Calendar Year which the return covers;
3. **Registered Number:** the registered company number of the Relevant Person (if applicable);
4. **Relevant Turnover:** the Relevant Turnover generated by the Relevant Person, broken down as follows:

- a. Networks Turnover (£ thousands);
  - b. Services Turnover (£ thousands);
  - c. Associated Facilities Turnover (£ thousands);
  - d. Non-Relevant Turnover (£ thousands);
  - e. Total Turnover (£ thousands);
5. Please refer to our [relevant activity guidelines for the definitions of relevant turnover](#)
  6. **Other Information** supporting the information regarding movements between the prior year's Annual Revenue Return and the current year's Annual Revenue Return and a reconciliation between the Annual Revenue Return and the annual turnover as reported in the Relevant Person's audited financial statements.

### **Part C: Manner and Form**

The information specified in Part B above must be provided to Ofcom by submitting an Annual Revenue Return electronically via Ofcom's secure Online Services Portal. Further information regarding the database and access to the database is set out in the document entitled "[User guide for data providers: Telecoms annual revenue return](#)".

The information specified in Part B above must be provided to Ofcom by electronically completing and certifying the Annual Revenue Return to the effect that the information has been accurately and properly prepared in accordance with Ofcom requirements and to confirm that the Financial Reporting Standards and Generally Accepted Accounting Practice in the UK have been followed in the preparation of the Return.

Details (i.e. name, email address, phone, position) of the individual providing data for the Annual Revenue Return and the individual submitting the Annual Revenue Return (if different) must be provided. Certification should be provided by a Director if the Relevant Person is a limited company or by a Partner if the Relevant Person is a partnership. Certification shall serve as notification that the named Director or Partner has certified the details of the Relevant Turnover of the Relevant Person as accurate.

Once access to Ofcom's secure Online Services Portal has been provided to an individual and if the individual is subsequently no longer associated to the Relevant Person, the Relevant Person must immediately inform Ofcom of this change of circumstances. This will allow Ofcom to remove the individual's association to the Relevant Person on Ofcom's system.

## Annex 2

### (Background information on the tiering system under the security framework)

#### The security framework

The [Telecommunications \(Security\) Act 2021](#) (the “**Security Act**”)<sup>7</sup> introduced a revised framework for protecting the security and resilience of public electronic communications service and networks in the UK.

The revised framework, which came into force from 1 October 2022, replaced sections 105A-105D of Act and placed new security duties on providers of public electronic communications networks and services. (“**public providers**”), including:

- The overarching security duties set out in the Act (sections 105A and 105C);
- Duties to take specified measures imposed by the Secretary of State by regulations (sections 105B and 105D); and
- Duties to report security compromises to Ofcom and to inform users (sections 105J and 105K).

The revised framework also provides for two forms of guidance for public providers:

- The Secretary of State’s guidance on the measures to be taken by public providers under sections 105A to 105D. The Secretary of State has powers to give such guidance by issuing codes of practice under section 105E of the Act;
- Ofcom’s general policy on how we will exercise our functions under sections 105I and 105M to 105V to seek to ensure compliance with the security duties. The Act (section 105Y) places a duty on Ofcom to publish a statement setting out such general policy and to have regard to it in exercising our relevant functions.

As a result, the Secretary of State has made [The Electronic Communications \(Security Measures\) Regulations 2022](#) (the “**2022 Regulations**”),<sup>8</sup> which came into force on 1 October 2022, and issued the [Code of Practice](#).

On 12 December 2022, Ofcom published its statement of general policy under section 105Y of the Act regarding how we will exercise our functions to seek to ensure that public providers comply with their new security duties under the revised security framework (“[Ofcom’s Procedural Guidance](#)”).

#### The tiering system under the security framework

Although certain aspects of the framework, such as the overarching duties in the Act, apply to all public providers, what is appropriate and proportionate in any particular case is likely to differ depending on

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<sup>7</sup> [The Telecommunications \(Security\) Act 2021](#), c. 31.

<sup>8</sup> [The Electronic Communications \(Security Measures\) Regulations 2022](#)

the size of the provider. The [Code of Practice](#) (para 0.12) reflects this by adopting the following three-tier approach:

- Tier 1 – public providers with relevant turnover in the relevant period of £1bn or more;
- Tier 2 – public providers with relevant turnover in the relevant period of more than or equal to £50m but less than £1bn;
- Tier 3 – public providers whose relevant turnover in the relevant period is less than £50m, but who are not micro-entities.<sup>9</sup>

As set out in the [Code of Practice](#) (para 0.14), the approach to defining the “relevant turnover” and the “relevant period” for tiering purposes aligns with Ofcom’s approach to the collection of equivalent data for administrative fees.

The measures in the Code of Practice apply to Tier 1 and Tier 2 providers.<sup>10</sup> As set out in [Ofcom’s Procedural Guidance](#) (para 3.9), consistent with the approach taken in the Code of Practice and reflecting our proportionate approach to compliance monitoring, our proactive compliance monitoring activities is on public providers in Tiers 1 and 2.<sup>11</sup>

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<sup>9</sup> The [2022 Regulations](#) do not apply to micro-entities (reg. 16). Micro-entities are defined as having two of the following three requirements under the Companies Act 2006: turnover of not more than £620,000; balance sheet total of not more than £316,000; not more than 10 employees ([Code of Practice](#); para 0.28).

<sup>10</sup> Tier 3 providers are not expected to follow the measures in the Code of Practice. However, the Security Act still applies to Tier 3 and they may choose to adopt the measures included within the Code of Practice where these are appropriate and proportionate to their networks and services ([Code of Practice](#), para 0.13). For further details on the Government’s tiering system, see paras 0.11-0.16 and 0.27-0.29 of the [Code of Practice](#).

<sup>11</sup> For further details on our approach to monitoring Tier 1 and Tier 2 providers, see [Ofcom’s Procedural Guidance](#) (in particular, Section 3).