

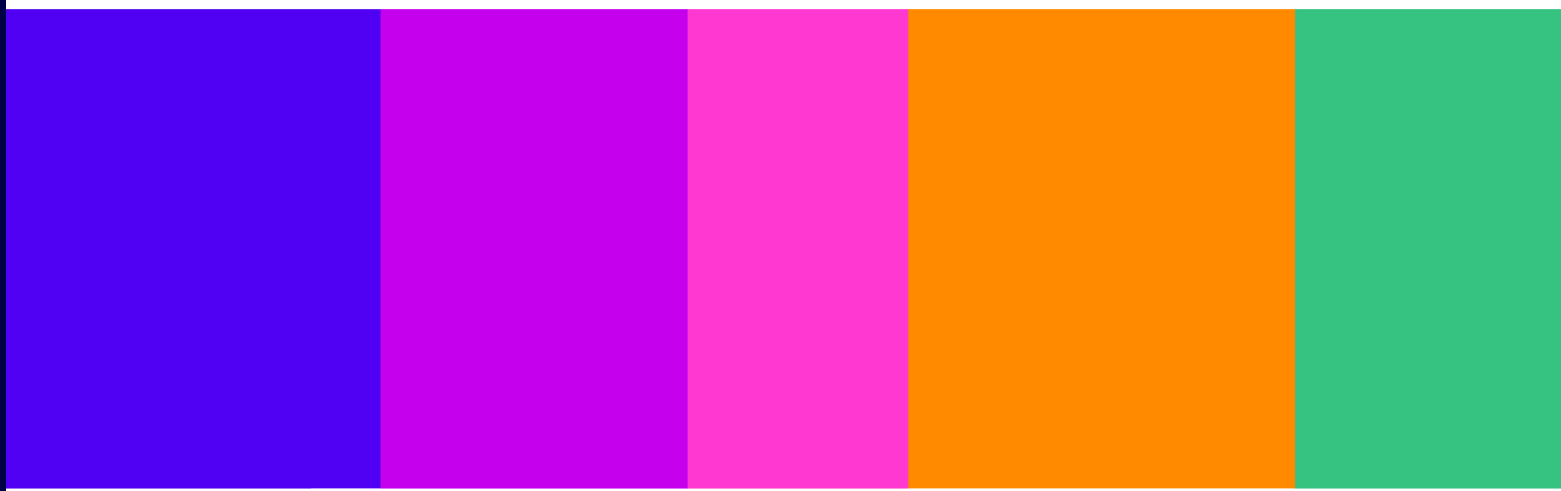
Guidance for service providers publishing pornographic content

Consultation on draft guidance on age assurance and other Part 5 duties

Consultation

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Contents

Section

1. Overview	3
2. Introduction.....	5
3. Guidance on scope	12
4. Guidance on age assurance duties	15
5. Guidance on the record-keeping duties	25
6. Assessing compliance with age assurance and record-keeping duties	28

Annex

A1. Impact Assessment.....	31
A2. Guidance on age assurance and other Part 5 duties for service providers publishing pornographic content on online services	41
A3. Responding to this consultation	42
A4. Ofcom's consultation principles	45
A5. Consultation coversheet.....	46
A6. Consultation questions	47

1. Overview

- 1.1 [The Online Safety Act 2023](#) ('the Act') received Royal Assent on 26 October 2023. The Act creates a new regulatory framework designed to make regulated internet services safer for users in the United Kingdom (UK), particularly for children. To achieve this, Part 5 of the Act imposes specific duties on service providers that display or publish pornographic content on their online services ('**the Part 5 duties**'). These include the duty to implement age assurance to ensure that children are not normally able to encounter such content. The age assurance must be implemented and used in a way that is highly effective at correctly determining whether or not a user is a child. They also include record-keeping duties.
- 1.2 As the online safety regulator, Ofcom has a duty to produce guidance for service providers to assist them in complying with their duties set out in Section 81 of the Act. Our proposed guidance is at Annex 2 to this consultation. As well as assisting service providers to comply with their age assurance duties, our guidance aims to assist service providers in ensuring that the age assurance process does not unduly prevent adult users from accessing legal content.

Ofcom is consulting on draft guidance for Part 5 of the Act

Ofcom is consulting on draft guidance for service providers that display or publish pornographic content ('**service providers**') on their online services ('**regulated services**'). The draft guidance is intended to help these service providers comply with their regulatory duties under Part 5 of the Act. We set out a summary of our proposed guidance below.

Proposed guidance on ensuring that children are not normally able to encounter regulated provider pornographic content:

- We set out a non-exhaustive list of kinds of age assurance that could be highly effective at correctly determining whether or not a user is a child. We also identify types of age assurance that would not be suitable to meet the duties in Part 5 of the Act.
- Service providers should implement an age assurance process that fulfils each of the criteria of technical accuracy, robustness, reliability, and fairness to ensure that it is highly effective at correctly determining whether or not a particular user is a child.
- Service providers should also consider the principles of accessibility and interoperability to ensure that the age assurance process is easy to use and does not unduly prevent adults from accessing legal content.
- Service providers should ensure access controls are in place on the service to prevent users who have been identified as children through the age assurance process from encountering pornographic content on the service. They also should not host or permit content on their service that directs or encourages child users to circumvent the age assurance process or access controls.
- Service providers should familiarise themselves with the data protection legislation, and how to apply it to their age assurance method(s), by consulting guidance from the Information Commissioner's Office (ICO).

Proposed guidance relating to the record-keeping duty:

- Service providers should keep a durable written record of the age assurance process in use. The record must be up-to-date and easy to understand.
- Written records must explain how the service provider has considered the importance of protecting users from a breach of any statutory provision or rule of law concerning privacy. We provide examples of how providers can demonstrate this.
- Service providers must publish a summary of the written record of their age assurance process which should be easy to understand and available in an easy-to-find area of the regulated service’s website.

Proposed guidance on our approach to assessing compliance:

- When determining whether a service provider has complied with its duties, Ofcom will have regard to our regulatory principles of transparency, accountability, proportionality, consistency, and ensuring that regulatory action is targeted only at cases where it is needed.
- We set out a non-exhaustive list of examples where we are likely to consider that a service provider has not complied with its duties.
- We will follow the procedures set out in our [Online Safety Enforcement Guidance](#) (which we are currently consulting on) where we suspect non-compliance with the obligations that apply to service providers under the Act.

This consultation document sets out additional information about the draft guidance, including the evidence we have relied upon to support our proposed approach. We also set out our assessment of the likely impact of our proposals at Annex 1.

Next steps

- 1.3 We are inviting stakeholders’ views on our draft guidance, and specifically the questions set out in Annex 6 to this consultation.
- 1.4 The deadline for responses is 5pm on 5 March 2024.
- 1.5 Once we have considered all responses, we will issue a statement setting out the final guidance. We expect this to be in 2025, after which Government will bring these duties into force.

2. Introduction

- 2.1 In this section, we outline the relevant regulatory framework for our proposed guidance, the online services which fall into the scope of Part 5 of the Act and the duties that apply to them.
- 2.2 We also summarise our impact assessment of the proposed guidance, our Equality Impact Assessment and Welsh language impact assessment.
- 2.3 We refer to the services within scope of Part 5 of the Act as ‘**regulated services**’ and to the providers of such regulated services as ‘**service providers**’ throughout this document. The type of content which is in scope of the duties under Part 5 of the Act is ‘**regulated provider pornographic content.**’ We explain the definition of this term in paragraphs 2.12 - 2.13 below.

Regulatory framework

- 2.4 The Act received Royal Assent on 26 October 2023, and creates a new regulatory framework which aims to make regulated internet services safer for users in the UK, particularly for children. To achieve this, the Act imposes new duties on providers of online services to implement measures to protect children from harm.
- 2.5 Part 5 of the Act imposes specific duties on service providers that display or publish pornographic content on their online services. These include the duty to implement age assurance to ensure that children are not normally able to encounter such content. The age assurance must be implemented and used in a way that is highly effective at correctly determining whether or not a user is a child.
- 2.6 The Act also gives Ofcom new functions and powers, including the functions under Part 5 of the Act described in paragraph 2.20 -2.23 below. In carrying out our functions, we must act in accordance with our general duties in section 3 of the Communications Act 2003 (‘CA03’). These include:
- a) our principal duty to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition;¹ and
 - b) our general duty in carrying out our functions to secure the adequate protection of citizens from harm presented by content on regulated services, through the appropriate use by providers of such services of systems and processes designed to reduce the risk of such harm.²
- 2.7 In performing our principal duty, Ofcom is required to have regard to the matters in section 3(4) and (4A) CA03 so far as they appear to us relevant in the circumstances. These include:
- a) the desirability of encouraging investment and innovation in relevant markets;³

¹ Section 3(1) CA03.

² Section 3(2)(g) CA03.

³ Section 3(4)(d) CA03.

- b) the vulnerability of children and of others whose circumstances appear to OFCOM to put them in need of special protection;⁴
 - c) the needs of persons with disabilities, of the elderly and of those on low incomes;⁵
 - d) the need for a higher level of protection for children than for adults;⁶
 - e) the need for it to be clear to providers of regulated services how they may comply with their duties;⁷
 - f) the desirability of promoting the use, by providers of regulated services, of technologies which are designed to reduce the risk of harm to citizens presented by content on regulated services;⁸ and
 - g) the extent to which these providers demonstrate, in a way that is transparent and accountable, that they are complying with their duties under the Act.⁹
- 2.8 In performing our duty to further the interests of consumers, Ofcom must have regard, in particular, to the interests of those consumers in respect of choice, price, quality of service and value for money.¹⁰
- 2.9 In carrying out our functions, we also have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed and any other principles which appear to us to represent the best regulatory practice.¹¹
- 2.10 We must also act in a way that takes into account the rights and freedoms under the [European Convention on Human Rights](#) ('the Convention'), to the extent that is possible under one or more provisions of primary legislation.¹² For the purposes of this consultation, we have had particular regard to the right to freedom of expression under Article 10 of the Convention, which includes the right to hold opinions and to receive and impart information and ideas, and the right to privacy, under Article 8 of the Convention.

