
Proposals for the regulation of advertising on video-sharing platforms

Consultation

[Proposals for the regulation of advertising on video-sharing platforms](#) – Welsh overview

CONSULTATION:

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1. Overview

What we are proposing – in brief

In November 2020 Ofcom was given new powers to regulate video-sharing platforms (“VSPs”) established in the UK. These include a duty to ensure that standards around advertising are met.

VSPs are a type of online video service. A principal feature of this type of service is that it enables users to upload and share videos with members of the public. Under the Communications Act 2003 (“the Act”¹), Ofcom is responsible for regulating VSPs, including advertising on such services, but may designate another body to be a co-regulator, subject to certain criteria.

The Government has stated that the VSP requirements will be superseded by the Online Safety Bill, however, the specific advertising requirements will be repealed, and paid-for advertising will not be incorporated into the online harms framework.²

In announcing this intention, the Government acknowledged that the self-regulatory system administered by the Advertising Standards Authority (“ASA”) will continue and that this will provide equivalent protections by regulating advertising on VSPs, as well as on other online platforms. Until such a time as the regulations for VSPs are no longer in force, Ofcom has a statutory duty to regulate advertising on UK-established VSPs.

The proposals set out in the consultation have been drafted taking into account the interim nature of the statutory provisions and the ASA’s ongoing self-regulatory role.

We propose a regulatory framework that reflects the distinction in the Act between advertising that is marketed, sold or arranged by the VSP provider and advertising that is not.

The Act requires VSP providers to take appropriate measures, as set out in Schedule 15A to the Act, to protect their users from harmful material. This applies to all videos on VSPs, as well as advertising. The Act also contains a number of specific requirements in relation to advertising.

The Act recognises that VSP providers may have differing degrees of control over the advertising that appears on their services. Where advertising is marketed, sold or arranged by VSP providers themselves, they are responsible for ensuring compliance with the relevant requirements. For advertising not marketed, sold or arranged by them, VSP providers must take appropriate measures to ensure that such advertising meets the relevant requirements. There are also some differences in the requirements that apply to these two categories of advertising.

Ofcom is proposing draft guidance on the application of the distinction in the legislation between advertising that is under the control of the VSP provider and advertising that is not. We have taken a broad and flexible approach, reflecting the complexity of the online advertising ecosystem.

We envisage two distinct regulatory approaches depending on whether advertising is under the control of the VSP provider.

We propose to designate the ASA as a co-regulator for VSP-controlled advertising.

We are proposing that day-to-day regulation of VSP-controlled advertising will be administered by the ASA, with Ofcom acting as the statutory backstop regulator.

Ofcom has existing co-regulatory arrangements with the ASA for the regulation of broadcast and on-demand advertising. For the reasons set out in this consultation, Ofcom is confident that it is appropriate to designate the ASA as a co-regulator for VSP-controlled advertising. We consider there is a benefit to consumers and industry in having a single point of contact for advertising issues across all media. Our proposals also aim to ensure continuity as far as possible, building on the existing self-regulatory system for online advertising. Reflecting the legislation, our approach is designed to enable the ASA to work with VSP providers flexibly to determine how best to ensure compliance on their service.

Ofcom will administer the framework for regulating non-VSP-controlled advertising, issuing guidance on the application of appropriate measures.

For non-VSP-controlled advertising, VSP providers must take measures as appropriate to ensure that this advertising meets the relevant requirements. Ofcom is responsible for assessing the appropriateness of measures taken by VSP providers and is proposing guidance to assist them in ensuring compliance. We would expect VSP providers to have appropriate systems and processes in place, and to be able to explain those to Ofcom as part of our wider supervisory engagement. Recognising that the ASA currently regulates online advertising on a self-regulatory basis, we will seek to collaborate with the ASA to identify any relevant information they can provide us with to help inform our assessments.

This consultation seeks stakeholders' views on:

- Ofcom's proposed guidance on control of advertising.
- The proposed framework for regulating VSP-controlled advertising.
- Our proposal to designate the ASA as a co-regulator in relation to VSP-controlled advertising.
- Our proposed guidance for VSP providers on the measures to take in relation to non-VSP-controlled advertising.
- Our proposed approach to regulating non-VSP-controlled advertising.

These proposals are designed to be as simple, straightforward, and platform and technology neutral as possible.

The closing date for responses is 5pm on 28 July 2021.

¹ [Communications Act 2003](#), as amended by the [Audiovisual Media Services Regulations 2020](#).

² DCMS, [Online Harms White Paper: Full Government response to the consultation](#), December 2020.

2. Introduction

- 2.1 In November 2020, changes to the Communications Act 2003 (“the Act”) came into effect, which introduced regulatory requirements for UK-established VSPs, and which gave Ofcom responsibility for enforcing these requirements.³ These changes transposed the 2018 revision to the Audiovisual Media Services Directive (“AVMSD”).
- 2.2 Part 4B of the Act requires VSP providers to take such of the measures set out as are appropriate to: protect under-18s from harmful content in videos; and protect the general public from videos containing content that incites violence or hatred, and certain types of illegal content. These general requirements apply to all VSP videos, as well as advertising.
- 2.3 Ofcom is consulting separately on guidance on these general requirements and the related measures (“the Harms and Measures Guidance consultation”).⁴ We have also consulted and published guidance to help providers understand whether they fall within scope of Part 4B of the Act.⁵
- 2.4 The Act includes additional obligations relating specifically to advertising. These requirements are set out below at paragraph 3.6. How VSP providers are required to meet these requirements varies depending on whether the advertising is marketed, sold or arranged by the VSP provider.
- 2.5 This consultation is about the regulation of the specific advertising requirements that apply to VSPs.

Future regulation of online advertising

- 2.6 The Government has announced its intention to introduce a new framework for regulating online harms.⁶ It has stated that the VSP regulatory requirements set out in the Act will be superseded by the Online Safety Bill, once the latter comes into force.⁷ However, the specific advertising requirements will be repealed, and paid-for advertising will not be incorporated into the online harms framework. In making this announcement, the Government stated that the self-regulatory system administered by the ASA will continue to provide equivalent protections by regulating advertising on VSP services, as well as on other online platforms. Until such a time as the regulations for VSPs are no longer in force, Ofcom has a statutory duty to regulate advertising on UK-established VSPs.
- 2.7 In addition, building on its programme of work reviewing the regulation of online advertising (including a call for evidence in January 2020), the Government has stated that

³ [Audiovisual Media Services Regulations 2020](#).

⁴ Ofcom, [Consultation – Guidance for video-sharing platform providers on measures to protect users from harmful material](#), March 2021.

⁵ Ofcom, [Consultation – Video-sharing platforms: Who needs to notify to Ofcom?](#), November 2020; Ofcom, [Statement - Video-sharing platforms: Who needs to notify Ofcom?](#), March 2021; Ofcom, [Guidance - Video-sharing platforms: Who needs to notify Ofcom?](#), March 2021.

⁶ DCMS, [Draft Online Safety Bill](#), May 2021.

⁷ DCMS, [Online Harms White Paper: Full Government response to the consultation](#), December 2020.

it is planning to consult later this year on measures to enhance how online advertising is regulated in the UK.⁸ Separately, it is also considering introducing restrictions on online advertising for food and drink products high in fat, sugar and salt.⁹

2.8 The proposals set out in the consultation have been drafted within this context. They build on the ASA's existing experience in regulating advertising on VSPs – a role that it will continue to fulfil when the provisions are repealed. They are designed to foster a collaborative approach, enabling Ofcom, the ASA and VSP providers to work together to secure appropriate advertising standards in the interests of citizens and consumers.

Structure of this consultation

2.9 The consultation document is structured as follows:

- Section 3 provides an overview of **advertising on VSPs**, including the statutory requirements that apply, and the proposed regulatory framework.
- Section 4 covers **control of advertising** and contains Ofcom's proposed guidance on the application of the distinction between advertising that is marketed, sold or arranged by the VSP provider and advertising that is not.
- Section 5 sets out Ofcom's proposed approach to regulating **VSP-controlled advertising**, including our assessment against the relevant criteria of a proposal to designate the ASA as a co-regulator.
- Section 6 sets out Ofcom's proposed approach to regulating **non-VSP-controlled advertising** and contains our proposed guidance on advertising harms and measures.
- The **consultation questions** are listed in Annex 1.
- Annex 5 contains summaries of consumer research and relevant responses to Ofcom's Call for Evidence on VSP regulation, which we have taken into account in formulating our proposals.¹⁰ A brief overview of the responses is presented below.

⁸ DCMS, [Online advertising: Call for evidence](#), January 2020.

⁹ DCMS, [Consultation - Total restriction of online advertising for products high in fat, sugar and salt \(HFSS\)](#), November 2020.

¹⁰ Ofcom, [Video-sharing platform regulation – Call for evidence](#), July 2020.

Most **VSP platforms** confirmed that their services carry advertising and some reported:

- the variety of ways that adverts can appear on a service, from providers directly selling advertising space, to working with intermediaries, to users uploading adverts;
- dedicated policies, such as to ensure adverts are age-appropriate, adverts for certain products/services are prohibited and the placement/format of adverts is managed;
- using a mix of automated and manual moderation to ensure compliance with rules.

Non-platform respondents raised concerns with:

- the transparency of online advertising, including how clearly marked it is;
- the ability of VSP providers to track and audit advertising on their service;
- the protection of children, considering the difficulty children may have identifying adverts (e.g. in influencer videos), the risk of the commercial exploitation of children and the potential targeting of children with age inappropriate adverts (e.g. alcohol).

