Annex 3: Legal Framework

Additional Safety Measures Statement

Statement Annex

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A1. Legal Framework Overview (Part A)

Introduction

A1.1 This Annex is in three sections. This first section sets out parts of the legal and regulatory framework under the Online Safety Act 2023 ('the Act') that are relevant to this consultation. It is intended to provide a high-level summary as context for our consultation but is not a comprehensive outline of service providers' obligations under the Act. It focuses on the duties the Act places on Ofcom and online service providers in relation to illegal content and protection of children where relevant to the additional measures we propose in this consultation. The second section of this Annex sets out in more detail Ofcom's and providers' duties relating to illegal content and the third section of this Annex sets out Ofcom's and providers' duties relating to protection of children.

A1.2 The Act places a number of duties on Ofcom and the online services who fall within scope of the new regime, namely user-to-user, search and pornography services. This consultation focuses on the first two categories of services.

A1.3 We have also not referred to aspects of the legal framework which are not the focus of this consultation, for example:

a) Aspects which relate to Phase 3 of our implementation roadmap, such as transparency, user empowerment and other duties on categorised services;
b) Aspects which relate to duties under Part 5 of the Act that apply to service providers that display or publish pornographic content.

The Online Safety Act 2023

Overview of the Act

Scope

A1.4 The Act provides for a regulatory framework which has the general purpose of making the use of regulated internet services safer for individuals in the UK. To achieve this, the Act imposes duties which require providers to identify, mitigate and manage the risks of harm from illegal content and activity and content and activity that is harmful to children, as well as conferring new functions and powers on Ofcom. Duties imposed on providers seek to secure, among other things, that regulated services are safe by design.[1]

A1.5 Internet services within scope of the regulatory regime can be broadly grouped as:

a) a "user-to-user service", which means an internet service through which content that is generated, uploaded or shared by users may be encountered by other users of the service;[2]
b) a "search service", which means an internet service that is, or includes, a search engine;[3] or

[1] Section 1 of the Online Safety Act 2023 (the Act).
[2] Section 3(1) of the Act.
[3] Section 3(4) of the Act.

c) a provider of internet services on which "provider pornographic content" is published or displayed.[4]

A1.6 Such services will only be in scope if they have "links to the United Kingdom" and do not fall within Schedule 1 to the Act (exempt services).[5] Regulated services have links to the UK if the service has a significant number of UK users or if UK users form one of the target markets or the only target market.[6] A service will also be considered to have links to the UK if it is capable of being used in the UK by individuals, and there are reasonable grounds to believe that there is a material risk of significant harm to individuals in the UK presented by user-generated content present on the service or search content of the service.[7]

A1.7 The Act establishes categories of regulated user-to-user and search services. Category 1 and Category 2B relate to different kinds of regulated user-to-user services, with Category 1 being the largest services. Category 2A relates to search services. The Secretary of State is responsible for setting threshold conditions for these categories based on the number of users of the service, its functionalities and other relevant factors.[8] Once the threshold conditions have been set, Ofcom is required to maintain and publish a register of the services in each category.[9]

A1.8 The Government's Statement of Strategic Priorities for Online Safety (SSP) was designated on 2 July 2025[10] and Ofcom responded on 25 July 2025.[11] The Act requires Ofcom to have regard to the SSP when exercising its regulatory functions on online safety.[12]

Provider duties

A1.9 The Act places duties of care (Part 3) and other duties (Part 4) on all providers of user-to-user services and search services. These include requirements to:

a) for user-to-user and search services:

i) carry out a suitable and sufficient illegal content risk assessment;[13]
ii) put in place systems and processes which allow users and affected persons to easily report illegal content and content that is harmful to children to the service provider;[14]
iii) operate a transparent and easy to use and access complaints procedure which allows for complaints of specified types to be made, including about illegal content;[15]
iv) have particular regard to the importance of protecting users' right to freedom of expression within the law, and protecting users from a breach of privacy, when deciding on and implementing safety measures and policies;[16]
v) put in place systems and processes designed to ensure that detected and unreported CSEA content is reported to the NCA.[17]