Providers within scope of Part 5 of the Act

- 2.11 The duties in Part 5 of the Act apply to providers of online services containing pornographic content which:
- a) meets the definition in section 79(2) of the Act; and
 - b) is not a category of pornographic content explicitly carved out from that definition; or
 - c) is not otherwise exempted or excluded.
- 2.12 The relevant definition in section 79(2) of the Act of regulated provider pornographic content applies where pornographic content is published or displayed on an online service by the provider of the service, or by a person acting on behalf of the provider.
- 2.13 The Act provides examples of when pornographic content will be treated as published or displayed by the provider of a service. These include where the content is:

⁴ Section 3(4)(h) CA03.

⁵ Section 3(4)(i) CA03.

⁶ Section 3(4A)(b) CA03.

⁷ Section 3(4A)(c) CA03.

⁸ Section 3(4A)(e) CA03.

⁹ Section 3(4A)(f) CA03

¹⁰ Section 3(5) CA03.

¹¹ Section 3(3) CA03.

¹² Section 6 of the Human Rights Act 1998.

- a) published or displayed on the service by means of a software or an automated tool or algorithm applied, or made available, by the provider or a person acting on behalf of the provider;
- b) generated on the service by means of an automated tool or algorithm in response to a prompt by a user and is only visible or audible to that user (no matter for how short a time);
- c) only visible or audible to users as a result of interacting with content that is blurred, distorted or obscured (for example, by clicking on the content), provided it is present on the service in question; or
- d) embedded on the service.¹³

Exemptions and exclusions from the scope of Part 5 of the Act

2.14 The following types of pornographic content are excluded from the definition in section 79(2) and are therefore outside the scope of Part 5 of the Act:

- a) user-generated content within the meaning of section 55(3) and (4) of the Act in relation to an internet service.¹⁴
- b) text, including text accompanied by a GIF (provided that is not pornographic), an emoji or other symbol;¹⁵
- c) paid-for advertisements (as defined in section 236 of the Act);¹⁶
- d) content appearing in the search results of a search engine or a combined service.¹⁷

2.15 In addition, Part 5 does not apply to on-demand programme services within the meaning of section 368A of the CA03. On-demand programme services are regulated under Part 4A of the CA03.¹⁸

Service has links to the UK

2.16 A service will only fall within the scope of Part 5 of the Act if it has a significant number of UK users, or if UK users form one of the target markets for the service (or the only target market).¹⁹

Duties applying to providers within scope of Part 5

2.17 The Act imposes the following duties on service providers that fall within the scope of Part 5:

- a) a duty to ensure, by the use of age verification or age estimation (or both), that children are not normally able to encounter content that is regulated provider pornographic content in relation to a service. The age assurance must be of such a kind, and used in such a way, that it is highly effective at correctly determining whether or not a particular user is a child; and

¹³ Section 79(3) and (6)(a) of the Act.

¹⁴ Section 79(7) of the Act. Providers of user-to-user services on which such content appears will be subject to obligations under Part 3 of the Act, including the children's risk assessment and safety duties in sections 11 to 13 of the Act.

¹⁵ Section 79(4) of the Act

¹⁶ Section 79(5) of the Act.

¹⁷ Section 79(6)(b) of the Act. In relation to a search service, a search result means content presented to a user of the service by operation of the search engine in response to a request made by the user (section 57(3)). A combined service is a user-to-user service that includes a public search engine (see section 4(7) of the Act).

¹⁸ Section 80(6) of the Act. There are also certain exemptions in Schedule 1 and Schedule 9 to the Act. The principal effect of these is to exempt internal business services, such as intranets, from the scope of Part 5.

¹⁹ Section 80(2) and (4) of the Act.

- b) a duty to make and keep a written record, in an easily understandable form, of –
 - i) the kinds of age verification or age estimation used, and how they are used, and
 - ii) the way in which the service, when deciding on the kinds of age verification or age estimation and how they should be used, has had regard to the importance of protecting UK users from a breach of any statutory provision or rule of law concerning privacy that is relevant to the use or operation of a regulated service;²⁰ and
- c) A duty to summarise the written record in a publicly available statement, so far as the record concerns compliance with the duty set out in 2.17(a), including details about which kinds of age verification or age estimation a service is using and how they are used.²¹

2.18 Throughout this document, we refer to the duties described in 2.17(a) as the **‘age assurance duties.’** We use **‘age assurance’** in this context to refer to both age verification and age estimation.

2.19 We refer to the duties described in 2.17(b) and (c) as the **‘record-keeping duties.’**

Ofcom’s duties under Part 5

2.20 The Act requires Ofcom to produce guidance for service providers to assist them in complying with the age assurance and record-keeping duties.

2.21 The guidance must include –

- a) Examples of kinds and uses of age verification and age estimation that are, or are not, highly effective at correctly determining whether or not a particular user is a child;
- b) Examples of ways in which a provider may have regard to the importance of protecting users as mentioned in paragraph 2.17(b)(ii);
- c) Principles that Ofcom proposes to apply when determining whether a provider has complied with each of the duties set out in paragraph 2.17; and
- d) Examples of circumstances in which Ofcom is likely to consider that a provider has not complied with each of those duties.²²

2.22 The Act states that the guidance may elaborate on the following principles governing the use of age assurance for the purpose of compliance with the duty set out in paragraph 2.17(a) –

- a) The principle that age verification and age estimation should be easy to use;
- b) The principle that age verification and age estimation should work effectively for all users, regardless of their characteristics or whether they are members of a certain group;
- c) The principle of interoperability between different kinds of age verification or age estimation.²³

²⁰ “Including, but not limited to, any such provision or rule of law concerning the processing of personal data,” Section 81(4)(b) of the Act.

²¹ Section 81(5) of the Act.

²² Section 82(2) of the Act.

²³ Section 82(3) of the Act.

- 2.23 The Act states that the guidance may refer to industry or technical standards for age verification or age estimation (where they exist).²⁴

Other regulatory regimes

- 2.24 The Act seeks to ensure that online services use appropriate systems and processes to protect their users from illegal content and activity online, and to protect children from online content and activity that may not be illegal but is harmful to them, with a higher standard of protection to be provided to children than to adults overall. There is other UK legislation and regulation closely related to the objectives of the Act, including data protection legislation.
- 2.25 The ICO is the UK's independent regulator, whose role is to uphold the information rights of individuals.²⁵ The UK data protection regime provides a framework within which organisations, including online services, should process personal data, including that it should be lawful, fair and transparent, and requires them to be accountable for their practices.
- 2.26 The ICO's [Children's code](#) (also known as the Age Appropriate Design code) sets out standards which internet society services (ISS) that are likely to be accessed by children must conform with. Standard three on age-appropriate application provides that organisations have to determine the age of their users to a degree of certainty which is appropriate to the data protection risks on their platform or apply the standards of the code to all users. The Commissioner's Opinion on Age Assurance ('the Opinion') outlines a risk-based approach for organisations to conform with the standards set out in the code. The ICO are currently updating the Opinion.²⁶
- 2.27 In November 2022, Ofcom and the ICO released a [joint statement](#) setting out how we intend to work effectively together to maximise the coherence of our respective regulatory remits and promote compliance with them. Ofcom and the ICO work closely alongside the Competition and Markets Authority (CMA), and the Financial Conduct Authority (FCA) through the [Digital Regulation Cooperation Forum](#) (DRCF) to support regulatory coordination in online services and cooperate on areas of mutual importance.

The video-sharing platform regime

- 2.28 Since 2020, Ofcom has had powers to regulate video-sharing platforms ('VSPs') established in the UK. In 2021, we published our [VSP guidance](#) which included definitions of age assurance, age verification and age estimation.
- 2.29 Under the Act, all pre-existing UK-established VSPs remain subject to existing regulation under Part 4B of the CA03 during a transition period, following which the VSP regime will be repealed.²⁷ Following repeal, we anticipate that all services in scope of the VSP regime will be in scope of the Act.

²⁴ Section 82(4) of the Act.

²⁵ ICO, [What we do](#). [accessed 23 November 2023].

²⁶ The Commissioner's Opinion on Age Assurance can be found at ICO, [Children's code guidance and resources](#). [accessed 20 November 2023].

²⁷ Ofcom, 2023, [Repeal of the VSP regime: what you need to know](#). [accessed 23 November 2023].

Impact assessment

- 2.30 The Act requires Ofcom to provide guidance to assist service providers in complying with their duties relating to regulated services under Part 5 of the Act. We have assessed the impact of the proposed guidance on regulated services, on users and more broadly.
- 2.31 Impact assessments provide a valuable way of evaluating the options for regulation and showing why the chosen option(s) was preferred. They form part of best practice policy making. This is reflected in section 7 of the CA03, which requires Ofcom 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. As a matter of policy, Ofcom is committed to carrying out impact assessments in a large majority of our policy decisions. Our [impact assessment guidance](#) sets out our general approach to how we assess and present the impact of our proposed decisions. As set out in section 7(5) of the CA03, Ofcom has discretion as to the substance and form of an impact assessment, and this will depend on the particular proposals being made. However, impact assessments which relate to proposals about the carrying out of Ofcom’s online safety functions under the Act must include an assessment of the likely impact of implementing the proposal on small and micro businesses.²⁸
- 2.32 We have concluded that, based on the information currently available, our proposed guidance on the age assurance duties is proportionate as it clarifies our expectations of what services should do to comply, while retaining appropriate flexibility for providers to do so in the most cost-effective way. In respect of the record-keeping duties, we consider that our proposed guidance is required for service providers to adequately fulfil their record-keeping duties and should not have material adverse impacts on stakeholders. We set out our impact assessment in full in Annex 1. This includes considerations of the costs, benefits and risks of the proposed guidance for different stakeholders, including service providers and adult users.

Equality legislation and Welsh language

- 2.33 Ofcom is also subject to duties under the Equality Act 2010 (‘the EA 2010’). This includes the public sector equality duty set out in section 149, which requires Ofcom, in the exercise of our functions, to have due regard to the need to:
- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the EA 2010;
 - b) advance equality of opportunity between persons who share a “relevant protected characteristic” and persons who do not share it; and
 - c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 2.34 The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.²⁹

²⁸ Section 7(4B) CA03, as inserted by section 93(4) of the Act.

²⁹ Section 4 EA 2010.