3. Advertising on VSPs

- 3.1 The Act captures advertising and other forms of commercial content on VSPs under the umbrella term ‘audiovisual commercial communications’ (“AVCCs”), defined as follows:¹¹

‘Audiovisual commercial communication’ means a set of moving or still images, or of legible text, or of a combination of those things (with or without sounds), which—

(a) is designed to promote, directly or indirectly, the goods, services or image of a natural or legal person pursuing an economic activity, and

(b) accompanies or is included in a video in return for payment, or for other valuable consideration, or for self-promotional purposes,

and forms of audiovisual commercial communication include advertising, sponsorship, teleshopping and product placement.

- 3.2 AVCCs include conventional advertising, as well as sponsorship, teleshopping and product placement, but also influencer marketing and other forms of advertising associated with VSPs. For ease, ‘adverts’ and ‘advertising’ are used as a shorthand in this document.

Types of advertising on VSPs

- 3.3 VSPs are often free to use and are funded primarily by **online display advertising**, including: video adverts that appear in the video player space around content that has been selected to view; and banners, graphics and videos that appear outside the video frame.
- 3.4 **Influencer marketing** is an established advertising technique on VSPs, whereby influencers – users whose popularity or authority can influence others, including their purchasing decisions – promote a product on a platform in return for payment, free/discounted products, or other incentives. Advertisers may work with content creators to promote such content, improving their ability to reach viewers and convert views into purchases.
- 3.5 Online platforms collect data about their users, which enables advertising to be **targeted** at users. Examples of targeted advertising include:
- **Programmatic advertising** which automatically targets adverts to users based on known data points (such as demographic information) through algorithms;
 - **Context targeting** where advertising space is sold by analysing the content of a page to identify relevant advertisers; and
 - **Consumer-brand relationships** which involves requesting information directly from users to better target the advertising served, often through a survey.

¹¹ [Communications Act 2003](#), Part 4B, S368Z13.

Requirements for VSP advertising

3.6 In addition to the general requirements to protect under-18s from harmful content in videos; and protect the general public from videos containing content that incites violence or hatred, and certain types of illegal content, the Act contains specific requirements to protect users against potential harms related to advertising on VSPs. In summary these are:¹²

General advertising requirements

Adverts included on a VSP:

- must be readily recognisable as such; and,
- must not use techniques which exploit the possibility of conveying a message subliminally or surreptitiously.

Advertising on a VSP must not:

- prejudice respect for human dignity;
- include or promote discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;
- encourage behaviour prejudicial to health or safety;
- encourage behaviour grossly prejudicial to the protection of the environment;
- cause physical, mental or moral detriment to persons under the age of 18;
- directly exhort such persons to purchase or rent goods or services in a manner which exploits their inexperience or credulity;
- directly encourage such persons to persuade their parents or others to purchase or rent goods or services;
- exploit the trust of such persons in parents, teachers or others; or,
- unreasonably show such persons in dangerous situations.

Prohibited and restricted products

Adverts for the following are prohibited: cigarettes and other tobacco products; electronic cigarettes and electronic cigarette refill containers; or any prescription-only medicine.

Adverts for alcoholic drinks must not be aimed at minors and must not encourage immoderate consumption of alcohol. They must also comply with the general advertising requirements set out above.

¹² [Communications Act 2003](#), Part 4B, S368Z, S368Z1(1)(c) and Schedule 15A(4).

Transparency of advertising

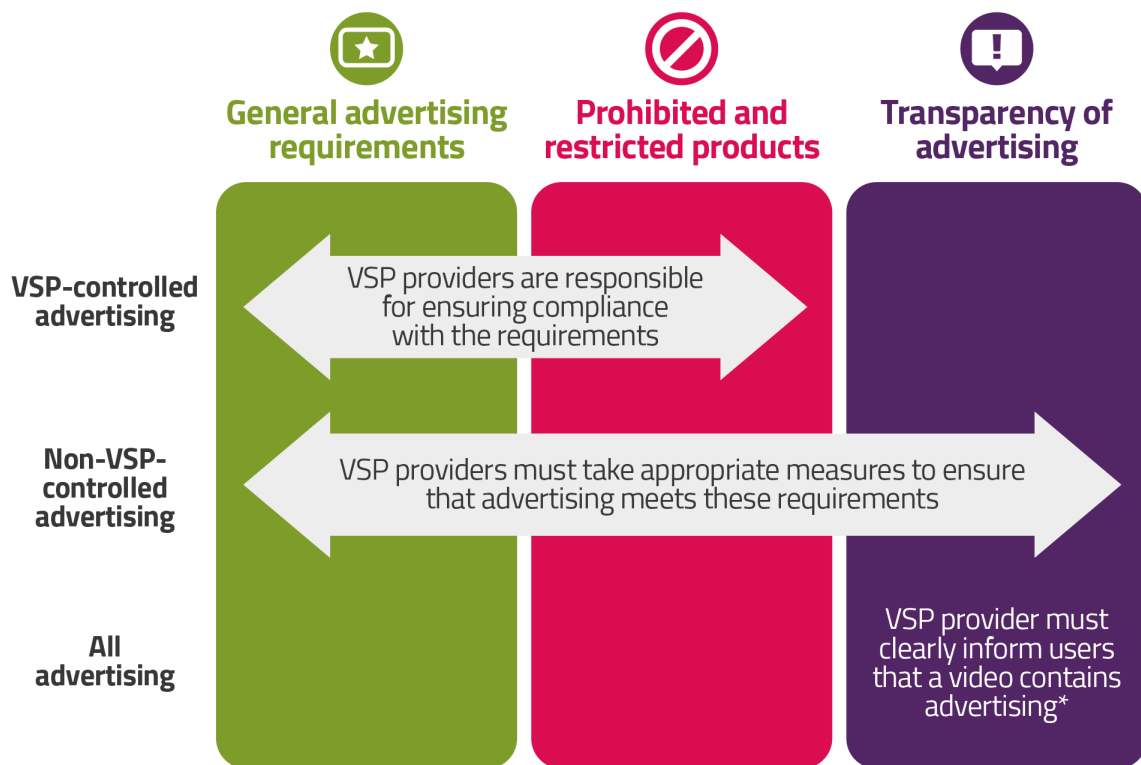
VSP providers must take such of the following measures as are appropriate to meet requirements relating to the transparency of advertising:

- make available a functionality for users who upload content to declare the presence of advertising as far as they know or can be reasonably expected to know; and
- include and apply in the terms and conditions of the service a requirement that users who upload content make use of that functionality as applicable.

In addition, VSP providers must clearly inform users that a video contains advertising where they have knowledge of this or its presence has been declared by the uploader using the functionality provided.

Proposed framework for regulating VSP advertising

Applying the VSP advertising requirements



*applies when the VSP provider has knowledge of this or it has been declared to them by the uploader.

3.7 Depending on whether they are in control of the advertising or not (see Section 4), VSP providers are required to comply with certain of the requirements summarised above. In addition, there is a difference in the way in which VSP providers are required to ensure compliance in each case.

- 3.8 Reflecting the distinction in the Act between the differing degrees of control VSPs have over advertising, Ofcom is proposing the following framework:
- Where VSP providers are responsible for ensuring compliance with certain of the requirements outlined above (i.e. where the advertising is marketed, sold or arranged by the provider), Ofcom is proposing to designate the ASA as a co-regulator (see Section 5).
- 3.9 Where the advertising is not marketed, sold or arranged by the VSP provider, VSP providers must take such of the measures set out in Schedule 15A of the Act as are appropriate for ensuring that advertising meets certain of the requirements. Ofcom will assess the appropriateness of measures taken by VSP providers to protect users (see Section 6).
- 3.10 The framework is designed to achieve clarity in terms of the relationship between Ofcom and the ASA. We have sought throughout to minimise complexity, aiming to avoid any unnecessary duplication of work, and building on existing structures and practices, including the self-regulatory system for online advertising.
- 3.11 In Section 4 we set out proposed guidance regarding the ‘control’ VSP providers have of advertising on their platforms.

4. Control of advertising

- 4.1 As part of this consultation, Ofcom is seeking views on proposed guidance on the application of the terms ‘marketed, sold or arranged’, for the purpose of distinguishing between VSP-controlled advertising and non-VSP-controlled advertising. We set out the rationale for our approach below.
- 4.2 This approach is informed by research and engagement with a range of stakeholders, including the ASA, which under our proposals would be the body initially responsible for determining whether advertising is under the control of the VSP provider. A summary of our stakeholder information and research is set out in Annex 5.
- 4.3 It is worth noting that VSP-controlled advertising and non-VSP-controlled advertising should ultimately adhere to the same set of requirements (specifically, the general advertising requirements and the provisions on prohibited and restricted products), regardless of whether the VSP provider is responsible for compliance, or it is secured through appropriate measures.

Defining ‘control’

- 4.4 The online video advertising ecosystem is complex, involving a range of actors and intermediaries, with interrelated and overlapping roles. VSPs also have varying business models and technological functionality. This complexity presents challenges for distinguishing between VSP-controlled advertising and non-VSP-controlled advertising.
- 4.5 In some instances, the VSP provider evidently has control over advertising that appears on its platform (e.g. where it directly sells advertising space itself). In other instances, the VSP provider clearly has no such control (e.g. where a user enters into an arrangement with an advertiser to promote its products or services entirely independently of the VSP provider).
- 4.6 In most cases, the distinction is not so clear-cut. In practice, there is usually a spectrum of control, covering different degrees of involvement by VSP providers. Reflecting the AVMSD, the Act nevertheless requires that all advertising on VSPs is classified according to the binary distinction between VSP-controlled advertising and non-VSP-controlled advertising.
- 4.7 We have not individually defined the terms ‘market’, ‘sell’ or ‘arrange’, which are always used together in the Act. Rather, we consider that these terms, taken together, suggest an expansive understanding of what constitutes ‘control’, covering a wide range of activity undertaken by VSP providers in relation to the advertising that appears on their services.
- 4.8 Accordingly, the proposed guidance is based on the broad principle that where a provider is involved in making the advertising available on the platform, that advertising is likely to be classified as VSP-controlled advertising. In some cases, however, it may be necessary to look further into the relevant commercial arrangements relating to specific form of advertising in order to determine whether this is under the control of the VSP provider.