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[4] Section 79 of the Act.
[5] Section 4(2)(a) of the Act.
[6] Section 4(5) of the Act.
[7] Section 4(6) of the Act.
[8] Schedule 11 of the Act.
[9] Section 95 of the Act. See also Ofcom's Register of Categorised Services.
[10] Statement of Strategic Priorities for Online Safety.
[11] Letter to Government on the Statement of Strategic Priorities for Online Safety.
[12] Section 92 of the Act.
[13] Sections 20 and 31 of the Act.
[14] Sections 20 and 31 of the Act.
[15] Sections 21 and 32 of the Act.
[16] Sections 22 and 33 of the Act.
[17] Section 66 of the Act.

b) for user-to-user service providers only:[18]

   i) take or use proportionate measures to prevent individuals from encountering priority illegal content; effectively mitigate and manage the risk of the service being used for the commission or facilitation of a priority offence; and effectively mitigate and manage the risks of harm to individuals as identified in a service's most recent illegal content risk assessment; and
   ii) use proportionate systems and processes designed to minimise the length of time for which any priority illegal content is present and to swiftly take down illegal content when the provider becomes aware of it;
   iii) explain in clear and accessible terms of service how the service is protecting its users from illegal content and apply these terms of service consistently;

c) for search services only:[19]

   i) take or use proportionate measures to effectively mitigate and manage the risks of harm to individuals as identified in a service's most recent illegal content risk assessment;
   ii) use proportionate systems and processes designed to minimise the risk of individuals encountering priority illegal content and other illegal content that the provider knows about;
   iii) explain in clear and accessible provisions in a public statement how individuals are to be protected from search content that is illegal content, and apply those provisions consistently;

d) for user-to-user services and search services likely to be accessed by children:

   i) carry out a suitable and sufficient children's risk assessment in accordance with Schedule 3 and keep it up to date;[20]
   ii) take or use proportionate measures to effectively mitigate and manage the risks of harm to children in different age groups as identified in a service's most recent children's risk assessment, and mitigate the impact of harm to children in different age groups presented by content that is harmful to children;[21]

e) in addition, user-to-user services likely to be accessed by children must notify Ofcom where a children's risk assessment identifies the presence of non-designated content that is harmful to children;[22] and operate the service using proportionate systems and processes designed to prevent children of any age from encountering primary priority content that is harmful to children and protect children in age groups judged at risk of harm from encountering other content that is harmful to children;[23]
f) search services likely to be accessed by children must also use proportionate systems and processes designed to minimise the risk of children of any age encountering primary priority content that is harmful to children, and minimise the risk of children in age groups judged to be at risk of harm from other content that is harmful to children.[24]

[18] Section 10 of the Act.
[19] Section 27 of the Act.
[20] Sections 11 and 28 of the Act.
[21] Sections 12(2) and 29(2) of the Act.
[22] Section 11(5) of the Act.
[23] Section 12(3) of the Act.
[24] Section 29(3) of the Act.

A1.10 In relation to illegal content, the Act defines this as "content that amounts to a relevant offence".[25] A relevant offence refers to a priority offence (terrorism offences, offences related to child sexual exploitation or abuse or other priority offences as specified in Schedule 7) or any other type of offence where the victim is an individual or individuals, subject to certain exceptions.[26] [27] [28] [29]

A1.11 Providers of Category 1 services are also subject to a number of additional duties, including requirements to abide by their terms of service and apply them consistently.[30] The Act also places specific duties on services in relation to certain pornographic content and fees.[31] [32] Our December 2024 Illegal Harms Statement deals with terms of service for providers of Category 1 services. The other duties will be dealt with in different decisions.

Duties about content reporting and complaints procedures

A1.12 The duties about content reporting and complaints procedures for providers of user-to-user service providers are contained in sections 20, 21A and 21 and the duties for search services can be found in sections 31 and 32 of the Act.