- 2.35 In addition, section 75 of the Northern Ireland Act 1998 requires us to promote good relations between people sharing specified characteristics, including people of different religious beliefs, political opinions or racial groups.
- 2.36 The Welsh language has official status in Wales. To give effect to this, certain public bodies, including Ofcom, are required to comply with Welsh language standards in relation to the use of Welsh.
- 2.37 Please see Annex 1 for our Equality Impact Assessment and Welsh Language Impact Assessment.

Ofcom's consultations on online safety regulation

- 2.38 This consultation and accompanying draft guidance are part of our suite of regulatory publications aimed towards the protection of children online. The rest, which we expect to publish in Spring 2024, will focus on the protection of children from harmful content in respect of regulated user-to-user and search services.
- 2.39 On 9 November 2023 we published our [Illegal Harms Consultation](#) which set out our proposals on the measures user-to-user and search services should take to assess and manage the risks of illegal harms, including child sexual abuse material and grooming. It also included our [proposed guidance on our enforcement powers](#), under Part 6 of the Act.

3. Guidance on scope

- 3.1 In this section, we set out an overview of the range of different types of services that make up the online pornography sector. We summarise our proposed guidance regarding how service providers can assess whether their particular service is in scope of the Part 5 guidance.
- 3.2 Ofcom’s draft guidance relating to scope can be found at Section 3 of Annex 2, and an overview of the relevant statutory definitions are set out in the Regulatory Framework at Section 2 above.

SECTION OVERVIEW

How does our guidance help service providers comply with their duties?

- We explain how service providers could identify if content published or displayed on their service is likely to be in scope of regulation under Part 5 of the Act.
- We set out an overview of the exemptions to the scope of Part 5 under the Act.
- We set out how service providers can assess whether their regulated service has links with the UK.

Overview of the online pornography sector

- 3.3 The online pornography sector consists of a range of different types of service which primarily provide or enable the dissemination of pornographic content. This content can be published or displayed in the form of videos and images or audio or provided in a live or interactive format. Pornographic services can include where pornographic content is made available by users of the service, by the provider of the service or both. In a [report into the Functionality of Online Pornography Services](#) commissioned by Ofcom, the British Board of Film Classification (BBFC) found that 74% of the top 100 online pornography services accessed by users in the UK allowed users to upload or stream content, whereas at least 30% of the services were publishing provider content.³⁰ Many services also offer some form of user-to-user interaction, for instance live chat and discussion forums.³¹
- 3.4 Paid content is common on online pornography services, but there are also many free-to-use services which rely on advertising to generate revenue.³² Online pornography services tend to fall within a range of types of service. Some are known as ‘tube sites’ and focus on

³⁰ This report explored the distinctions between ‘user-generated content’ and ‘provider’ pornography through looking at the nature and functionalities of the most accessed pornography services by people in the UK.

³¹ At least 76% of the top 100 services that the BBFC explored allowed some form of user-to-user interaction, BBFC, 2023, [Functionality of Online Pornography Services. A BBFC research report for Ofcom](#), p. 24. Subsequent references are to ‘Functionality of Online Pornography Services.’

³² The BBFC found that advertising was present on 68 of the top 100 services, suggesting these services are at least partially funded by advertising revenue. [Functionality of Online Pornography Services](#), p. 32.

uploaded pre-recorded images or videos, often by users of the service.³³ Others are known as ‘cam sites’ which specialise in providing livestreamed content to users.³⁴ These services often generate revenue by taking a commission from the fee that users pay to engage with the services’ performers.³⁵ A ‘voyeur service’ is similar to a cam site, and displays a 24-hour live video stream (often of a performer’s home), that allows users to watch people going about their day, including any engagement in sexual activity.³⁶ Services might also offer multiple functionalities, for instance, a tube service may also include a live cam site.³⁷

- 3.5 Some online services allow users to buy monthly subscriptions to content creators and these generate revenue through taking a commission from the subscription fee. Similarly, some ‘premium’ or subscription services require users to pay to subscribe to the service, before accessing any premium content.³⁸
- 3.6 Services known as ‘aggregators’ gather clips from external services by an automated tool. They generally embed or link to content hosted on other services, rather than publishing their own content or hosting content uploaded by users.³⁹
- 3.7 The Part 5 duties will not apply to every pornographic service. A service will only be in scope where the service provider publishes or displays regulated provider pornographic content on the service, as defined in the Act.⁴⁰ In particular, user-generated pornographic content is outside the scope of Part 5 of the Act but will be subject to the child safety duties in Part 3 of the Act. We explain how a service provider can determine whether it is subject to the Part 5 duties in the draft guidance.

Our approach to scope

- 3.8 Our draft guidance aims to assist service providers in determining whether their service is in scope of these duties, by providing a breakdown of the statutory definitions and conditions which would mean a provider would be in scope. We seek to provide helpful examples where relevant, in particular drawing on the findings of the BBFC report.
- 3.9 We recognise that regulated services will have different models in place for hosting pornographic content, for instance, through service providers publishing content from an in-house production company, or paid partnerships between content creators and the service. The BBFC report suggests that the commercial arrangements between creators or pornography production companies and services may have a bearing on whether content is regulated provider pornographic content, as defined in the Act.⁴¹ We therefore invite input from industry regarding any service types, or business models for hosting content which are

³³ The BBFC report defines tube services as free-to-access video-sharing platforms ‘which allow users to upload and share videos with the public.’ Of the top 100 services that the BBFC explored, it found 47% of these were tube services. *Functionality of Online Pornography Services*, p. 10.

³⁴ *Functionality of Online Pornography Services*, p. 10.

³⁵ *Functionality of Online Pornography Services*, p. 33.

³⁶ *Functionality of Online Pornography Services*, p. 11.

³⁷ *Functionality of Online Pornography Services*, p. 12.

³⁸ *Functionality of Online Pornography Services*, p. 10.

³⁹ *Functionality of Online Pornography Services*, p. 14.

⁴⁰ An overview of the statutory definition of ‘regulated provider pornographic content’ is set out at paragraphs 2.12-2.13 in this document.

⁴¹ *Functionality of Online Pornography Services*, p. 16.

not covered by the examples in the guidance, where further clarity about whether they are in scope of Part 5 may be helpful.

Pornographic content which falls outside Part 5

- 3.10 The guidance does not cover regulated user-generated content that is pornographic content.⁴² This is not in scope of Part 5 and will instead fall into scope of Part 3 of the Act.⁴³ This sets out the obligations for user-to-user services, including the children’s risk assessment and safety duties in sections 11 to 13 of the Act. In particular, Part 3 of the Act requires regulated user-to-user services that allow pornographic content on their service to use highly effective age assurance to prevent children from encountering it.⁴⁴
- 3.11 In addition, the guidance does not cover pornographic content which appears in the search results of a search engine or a combined service, which is also not in scope of Part 5 of the Act. Search services and combined services will be subject to obligations in Part 3 of the Act, including the children’s risk assessment and safety duties in sections 11 to 13 and 28 to 30 of the Act.
- 3.12 We will set out our approach to these Part 3 duties in Spring 2024 through our consultation on the protection of children from harmful content. This will include consulting on a draft Code of Practice setting out measures to comply with the children’s safety duties and draft guidance on conducting a children’s risk assessment.

Consultation question 1: Do you agree with our proposed guidance on scope? If not, please provide any information or evidence in support of your views, including descriptions of services or content where you consider it is unclear whether they fall within the scope of Part 5.

Consultation question 2: Do you have any comments on how our proposed guidance applies in respect of pornographic content created by generative-AI services within the scope of Part 5? Please provide any information or evidence in support of your views.

⁴² See section 55(3) and (4) of the Act for definition of ‘user-generated content.’ As defined in section 236 of the Act, pornographic content means “content of such a nature that it is reasonable to assume that it was produced solely or principally for the purpose of sexual arousal.”

⁴³ See section 61(2) of the Act.

⁴⁴ See section 12 of the Act. All regulated user-to-user services that are likely to be accessed by children must use highly effective age assurance to prevent children from encountering primary priority content that is harmful to children, including pornographic content, except where such content is prohibited on the service for all users.

4. Guidance on age assurance duties

- 4.1 The guidance on age assurance duties is intended to assist service providers to ensure that children are not normally able to encounter regulated provider pornographic content on their service, by implementing age assurance which is highly effective at correctly determining whether or not a particular user is a child.⁴⁵
- 4.2 Ofcom’s draft guidance on the age assurance duties can be found at Section 4 of the draft guidance in Annex 2.

GUIDANCE OVERVIEW

How does this guidance section help service providers comply with their duties?

We set out:

- kinds of age assurance that could be highly effective, and those that are not;
- criteria that service providers should fulfil when designing or implementing age assurance to ensure that it is highly effective;
- principles that service providers should consider to ensure that the age assurance process is easy to use and does not unduly prevent adults from accessing legal content;
- examples of circumstances where we are likely to consider that a service provider has not complied with the age assurance duties.

- 4.3 When referring to age assurance in the guidance, we use the following terms:
- **age assurance method**, which refers to the particular system or technology that underpins an age assurance process; and
 - **age assurance process**, which refers to the end-to-end process through which an age assurance method or combination of methods are implemented to determine whether or not a user is a child.

Our approach to setting out kinds of age assurance that are highly effective

- 4.4 The age assurance duties require service providers to ensure children are not normally able to encounter pornographic content by implementing age assurance that is highly effective at correctly determining whether or not a user is a child.

⁴⁵ Throughout this consultation document, we use the term ‘**highly effective**’ to refer to age assurance methods and processes that are “highly effective at correctly determining whether or not a particular user is a child.” We use the term ‘**age assurance**’ to refer to both age estimation and age verification, as defined in the Act.

- 4.5 This means providers must implement access controls on their regulated service so that users who have been identified as children by the age assurance process are then prevented from encountering pornographic content on the service (for example by denying access to any further sections of the service). We also explain that service providers should not host or permit content on their service that directs or encourages child users to circumvent the age assurance process or access controls, for example by providing information about or links to a virtual private network (VPN).
- 4.6 We set out a summary of our proposed approach to implementing highly effective age assurance in the table below.

Figure 4.1: Summary of our proposed approach to implementing highly effective age assurance.