- 4.9 Recognising the interim nature of the statutory provisions, the proposed guidance is designed to complement the existing self-regulatory system that applies to online advertising regulation. Reflecting the Government intention for the regulatory approach to mirror that which applies to advertising on on-demand programme services¹³, the proposals do not specify how compliance should be achieved. For example, they do not mandate a system of ‘pre-clearance’. Instead the approach is intended to provide the greatest possible flexibility, enabling VSP providers to work with the Committees of Advertising Practice (CAP) – the body responsible for the non-broadcast advertising code (the CAP Code) – and the ASA to determine how best to ensure that advertising that appears on their services is compliant with the applicable requirements.

Proposed guidance on control of advertising

- 4.10 Ofcom’s proposed guidance on control of advertising is set out below:

Ofcom considers advertising to be marketed, sold or arranged by a VSP provider when a VSP provider is involved in making the advertising available on the platform, which may include (but is not limited to): enabling advertisers to buy advertising on their platform, either directly or via a third-party; providing the tools to enable advertisers to serve advertising on their platform; and/or providing tools that enable advertisers to target or optimise the reach of their advert.

Advertising can appear on a platform but not be marketed, sold or arranged by a VSP provider. For instance, influencer marketing may not meet this definition if the provider has not engaged with the influencer in relation to the advertising. In addition, an advert posted by a brand (in their capacity as a user) on a VSP that appears without any engagement between the brand and the VSP provider would not be considered to be under the provider’s control.

For VSP advertising, the legislation aims to secure the same outcomes through two frameworks.

a) VSP providers are responsible for ensuring compliance with the general advertising requirements and provisions on prohibited and restricted products (outlined in paragraph 3.6) where the advertising is marketed, sold or arranged by them. Providers may achieve compliance through a range of approaches, including but not limited to:

¹³ <https://www.gov.uk/government/consultations/audiovisual-media-services/outcome/audiovisual-media-services-government-response-to-public-consultations-on-the-governments-implementation-proposals>

- i) ensuring that advertisers and other third-parties they engage with are aware of to the relevant requirements (e.g. when setting out terms of a contract or during the development of advertising);
- ii) ensuring that tools they provide to assist advertisers alert those making use of them to the relevant requirements; and/or
- iii) taking prompt action to remove or edit advertising that may contravene the requirements and taking steps to prevent the reoccurrence of any issues identified with advertising on their platform.

It is for providers to determine the appropriate steps they should take to ensure that advertising they control is compliant with the requirements.

b) Where the advertising is not marketed, sold or arranged by the VSP provider, VSP providers must take such of the measures set out in Schedule 15A of the Act as are appropriate for ensuring that advertising meets the general advertising requirements, provisions on prohibited and restricted products, and requirements relating to the transparency of advertising (outlined above in paragraph 3.6).

c) In addition, VSP providers must clearly inform users that a video contains advertising (where they have knowledge of this or it has been declared to them by the uploader), regardless of whether or not they have marketed, sold or arranged that advertising.

- 4.11 This proposed guidance has been designed to be as platform- and technology-neutral as possible, in light of the complexity and variety of the online advertising ecosystem, as well as the potential for new and innovative methods of serving advertising to emerge in this fast-developing sector.
- 4.12 We believe that this approach is sufficiently simple and straightforward to ensure it is practical from the point of view of enforcement and reflects the ASA's ongoing role in regulating online advertising.
- 4.13 We are consulting on our proposed guidance on control of advertising. The consultation questions are listed in full in Annex 1.

Consultation Question 1:

- a) Do stakeholders agree with Ofcom's proposed guidance on control of advertising, including the application of the terms 'marketed, sold or arranged'?
- b) If you do not agree with the proposed guidance on control of advertising, please explain why, and include any alternative approaches.

- 4.14 Ofcom's proposed guidance also covers the measures which may be appropriate for non-VSP-controlled advertising. This is set out in Section 6.
- 4.15 In Section 5 we set out the proposed framework for regulating VSP-controlled advertising and our proposal to designate the ASA as a co-regulator.

5. VSP-controlled advertising

- 5.1 The legislation requires VSP providers to protect users against potential harms related to advertising, as set out above in paragraph 3.6.¹⁴ As set out in Section 3, VSP-controlled advertising must comply with the general advertising requirements and the provisions on prohibited and restricted products.
- 5.2 The Government has given Ofcom the power to designate a co-regulator for aspects of VSP regulation. Section 368T of the Act gives Ofcom the power to designate any body corporate to be, to the extent provided by the designation, the appropriate regulatory authority for the purposes of any provision of Part 4B of the Act regarding VSPs. The Act also requires us to have regard to the extent to which our duties could be furthered or secured by effective self-regulation.
- 5.3 In respect of advertising, the Government's 2019 consultation on the implementation of the AVMSD noted our existing co-regulatory relationships with the ASA for broadcast and on-demand advertising as a potential model for VSP advertising regulation. The majority of stakeholders who responded to the Government consultation favoured designating the ASA as co-regulator for advertising on VSPs.¹⁵
- 5.4 We are proposing that day-to-day regulation of VSP-controlled advertising will be administered primarily by the ASA, with Ofcom acting as the statutory backstop regulator. An overview of this proposed framework is set out below.
- 5.5 Under these proposals, the ASA would also continue to regulate advertising on VSPs under its self-regulatory system and could take action against the advertiser for contravening these rules, as set out in the UK Code of Non-Broadcast Advertising and Direct & Promotional Marketing ("the CAP Code"). These rules provide protections that are consistent with the principles of the VSP legislation and address many of the potential harms identified.
- 5.6 In designing the proposed framework, Ofcom has been mindful of the Government's intention for VSP regulation to be a temporary regime, including the advertising provisions. We have sought wherever possible to minimise complexity and to ensure consistency with the wider regulatory landscape for advertising in the UK. In particular, we have taken into account that the existing self-regulatory system for online advertising administered by the ASA will continue to operate in parallel with, and subsequent to, VSP regulation.
- 5.7 Ofcom's assessment of this proposed approach against the relevant statutory criteria for designating a co-regulator and our principles for analysing self- and co-regulation is set out in full in this section. Consultation questions on the proposed framework for regulating VSP-controlled advertising are included below and in Annex 1.

¹⁴ [Communications Act 2003](#), Part 4B, S368Z.

¹⁵ DCMS, [Audiovisual Media Services Consultation Document](#), May 2019; DCMS, [Audiovisual Media Services: Interim approach to implementing requirements relating to Video-Sharing Platforms](#), June 2019; DCMS, [Audiovisual Media Services, Government response to public consultations on the Government's implementation-proposals](#), July 2019.

The ASA

- 5.8 Established in 1962, the ASA is the independent advertising regulator across all media in the UK, investigating complaints and enforcing the advertising codes written by its sister organisations the Committees of Advertising Practice. The Committees consist of members representing advertisers, agencies and media owners. The system is funded by the advertising industry, through a voluntary levy on the cost of advertising space, collected on the ASA's behalf by the Advertising Standards Board of Finance ("ASBOF") and the Broadcast Advertising Standards Board of Finance ("BASBOF").
- 5.9 Broadcast advertising is regulated under the UK Code of Broadcast Advertising (the "BCAP Code"), which is written and maintained by Broadcast Committee of Advertising Practice ("BCAP"). CAP is responsible for the non-broadcast CAP Code.
- 5.10 In 2004, Ofcom contracted out certain of its functions (in relation to broadcast advertising on TV and radio) to the ASA for a period of ten years.¹⁶ The scheme was renewed in 2014 for a further ten years until November 2024. The co-regulatory scheme is underpinned by the principle that a single point of contact for advertising issues across all media is in the consumer interest, and that a co-regulatory approach to broadcast advertising may be better suited to managing the convergence of issues between broadcast and non-broadcast advertising.
- 5.11 Under the terms of the co-regulatory scheme, Ofcom remains ultimately responsible for broadcast advertising. As the back-stop regulator, Ofcom retains the power to impose statutory sanctions against service providers who fail to comply with ASA decisions; supervises the ASA's performance against a variety of key performance targets; approves any proposed changes to the BCAP Code; and retains the right to intervene (in exceptional circumstances) to set BCAP Code requirements.
- 5.12 In 2009, Ofcom was appointed as the regulator for ODPS following the introduction of on-demand regulation under the AVMSD 2010/13 which was transposed into UK law under Part 4A of the Act. Under the Act, Ofcom is given the power to designate any body corporate to be, to the extent provided by the designation, the appropriate regulatory authority for the purposes of any provision of Part 4A of the Act regarding ODPS. Following consultation, Ofcom designated the ASA to regulate advertising on ODPS in 2010 and the designation was renewed in 2020 until 31 October 2024.¹⁷ The rules relating to ODPS advertising replicate the Act and are set out in an appendix to the **CAP Code** (the "**ODPS annex**").

¹⁶ Pursuant to the Contracting Out (Functions relating to Broadcast Advertising) and Specification of Relevant Functions Order 2004 (SI 1975/2004), made under the Deregulation and Contracting Out Act 1994.

¹⁷ Ofcom, [Designation pursuant to section 368B of the Communications Act 2003 of the Advertising Standards Authority in relation to the regulation of advertising included in on-demand programme services](#), September 2020.

The regulation of ODPS advertising

As the statutory regulator for ODPS, Ofcom is responsible under Part 4A of the Act for the regulation of advertising included in ODPS. However, according to the terms of the designation arrangements Ofcom has entered into with the ASA, the ASA acts as a co-regulator for on-demand advertising with day-to-day responsibility for enforcing the rules in this area. The details of this arrangement are set out in the designation.¹⁸

The rules in the ODPS annex replicate the ODPS advertising requirements set out in the Act. Under the terms of the designation agreement, the ASA is responsible for securing compliance by OPDS providers with the rules in the ODPS annex and ensuring that providers cooperate fully and promptly with its decisions.

