

Ofcom's information gathering powers in connection with an investigation into the death of a child

The Online Safety Act includes provisions to support a coroner's investigation or inquest into the death of a child, by empowering Ofcom to request information from online services where it may be relevant to an investigation. Ofcom can request this information by issuing in-scope services a section 101 information request under the Act.

The Online Safety Act (OSA) includes new powers for Ofcom to support a coroner's investigation, inquest or inquiry¹ into the death of a child.

1 April 2024 marks the commencement of Ofcom's key information gathering power (section 101) to support coroners.

This note summarises how Ofcom is supporting coroners across the UK, our implementation plans for the OSA functions which support the coroners, additional duties on categorised services to help families who have lost a child, and planned next steps.

Working with coroners

Ofcom's new section 101 powers aim to support all coroners and procurators fiscal across the UK.

To prepare for this, we have been working with the Ministry of Justice and Chief Coroner's Office to align Ofcom's work with the England and Wales Chief Coroner's guidance. We are also in the process of engaging with the Crown Office and Procurator Fiscal Service in Scotland and the Coroners Service for Northern Ireland.

In England and Wales, a coroner's formal request for information will be sent via a [Schedule 5 notice](#) under the Coroners and Justice Act 2009. Coroners from Northern Ireland will send a formal request for information via their [17A powers](#) under the Coroners Act (Northern Ireland) 1959. In Scotland, a procurator fiscal's power to issue Ofcom an information requests comes from common law to investigate deaths.

In all cases, Ofcom will fulfil its legal duty to respond to a coroner's or procurator fiscal's statutory information gathering notices. For example, in England and Wales, Ofcom has a legal duty to respond to a **Schedule 5 notice** (by which a coroner may require evidence to be given or produced to support an investigation or inquest) or a **Report to Prevent Future Deaths** (a coroner's report to prevent future deaths).

Additionally, we hope to informally engage with each individual coroner before they formally request information to support their investigation into a death of a child, to understand the requirements of each individual case, and agree on the parameters of the information request.

¹ We use the terms 'coroners' in this note, but these powers also extend to the Procurator Fiscal in Scotland and the Coroners Service for Northern Ireland.

Ofcom's new powers under the Act

Section 101

Where Ofcom has received a coroner's information request,² it has a discretionary power to require relevant persons³ to provide them with information for the purpose of responding to such a notice or preparing a report as noted below⁴.

Information which Ofcom may request via a section 101 information request includes:

- content encountered by the child;
- how the content came to be encountered by the child, including the role of algorithms or particular functionalities;
- how the child interacted with the content; and,
- content generated, uploaded or shared by the child.

Ofcom will consider each coroner's request on a case-by-case basis, taking into account all relevant factors before deciding whether to issue a section 101 notice to services. Ofcom's section 101 information gathering requests will follow a similar process as other requests for information Ofcom issues to in-scope services.

Ofcom's section 101 discretionary powers come into effect on 1 April 2024.

Section 163

Where Ofcom has received a coroner's information request, it has a discretionary power to write a report dealing with any matters it considers relevant in connection with an investigation into a death.

Ofcom's section 163 discretionary powers came into effect on 10 January 2024.

Section 75 and 76 duties on categorised services

Services designated as Category 1, 2a and 2b services⁵ will have additional duties to make clear in their terms of service what their policy is about dealing with requests from parents⁶ of a deceased child for information about the child's use of the service.

We expect to consult on the section 75 and 76 duties on categorised services in our Phase 3 work, as outlined in [Ofcom's implementation roadmap](#). We would welcome responses from any interested persons to support our work here.

Section 75 and 76 duties on categorised services will come into effect after the categorisation of services and the specific section 75 and 76 duties have been consulted on.

Next steps

After 1 April 2024, if a coroner sends Ofcom a formal request for information to support an investigation into the death of a child,⁷ then Ofcom may issue a section 101 request to gather information from in-scope services.

Ofcom will consult on our section 101 information gathering powers within our wider information gathering consultation in Summer 2024. We would welcome responses from all stakeholders to support our work and inform our approach to section 101.

If you would like to know more about our section 101 implementation plans, please email us: CoronersSupport@ofcom.org.uk

² For example, a Schedule 5 notice from a coroner in England and Wales.

³ 'Relevant person' means a person within any of paragraphs (a) to (e) of section 100(5) of the OSA.

⁴ OSA Section 101(1)(a)-(c).

⁵ Ofcom is required to carry out research and provide advice to Government about the threshold conditions for each category of service – Category 1, Category 2A and Category 2B. Government will consider this advice in setting thresholds for Categories in secondary

legislation. Ofcom will then produce and keep up to date a published register of categorised services, based on these thresholds. The published register of categorised services will determine which companies need to comply with additional duties.

⁶ "Parent" includes any person who has parental responsibility for the child.

⁷ For example, a Schedule 5 notice from a coroner in England and Wales.