Duties about content reporting

A1.13 All providers of regulated user-to-user and search services are required to use systems and processes in the operation of their services which allow users and "affected persons" (paragraph A1.16) and "interested persons" (paragraph A1.17) to easily report certain types of content, depending on the kind of service. For instance, such systems and processes must be put in place to enable users and affected persons to report "illegal content" on *all* user-to-user and search services.[33] The duty includes a duty to operate a service using systems and processes that allow users and affected persons to easily make an "intimate image content report"

A1.14 For services that are likely to be accessed by children, the duty also applies in respect of content that is harmful to children.[34] [35]

A1.15 Section 8(3)(b) of the Act provides that a duty in relation to a service which is expressed to apply in relation to users of a service extends to the design, operation and use of the service as it affects *United Kingdom* users of the service.

A1.16 For the purposes of the duties about content reporting and complaints procedures (paragraphs A1.13 - A1.23), an "affected person" means a person, other than a user of the service in question, who is in the United Kingdom and who is: (a) the subject of the content, (b) a member of a class or group of people with a certain characteristic targeted by the content, (c) a parent of, or other adult with responsibility for, a child who is a user of the service or is the subject of the content, or (d) an adult providing assistance in using the

[25] Section 59(2) of the Act.
[26] Schedule 5 of the Act.
[27] Schedule 6 of the Act.
[28] Section 59(5) of the Act.
[29] Section 59(6) of the Act.
[30] Sections 71 and 72 of the Act.
[31] Part 5 of the Act.
[32] Part 6 of the Act.
[33] Sections 20(2), 20(3), 31(2) and 31(3) of the Act.
[34] Sections 20(4) and 31(4) of the Act.
[35] Section 20(6) of the Act states that: "*a provider is only entitled to conclude that it is not possible for children to access a service, or a part of it, if age verification or age estimation is used on the service with the result that children are not normally able to access the service or that part of it*."

service to another adult who requires such assistance, where that other adult is a user of the service or is the subject of the content.[36]

A1.17 For the purposes of the duties about complaints procedures for regulated search services, an "interested person" means a person that is responsible for a website or database capable of being searched by the search engine, provided that—

a) in the case of an individual, the individual is in the United Kingdom;
b) in the case of an entity, the entity is incorporated or formed under the law of any part of the United Kingdom.[37]

A1.18 In applying the content reporting duty, the cross-cutting duties will also be relevant.

Duties about complaints procedures

A1.19 There are two main duties in respect of complaints procedures which apply in relation to all regulated user-to-user and search services. These are:

a) A duty to operate a complaints procedure, in relation to a service, that:
   i) allows for relevant kinds of complaint to be made (as set out below),
   ii) provides for appropriate action to be taken by the provider of the service in response to complaints of a relevant kind, and
   iii) is easy to access, easy to use (including by children) and transparent.[38]
b) A duty to include provisions in the terms of service which are easily accessible (including to children) specifying the policies and processes that govern the handling and resolution of complaints of a relevant kind.[39]

A1.20 For all services, relevant complaints are:

a) complaints by users and affected persons about content present on a service which they consider to be illegal content;
b) complaints by users and affected persons (see definition at paragraph A1.16 if they consider that the provider is not complying with their: Illegal content duties (paragraphs A2.11-A2.19), the content reporting duty (paragraphs A1.13 – A1.18), or either of the cross-cutting duties (paragraphs A1.24-A1.26);
c) complaints by a user who has generated, uploaded or shared content on a service if that content is taken down on the basis that it is illegal content;
d) complaints by a user of a service if the provider has given a warning to the user, suspended or banned the user from using the service, or in any other way restricted the user's ability to use the service, as a result of content generated, uploaded or shared by the user which the provider considers to be illegal content;
e) complaints by a user who has generated, uploaded or shared content on a service if—
   i) the use of proactive technology on the service results in that content being taken down or access to it being restricted, or given a lower priority or otherwise becoming less likely to be encountered by other users, and
   ii) the user considers that the proactive technology has been used in a way not contemplated by, or in breach of, the terms of service (for example, by affecting

[36] Section 20(5) of the Act.
[37] Sections 32(6) and 227(8) of the Act.
[38] Sections 21(2) and 32(2) of the Act.
[39] Sections 21(3) and 32(3) of the Act.