Ofcom acts as a statutory backstop, retaining the ability to take action where we determine that a contravention of the statutory requirements has occurred. Under the arrangements, the ASA is required to refer repeated or serious matters to us to consider whether to take further action using our retained powers (which include the power to impose statutory sanctions), or where urgent action may be required. In addition, the ASA is required to cooperate and consult with Ofcom, including in cases where there is doubt or disagreement, for example as to whether a service qualifies as an ODPS.

The rules in the ODPS annex have a separate status to the rest of the CAP Code and sits outside of the co-regulatory arrangements. The CAP Code is an industry-led code that operates under a self-regulatory system run by the ASA. The wider CAP Code sets out rules for non-broadcast advertisements, sales promotions and direct marketing communications (marketing communications). Unlike the rules in the ODPS annex, the wider CAP Code rules apply to, and are enforceable against, the advertiser rather than the media provider. As these rules provide a wider range of protections than the rules in the ODPS annex, the ASA will first consider whether an advertisement on an ODPS is in breach of the CAP Code rules before turning to consider any potential compliance issues by ODPS providers under the rules in the ODPS annex.

Our proposed approach

- 5.13 We propose that specific rules on the general advertising requirements and prohibited and restricted products, reflecting the requirements of Section 368Z of the Act, should be contained in a VSP annex in the CAP Code, to be enforced by the ASA.
- 5.14 The ASA would be designated the function set out in Section 368X(1) of the Act to take such steps as appear to them best calculated to secure providers of UK-established VSPs that are within scope of the regulations comply with the general advertising requirements and the provisions on prohibited and restricted products.¹⁹

¹⁸ <https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/on-demand/designation-asa>.

¹⁹ See sections 368(Y)(1) and 368(Z) of the Act.

- 5.15 The ASA would handle complaints in accordance with its procedures, including by:
- 5.16 accepting complaints from the public and industry about advertising on VSPs;
- 5.17 assessing all complaints under the requirements set out in the VSP annex, regardless of how many complaints it has received about an advert;
- 5.18 assessing complaints against a range of prioritisation principles to determine the most appropriate course of action.
- 5.19 The ASA's procedures set out its approach to handling complaints in more detail.²⁰ The designation will also contain further detail on how these apply in the case of VSPs, subject to the outcome of this consultation process. In addition to receiving complaints, the ASA would continue to proactively monitor adverts on VSPs to make sure requirements are being met.
- 5.20 If the ASA investigates an advert on a VSP, it will contact the VSP provider about potential breaches of the requirements. The ASA will also be the body responsible for making an initial determination as to whether advertising is under the control of the VSP provider.
- 5.21 In circumstances in which there appears to be a breach of the requirements, the ASA would be designated the power to record a breach against the VSP provider with reference to the relevant rule(s) in the VSP annex and to require that provider to co-operate fully and promptly to secure compliance with its decision.
- 5.22 Ofcom would retain statutory backstop powers. Where a breach is considered sufficiently serious or repeated, the ASA could refer the matter to Ofcom in order to consider whether we should exercise our powers.
- This would include our powers to investigate and enforce against a breach of a VSP provider's statutory obligations, which include giving an enforcement notification or imposing a statutory sanction, such as a financial penalty, and, in the most serious cases, suspending or restricting a service.
 - The ASA would also be required to refer to Ofcom all cases where the potential contravention may be such as to justify exercise by Ofcom of its power to suspend or restrict a service for inciting crime or disorder.²¹
- 5.23 In all cases, Ofcom would be able to exercise its powers under Part 4B of the Act concurrently or in place of the ASA.
- 5.24 The ASA would also refer to Ofcom any cases where there is doubt or disagreement over whether the VSP provider markets, sells or arranges the relevant advertising. Ofcom proposes that the ASA should have regard to Ofcom's final guidance on this definition when making this determination.²²
- 5.25 To ensure transparency and accountability, we are proposing that the ASA would regularly report to Ofcom on such matters as: the number of complaints received; investigations

²⁰ <https://www.asa.org.uk/about-asa-and-cap/the-work-we-do/how-we-handle-complaints.html>.

²¹ See section 368Z6 of the Act.

²² See paragraph 4.9 for our proposed guidance on this matter.

launched for each rule of the VSP annex; and a breakdown of complaints against each relevant VSP provider that were upheld, partially upheld or not upheld. The ASA produces similar reports for Ofcom in respect of broadcast and on-demand programme services (“ODPS”) advertising.

- 5.26 The ASA would notify Ofcom if a VSP provider failed to engage with their enforcement action under the VSP annex, such as by failing to respond to the ASA’s requests for information. Ofcom would retain formal information-gathering powers as set out in Section 368Z10 of the Act and the power to take enforcement action where VSP providers fail to comply.
- 5.27 The full details of this framework will be set out in a designation, subject to this consultation process and further discussions with the ASA (if designated). Ofcom intends to publish this designation along with its regulatory statement on the proposal for regulating advertising on VSPs set out in this document.
- 5.28 The proposal is modelled on an established system we know to work well and is designed to minimise complexity, ensuring that statutory regulation and the self-regulatory system work well together, noting that the latter will continue when the former is no longer in force:
- 5.29 The role of the self-regulatory system as a first layer of protection would therefore offer industry and consumer continuity and consistency. The rules in the wider CAP Code would continue to apply to all non-broadcast advertising, sales promotions and direct marketing communications in the UK, within the remit and jurisdiction of the code.²³
- 5.30 The rules in the VSP annex would apply only to UK-established VSPs. As the statutory backstop regulator, Ofcom would be able to sanction non-compliance, in the case of serious breaches of the rules in the VSP annex, for VSP-controlled advertising.
- 5.31 We are consulting on the proposed framework for regulating VSP-controlled advertising:

Consultation Question 2:

- a) Do stakeholders agree with Ofcom’s proposed framework for regulating VSP-controlled advertising?
- b) If you do not agree with the proposed framework for regulating VSP-controlled advertising, please explain why, and include any alternative approaches for regulating advertising on VSPs.

Designation of the ASA

- 5.32 This section seeks views on Ofcom’s proposal to designate the ASA as a co-regulator in relation to certain aspects of VSP advertising.

²³ CAP, [Scope of the Code](#).

Our basis for assessing co-regulatory models for VSP advertising

- 5.33 The basis of Ofcom’s proposal to designate the ASA as a co-regulator for advertising on VSPs is drawn from two sources set out below (“the designation criteria”):
- 5.34 First, Section 368T(9) of the Act requires Ofcom to satisfy itself that any body to which we propose to designate regulatory functions meets a series of criteria as set out in the table below;
- 5.35 Second, Ofcom’s *Principles for Analysing Self- and Co-regulation* require us to set a clear framework under which we can consider if and when it may be appropriate to operate a co-regulatory system.²⁴
- 5.36 Paragraphs 5.28 to 5.34 below set out our assessment of the appropriateness of designating functions to the ASA against the designation criteria.
- 5.37 Criteria for designating the regulation of VSP advertising

Statutory criteria

Ofcom may not designate a body unless, as respects that designation, they are satisfied that the body:

- is a fit and proper body to be designated;
- has consented to being designated;
- has access to financial resources that are adequate to ensure the effective performance of its functions as the appropriate regulatory authority;
- is sufficiently independent of providers of video-sharing platform services; and
- will, in performing any functions to which the designation relates, have regard in all cases-
(i) to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and,
(ii) to such of the matters mentioned in section 3(4) of the Act as appear to the body to be relevant in the circumstances.

Principles for Analysing Self- and Co-regulation

An effective regulatory body must have:

- independent governance and decision making;
- clear public accountability;
- clear regulatory objectives set out in a code;
- clear and transparent processes, which are followed;
- workable membership incentives (where relevant) and/or obligations for or on those it regulates;
- secure and sufficiently independent funding and budget control;
- accessibility to those seeking redress;
- genuine powers of investigation; and,
- effective powers of enforcement and sanction.

²⁴ These principles were last referred to in Ofcom’s [Renewal of the co-regulatory arrangements for broadcast advertising](#), November 2014.

Note: The matters mentioned in section 3(4) of the Act referred to under ‘Statutory criteria’ include the following: ‘...(c) the desirability of promoting and facilitating the development and use of effective forms of self-regulation;... (h) the vulnerability of children and of others whose circumstances appear to OFCOM to put them in need of special protection; (i) the needs of persons with disabilities, of the elderly and of those on low incomes; (j) the desirability of preventing crime and disorder; (k) the opinions of consumers in relevant markets and of members of the public generally; (l) the different interests of persons in the different parts of the United Kingdom, of the different ethnic communities within the United Kingdom and of persons living in rural and in urban areas...’