Criteria that the age assurance should fulfil to be highly effective
<ul style="list-style-type: none"> • Technically accurate • Robust • Reliable • Fair
Examples of age assurance methods that could be highly effective:
<ul style="list-style-type: none"> ✓ Open banking ✓ Photo-ID matching ✓ Facial age estimation ✓ MNO age checks ✓ Credit cards ✓ Digital identity wallets ✓ Other methods that fulfil each of the criteria
Examples of age assurance methods that are not capable of being highly effective
<ul style="list-style-type: none"> × Self-declaration × Debit, Solo, or Electron cards × Other payment methods which do not require the user to be over 18 × General contractual restrictions on the use of the service by children
Principles to consider to ensure the age assurance process is easy to use
<ul style="list-style-type: none"> • Accessibility • Interoperability

Examples of kinds of age assurance

- 4.7 We recognise that there are a diverse range of age assurance methods a service provider may implement. Some may be developed in-house by the service provider; others may be delivered by third party providers. These methods operate in different ways and the technology that underpins them is likely to continue to improve with time. We also recognise that novel approaches to age assurance are likely to emerge in future. We have therefore proposed to set out in our guidance a non-exhaustive list of kinds of age assurance that could be highly effective at correctly determining whether or not a user is a child, as well as setting out some examples of methods that we consider are not capable of doing this. This is intended to ensure, as far as possible, that our guidance is future proof and technology neutral.
- 4.8 The non-exhaustive list of kinds of age assurance that could be highly effective includes well-established methods, such as photo-identification (photo-ID) matching, and more innovative age assurance methods, such as facial age estimation. We are aware that a wide range of age estimation methods exist. At present, we have only included facial age estimation in our guidance as we do not have evidence to suggest that other methods of age estimation are currently capable of being highly effective, are sufficiently mature technologies, or are being deployed at scale. We will continue to review this position over time as technologies evolve.
- 4.9 It is for each service provider to determine which kind(s) of age assurance are most appropriate to meet its duties under the Act. In recognition that there are likely a number of ways to implement an age assurance process that is highly effective, and that our guidance is applicable to a diverse range of services, our approach to the guidance affords service providers a degree of flexibility in how they comply.
- 4.10 We also note that all age assurance methods involve the processing of personal data, and as such, are subject to the requirements of the UK's data protection regime. Service providers are required to keep written records explaining how they have had regard to the importance of protecting users from a breach of privacy and data protection laws. We provide information about where to find guidance on how these requirements should be met in Section 5 of our draft guidance.

Consultation question 3: Do you have any comments on our proposed guidance in respect of the kinds of age assurance which could be highly effective? If you consider there are other kinds of age assurance which have not been listed that you consider could fulfil the proposed criteria, please identify these with any supporting information or evidence.

Criteria for ensuring age assurance is highly effective

- 4.11 While we have provided examples of age assurance methods that could be used by service providers to fulfil their duties, it is nonetheless the case that none of them are inherently highly effective at determining whether or not the user trying to access a service is a child. Instead, effectiveness depends upon how age assurance is implemented by the provider. For this reason, we are proposing in our guidance four criteria that providers should have regard to when implementing age assurance: technical accuracy, robustness, reliability, and fairness. We propose that providers should ensure that their age assurance process fulfils each of them. We recognise that there may be trade-offs in how well an age assurance method performs against each of the criteria, and it is for the service provider to determine

which trade-offs are appropriate to ensure that the overall process is highly effective at correctly determining whether or not a particular user is a child.

- 4.12 Currently, we do not have sufficient evidence as to the effectiveness and potential risks of different age assurance methods to recommend specific metrics for assessing whether or not any given age assurance method or process should be considered highly effective.
- 4.13 Furthermore, as the age assurance industry is still nascent, with improvements and new solutions likely to emerge over time, we consider it would not be appropriate at this time to set a base level or score which service providers must ensure their age assurance method or process meets for each of the criteria. We also want to allow space for important innovation in the safety tech sector. For these reasons, we are not proposing specific metrics that the age assurance process should achieve for each of the criteria. However, we welcome evidence from relevant stakeholders relating to the effectiveness of any of the kinds of age assurance included in the guidance, or any additional kinds of age assurance not mentioned.

Technical accuracy

- 4.14 The criterion of **technical accuracy** refers specifically to how an age assurance method can correctly determine the age of a user under test lab conditions. We have used the term ‘technical’ accuracy to distinguish this criterion from more holistic concepts of accuracy, which may consider a broader range of factors.
- 4.15 We propose a service provider should carry out the following practical steps to have regard to technical accuracy:
- a) ensure the method has been evaluated against appropriate metrics, and record these in the written record;
 - b) consider implementing a ‘challenge age’ approach where using an estimation method.
- 4.16 To inform the suggested list of metrics set out in the draft guidance, we have drawn on the Age Check Certification Scheme’s (ACCS) research on the [Measurement of Age Assurance technologies](#) which examined different metrics for the assessment of age assurance. The metrics could be derived from the service providers’ own internal testing, from testing that third-party providers have done, or from testing carried out by an independent third party. If relying on testing carried out by a third party, it is the service provider’s responsibility to check that the appropriate testing has occurred before implementing the relevant method.
- 4.17 We welcome stakeholders’ views on the suitability of metrics we have suggested for evaluating technical accuracy, and on whether there are additional metrics that may help service providers to assess the technical accuracy of their method(s).
- 4.18 The ‘challenge age’ approach originates from offline contexts, for instance the ‘Challenge 25’ strategy used when selling age restricted products, such as alcohol.⁴⁶ The use of this approach in the context of age assurance was explored by the ACCS in the joint research with the ICO and Ofcom highlighted above. This found that facial age estimation performing

⁴⁶ The ACCS standards describe challenge age as “the age at which a provider of age-restricted goods, content or services may cease to require a potential customer to prove their age by means of producing evidence of their age.” ACCS, 2020, [Technical Requirements for Age Estimation Technologies](#), p. 11.

at 'standard accuracy' across all age groups could perform at an 'enhanced accuracy' level when using a challenge age of 25.⁴⁷

Robustness

- 4.19 The criterion of **robustness** describes the degree to which an age assurance method can correctly determine the age of a user in unexpected or real-world conditions.
- 4.20 To fulfil this criterion, we propose that service providers should take the following steps:
- a) ensure the age assurance methods have undergone testing in multiple environments during development;
 - b) include details of the testing process in the written record; and
 - c) take steps to mitigate against methods of circumvention that are easily accessible to children and where it is reasonable to assume that they may use them.
- 4.21 Age assurance methods dependent on visual or audio input that have only been tested in test-lab conditions may fail to perform effectively in real world conditions. This is because test-lab conditions are not representative of the real-world conditions that users might experience in their typical environments. Different conditions may be due to intentional or unintentional scenarios.
- 4.22 Unintentional scenarios include unexpected variations in the input. Examples of circumstances that may affect the effectiveness of an age check in such scenarios include:
- a) poor / varied lighting conditions;
 - b) the use of low resolution cameras; or,
 - c) motion, for example from a tremor or the natural movement of a hand.
- 4.23 Intentional scenarios include attempts to circumvent the age assurance method. We recognise that it is unlikely there will be an age assurance method that will be impossible to circumvent.
- 4.24 We therefore expect service providers to focus on taking steps to ensure that their age assurance process can mitigate against simple forms of circumvention that are easily accessible to children and that are enabled by the internal functioning of the age assurance method.
- 4.25 The circumvention risks are different across the different age assurance methods considered, and we welcome suggestions of practical steps that service providers can take to mitigate these risks. There may be a concern, for example, that certain forms of age assurance could be particularly vulnerable to misuse if it is easy for a child to obtain access by using an adult's personal details or forms of identification or otherwise impersonating them. We are therefore seeking input on the evidence available on the circumvention risks for different age assurance methods, and what practical steps may be appropriate to manage these risks.

⁴⁷ ACCS, [Measurement of Age Assurance Technologies. Part 2 – Current and short-term capability of a range of Age Assurance measures](#). p. 26. 'Standard' and 'enhanced' accuracy refer to the ACCS' proposed indicators of confidence in international standards, p. 2. We note that the ACCS research relies on self-declared data reported by age assurance providers, and though the ACCS has independently validated this data, it notes that it should be viewed with some caution given that the data has not been independently certified.

Reliability

- 4.26 The criterion of **reliability** describes the degree to which the age output from an age assurance method is reproducible and derived from trustworthy evidence.
- 4.27 The practical steps that we propose a service provider should take to have regard to reliability are to:
- a) ensure that age assurance methods with a degree of variance (e.g., methods that rely on statistical modelling or artificial intelligence) have been suitably tested, and that ongoing performance is measured and monitored; and,
 - b) ensure that the evidence that the age assurance method uses is derived from a trustworthy source.
- 4.28 In the guidance, we have provided a non-exhaustive list of aspects of the relevant evidence that service providers might wish to consider in deciding whether the evidence is trustworthy. We provide examples of features that would indicate trustworthy evidence when using photo-ID matching, drawing from the [Government's Good Practice Guide](#) (GPG45) which provides guidance to businesses on how to prove and verify someone's identity.

Fairness

- 4.29 The criterion of **fairness** describes the extent to which an age assurance method avoids or minimises bias and discriminatory outcomes. Bias or discriminatory outcomes in this context could include where an age assurance method provides outputs with a lower degree of technical accuracy for users of certain ethnicities when relying on facial estimation. Fairness here refers to the internal operation of an age assurance method, as opposed to external factors, such as a lack of access to a particular form of identification required by the age assurance method. The additional principle of accessibility set out in the guidance covers these external factors.
- 4.30 Ensuring that the age assurance process is fair will help to ensure that it does not prevent adults from accessing legal content. We also consider that this criterion is important to assist service providers to comply with the duties under the EA 2010, which prohibits discrimination against persons sharing protected characteristics. The relevant characteristics in this instance include race, age, disability, sex, and gender assignment.⁴⁸
- 4.31 To ensure fairness, we propose that service providers should ensure that the age assurance method used has been tested on diverse datasets. This practical step applies to age assurance methods which rely on machine learning or statistical modelling specifically. This is because bias in this context may occur when the datasets used to train an algorithm are not sufficiently diverse. We welcome input from stakeholders on any additional steps a service provider could take to consider fairness regarding other age assurance methods in their response to consultation question 4 below.