content not of a kind specified in the terms of service as a kind of content in relation to which the technology would operate).[40]

A1.21 For services that are likely to be accessed by children the following will be a relevant complaint:[41]

a) Complaints by users and affected persons about content, present on a part of a service that it is possible for children to access, which they consider to be content that is harmful to children;
b) Complaints by users and affected persons if they consider that the provider is not complying with the children's safety duties (paragraphs A3.13-A3.18);
c) Complaints by a user who has generated, uploaded or shared content on a service if that content is taken down, or access to it is restricted, on the basis that it is content that is harmful to children;
d) Complaints by a user of a service if the provider has given a warning to the user, suspended or banned the user from using the service, or in any other way restricted the user's ability to use the service, as a result of content generated, uploaded or shared by the user which the provider considers to be content that is harmful to children; and
e) Complaints by a user who is unable to access content because measures used to comply with the children's safety duties have resulted in an incorrect assessment of the user's age.[42]

A1.22 For search services the following will be a kind of relevant complaint:

a) complaints by an interested person if the provider of a search service takes or uses measures in order to comply with their safety duties (paragraphsA3.22-A3.26) that result in content relating to that interested person no longer appearing in search results or being given a lower priority in search results;[43]
b) complaints by an interested person if—
    i) the use of proactive technology (paragraphs A1.55-A1.59) on a search service results in content relating to that interested person no longer appearing in search results or being given a lower priority in search results; and
    ii) the interested person considers that the proactive technology has been used in a way not contemplated by, or in breach of, the provider's policies on its use (for example, by affecting content not of a kind specified in those policies as a kind of content in relation to which the technology would operate).[44]

A1.23 Category 1 user-to-user service providers are required to provide for additional types of relevant complaint. For instance, relevant complaints include complaints that they are not complying with their duties relating to user empowerment, content of democratic

[40] Sections 21(4)(a)-(e) and 32(4)(a)-(d) of the Act.
[41] These categories apply in addition to those types of relevant complaint which apply to all regulated user-to-user and search services as set out in sections 21(4) and 31 of the Act. These are covered by the Illegal Content Codes of Practice for user-to-user services. See Ofcom's Statement: Protecting people from illegal harms online, Annex 2 (Legal Framework), Part B, paragraph A2.26 for more information. Category 1 services are also required to provide for additional types of relevant complaint, as set out in section 21(6) of the Act.
[42] Section 21(5) of the Act.
[43] Section 32(5)(d) of the Act also provides for complaints from users who are unable to access content due to an incorrect assessment of their age.
[44] Section 32(4)(a)-(d) of the Act.

importance, news publisher content, journalistic content and freedom of expression and privacy.[45]

Cross-cutting duties

User-to-user service providers

A1.24 The Act also creates so-called "cross-cutting duties", which apply to regulated user-to-user service providers in relation to the performance of other duties under the Act. For instance, the freedom of expression and privacy duties are concerned with how "safety measures and policies" are introduced in relation to a regulated user-to-user service providers. These "safety measures and policies" refer to any measures or policies designed to secure compliance with the safety duties in respect of illegal content (section 10, paragraphs A2.12-A2.15), children's online safety (section 12, paragraphs A3.4-A3.11), the duties about content reporting (section 20, paragraphs A1.13-A1.18) and complaints procedures (section 21, paragraphs A1.19-A1.23), as well as other duties in relation to user empowerment (section 15).

A1.25 In a similar vein, the record-keeping and review duties apply to the performance of the risk assessment duties in relation to illegal content (section 9) children's online safety (section 11) and other "relevant duties", including the illegal content duties (section 10), content reporting (section 20) and complaints procedures (section 21).

A1.26 Section 7 of the Act states that all providers of regulated user-to-user service providers must comply with these duties (and the other duties set out under section 7(2)).