Ofcom’s assessment against the designation criteria

Statutory criteria

- 5.38 The statutory criteria for designating a co-regulatory body under the VSP framework in Part 4B of the Act are the same as those set out in the ODPS framework in Part 4A. These are the criteria we applied when we considered whether to designate ODPS advertising functions to the ASA in 2009.²⁵ As confirmed in our subsequent decision, we considered that the ASA met the statutory tests and were satisfied that:
- 5.39 the ASA’s experience of co-regulating broadcasting advertising demonstrated that it was a fit and proper body to be designated;
- 5.40 the ASA had confirmed to Ofcom that it would consent to being designated as a co-regulator for ODPS advertising and that CAP had confirmed its willingness to amend its code accordingly;
- 5.41 ASBOF had confirmed that it would make the necessary arrangements to fund the ASA’s ODPS-related activities, in the same way as it already funded other aspects of the ASA’s work;
- 5.42 the ASA’s governance structure, in which a clear majority of its complaints adjudicating body were lay members, and which mirrored the arrangements in relation to the ASA’s current co-regulatory arrangements in relation to broadcast advertising, demonstrated that it was sufficiently independent of ODPS providers; and
- 5.43 in the event of designation, Ofcom would agree with the ASA a set of key indicators (including complaints received, completed and upheld), as well as a structured review programme.
- 5.44 In relation to the statutory criteria for designating the ASA as the co-regulator for advertising on VSPs we consider that the ASA meets the statutory tests. We are satisfied that:
- The ASA’s experience of co-regulating on-demand advertising demonstrates that it is a fit and proper body to be designated. The ASA has reported to Ofcom annually on its regulation of ODPS advertising and, to date, has not identified any serious issues that

²⁵ Ofcom, [Proposals for the regulation of video-on-demand services - consultation](#), September 2009. We also reviewed this assessment in 2020, in deciding to redesignate the ASA: https://www.ofcom.org.uk/_data/assets/pdf_file/0007/202210/designation-renewal.pdf.

have warranted further action from Ofcom. We consider this co-regulatory model is a suitable template for the regulation of advertising on VSPs. In Ofcom's view, the ASA's experience of working with online platforms to regulate online advertising under the self-regulatory system further demonstrates that it is fit and proper to be designated. Since 2018, the ASA has focused on strengthening its regulation of online advertising by working more closely with large online platforms, the Government, Ofcom and VSPs as part of its More Impact Online strategy.²⁶ It has developed stakeholder relationships and regulatory tools to address issues associated with online advertising.

- 5.45 Ofcom understands that the ASA would consent to being designated as the co-regulator for advertising on VSPs (and CAP would be willing to amend the CAP Code accordingly).
- 5.46 The costs of co-regulation would be readily incorporated within the ASA structure as the regulator already oversees VSP advertising in a self-regulatory capacity; this would secure funding for the ASA to ensure the effective discharge of the functions it would have been designated as a co-regulator for VSP advertising.
- 5.47 The ASA's governance structure, as described in paragraph 5.23 demonstrates that it is sufficiently independent of VSP providers. The ASA's experience of co-regulating broadcast and on-demand advertising demonstrates that in performing its function under the designation it would 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. Ofcom considers that this co-regulatory model has worked well, ensuring that relevant standards are met.
- 5.48 Accordingly, Ofcom considers that the ASA would meet the necessary criteria for designating it as the co-regulator for advertising on VSPs. Ofcom's experience of working with the ASA in relation to broadcast and on-demand advertising provides us with confidence that an effective partnership can be developed for advertising on VSPs.
- 5.49 Ofcom also considers that there is a benefit in having a single point of contact for consumers for advertising issues across all media. The ASA's public profile, as the established regulator for this sector, would help to secure consumer awareness and confidence in the system.
- 5.50 The ASA already has experience of regulating online advertising on a self-regulatory basis, a system which will continue to operate once VSP regulation is no longer in force. This proposal would ensure the greatest possible degree of regulatory certainty and continuity for industry, given the temporary nature of the regime.

Principles for analysing self-regulation and co-regulation

- 5.51 Ofcom's criteria for the promotion of effective co- and self-regulation and for deciding whether to establish co-regulatory models, were first published in 2004, and subsequently

²⁶ The ASA, [More Impact Online – launching our five year strategy](#), November 2018.

revised in 2008 and 2012. We have conducted a thorough assessment of our proposals against these criteria:

- 5.52 *Independent governance and decision making.* The ASA is independent of both Government and industry and has a transparent governance structure. The ASA's adjudicating body, the ASA Council, is appointed by the ASA Chairman and has a clear majority of members independent of industry. The Council will consider the recommendation of the ASA but is free to come to its own conclusion.
- 5.53 *Clear public accountability.* The ASA currently publishes details of all its investigations into broadcast and on-demand advertising (as well as advertising on other media, on a self-regulatory basis). It also publishes an evaluation of its performance under key performance indicators ("KPIs") in an annual statement, such as the number of complaints received and resolved. Under our proposal:
- 5.54 The ASA would report on a regular basis details of investigations and breaches of the VSP advertising rules contained in a dedicated VSP annex to the CAP Code, broken down by rule and VSP. We anticipate that this information would be publicly available.
- 5.55 The ASA would comply with KPIs for its complaints handling arrangements which would be set out in the designation of the ASA as the co-regulator for advertising on VSPs.
- 5.56 Ofcom intends to agree a timetable for reviewing the designation of the ASA in further discussion with the ASA. Details of that timetable will be included in the designation to be published alongside Ofcom's regulatory statement on the outcome of this consultation. Ofcom would then carry out a review according to that timetable, unless the regulations for VSPs are repealed before the specified period has elapsed. The outcome of any review would also be published.
- 5.57 *Clear regulatory objectives set out in a code.* Under this proposal, CAP would be responsible for reflecting the statutory requirements through rules contained in the VSP annex.
- 5.58 *Clear and transparent process, which are followed.* The ASA's processes for investigating and adjudicating on complaints are described in the CAP Code (which would be extended to include the VSP annex under this proposal) and available on its website. The ASA's website also contains information for consumers on how to complain.
- 5.59 *Workable membership incentives (where relevant) and/or other obligations for or on those it regulates.* The ASA/CAP system has a high level of buy-in from the advertising industry, as well as involvement from broadcasters and providers of on-demand programme services. It also engages with VSP providers, whose participation would increase as a result of being brought under statutory regulation.
- 5.60 *Secure and sufficiently independent funding and budget control.* As set out above, the ASA is funded through an arms-length arrangement based on charging a levy on the cost of advertising space, to ensure that it is sufficiently independent of industry and Government. The ASA already regulates VSP advertising on a self-regulatory basis under this system. We do not expect the functions we are proposing to designate to the ASA will lead to a

significant increase in its enforcement work and, as such, Ofcom's expectation is that the existing funding system will cover the co-regulatory arrangement. However, we would keep the impact of this arrangement under review.

- 5.61 *Accessibility to those seeking redress.* The ASA's public profile as the established regulator for advertising across all media makes it a suitable body to take on co-regulation of advertising on VSPs. It provides information to consumers on how the regulatory system works via its website. We consider that the ASA's complaints handling procedures in respect of broadcast and on-demand advertising are appropriate and should be extended to include VSP advertising in the event the ASA is designated as the co-regulator in this area. We note that the ASA retains an Independent Reviewer, which gives complainants a second opportunity to consider complaints, and consider appeals about the conduct of ASA investigations.
- 5.62 *Genuine powers of investigation.* If Ofcom were to designate the ASA as the appropriate regulatory authority for VSP advertising, the ASA would have the ability to find a platform in breach of the relevant rules in the VSP annex.
- 5.63 *Effective powers of enforcement and sanction.* If Ofcom were to designate the ASA, the ASA would have the ability to require a VSP provider who has been found to contravene any of the rules in the VSP annex to co-operate fully and promptly with the ASA in order to secure compliance. For broadcast and on-demand advertising, the ASA has established approaches to compliance including prohibiting adverts and particular advertising techniques. Based on the ASA's experience of regulating advertising in these sectors, Ofcom is confident that it operates appropriate enforcement measures. In any event, Ofcom would retain the power to impose statutory sanctions, including financial penalties and issuing a direction for the suspension or restriction of a service.
- 5.64 For these reasons, Ofcom provisionally considers that the ASA would satisfy Ofcom's criteria for designating it to be the co-regulator for advertising on VSPs. We welcome stakeholders' views on this proposal and will confirm the details of our co-regulatory arrangements with the ASA subject to the outcome of this consultation. The consultation questions are listed in Annex 1.

Consultation Question 3:

- a) Do stakeholders agree with Ofcom's proposal to designate the ASA as a co-regulator for VSP-controlled advertising?
- b) If you do not agree that it would be appropriate to designate the ASA as a co-regulator for VSP advertising, please explain why, and include any alternative approaches.

- 5.65 In the next section we set out the proposed framework for the regulation of non-VSP-controlled advertising and proposed guidance on advertising harms and measures.

6. Non-VSP-controlled advertising

- 6.1 As already noted, Ofcom is consulting separately on our wider approach to regulating VSPs.²⁷ As set out in the Harms and Measures Guidance consultation, VSP providers are required to take such of the measures listed in Schedule 15A of the Act as are appropriate to ensure the protection of minors from restricted material,²⁸ and the protection of the general public from relevant harmful material,²⁹ in all videos, as well as advertising, regardless of whether it is under the control of the VSP provider.
- 6.2 The Schedule 15A measures include applying the relevant requirements in the terms and conditions of the VSP, reporting and flagging systems, age-assurance systems and parental controls, rating systems, and complaints handling systems. Where a VSP provider takes a measure set out in Schedule 15A, the provider must implement it in such a way as to secure the protection or protections for which the measure is appropriate. Ofcom's proposed guidance on these measures also applies to advertising on VSPs.
- 6.3 Schedule 15A also includes additional measures that apply specifically to non-VSP-controlled advertising, in relation to the requirements set out in paragraph 3.6.³⁰ We have not previously consulted on these measures. These measures are designed to protect users from potentially harmful material under the general advertising requirements and provisions on prohibited and restricted products and to ensure the transparency of advertising.
- 6.4 Our proposals in relation to these measures are intended to operate within the overall framework for regulating VSPs set out in the Harms and Measures Guidance consultation. It is important that providers read the below proposals in conjunction with the proposals set out in the Harms and Measures Guidance consultation, as well as the proposed guidance on control of advertising set out in Section 4 above, to ensure they have a full understanding of how the VSP framework is applied in relation to advertising.
- 6.5 Where Ofcom determines that a VSP provider has failed to apply such of the measures set out in the Act as are appropriate to protect users as required, we may find them in breach of their statutory obligations. Our enforcement powers include the power to impose financial penalties of up to 5% of relevant turnover or £250,000 (whichever is the greater amount). The Harms and Measures Guidance consultation contains more detailed information on our duties and powers in this area.