Consultation question 4: Do you agree that service providers should use the proposed criteria to determine whether the age assurance they implement is highly effective at correctly determining whether or not a user is a child? Please provide any information or evidence in support of your views.

⁴⁸ Section 4 EA 2010.

Consultation question 5: Do you have any information or evidence on the extent of circumvention risk affecting different age assurance methods and/or on any steps that providers might take to manage different circumvention risks for different methods?

We also propose principles to consider when designing or implementing age assurance to aid ease of use

- 4.32 Alongside the criteria, we propose that service providers should consider the principles of accessibility and interoperability.
- 4.33 Above all, service providers must ensure that the age assurance process is highly effective at correctly determining whether a particular user is a child and that children cannot normally encounter pornographic content. A service provider should then consider how to ensure that the process is easy to use and accessible in practice. Failing to do so might unduly prevent adult users from accessing legal content.

Accessibility

- 4.34 The Act states that Ofcom’s guidance may elaborate on the following principles governing the use of age assurance for the purposes of compliance with the Part 5 duties:
- a) the principle that age assurance should be easy to use; and
 - b) the principle that age assurance should work effectively for all.⁴⁹
- 4.35 We propose to elaborate on these principles in the guidance because we consider that they are important to ensure that, as far as possible, adults are not unduly excluded from accessing legal content. We refer to these principles collectively using the term **accessibility**.
- 4.36 In addition, ensuring that the age assurance process is accessible will help to ensure in particular that adult users are not excluded based on them holding certain characteristics or being part of a certain group. This will assist regulated services in complying with the duties under the EA 2010, as set out above under the criterion of fairness.
- 4.37 The practical steps that we propose service providers could take to have regard to accessibility include but are not limited to:
- a) considering the potential impact that the chosen age assurance method(s) might have on people sharing protected characteristics;
 - b) considering offering a variety of age assurance methods; and,
 - c) designing the user journey through the age assurance process to be accessible for a wide range of abilities.

Interoperability

- 4.38 The Act also states that Ofcom’s guidance may elaborate on the principles of interoperability between different kinds of age assurance for the purposes of compliance with the Part 5 duties.⁵⁰

⁴⁹ Section 82(3) of the Act.

⁵⁰ Section 82(3)(c) of the Act.

- 4.39 **Interoperability** describes the ability for technological systems to communicate with each other using common and standardised formats. It relies on consistent technological approaches being adopted across different systems. Standards, technical frameworks and other specifications are important to achieving interoperability.
- 4.40 In the context of age assurance, interoperability may involve re-using the result of an age check across multiple services allowing different providers of age assurance methods to share this information in line with data privacy laws.
- 4.41 We have provided a non-exhaustive list of current efforts to enable interoperable age assurance processes. We also propose that service providers can have regard to this principle by staying up to date with developments in this space, and implementing such solutions where they exist and are appropriate for their service.
- 4.42 We do not propose to elaborate further in this iteration of the guidance, as at present we are not aware of any operational technical infrastructure, standards, or certification schemes that currently enable interoperability between different age assurance providers or are likely to emerge in the near future. We will keep this area under review for any future iterations of the guidance.

Consultation question 6: Do you agree with our proposed guidance that providers should consider accessibility and interoperability when implementing age assurance? Please provide any information or evidence in support of your views.

We provide an illustrative case study

- 4.43 In the guidance, we give an illustrative case study which provides an example of how the proposed criteria and principles might apply to an age assurance process.
- 4.44 In designing the case study, we have aimed to strike a balance between providing additional clarity to service providers on how to use the principles and criteria, while remaining technology neutral. We have therefore opted to refer to a generic age estimation method and age verification method in the case study, rather than a specific age assurance method or process.
- 4.45 Similarly, we have set out the example user journey at a high level. This is to reflect that the case study is **not** intended to be a definitive guide to implementing age assurance, as it is for the service provider to determine which is the most appropriate method or process for its service. We welcome input on other ways in which a provider might apply the proposed criteria and principles to an age assurance process in the form of a worked example.
- 4.46 The case study does illustrate, however, how a service provider could assess each of the criteria when choosing a method, and how it might balance trade-offs to ensure that the overall process fulfils each of the criteria. In the example, the limited technical accuracy of the first method for users with an age close to 18 is rectified by adding a secondary method to the age assurance process. The case study then illustrates how a provider can consider accessibility and interoperability, once it has determined that its chosen age assurance method is highly effective.

Consultation question 7: Do you have comments on the illustrative case study we have set out in the guidance? Do you have any supporting information or evidence relating to

additional examples of how the criteria and principles might apply to different age assurance processes?

We do not refer to standards for age assurance currently under development

- 4.47 The Act sets out that Ofcom may refer to industry or technical standards for age assurance, where these exist.⁵¹
- 4.48 While we refer to certain technical standards throughout the guidance, we have not included reference to the technical standards for age assurance that are currently in development.⁵² This is because these have not yet been finalised and are subject to change. We will continue to follow the progress of technical standards for age assurance and, if relevant, update our position in due course.

Setting out examples of non-compliance

Examples of methods which are not appropriate for the purpose of compliance with Part 5

- 4.49 In Section 4 of the draft guidance, we provide examples of methods which would lead us to consider it likely that a service provider, if relying solely on these methods, has not complied with the age assurance duties.
- 4.50 The Act sets out that self-declaration of age is not to be regarded as age verification or age estimation and is therefore not a potential approach for compliance with Part 5 duties.⁵³
- 4.51 Accordingly, measures falling short of self-declaration, such as where a service has used only general contractual restrictions, e.g., general disclaimers asserting that all users should be 18 years of age or over, or content warnings that specific content is for adults only, would not be highly effective at determining whether a user is a child in the absence of other age assurance methods.

Additional examples of non-compliance with the age assurance duties

- 4.52 The examples of non-compliance with the age assurance duties that we set out in the guidance are relatively high-level as they represent clear breaches of the duties. To provide greater clarity on the example of non-compliance relating to circumvention, we have provided two supporting examples where we may consider that a breach has occurred to illustrate the types of circumvention techniques which it is reasonable to expect children may use that are specific to individual age assurance methods. We also provide an example

⁵¹ Section 82(4) of the Act.

⁵² See, for example, ISO, [ISO/IEC AWI 27566-1](#); [ISO/IEC AWI 27566-2](#) and [ISO/IEC AWI 27566-3](#). [accessed 20 November 2023].

⁵³ Section 230(4) of the Act.

of potential non-compliance relating to attempts at circumvention of the age assurance process or the access control process as a whole.

- 4.53 The first specific example is where the service provider has implemented a facial age estimation method which only requires a still image. Such functionality without further authentication is at risk of 'print attacks', i.e. when a printed photograph or image of a user's face is presented to the camera to attempt to match the image on the photo ID. Liveness detection, which confirms the authenticity of a scanned face by distinguishing it from static images or videos through the analysis of subtle facial movements (e.g., blinking), is one way that a service provider could take steps to mitigate against this risk.
- 4.54 The second is where the service provider has implemented an age assurance process which allows children to easily verify their age using fake or manipulated ID documents. We chose to include this example given that there is a widespread availability of fake forms of identification.⁵⁴ These include, but are not limited to, basic forms of falsified documents (e.g., where the age could be altered using a pen or pencil on an existing ID at one end) or more advanced forms involving the misuse of genuine documents. The former is easily accessible to children, and it is reasonable to expect that they may use it. Therefore, where a regulated service uses a photo-ID matching method we would expect it to take steps to mitigate against the most basic levels of faked documentation. We suggest that service providers using this method could ensure it meets at least level 2 checks from GPG45.
- 4.55 We recognise that there may be other forms of circumvention of the age assurance process or access control process as a whole, and we expect service providers to take steps to mitigate against, and refrain from promoting, such forms which are easily accessible to children and where it is reasonable to assume they will use them. An example of potential non-compliance in this instance would be where the service provider explicitly and deliberately encourages child users to circumvent its age assurance process and/or access controls for UK users, for instance through providing a link and recommending the use of a VPN to allow them to access regulated provider pornographic content.

⁵⁴ Interpol, [Identity and travel document fraud](#). [accessed 23 November 2023].

5. Guidance on the record-keeping duties

- 5.1 In this section, we set out our proposed guidance relating to the record-keeping duties under Part 5 of the Act. We also summarise our proposed guidance relating to examples of circumstances in which we are likely to consider that a service provider has not complied with the age assurance duties.
- 5.2 Ofcom’s draft guidance on complying with the record-keeping duties can be found at Section 5 of the draft guidance in Annex 2.

GUIDANCE OVERVIEW

How does this guidance section help service providers comply with their duties?

- We set out steps that service providers should take when making and keeping a written record and summarising it in a publicly available statement.
- We signpost to ICO guidance, including the Opinion, to help service providers understand how they can have regard to the importance of protecting user privacy. We provide examples of how service providers can record that they have done so.
- We set out examples of circumstances where we are likely to consider that a service provider has not complied with the record-keeping duties.

Our proposed guidance for keeping a written record

- 5.3 In the guidance, we have set out general steps that service providers can take to ensure they comply with their duty to make and keep a written record. This guidance follows the approach we are proposing to take in our draft [Guidance on Record-Keeping and Review](#) as part of our [Illegal Harms Consultation](#).

Written record duty related to kinds of age assurance

- 5.4 We have set out information that service providers should include about their age assurance process. This includes details of any third-party supplier contracted to provide an age assurance process and what kind of age assurance the process uses, whether made up of one or multiple age assurance methods.
- 5.5 We have proposed that service providers should include in their written record how they have had regard to each of the criteria and principles set out in Section 4 of the draft guidance and why they consider that the age assurance process they are using fulfils each of them. We consider that this will help service providers to keep track of how they are complying with their relevant duties and ensure that the age assurance processes they have implemented are fit for purpose.