Connection with the UK

A1.27 These duties only apply to:

a) The design, operation and use of the service in the UK, and
b) In the case of a duty that is expressed to apply in relation to users of a service, the design, operation and use of the service as it affects UK users of the service.[46]

Combined services

A1.28 Where the user-to-user service providers is a combined service (i.e., providing both a regulated user-to-user and regulated search service), these duties will not apply to:

a) The search content of the service,
b) Any other content that, following a search request, may be encountered as a result of subsequent interactions with internet services, or
c) Anything relating to the design, operation or use of the search engine.[47]

A1.29 However, the duties that apply to regulated search services in relation to the protection of children (see paragraphs A3.22-A3.26) will still apply to those aspects of a combined service.[48]

A1.30 The cross-cutting duties for regulated user-to-user service providers are contained in sections 22 and 23 of the Act.

[45] Section 21(6) of the Act.
[46] Section 8(3) of the Act.
[47] Section 8(2) of the Act.
[48] Section 7(6) of the Act.

Search services

A1.31 The Act also creates 'cross-cutting' duties which apply to regulated search services in relation to the performance of other duties under the Act. For instance, the duties about freedom of expression and privacy are concerned with how "safety measures and policies" are introduced in relation to a regulated search service. These "safety measures and policies" refer to any measures or policies designed to secure compliance with the safety duties about illegal content (section 27, paragraphs A2.25-A2.27), duties in relation to children's online safety (section 29, paragraphs A3.22-A3.26) and the duty about content reporting (section 31, paragraphs A1.13-A1.18), and duties about complaints procedures (section 32, paragraphs A1.19-A1.23).

A1.32 In a similar vein, the record-keeping and review duties apply to the performance of the risk assessment duties under section 26 (paragraphs A1.39-A1.42) and section 28 (Children's risk assessment duties); and other "relevant (duties)", including the safety duties in respect of illegal content (paragraphs A2.24-A2.27), and content reporting and complaints procedures (sections 31 and 32, paragraphs A1.13-A1.23).

A1.33 The cross-cutting duties for regulated search services are set out in sections 33 and 34 of the Act.

Duties about freedom of expression and privacy

A1.34 All regulated user-to-user and search services have the following duties when deciding on, and implementing, "safety measures and policies":

a) a duty to have particular regard to the importance of protecting users' right to freedom of expression within the law;[49] and
b) a duty to have particular regard to the importance of protecting users from a breach of any statutory provision or rule of law concerning privacy that is relevant to the use or operation of a user-to-user service (including, but not limited to, any such provision or rule concerning the processing of personal data).[50]

A1.35 In addition, regulated user-to-user service providers which are also Category 1 services will have the following duties:

a) A duty to carry out impact assessments:

i) when deciding on safety measures and policies, to determine the impact that such measures or policies have on (i) users' right to freedom of expression within the law, and (ii) the privacy of users;[51] and
ii) to determine the impact that any adopted safety measures and policies have on (i) users' right to freedom of expression within the law, and (ii) the privacy of users.[52]

A1.36 An impact assessment relating to a service must include a section which considers the impact of the safety measures and policies on the availability and treatment on the service of content which is news publisher content or journalistic content in relation to the service.

a) A duty to keep an impact assessment up to date, and to publish impact assessments.[53]

[49] Section 22(2) for User-to-user service providers and section 33(2) of the Act for search services.
[50] Section 22(3) for User-to-user service providers and section 33(3) of the Act for search services.
[51] Section 22(4)(a) of the Act.
[52] Section 22(4)(b) of the Act.
[53] Section 22(6) of the Act.

b) A duty to specify in a publicly available statement the positive steps that the provider has taken in response to an impact assessment to— (i) protect users' right to freedom of expression within the law, and (ii) protect the privacy of users.[54]

Record-keeping and review duties

User-to-user service providers

A1.37 All regulated user-to-user service providers have the following duties:

a) A duty to make and keep a written record, in an easily understandable form, of every risk assessment under section 9 (Illegal Content Risk assessment duties) or 11 (Children's Risk Assessments).[55]

b) A duty to make and keep a written record of any measures taken or in use to comply with a relevant duty which— (a) are described in a Code of Practice and recommended for the purpose of compliance with the duty in question, and (b) apply in relation to the provider and the service in question. Such measures are referred to as "applicable measures in a Code of Practice".[56]

c) If alternative measures (paragraph A1.38) have been taken or are in use to comply with a relevant duty, a duty to make and keep a written record containing the following information—

i) the applicable measures in a Code of Practice that have not been taken or are not in use,
ii) the alternative measures that have been taken or are in use,
iii) how those alternative measures amount to compliance with the duty in question, and
iv) how the provider has had regard to the importance of protecting the right of users to freedom of expression within the law, and protecting the privacy of users in taking or using alternative measures.[57] [58]

d) A duty to review compliance with the relevant duties in relation to a service— (a) regularly, and (b) as soon as reasonably practicable after making any significant change to any aspect of the design or operation of the service.[59]