²⁷ Ofcom, [Consultation – Guidance for video-sharing platform providers on measures to protect users from harmful material](#), March 2021.

²⁸ As set out in the Harms and Measures Guidance consultation, restricted material refers to videos which have or would be likely to be given an R18 certificate, or which have been or would likely be refused a certificate. It also includes other material that might impair the physical, mental or moral development of under-18s.

²⁹ As set out in the Harms and Measures Guidance consultation, relevant harmful material refers to any material likely to incite violence or hatred against a group of persons or a member of a group of persons based on particular grounds. It also refers to material the inclusion of which would be a criminal offence under laws relating to terrorism; child sexual abuse material; and racism and xenophobia.

³⁰ [Communications Act 2003](#), Part 4B, S368Z1 and Schedule 15A.

- 6.6 Ofcom is proposing draft guidance on advertising harms and measures which relate to the specific advertising requirements as set out in paragraph 3.6 above. Our proposed guidance on these requirements, and the applicable Schedule 15A measures relevant to them, is set out below. In addition to this guidance, providers should also refer to Ofcom’s draft Harms and Measures Guidance more generally, such as the guidance in relation to terms and conditions and in particular ensuring that these are implemented effectively.

Proposed guidance on advertising harms and measures

Terms and conditions relating to advertising requirements

Include terms and conditions to the effect that—

(a) a person must not upload to the service a video containing advertising for a prohibited product,

(b) a person must not upload to the service a video containing advertising for an alcoholic drink unless it meets the general advertising requirements and the requirements in relation to restricted products, and

(c) a person must not upload to the service a video containing advertising for anything else unless that it meets the general advertising requirements.

- 6.7 Ofcom considers this measure as fundamental to the VSP Regime, and we consider it is unlikely that effective protection of users can be achieved without having this measure in place and it being implemented effectively.
- 6.8 Terms and conditions in the context of VSP regulation may include community guidelines; community standards; terms of service; or any other phrases used to describe a set of rules or standards which govern the type of content permitted on a VSP.
- 6.9 We expect terms and conditions relating to advertising to be clear about the general advertising requirements and provisions on prohibited and restricted products outlined above, and for VSP providers to clearly communicate those terms to their users. We would encourage VSP providers to have a specific advertising-related section within their terms and conditions for these requirements, which should include a clear explanation of what material constitutes advertising and is therefore subject to the requirements.
- 6.10 We also encourage VSP providers to produce a user-friendly summary of the advertising requirements. Any such summary should use simple language, minimise jargon and avoid technical terms.
- 6.11 VSP providers should provide examples of what would and would not be permitted to comply with these advertising requirements.

- 6.12 The consequences of breaching terms and conditions also need to be clear to all users. In addition, VSP providers may wish to consider the role potentially played by peer-to-peer learning and advice in increasing understanding of advertising rules among users.³¹

Transparency of advertising

- 6.13 The legislation also contains requirements which together are designed to ensure advertising on VSPs, regardless of whether it is marketed, sold or arranged by providers, is transparent to users of the service.³² The relevant requirements and appropriate measures to ensure transparency, and the guidance relating to these measures, are outlined below.

Functionality for users to declare advertising

Provide functionality for a person uploading a video to the service to declare whether, as far as they know or can reasonably be expected to know, the video contains advertising.

- 6.14 This measure relates to VSP providers putting in place a functionality for users who upload user-generated videos to declare whether or not those videos contain advertising. Such a functionality should be easy to use, accessible for all users, and suitable for all devices which may be used to upload videos to the platform.
- 6.15 To ensure that users engage with this functionality, we encourage providers to include it as a mandatory step in the video upload process. For example, users could be prevented from completing the video upload process until they have confirmed whether or not the video contains advertising.
- 6.16 An example of best practice would be for this functionality to also enable users to provide additional information about the advertising contained within the video, such as the third party with which the person uploading the content has partnered and the product or service being advertised. On some platforms, this functionality could enable the person uploading the content to “tag” the relevant third parties in the video.

Terms and conditions about declaring advertising

Include terms and conditions to the effect that a person uploading a video must use the functionality to make such a declaration.

- 6.17 We expect VSP providers to communicate this requirement (i.e. to make use of the functionality to declare advertising) to users clearly within the terms and conditions. We would encourage VSP providers to include this requirement in a specific advertising-related section within the terms and conditions.

³¹ Yonder, User experience of potential online harms within video-sharing platforms: a report for Ofcom , March 2021. https://www.ofcom.org.uk/data/assets/pdf_file/0024/216492/yonder-report-experience-of-potential-harms-vsps.pdf

³² [Communications Act 2003](#), Part 4B, Section 368Z1(6) and Schedule 15A(5).

- 6.18 VSP providers should ensure clarity and understanding among users about how to declare advertising on their platform.³³ As with all terms and conditions, these terms and conditions must be robustly and consistently enforced to ensure effective implementation.

Communicating the presence of advertising to users

- 6.19 The legislation requires that, where a VSP provider is aware that a video contains advertising (i.e. the provider knows that content uploaded to the service contains advertising or the person who uploaded the content has told the VSP provider that this is the case), the VSP provider must clearly inform its users about the presence of the advertising.³⁴
- 6.20 We recommend that, once advertising has been declared using the above functionality, VSP providers use an automated system to communicate its presence to users. Providers must also communicate the presence of any other advertising which it knows about, and it is for the provider to determine whether this is done through an automatic or manual process.
- 6.21 We encourage VSP providers to communicate the presence of advertising in a consistent way across their platform, such as through the use of a singular predetermined word or phrase. For example, the ASA already encourages the use of a clear and prominent identifier, such as “#ad”, to communicate to audiences the presence of advertising in social media posts.³⁵ VSP providers may wish to adopt a similar approach to inform users about the presence of the advertising across their platforms.
- 6.22 We expect information about the presence of advertising to be displayed prominently to users. We also expect such communication to take place as early as possible in a user’s exposure to the advertising. Depending on the nature of the platform, this may be before the user views the content or at the point at which users views the content. Regardless, users should not need to click on, or otherwise engage with, the content to be informed that it is advertising.
- 6.23 In line with the example of best practice outlined above, where the person who uploaded the content has provided additional information about the advertising, such as the third-party with which they have partnered or the product or service being advertised, we would expect this information to also be clearly communicated to users.

³³ Ofcom/Yonder, User experience of potential online harms within video-sharing platforms: a report for Yonder, March 2021.

³⁴ [Communications Act 2003](#), Part 4B, S368Z1(6).

³⁵ <https://www.asa.org.uk/advice-online/recognising-ads-social-media.html>

Consultation Question 4:

- a) Do stakeholders agree with Ofcom’s proposed guidance on non-VSP-controlled advertising?
- b) If you do not agree with the proposed guidance on non-VSP-controlled advertising, please explain why, and include any alternative approaches.

Determining which measures are appropriate

- 6.24 As set out in the Harms and Measures Guidance consultation, VSP providers are required to determine which of the measures to take to protect users from harmful material.³⁶ Whether a measure is appropriate for these purposes must be determined by whether it is practicable and proportionate for the measure to be taken, taking into account:
- a) the nature of the material in question;
 - b) the harm the material in question may cause;
 - c) the characteristics of the category of persons to be protected (for example, under-18s);
 - d) the size and nature of the video-sharing platform service;
 - e) in relation to adverts that are not marketed, sold or arranged by a person providing a video-sharing platform service, the fact that the provider exercises limited control over such communications;
 - f) the rights and legitimate interests at stake, including those of the person providing the video-sharing platform service and the persons having created or uploaded the material, as well as the general public interest;
 - g) any other measures which have been taken or are to be taken.³⁷
- 6.25 Criterion (e) is especially relevant to advertising.
- 6.26 We discuss the broader application of these criteria in the Harms and Measures Guidance consultation. The appropriate measures that may apply in the case of non-VSP-controlled advertising, relating to terms and conditions and to the transparency of advertising, take account of the fact that the provider exercises limited control over this category of advertising.
- 6.27 When assessing the practicality and proportionality of these measures, VSP providers should have regard to the extent to which advertising that is not under their control appears on the service. They may also wish to consider this criterion in conjunction with other factors, such as the size of the platform and the nature of the service, in particular in

³⁶ Ofcom, [Consultation – Guidance for video-sharing platform providers on measures to protect users from harmful material](#), March 2021.

³⁷ [Communications Act 2003](#), S368Z1 (4).

relation to the measure to put in place a functionality for users who upload user-generated videos to declare whether or not those videos contain advertising.

Determining whether appropriate measures are effective

- 6.28 As explained in Section 7 of Ofcom’s draft Harms and Measures Guidance, Ofcom will use a range of information in its assessments of the appropriateness and effectiveness of measures taken by VSP providers to protect users. For advertising-related measures, this may include information obtained from providers as well as information from the ASA’s self-regulatory activities.
- 6.29 For example, the ASA may provide to Ofcom other information it becomes aware of in the course of its self-regulatory activity to help inform our assessments of the measures taken by providers. This information may include, but is not limited to:
- 6.30 *Investigations and breaches of rules in the wider CAP Code.* The wider CAP Code, which the ASA enforces against the advertiser, contains protections that are consistent with the provisions in the Act covering the general advertising requirements, prohibited and restricted products, and transparency of advertising. A high volume of breaches of relevant rules in the wider CAP Code, enforced against advertisers under the self-regulatory system, may indicate a serious failure by a VSP provider to deliver the appropriate protection for consumers.
- 6.31 *Other information.* This may include the ASA’s findings from monitoring projects and other research; and market intelligence.
- 6.32 The details of how the ASA’s provision of information to Ofcom will work in practice will be set out in a Memorandum of Understanding between Ofcom, the ASA and Committee of Advertising Practice (“CAP”). As already noted, this will be published alongside Ofcom’s regulatory statement on the outcome of this consultation.
- 6.33 This consultation invites stakeholder views on the proposed framework for regulating non-VSP-controlled advertising. The consultation questions are listed in Annex 1.