Written record duty related to privacy

- 5.6 When deciding on the kinds of age assurance and how they should be used, service providers are required under the record-keeping duties to keep a written record of how they have had regard to the importance of protecting UK users from a breach of privacy laws, including laws concerning the processing of personal data, relevant to the use or operation of the service. Their obligations related to the privacy of their users under the UK data protection regime are relevant in this context, including the requirements to use personal data fairly, lawfully and transparently, which is overseen and enforced by the ICO. We recommend that service providers should consult ICO guidance to understand the data protection legislation requirements, and to inform the contents of their written record. In particular, service providers should consult the Opinion, which sets out how services can comply with data protection law in the context of age assurance.⁵⁵
- 5.7 In addition to complying with necessary legislation, protecting user privacy is also important to users. According to [Ofcom research](#), data protection (52%) and sharing personal information (42%) are the biggest concerns users hold about proving their age to access pornographic content.⁵⁶ In particular, users fear the potential consequences of being associated with having seen pornographic content if their information were to be leaked. This suggests users place significant importance on knowing the information they share is adequately safeguarded.
- 5.8 In our draft guidance, we provide examples of how service providers can record that they have had regard to user privacy, to assist compliance with their record-keeping duties under the Act.
- 5.9 We have consulted the ICO during the development of our proposed guidance. We will continue to work closely with the ICO on the privacy aspects of the Part 5 duties once they come into force. Where we have concerns that a provider, based on its written record, has not complied with its obligations under data protection law, we may refer the matter to the ICO.

Our proposed guidance for summarising the written record in a publicly available statement

- 5.10 Service providers are required to summarise the written record in a publicly available statement. This should summarise compliance with the duty to ensure that children are not normally able to encounter regulated provider pornographic content, including details about which kinds of age assurance methods are used and how.
- 5.11 As set out in Section 5 of the draft guidance, we have proposed that service providers should clearly explain to users how the age assurance process works and why it is necessary, and that this information could be included in the publicly available statement.
- 5.12 The Act defines ‘publicly available’ as “available to members of the public in the UK.”⁵⁷ We have therefore proposed that service providers should make the statement available to the general UK public in an easy to find area of the website, for example, in the section at the

⁵⁵ The Opinion can be found at ICO, [Children’s code guidance and resources](#). [accessed 23 November 2023].

⁵⁶ Ofcom and Yonder Consulting, 2022, [Adult Users’ Attitudes to Age Verification on Adult Sites](#), p. 10.

⁵⁷ See section 236 of the Act.

top (header) or bottom (footer) of the home page, where users can typically find site contact details and navigation links, or on the service's landing page. We are also proposing that service providers should provide the summary alongside any explanatory text on how the age assurance works when a user begins the age assurance process, so that they can read this before completing the age assurance check.

Setting out examples of non-compliance

- 5.13 Our proposed examples of circumstances where a service provider has not complied with the record-keeping duties focus on the core elements of the legal requirements, rather than suggested good practice. Examples include where it has not updated its written record to ensure it remains current.

Consultation question 8: Do you agree with our proposed guidance on the record-keeping duties? Please provide any information or evidence in support of your views.

6. Assessing compliance with age assurance and record-keeping duties

- 6.1 In this section we set out a summary of the proposed guidance relating to assessing compliance with the Part 5 duties.
- 6.2 Ofcom’s draft guidance on how we will assess compliance with Part 5 duties can be found in Section 6 of the draft guidance document. We also set out examples of circumstances in which we are likely to consider that a service provider has not complied with the age-assurance duties in Section 4 and record-keeping duties in Section 5 of the draft guidance.

GUIDANCE OVERVIEW

How does this guidance section help service providers comply with their duties?

- We set out an overview of our general approach to enforcement under the Act, including the principles that we will consider when determining whether a service provider has complied with its duties.
- We explain where service providers can find further information on Ofcom’s enforcement processes under the Act.

Our approach to enforcement

- 6.3 Once we have considered all responses to this consultation, we will issue a statement setting out the final guidance. We expect this to be in 2025, after which Government will bring the Part 5 duties into force.
- 6.4 This guidance applies to service providers that display or publish regulated provider pornographic content under Part 5 of the Act.⁵⁸ As set out in Section 3, other pornographic content may be in scope of Part 3 of the Act, and for user-to-user services, service providers will also be required to implement age assurance that is highly effective at preventing children from encountering this content.⁵⁹
- 6.5 In line with our proposals in relation to enforcement under the Act more generally, we acknowledge that it may take time for service providers to bring themselves fully into compliance after the Part 5 duties come into effect.⁶⁰ In particular, service providers may need time to understand the new regime, assess the risks their services pose to users and make the necessary adaptations to their systems and processes. This is likely to particularly be the case for smaller services, those new to regulation, and services within scope of both Part 5 and Part 3 of the Act.

⁵⁸ See paragraphs 2.11-2.16 above for further detail on who the guidance applies to.

⁵⁹ Section 12(3)(a) of the Act.

⁶⁰ Ofcom, 2023, [Online Safety Enforcement Guidance](#), paragraph 29.6.

- 6.6 We will take these challenges into account when considering whether and when it is appropriate to take enforcement action against non-compliance with the Part 5 duties and will seek to align our approach to enforcement across both Part 5 and Part 3 duties where appropriate. Our focus in the early regulatory period will be on working with service providers to help them understand their obligations and any steps that are needed for them to come into compliance. This will be balanced against the need to take swift action against serious breaches, and the importance of protecting children from harm.

Ofcom's draft guidance on assessing compliance

Principles for assessing compliance

- 6.7 Ofcom's general approach to enforcement across our remit is guided by our regulatory principles.⁶¹ When determining whether a service provider has complied with its duties under Part 5, Ofcom will have regard to these principles including transparency, accountability, proportionality, consistency, and ensuring that regulatory action is targeted only at cases where it is needed.⁶²
- 6.8 Our draft [Online Safety Enforcement Guidance](#) ('OS Enforcement Guidance') sets out the priority framework that we will use to help us decide whether to take formal enforcement action. The protection of children forms an important part of that framework.
- 6.9 Our general duties under the CA03 now require us to have regard to, among other matters, to the need for a higher level of protection for children than for adults.⁶³ Section 151(3) of the Act also states that our enforcement guidance must include an explanation of how we will take account of the impact (or possible impact) of non-compliance on children. As we set out in the draft OS Enforcement Guidance, we are proposing to include the harm, or risk of harm, to children in our prioritisation framework when considering:
- a) the risk of harm or seriousness of the conduct; and
 - b) the strategic significance of addressing the alleged contravention.⁶⁴
- 6.10 Including the risk of harm to children in two parts of Ofcom's prioritisation framework reflects the importance of this factor in considering whether or not to take enforcement action.
- 6.11 When deciding whether to open an investigation to assess compliance with the duties on regulated services or to take other enforcement action, we will have regard to our regulatory principles and our prioritisation criteria, which – along with the considerations referred to in paragraph 6.9 above – includes an assessment of resource implications and risks of taking enforcement action.

⁶¹ Ofcom, 'Regulatory Principles' in [Policies and guidelines](#). [accessed 23 November 2023].

⁶² Section 3(3) CA03.

⁶³ Section 3(4A)(b) CA03.

⁶⁴ Ofcom, 2023, [OS Enforcement Guidance](#), p. 17.

Examples of circumstances in which Ofcom is likely to consider a provider has not complied

- 6.12 Any compliance decision that we take will be based on the particular facts and evidence of the case in question. However, there are certain circumstances in which we would be likely to consider that a service provider has not complied with its duties. In the draft guidance, we have proposed examples of non-compliance for each duty, taking into account the core elements of the duties as well as drawing on our existing experience of VSP regulation. These can be found in Section 4 and Section 5 of the draft guidance.
- 6.13 We may identify further examples of circumstances in which we are likely to consider a service provider has not complied, in particular as a result of findings of compliance breaches that we make in future. The examples proposed are therefore non-exhaustive and may be updated in future iterations of this guidance.

Consultation question 9: Do you have any comments on our proposed approach to assessing compliance with the duties on service providers who publish or display pornographic content, including on the proposed examples of non-compliance? Please provide any information or evidence in support of your views.

A1. Impact Assessment

- A1.1 In this section, we set out our assessment of the potential impacts of our draft guidance for service providers, including those providers which are small or micro businesses. As Ofcom is required by legislation to provide this guidance, our assessment focuses on areas where we have exercised our discretion regarding how a service provider should comply with its duties.
- A1.2 We also set out our assessment of the impact of our draft guidance on the Welsh Language, and on persons sharing protected characteristics under the EA 2010.

Assessing the impact of our draft guidance

- A1.3 Impact assessments provide a valuable way of assessing the options for regulation and showing why the chosen option(s) was preferred. They form part of best practice policy making. This is reflected in section 7 of the CA03, which requires Ofcom 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.
- A1.4 As a matter of policy, Ofcom is committed to carrying out impact assessments in the large majority of our policy decisions. Our [impact assessment guidance](#) sets out our general approach to how we assess and present the impact of our proposed decisions. As set out in section 7(5) of the CA03, Ofcom has discretion as to the substance and form of an impact assessment, and this will depend on the particular proposals being made. However, impact assessments which relate to proposals about the carrying out of Ofcom's online safety functions under the Act must include an assessment of the likely impact of implementing the proposal on small and micro businesses.⁶⁵
- A1.5 The Act requires Ofcom to provide guidance for service providers to help them understand the statutory requirements under Part 5 of the Act.⁶⁶ The objective of the guidance is to help service providers comply with their duties under Part 5. To achieve this, we have set out our expectations on what service providers 'should do' and 'may wish to consider' to ensure that children are not normally able to encounter regulated provider pornographic content in relation to regulated services. Our secondary policy objective is to ensure through the guidance that providers' use of age assurance does not unduly prevent adult users from accessing legal pornographic content. In designing our proposed guidance, we have considered what will be effective in achieving these objectives in the least costly way.
- A1.6 We have not considered the impacts of the duties which service providers are under statutory obligation to comply with. We also have not set out an impact assessment where we have made suggestions of what service providers "may wish to consider" when complying with the duties, as these are not prescriptive requirements.

⁶⁵ Section 7(4B) of the CA03, as inserted by section 93(4) of the Act.

⁶⁶ At paragraphs 2.20-2.23, we set out the specific elements that the Act requires Ofcom to include in this guidance.