A1.38 'Alternative measures' means measures other than measures which are (in relation to the provider and the service in question) applicable measures in a Code of Practice. If alternative measures have been taken or are in use to comply with the safety duties about illegal content (paragraphs A2.12-A2.15), or a duty set out in section 11(2) or (3)) of the Act (safety duties protecting children), these records must also indicate whether such measures have been taken or are in use in every area listed at paragraphs A3.13 (a)-(h) below or 11(5) (concerning safety duties protecting children), as the case may be, in relation to which there are applicable measures in a Code of Practice (paragraphs A1.43-A1.62).

Search services

A1.39 All regulated search services have the following duties:

[54] Section 22(7) of the Act.
[55] Section 23(2) of the Act.
[56] Section 23(3) of the Act.
[57] Section 23(4) of the Act.
[58] Section 49(5) of the Act.
[59] Section 23(6) of the Act.

a) A duty to make and keep a written record, in an easily understandable form, of every risk assessment made under section 26 (paragraph A2.24) or 28 (children's risk assessment duties).[60]

b) A duty to make and keep a written record of any measures taken or in use to comply with a relevant duty which—

   i) are described in a Code of Practice and recommended for the purpose of compliance with the duty in question, and

   ii) apply in relation to the provider and the service in question. In this section such measures are referred to as "applicable measures in a code of practice".[61]

c) If alternative measures have been taken or are in use to comply with a relevant duty, a duty to make and keep a written record containing the following information—

   i) the applicable measures in a Code of Practice that have not been taken or are not in use,

   ii) the alternative measures that have been taken or are in use,

   iii) how those alternative measures amount to compliance with the duty in question, and

   iv) how the provider has had regard to the importance of protecting the right of users and interested persons to freedom of expression within the law, and protecting the privacy of users in taking or using alternative measures (i.e. under section 49(5)).[62]

A1.40 If alternative measures have been taken or are in use to comply with the safety duties about illegal content (specifically sections 27(2) or (3)), or the safety duties protecting children (in section 29(2) or (3) of the Act), this record must also indicate whether such measures have been taken or are in use in every area listed at paragraph A2.26 or paragraph A3.24 below (Section 29(4)) concerning Safety duties protecting children (as the case may be) in relation to which there are applicable measures in a Code of Practice (paragraphs A2.42 and A3.33-A3.40[63]

a) A duty to review compliance with the relevant duties in relation to a service— regularly, and as soon as reasonably practicable after making any significant change to any aspect of the design or operation of the service.[64]

A1.41 Ofcom may provide that particular descriptions of providers of search services are exempt from any or all of the record-keeping and review duties, and must publish details of any exemption.[65]

A1.42 As required under section 52(3)(a) of the Act, we published guidance on record keeping and review as part of our December 2024 Statement.[66] This guidance has been updated and published alongside our April 2025 Statement on Protecting Children from Harms Online to reflect the duties relevant to services likely to be accessed by children.

[60] Section 34(2) of the Act.
[61] Section 34(3) of the Act.
[62] Section 34(4)(a)-(d) of the Act.
[63] Section 34(5) of the Act.
[64] Sections 34(6)(a) & (b) of the Act.
[65] Section 34(7) of the Act.
[66] See Ofcom, 2024. Record-Keeping and Review Guidance.

Ofcom's Codes of Practice and guidance

A1.43 Ofcom must issue Codes of Practice for regulated user to user and search services containing measures recommended for the purposes of compliance with certain duties referred to above, including the illegal content safety duties in sections 10 and 27.[67] In preparing these Codes of Practice, Ofcom must consider the principles and objectives set out Schedule 4 to the Act. Please see Section 23 of this consultation for further discussion of these requirements.