Consultation Question 5:

- a) Do stakeholders agree with Ofcom’s proposed approach to regulating non-VSP-controlled advertising?
- b) If you do not agree with the proposed approach to regulating non-VSP-controlled advertising, please explain why, and include any alternative approaches.

7. Impact assessment

- 7.1 This consultation does not contain a separate impact assessment document. Instead, the consultation document as a whole covers the key factors that are likely to have an impact on stakeholders (including citizens and consumers and VSP providers). The main points are summarised below.
- 7.2 The Government has dealt separately with the impact in principle of VSP regulation on stakeholders, and of co-regulation in relation to advertising.³⁸ In the Harms and Measures Guidance consultation, Ofcom assessed the potential impact of our general approach to VSP regulation and our draft VSP guidance. We consider that this assessment also applies to VSP advertising regulation, and only deal with advertising-specific requirements and measures below.
- 7.3 Our assessment of the impact of the proposed changes has been informed by our engagement with industry stakeholders, including responses to our Call for Evidence. These stakeholders include VSP providers and other interested parties.
- 7.4 The assessment has also been informed by the Government's consultations on implementing the revised AVMSD and the provisions relating to VSPs.³⁹ In its response to these consultations, the Government noted that a majority of stakeholders had supported designating the ASA as Ofcom's co-regulator for advertising on VSPs.⁴⁰
- 7.5 The introduction of a regulatory framework for VSPs entails certain costs for VSP providers (i.e. in terms of the administrative burden and an enhanced compliance function). These need to be balanced against the benefits for citizens and consumers which are the aim of the legislation (i.e. protection from accessing harmful content). We believe that co-regulation will assist in securing these benefits.
- 7.6 We have considered whether the co-regulatory structure envisaged in this consultation will impose any additional costs on VSP providers. In having to cooperate with the ASA as well as Ofcom (e.g. responding to requests for information about whether advertising is under the control of the VSP provider), VSP providers may incur some additional costs. However, the ASA already regulates advertising on UK-established VSPs on a self-regulatory basis, and our proposal will preserve the existing relationship with industry that the ASA has developed as part of its wider online strategy. We therefore expect these additional costs to be marginal.
- 7.7 Drawing on the success of our co-regulatory relationships with the ASA for broadcast and on-demand advertising, Ofcom intends for the co-regulation of VSP advertising to preserve and enhance that model. The ASA is widely recognised as a 'one-stop shop' for advertising

³⁸ DCMS, [Impact Assessment – Revision of the Audiovisual Media Services Directive](#), January 2020.

³⁹ DCMS, [Consultation: Audiovisual Media Services](#), May 2019; DCMS, Requirements for video-sharing platforms in the Audiovisual Media Services Directive, July 2019.

⁴⁰ DCMS, [Audiovisual Media Services, Government response to public consultations on the governments implementation proposals](#), July 2019.

complaints, with Ofcom acting as a statutory backstop in specific media. There is a benefit for industry and consumers in building on this established approach.

- 7.8 If the ASA is not designated as a co-regulator as proposed here, VSP providers will still be required to engage with Ofcom in relation to advertising on their services. If the ASA takes on this role, the designation and Memorandum of Understanding will be designed to minimise any unnecessary duplication of regulatory activity between Ofcom and the ASA, setting out clearly defined roles for all parties.
- 7.9 Ofcom has separately assessed the potential impact of our overall approach to regulating VSPs in the Harms and Measures Guidance consultation.⁴¹ We consider that assessment also applies to the advertising-specific requirements and measures which are to be regulated under this framework.
- 7.10 The proposed guidance set out in Section 6 of this document is designed to afford VSP providers some flexibility in how they protect their users. However, there is one specific area where we have outlined certain expectations on VSP providers because without them we believe it is unlikely that users would be adequately protected. We have considered the potential impact of these specific expectations in Table 1 below. Table 2 reflects the impact of measures strongly encouraged to assist VSP providers in satisfying themselves that they are complying with their obligations in relation to advertising.

Table 1: Measures which we consider are central to protect users

Measure	Potential impact on VSPs	Expected benefits
Implementing and enforcing T&Cs relating to advertising requirements (see paragraphs 6.7 to 6.12).	Staff costs associated with reviewing, updating and enforcing T&Cs relating to advertising requirements, satisfying the principles of transparency and ease of use.	Our view is that this is necessary for any VSP provider to be able to protect its users. Appropriate and effectively enforced T&Cs are likely to discourage users from uploading content that they know is harmful and will result in sanctions or penalties. Therefore, this could reduce the risk that users encounter it.

⁴¹ Ofcom, [Consultation – Guidance for video-sharing platform providers on measures to protect users from harmful material](#), March 2021.

Table 2: Measures strongly encouraged to support compliance

Measure	Potential impact on VSPs	Expected benefits
Information collecting and measuring effectiveness	<p>Staff costs to determine information that can indicate effectiveness of the measures.</p> <p>Staff and systems infrastructure costs associated with collecting and analysing information on those measures.</p>	<p>Understanding the effectiveness of measures is vital for platforms to understand how well they are working to protect users from harmful content.</p> <p>The collection of data and information would form an important aspect of this as it will help the provider to satisfy itself that it is complying with its obligations under the regime.</p>

7.11 Finally, Ofcom notes that the system for regulating advertising on VSPs on a statutory basis will be temporary. The positive and negative impact, for citizens and consumers and VSP providers, will be accordingly limited. We have modelled our proposal on the established system and as far as possible sought to minimise complexity in light of the temporary nature of the regime.

Equality impact assessment

7.12 Section 149 of the Equality Act 2010 (the “EA 2010”) imposes a duty on Ofcom, when carrying out its functions, to have due regard to the need to eliminate discrimination, harassment, victimisation and other prohibited conduct related to the following protected characteristics: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex and sexual orientation. The EA 2010 also requires Ofcom to have due regard to the need to advance equality of opportunity and foster good relations between persons who share specified protected characteristics and persons who do not.

7.13 Section 75 of the Northern Ireland Act 1998 (the “NIA 1998”) also imposes a duty on Ofcom, when carrying out its functions relating to Northern Ireland, to have due regard to the need to promote equality of opportunity and regard to the desirability of promoting good relations across a range of categories outlined in the NI 1998. Ofcom’s Revised Northern Ireland Equality Scheme explains how we comply with our statutory duties under the NI 1998.⁴²

⁴² Ofcom, 2014. Revised Northern Ireland Equality Scheme for Ofcom, January 2014 (updated December 2019). https://www.ofcom.org.uk/_data/assets/pdf_file/0023/123737/Revised-NI-Equality-Scheme.pdf.

- 7.14 To help us comply with our duties under the EA 2010 and the NI 1998, we assess the impact of our proposals on persons sharing protected characteristics and in particular whether they may discriminate against such persons or impact on equality of opportunity or good relations. We do not consider that our proposals for VSP advertising have equality implications under the EA 2010 or the NIA 1998.

A1. Consultation questions

- A1.1 This consultation is seeking views from stakeholders on our proposed framework for regulating advertising on VSPs. Ofcom wants to hear from a broad range of stakeholders through this consultation.
- A1.2 Respondents are asked to provide an answer to every question that they consider relevant but are not required to respond to every question as part of their submission. Ofcom will publish non-confidential responses on its website, but respondents should specify where a response or part of a response is confidential.

Question 1:

- a) Do stakeholders agree with Ofcom's proposed guidance on control of advertising, including the application of the terms 'marketed, sold or arranged'?
- b) If you do not agree with the proposed guidance on control of advertising, please explain why, and include any alternative approaches.

Question 2:

- a) Do stakeholders agree with Ofcom's proposed framework for regulating VSP-controlled advertising?
- b) If you do not agree with the proposed framework for regulating VSP-controlled advertising, please explain why, and include any alternative approaches for regulating advertising on VSPs.

Question 3:

- a) Do stakeholders agree with Ofcom's proposal to designate the ASA as a co-regulator for VSP-controlled advertising?
- b) If you do not agree that it would be appropriate to designate the ASA as a co-regulator for VSP advertising, please explain why, and include any alternative approaches.

Question 4:

- a) Do stakeholders agree with Ofcom's proposed guidance on non-VSP-controlled advertising?
- b) If you do not agree with the proposed guidance on non-VSP-controlled advertising, please explain why, and include any alternative approaches.

Question 5:

- a) Do stakeholders agree with Ofcom's proposed approach to regulating non-VSP-controlled advertising?
- b) If you do not agree with the proposed approach to regulating non-VSP-controlled advertising, please explain why, and include any alternative approaches.

A2. Responding to this consultation

How to respond

- A2.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on 28 July 2021.
- A2.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/category-1/regulation-of-advertising-on-vsp>. You can return this by email or post to the address provided in the response form.
- A2.3 If your response is a large file, or has supporting charts, tables or other data, please email it to VSPRegulation@ofcom.org.uk, as an attachment in Microsoft Word format, together with the [cover sheet](#).
- A2.4 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.
- A2.5 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A2.6 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.
- A2.7 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.
- A2.8 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 1. 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.
- A2.9 If you want to discuss the issues and questions raised in this consultation, please contact VSPRegulation@ofcom.org.uk.

Confidentiality

- A2.10 Consultations are more effective if we publish the responses before the consultation period closes. In particular, 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 all responses on [the Ofcom website](#) as soon as we receive them.