- A1.7 In some areas, we have exercised our discretion by setting out specific expectations on what service providers “should do” to fulfil their obligations. We propose that service providers should:
- a) ensure that the age assurance process implemented fulfils the criteria of technical accuracy, robustness, reliability and fairness;
 - b) implement an effective access control process to prevent users who have been identified as children through the age assurance process from encountering pornographic content on the service;
 - c) consider the principles of accessibility and interoperability when implementing age assurance;
 - d) ensure the written record is durable, accessible, and up to date; and,
 - e) familiarise themselves with the data protection legislation, and how to apply it to their age assurance method(s), by consulting guidance from the ICO.
- A1.8 We have summarised our assessment of the impact of this proposed guidance on various stakeholder groups below.

Impact on stakeholders of our proposed guidance

Impact on regulated service providers

- A1.9 The following table sets out our view on why our proposed guidance above, and where we have exercised discretion, is justified in relation to the requirements of the Act. We articulate the potential benefits which may arise from this proposed guidance, as well as the potential costs related to areas where we have exercised our discretion in the proposed guidance. We do not consider the costs resulting from the statutory requirements because of the Act here.

Figure A1.1: Summary of our assessment of the impact of our proposed guidance on regulated service providers.

Proposed guidance	Justification and potential benefits	Potential direct costs
<p>Service providers should ensure the age assurance process implemented fulfils the criteria of technical accuracy, robustness, reliability and fairness.</p>	<p>For age assurance to be highly effective at correctly determining whether a user is a child and to achieve the objective that children are not normally able to encounter regulated provider pornographic content on the service, it needs to fulfil each of the criteria. Further detail on the rationale for the proposed guidance is in paragraphs 4.11-4.13.</p> <p>These are the minimum expectations required to enable Ofcom to fulfil its duty to provide guidance on compliance with the Part 5 duties, and for service providers to fulfil their obligations under the Act.</p> <p>Our approach provides service providers with the flexibility to determine how they implement age assurance, rather than requiring them to implement a specific kind of age assurance, or achieve specific accuracy metrics results, for example. This flexibility should benefit all regulated services as it allows them to future-proof their systems and respond to their user base and technical developments over time in the most cost-effective way for them.</p>	<p>There may be staff costs associated with understanding and considering the criteria when implementing age assurance, for instance, the resource required to assess potential age assurance methods against the criteria.</p> <p>There may also be additional staff and development costs associated with reviewing and updating age assurance methods over time to ensure the age assurance process fulfils each of the criteria as understanding of effectiveness evolves.</p> <p>Service providers may incur the above costs as part of internal staff costs, or due to outsourcing to external experts or suppliers.</p>

Proposed guidance	Justification and potential benefits	Potential direct costs
<p>Service providers should implement effective access controls on their service to prevent users who have been identified as children through the age assurance process from encountering pornographic content on the service.</p>	<p>To ensure children are not normally able to encounter regulated provider pornographic content on a service, there needs to be an effective access control measure in place so that users who have been identified as children through the age assurance process are prevented from encountering such content.</p> <p>These are therefore the minimum expectations required for service providers to fulfil their obligations under the Act.</p> <p>We are mindful there is a risk that the benefits from preventing children from encountering this content could be reduced due to opportunities to circumvent the access controls or age assurance process. For this reason, we consider there is material benefit in recommending that providers should not host or permit content that directs or encourages child users to circumvent.</p>	<p>As part of the effective access control process, service providers should not host or permit content that directs or encourages child users to circumvent the age assurance or access control method.</p> <p>There may be costs arising from efforts to identify and prevent this content, although the scale of this will likely be limited where there are limited content/functionalities available to users prior to the age check.</p>

Proposed guidance	Justification and potential benefits	Potential direct costs
<p>Service providers should consider the principles of accessibility and interoperability when implementing age assurance.</p>	<p>These principles are important to achieve the secondary policy objective to ensure that service providers' use of age assurance does not unduly prevent adult users from accessing legal pornographic content. Further detail on the rationale for the proposed guidance is in paragraphs 4.35-4.36 and 4.39-4.41.</p> <p>As above, the principles-based approach allows service providers to future-proof their systems and respond to their user base and technical developments over time in the most cost-effective way for them. The practical steps set out to fulfil the principles are recommendations, as opposed to requirements.</p>	<p>There may be staff costs associated with understanding and considering the principles when implementing age assurance. For instance, drafting explanatory text as to how the age assurance check works or assessing the impact of the age assurance process on users with different characteristics.</p> <p>Service providers may incur the above costs as part of internal staff costs, or due to outsourcing to external experts or suppliers.</p>
<p>Service providers should ensure the written record is durable, accessible, and up to date.</p>	<p>These are the minimum expectations required for service providers to fulfill their record-keeping duties. For instance, to meet the duty to 'keep' a written record, we have proposed that a service provider should retain written records in accordance with their record retention policies, or for a minimum of five years, whichever is the longer.</p>	<p>There may be some costs arising from our expectations around record-keeping. For instance, there may be a minor systems infrastructure cost associated with retaining the written record for a minimum of five years, if the service provider's current record retention policies are shorter than this.</p>
<p>Service providers should familiarise themselves with the data protection legislation, and how to apply it to their age assurance method(s), by consulting ICO guidance.</p>	<p>These are the minimum expectations required for service providers to understand and fulfil the duty to keep a written record of how they have had regard to the importance of protecting UK users from a breach of any statutory provision or rule of law concerning privacy.</p> <p>These expectations are also likely to be required to ensure compliance with data protection law.</p>	<p>There may be some staff costs associated with efforts to consult and understand the relevant ICO guidance.</p>

Impact on service providers who are small and micro businesses

A1.10 The potential direct costs set out above will depend on how a service provider approaches compliance with its online safety duties and our guidance. In general, some costs could be somewhat lower for smaller or less complex services. However, the overall direct costs relating to our proposed guidance are likely to be a greater proportion of the total costs/revenues for smaller firms. Regardless, we have explained why our expectations of what services ‘should do’ is the minimum required for them to fulfil their duties. Moreover, our guidance gives service providers a degree of flexibility in how they choose to comply, which will allow them to future-proof their systems and respond to their user base and technical developments over time in the most cost-effective way for them. We therefore conclude that the impact of our guidance on small and micro businesses is proportionate.

Impact on adult users

A1.11 If age assurance is not fair or accessible, it may unduly exclude adults from accessing legal content. Our specific proposed guidance may improve the user experience of age assurance and reduce the risk that adult users are unable to access legal content. Absent our proposed guidance, some users could be unable to access this content because, for example, the age assurance process might be too difficult to use resulting in some users abandoning the process. Alternatively, some users might not be able to meet the requirements, for instance if they lack the required identification documents. Our approach should minimise the number of legitimate users being wrongly excluded from accessing these services and this content.⁶⁷

A1.12 However, we note that service providers are already likely to aim to maximise revenues from subscriptions and advertising, and so they should already have incentives to minimise the loss of users because of the requirement to implement age assurance, absent our proposed guidance.

A1.13 We do not consider that our proposed guidance will materially increase the costs to adult users.

Other impacts

A1.14 To the extent our proposed guidance impacts on user numbers, we recognise there could be an impact on the revenues of service providers (e.g., through reduced advertising revenue and/or subscriptions). However, we consider this risk is low, since (as discussed above) our proposed guidance is intended to help ensure that adult users are not unduly prevented from accessing legal content, and we would expect service providers to have commercial incentives to introduce age assurance in a way which seeks to help prevent this. In addition, where revenue impacts result from excluding child users, this is a direct result of the policy intention, rather than a negative impact. We do not consider that our proposed guidance will unduly affect competition in the provision of pornographic services because it applies to all services and because, as set out above, our assessment is that the impact on smaller businesses of the aspects of our guidance (where we have exercised our discretion) is proportionate.

A1.15 Giving these service providers flexibility over how to implement age assurance allows for service providers and third-party age assurance providers to develop alternative innovative age assurance methods. This could increase competition among age assurance providers,

⁶⁷ We discuss fairness and accessibility in more detail in paragraphs 4.29-4.31 and 4.34-4.37.

improving quality and/or putting downward pressure on prices and the cost of age assurance, which could also improve the experience of users of these services.

Provisional conclusions on the impact of our proposed guidance

- A1.16 The objective of the guidance is to help service providers comply with their duties under Part 5. To achieve this, we have set out our expectations for how service providers can ensure that children are not normally able to encounter regulated provider pornographic content in relation to regulated services, and adequately fulfil their record-keeping duties. Through the guidance, we also clarify how providers can ensure that the use of age assurance does not unduly prevent adult users from accessing legal pornographic content.
- A1.17 In developing our proposed guidance, we have exercised a degree of discretion in setting out specific expectations on what service providers ‘should do’ to fulfil their obligations. We have limited our use of discretion to the extent we considered necessary to clarify to services how they can comply with their duties. We also consider that these expectations are proportionate. They are the minimum steps we expect services should take to comply with their duties. Moreover, the principles-based approach gives providers flexibility to determine which age assurance method(s) best suit their needs and to pursue cost-effective approaches which can be adjusted over time. This should benefit all regulated services as it allows them to future-proof their systems and processes, and to respond to their user base and technical developments over time in the most cost-effective way for them.

Ex-post evaluation of the impact of our guidance

- A1.18 We are required by the Act to produce a report on regulated services’ use of age assurance for the purpose of compliance with their duties set out in the Act, and how effective the use of age assurance has been for that purpose.⁶⁸ The report must, in particular, consider whether effective use of age assurance has been prevented or hindered by the costs to providers of using it.
- A1.19 Our evaluation workstream focuses on selecting and collecting quantitative and qualitative information to help assess the effectiveness of our guidance. The findings from this workstream will feed into the age assurance report. The evaluation work will consider how effective our guidance is at helping platforms comply with their duty to ensure that children are not normally able to encounter pornographic content, but also the extent of any unintended impacts from our guidance.

Consultation question 10: Do you have any comments on the impact assessment set out in Annex 1? Please provide any information or evidence in support of your views.

Welsh Language Impact Assessment

- A1.20 The Welsh Language (Wales) Measure 2011 established a legal framework to impose duties on certain organisations to comply with certain Standards in relation to the Welsh language. The Welsh Language Commissioner issued a [compliance notice](#) to Ofcom which lists the

⁶⁸ Section 157 of the Act.