A1.44 Where a Code of Practice exists, a provider of a regulated user-to-user service is to be treated as complying with a relevant duty if the provider takes or uses the measures described in the Code of Practice which are recommended for the purpose of complying with that duty (this is sometimes referred to as a "safe harbour"). In addition, providers are treated as complying with the cross-cutting duties regarding freedom of expression and privacy set out in sections 22 and 33 if they take or use such of the relevant recommended measures as incorporate safeguards to protect users' rights to freedom of expression and privacy. Providers may choose to take alternative measures to comply with the relevant duties rather than following the recommended measures in Codes.[68]

A1.45 Ofcom is further required to issue Illegal Content Judgements Guidance.[69]

General principles

A1.46 In preparing a draft code, Ofcom must consider the appropriateness of provisions of the code to different kinds and sizes of user-to-user and search services, and to providers of differing sizes and capacities (paragraph 1 of Schedule 4). It must also have regard to the following principles:

a) Providers of user-to-user and search services must be able to understand which provisions of the code of practice apply in relation to a particular service they provide;
b) The measures described in the code of practice must be sufficiently clear, and at a sufficiently detailed level, that providers understand what those measures entail in practice;
c) The measures described in the code of practice must be proportionate and technically feasible: measures that are proportionate or technically feasible for providers of a certain size or capacity, or for services of a certain kind or size, may not be proportionate or technically feasible for providers of a different size or capacity or for services of a different kind or size; and
d) The measures described in the code of practice that apply in relation to user-to-user and search service providers of various kinds and sizes must be proportionate to Ofcom's assessment of the risk of harm presented by services of that kind or size (paragraphs A2.31 and A3.29).[70]

[67] Section 41 of the Act.
[68] Section 49 of the Act.
[69] Section 193 of the Act.
[70] Paragraph 2(a)-(d) of Schedule 4 to the Act.

Online safety objectives

A1.47 Ofcom must ensure that measures described in the Codes are compatible with the pursuit of the online safety objectives.[71]

A1.48 For user-to-user service providers, the online safety objectives are:

a) That a service should be designed and operated in such a way that –

i) the systems and processes for regulatory compliance and risk management are effective and proportionate to the kind and size of service,
ii) the systems and processes are appropriate to deal with the number of users of the service and its user base,
iii) UK users (including children) are made aware of, and can understand, the terms of service,
iv) there are adequate systems and processes to support UK users,
v) (in the case of a Category 1 service) users are offered options to increase their control over the content they encounter and the users they interact with,
vi) the service provides a higher standard of protection for children than for adults,
vii) the different needs of children at different ages are taken into account,
viii) there are adequate controls over access to the service by adults, and
ix) there are adequate controls over access to, and use of, the service by children, taking into account use of the service by, and impact on, children in different age groups; and

b) That a service should be designed and operated so as to protect individual UK users from harm, including with regard to –

i) algorithms used by the service,
ii) functionalities of the service, and
iii) other features relating to the operation of the service.[72]

A1.49 For search services, the online safety objectives are:

a) That a service should be designed and operated in such a way that –

i) the systems and processes for regulatory compliance and risk management are effective and proportionate to the kind and size of service,
ii) the systems and processes are appropriate to deal with the number of users of the service and its user base,
iii) UK users (including children) are made aware of, and can understand, the publicly available statement referred to in relation to the safety duties protecting children in section 29,[73]
iv) there are adequate systems and processes to support UK users,
v) the service provides a higher standard of protection for children than for adults, and
vi) the different needs of children at different ages are taken into account; and

b) That a service should be assessed to understand its use by, and impact on, children in different age groups; and

[71] Paragraph 3 of Schedule 4 to the Act.
[72] Paragraph 4 of Schedule 4 to the Act.
[73] This provision also applies to the statement relating to the illegal content safety duties referred to in section 27 of the Act.