- A2.11 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.
- A2.12 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A2.13 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

- A2.14 Following this consultation period, Ofcom plans to publish a statement in later this year.
- A2.15 If you wish, you can [register to receive mail updates](#) alerting you to new Ofcom publications.

Ofcom's consultation processes

- A2.16 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 3.
- A2.17 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.
- A2.18 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:
Email: corporationsecretary@ofcom.org.uk

A3. Ofcom's consultation principles

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

Before the consultation

- A3.1 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

- A3.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A3.3 We will make the consultation document as short and simple as possible, with a summary of no more than two pages. We will try to make it as easy as possible for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.
- A3.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A3.5 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.
- A3.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

- A3.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website as soon as we receive them. 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.

A4. 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 there is no separate annex, 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)?

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 seeks to publish responses on receipt. 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)

A5. Stakeholder information and research

A5.1 Ofcom's approach to regulating advertising on VSPs has been informed by responses to our Call For Evidence from representatives of industry and other stakeholders; and consumer research conducted with content creators. The most pertinent findings are summarised below.

Industry information

A5.2 Most platforms that responded to the Call for Evidence confirmed that their services carried some form of advertising. Some of these platforms set out the variety of mechanisms by which advertising appears on their services, including selling advertising space directly, working with partners and intermediaries, providing a self-serve advertising platform or similar functionality, and allowing users to upload advertising independently.

A5.3 All platforms with advertising referenced their dedicated advertising policies, as well as, in most cases, wider community standards and compliance with applicable regulations/laws. The advertising rules cited by platforms included ensuring adverts and other commercial content are age-appropriate, prohibiting advertising for certain products and services, and regulating the placement or format of advertising. BitChute said that it applies a set of advertising-specific guidelines in selecting advertising for the platform, while users uploading advertising are expected to comply with more general rules.

A5.4 Platforms reported using a mix of automated and manual moderation to ensure compliance with advertising rules. This can be combined with vetting advertising in advance, tools for users uploading advertising to declare it, and/or reporting tools for users viewing content containing advertising. SuperAwesome listed a number of tools platforms should provide to users, and SafeCast noted that its metadata labelling technology could assist VSPs in ensuring compliance with advertising rules.

A5.5 Many platforms said they did not have a mechanism in place to establish whether videos uploaded by users contain advertising. BitChute questioned the feasibility of such an approach given issues of cost and technological challenges. In general, platforms emphasised other measures they had taken.

A5.6 Non-platform respondents raised a range of issues, including the transparency of online advertising and the protection of children in particular. 5Rights Foundation said that, in its view, online advertising was not marked clearly enough, with children experiencing difficulty identifying advertising in influencer videos and not fully understanding the role played by advertising in such content.

A5.7 Safecast said that, in its view, all adverts appearing on VSPs should be trackable and auditable. It said that VSPs are failing to prevent the commercial exploitation of children on their platforms and could be required to produce audit reports on this. SuperAwesome highlighted the importance of working with influencers to ensure that interactions between brands and children are appropriate and pointed to its own work in this area.

- A5.8 The Institute of Alcohol Studies focused on the targeting of children with alcohol advertising online, which it said caused them to drink earlier and more than they otherwise would. Referencing restrictions on the placement and content of alcohol advertising online in France, the Institute of Alcohol Studies called for alcohol advertising targeting children to be prohibited.
- A5.9 In the context of the broader regulatory framework for Online Harms, Which? said that consumers should have equal protection from commercial and non-commercial content with the potential to cause harm, in order to avoid regulatory gaps which could be exploited by bad actors.

Consumer research with content creators

- A5.10 Ofcom commissioned research that spoke to 20 content creators who are active on a range of video-sharing platforms⁴³. All of the creators earn some form of revenue via the content they share on VSPs. The form of revenue generation varies substantially between different creators and the sites they use, but this could include revenue from marketing, sponsorships, money directly from viewers or receiving gifts from brands.
- A5.11 Amongst our sample most of the content creators were broadly aware and supportive of the need for advertising rules on video-sharing platforms. They felt that such rules enable a fair and level playing field amongst creators, as well as delivering transparency and authenticity to viewers. However, many of the creators seemed to lack an understanding of specific rules. Amongst the sample the greatest awareness of advertising rules was found among YouTube creators and they referred to the prompted checklist that appears when they upload new content to the site.⁴⁴
- A5.12 For the most part, creators within our research try to abide by the rules as this is important for their brand. Only a small minority, often young or relatively inexperienced creators, seemed to be willing to break the rules as part of their 'niche' or to stand out. This may involve, for example, deliberately showing copyrighted material in their videos. However, several creators did speak of breaking the rules unwittingly. The feedback received from the VSPs on how they broke the rules was not specific, leading creators to have to make assumptions around how they fell foul. Rules vary across VSPs and there were instances where creators had breached rules on some sites, while the same behaviour/act was acceptable elsewhere. Among the creators in this research it is felt that they could benefit from greater guidance and consistency from the VSPs.⁴⁵
- A5.13 The creators within our sample were also confused as to what happens when you do break the rules and who is responsible for their enforcement. Creators were unsure about some of the specifics about how and where they declare advertising, especially when products

⁴³ This research involved creators who worked on a range of websites and apps that people in the UK use to watch and share videos online. It did not focus solely on the services which may fall into Ofcom's regulatory remit under the VSP Regime, but instead sought to understand the UK VSP content creator's experience across the market.

⁴⁴ Ofcom, *Video-sharing platform Content Creators and Community Standards* 2021.

https://www.ofcom.org.uk/__data/assets/pdf_file/0024/216519/content-creators-community-standards.pdf

⁴⁵ Ofcom, *Video-sharing platform Content Creators and Community Standards* 2021.

are acquired via a more informal relationship or via gifting from a brand. Some of the smaller scale creators, who's revenue is being generated via small scale relationships or local connections (as opposed to official brand sponsorships), are less aware of what they need to do to adhere to advertising rules. Some of these creators are also under the impression that due to the smaller-scale nature of their revenue generation that the advertising rules do not necessarily apply to them. ⁴⁶

- A5.14 One key finding from our research is that content creators in this research choose to educate themselves on how to declare advertising by following their peers. Many of the content creators we spoke to had not seen any official guidance, but rather they followed their peers' examples. VSPs need to be mindful of peer-to-peer learning when trying to increase awareness and adherence to advertising rules on their sites. Content creators in our sample were also more likely to watch a 'how to' video on being a content creator, rather than reading any guidance published on a webpage. ⁴⁷
- A5.15 VSPs should also ensure they provide more clarity to content creators on when and where advertising should be declared, as well as providing more clarity for content creators on why their content may breach advertising rules. Amongst creators there are guideline breaches that can cause confusion. For example, within our sample content being removed for claims of nudity can cause frustration, with a perception that criteria is unfairly weighted against plus-size body imagery. And whilst content creators are aware they cannot promote illegal goods, there are some products where more guidance is needed such as the promotion of questionable health products such as diet pills. ⁴⁸
- A5.16 Overall, our research found that content creators are aware of their brand and consciously act to adhere to advertising rules. The threat of demonetisation for rule-breaking is a strong motivating factor for this group, as well as wanting to be portrayed as acting with integrity amongst their followers. Both of these factors should be considered by VSPs when trying to adhere good practice amongst the users of the site. But this research suggests that content creators may also be in need of:
- Greater clarity from VSPs around the consequences of breaking rules;
 - Consistency of rules amongst VSPs;
 - Greater clarity on how advertising should be declared and clarity on the rules around promoting more questionable products;
 - VSPs could consider leveraging peer-to-peer communication amongst content creators to spread awareness of the rules; and
 - Research suggests greater exposure to communication of need-to-knows increases creators' understanding of the rules.

⁴⁶ Ofcom, *Video-sharing platform Content Creators and Community Standards* 2021.

⁴⁷ Ofcom, *Video-sharing platform Content Creators and Community Standards* 2021.

⁴⁸ Ofcom, *Video-sharing platform Content Creators and Community Standards* 2021.

A6. Glossary and abbreviations

Advertising Standards Authority (ASA): The ASA is the UK's independent advertising regulator across all media. Its role is to ensure UK advertising complies with the Advertising Codes, which require that adverts are legal, decent, honest and truthful. It responds to concerns from consumers and businesses as well as proactively monitoring advertising. It acts to ban adverts that are misleading, harmful, offensive or irresponsible.

Audiovisual Commercial Communications (AVCCs): 'AVCC' is an umbrella term used in the Act to cover conventional advertising, as well as sponsorship, teleshopping and product placement, but also influencer marketing and other forms of advertising associated with VSPs.

Broadcast Committee of Advertising Practice (BCAP): BCAP is responsible for writing and maintaining the UK Code of Broadcast Advertising ("the BCAP Code"). The BCAP Code applies to all advertisements (including teleshopping, content on self-promotion television channels, television text and interactive TV adverts) and programme sponsorship credits on radio and television services licensed by Ofcom.

Committee of Advertising Practice (CAP): CAP is responsible for writing and maintaining the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing ("the CAP Code"). This Code applies across all non-broadcast media including online and on companies' own websites, outdoor, print media, cinema and direct marketing. CAP also provides training and advice to help businesses and marketers stick to the rules.

Non-VSP-controlled advertising: Advertising that is not controlled by a VSP provider (i.e. is not marketed, sold or arranged by a VSP provider), for which the VSP is to take measures to ensure standards are met, as set out in the Act.

Video-Sharing Platform (VSP): A type of online video service. A principal feature of this type of service is that it enables users to upload and share videos with members of the public.

The VSP Annex: An annex to the CAP Code which contain the specific rules that apply to VSP-controlled advertising, reflecting the requirements of Section 368Z of the Act, to be enforced by the ASA.

VSP-controlled advertising: Advertising that is marketed, sold or arranged by VSP providers themselves and is considered to be under their control for the purposes of the Act.