Standards which Ofcom must meet when carrying out its work to ensure that it treats Welsh no less favourably than English. These include policy-making Standards which are engaged when we are formulating policy proposals which are relevant to Wales, including those which are not targeted at Wales specifically but are of interest across the UK generally.

The relevant policy-making standards

A1.21 When formulating a new policy, or reviewing or revising an existing policy, we must consider:

- a) What effects, if any (whether positive or negative) the policy decision would have on –
 - i) opportunities for persons to use the Welsh language, and
 - ii) treating the Welsh language no less favourably than the English language;⁶⁹
- b) How the policy could be formulated (or how an existing policy could be changed) so that the policy decision would have positive effects, or increased positive effects on A1.21(a)(i)-(ii);⁷⁰ and,
- c) How the policy could be formulated (or how an existing policy could be changed) so that the policy decision would not have adverse effects, or so that it would have decreased adverse effects, on A1.21(a)(i)-(ii).⁷¹

A1.22 When publishing a consultation document which relates to a policy decision, the document must consider, and seek views on:

- a) the effects (whether positive or adverse) that the policy decision under consideration would have on A1.21(a)(i)-(ii);⁷²
- b) how the policy under consideration could be formulated or revised so that it would have positive effects, or increased positive effects on A1.21(a)(i)-(ii);⁷³ and,
- c) how the policy under consideration could be formulated or revised so that it would not have adverse effects, or so that it would have decreased adverse effects, on A1.21(a)(i)-(ii).⁷⁴

A1.23 When commissioning or undertaking research that is intended to assist in making a policy decision, you must ensure that the research considers:

- a) what effects, if any (and whether positive or adverse), the policy decision under consideration would have on A1.21(a)(i)-(ii);⁷⁵
- b) how the policy decision under consideration could be made so that it would have positive effects, or so that it would have increased positive effects on A1.21(a)(i)-(ii);⁷⁶ and,
- c) how the policy decision under consideration could be made so that it would not have adverse effects, or so that it would have decreased adverse effects on A1.21(a)(i)-(ii).⁷⁷

⁶⁹ Standard 84 of the Welsh Language Commissioner, 2016, [Compliance Notice to the Office of Communications](#). Subsequent references to this document are to the ‘Welsh Language Standards.’

⁷⁰ Standard 85 of the Welsh Language Standards.

⁷¹ Standard 86 of the Welsh Language Standards.

⁷² Standard 87 of the Welsh Language Standards.

⁷³ Standard 88 of the Welsh Language Standards.

⁷⁴ Standard 89 of the Welsh Language Standards.

⁷⁵ Standard 91 of the Welsh Language Standards.

⁷⁶ Standard 92 of the Welsh Language Standards.

⁷⁷ Standard 93 of the Welsh Language Standards.

Impact of our proposed guidance on the Welsh Language

A1.24 In formulating and publishing the policy proposals for this guidance, we considered that setting out that service providers can keep their written records in English or Welsh where the provider is based in Wales will have a positive effect on opportunities to use the Welsh language and on the equal treatment of Welsh and English. We are not proposing any specific language requirement in relation to age assurance process or the statutory duty to make a publicly available statement other than that they should be accessible. This leaves it open to service providers to decide what language is appropriate, including whether to provide a Welsh language version of the age assurance process or publicly available statement if, in particular, the service is targeted at Wales or Welsh speakers. For these reasons, we consider that our policy proposals will have positive effects on opportunities to use Welsh and on treating Welsh no less favourably than English. We do not consider that there is scope, acting within our powers, to formulate our proposed guidance differently so as to have increased positive effects on these matters.

Consultation question 11: Do you agree that our proposed guidance is likely to have positive effects on opportunities to use Welsh and treating Welsh no less favourably than English?

If you disagree, please explain why, including how you consider this proposed guidance could be revised to have positive effects or more positive effects, or no adverse effects or fewer adverse effects on opportunities to use Welsh and treating Welsh no less favourably than English.

Equality Impact Assessment

A1.25 We have given careful consideration to whether our proposed guidance will have a particular impact on persons sharing protected characteristics (broadly including race, age, disability, sex, sexual orientation, gender assignment, pregnancy and maternity, marriage and civil partnership and religion or belief in the UK), and in particular whether it may discriminate against such persons or impact on equality of opportunity or good relations. We have also had due regard to the need to promote equality of opportunity and good relations across a range of categories, including those with different political opinions and between those with dependents and those without, as set out in the Northern Ireland Act 1998. This assessment helps us to comply with our duties under the EA 2010 and the Northern Ireland Act 1998.

A1.26 Taking account of our general duties under section 3 of the CA03, we have considered more broadly whether there are potential impacts on other groups, beyond those that share protected characteristics identified in equalities legislation.

A1.27 The implementation of age assurance using facial estimation alone has the potential to have a greater negative impact on users with the following protected characteristics:

- a) Age – young adults who are over 18 years old, but who look younger than their age could be negatively affected by false positives that indicate they are under 18 due to being closer to the age threshold, though we note that there is an exception to the EA 2010 for age verification schemes;
- b) Race – some age assurance methods may show varying levels of accuracy against users of different races or with different skin tones; and,

- c) Disability – users who have a disability which contributes to a visible difference in appearance could be negatively affected if the technology relies solely on age estimation that has been trained using a narrow set of example faces.
- A1.28 Age assurance methods which rely on the use of ID documents also may have a greater negative impact for users from disadvantaged backgrounds, who are statistically less likely to have a passport or driving licence.
- A1.29 No single method may be completely free of bias but our proposed guidance aims to mitigate the potential negative equalities impacts. As set out in paragraph 4.11, our proposed guidance sets out criteria that service providers should ensure the age assurance process they implement fulfils to ensure that it is highly effective. These include fairness, which requires the provider to consider the extent to which an age assurance method avoids or minimises bias and discriminatory outcomes. In addition, we propose that service providers should consider incorporating the principle of accessibility to ensure that the age assurance process is easy to use and does not unduly prevent adults from accessing legal content due to their characteristics or whether they are members of a certain group.

A2. Guidance on age assurance and other Part 5 duties for service providers publishing pornographic content on online services

A2.1 This annex has been [published separately on our website](#).

A3. Responding to this consultation

How to respond

- A3.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on 5 March 2024.
- A3.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/category-1/guidance-service-providers-pornographic-content>. You can return this by email or post to the address provided in the response form.
- A3.3 If your response is a large file, or has supporting charts, tables or other data, please email it to Part5Guidance@ofcom.org.uk, as an attachment in Microsoft Word format, together with the cover sheet.
- A3.4 Responses may alternatively be posted to the address below, marked with the title of the consultation:
- Age Assurance Policy Team
Online Safety Group
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- A3.5 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.
- A3.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A3.7 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.
- A3.8 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.
- A3.9 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at Annex X. 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.
- A3.10 If you want to discuss the issues and questions raised in this consultation, please contact the Age Assurance Policy Team by email to Part5Guidance@ofcom.org.uk.

Confidentiality

- A3.11 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.
- A3.12 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.
- A3.13 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it, either by not publishing the response at all, or by only publishing the bits that are not confidential. Sometimes we might think it is important to disclose parts of a response that have been marked as confidential for reasons of transparency, but we will consult you before we do. Occasionally we might have a legal obligation to publish information or disclose it in court, but again, as far as possible, we will let you know.
- A3.14 Even if your response is not marked as confidential, we might still decide not to publish all or part of it in certain circumstances. For example, if we have concerns about the impact on your privacy or the privacy of others, that the content of the response might facilitate the commission of crime, or about the sensitive nature of the content more generally. If we decide not to publish all or part of your response, we will still take it into account in our consideration of the matter.
- A3.15 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.
- A3.16 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

- A3.17 Following this consultation period, Ofcom will publish a statement including the final guidance. We expect this to be in 2025.
- A3.18 If you wish, you can register to receive mail updates alerting you to new Ofcom publications.

Ofcom's consultation processes

- A3.19 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex x.
- A3.20 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.

A3.21 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:

A3.22 Corporation Secretary
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA
Email: corporationsecretary@ofcom.org.uk

A4. Ofcom's consultation principles

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

Before the consultation

- A4.1 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

- A4.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A4.3 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.
- A4.4 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.
- A4.5 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.
- A4.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

- A4.7 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.

A5. 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)

A6. Consultation questions

Question 1: Do you agree with our proposed guidance on scope? If not, please provide any information or evidence in support of your views, including descriptions of services or content where you consider it is unclear whether they fall within the scope of Part 5.

Question 2: Do you have any comments on how our proposed guidance applies in respect of pornographic content created by generative-AI services within the scope of Part 5? Please provide any information or evidence in support of your views.

Question 3: Do you have any comments on our proposed guidance in respect of the kinds of age assurance which could be highly effective? If you consider there are other kinds of age assurance which have not been listed that you consider could fulfil the proposed criteria, please identify these with any supporting information or evidence.

Question 4: Do you agree that service providers should use the proposed criteria to determine whether the age assurance they implement which is highly effective at correctly determining whether or not a user is a child? Please provide any information or evidence in support of your views.

Question 5: Do you have any information or evidence on the extent of circumvention risk affecting different age assurance methods and/or on any steps that providers might take to manage different circumvention risks for different methods?

Question 6: Do you agree with our proposed guidance that providers should consider accessibility and interoperability when implementing age assurance? Please provide any information or evidence in support of your views.

Question 7: Do you have comments on the illustrative case study we have set out in the guidance? Do you have any supporting information or evidence relating to additional examples of how the criteria and principles might apply to different age assurance processes?

Question 8: Do you agree with our proposed guidance on the record-keeping duties? Please provide any information or evidence in support of your views.

Question 9: Do you have any comments on our proposed approach to assessing compliance with the duties on service providers who publish or display pornographic content, including on the proposed examples of non-compliance? Please provide any information or evidence in support of your views.

Question 10: Do you have any comments on the impact assessment set out in Annex 1? Please provide any information or evidence in support of your views

Question 11: Do you agree that our proposed guidance is likely to have positive effects on opportunities to use Welsh and treating Welsh no less favourably than English?

If you disagree, please explain why, including how you consider the proposed guidance could be revised to have positive effects or more positive effects, or no adverse effects or fewer adverse effects on opportunities to use Welsh and treating Welsh no less favourably than English.