c) That a search engine should be designed and operated so as to protect individuals in the UK who are users of the service from harm, including with regard to –

i) algorithms used by the search engine,
ii) functionalities relating to searches (such as a predictive search functionality), and
iii) the indexing, organisation and presentation of search results.[74]

A1.50 For combined services:

a) The online safety objectives that apply to user-to-user services (paragraph A1.48) do not apply in relation to the search engine;

b) The online safety objectives that apply to search services (paragraph A1.49) apply in relation to the search engine (and, accordingly, in this context, references to a search service are to be read as references to the search engine); and

c) The reference to a publicly available statement includes a reference to provisions of the terms of service which relate to the search engine.[75]

A1.51 The Secretary of State may amend these objectives by way of regulations.[76]

Content of Codes of Practice

A1.52 The Act also sets out what type of measures must be included in the content of the Codes, and the principles in relation to which such measures should be designed. Such measures may only relate to the design or operation of the relevant service in the United Kingdom, or as it affects United Kingdom users of the service. In particular:

a) The Codes of Practice describing measures recommended for the purpose of compliance with the safety duties for providers of user-to-user service providers set out at paragraphs A2.15(a)&(b) and A3.18(a)&(b) below (i.e. in relation to taking proportionate measures relating to the design or operation of the service, or to operate a service using proportionate systems and processes), must include measures in each of the areas of a service listed at paragraphs A2.14(a)-(h) (for the duties relating to illegal content) and A3.15(a)-(h) (for the safety duties protecting children), to the extent that inclusion of the measures in question is consistent with:

i) their appropriateness to different kinds and sizes of services and to providers of differing sizes and capacities;
ii) the principle that measures should be proportionate and technically feasible; measures that are proportionate or technically feasible for providers of a certain size or capacity, or for services of a certain kind or size, may not be proportionate or technically feasible for providers of a different size or capacity or for services of a different kind or size;
iii) the principle that the measures described in the code of practice that apply in relation to services of various kinds and sizes must be proportionate to OFCOM's assessment (under section 98) of the risk of harm presented by services of that kind or size.[77]

b) Codes of practice that describe measures recommended for the purpose of compliance with the Safety Duties about illegal content and children's online safety, for providers of

[74] Paragraph (5)(a)-(c) of Schedule 4 to the Act.
[75] Paragraph 6(a)-(c) of Schedule 4 to the Act.
[76] Paragraph 7 of Schedule 4 to the Act.
[77] Paragraphs 9(1), 9(2) and 9(5) of Schedule 4 to the Act.

search services set out at paragraphs A2.27(a)&(b) and A3.26(a)&(b) below (i.e. in relation to taking proportionate measures relating to the design or operation of the service, or to operate a service using proportionate systems and processes) must include measures in each of the areas of a service listed at paragraphs A2.26(a)-(f) (for the duties relating to illegal content) and A3.24(a)-(f) (for the safety duties protecting children) below, to the extent that inclusion of the measures in question is consistent with paragraph A1.52(a) i) to iii) above.[78] [79]

A1.53 Any measures described in a Code of Practice which are recommended for the purpose of compliance with any of the relevant duties must be designed in the light of the following principles:

a) the importance of protecting the right of users and (in the case of search services or combined services) interested persons to freedom of expression within the law, and
b) the importance of protecting the privacy of users.[80]

A1.54 Where appropriate, such measures must also incorporate safeguards for the protection of the matters mentioned in those principles.

Proactive technology

A1.55 If Ofcom considers it appropriate to do so, and in accordance with the general principles set out at paragraphs 1 and 2 of Schedule 4 to the Act (paragraphs A1.47-A1.52) and the principles set out at paragraph 10(2) of Schedule 4 to the Act (paragraph A1.54), it may include in a Code of Practice a measure describing the use of a kind of technology. However, there are constraints on Ofcom's power to include a measure describing the use of "proactive technology" (a "proactive technology measure"). Section 231 defines "proactive technology" as consisting of three types of technology: content identification technology, user profiling technology, and behaviour identification technology (subject to certain exceptions). These are explained in greater detail below.

A1.56 Content identification technology refers to technology, such as algorithms, keyword matching, image matching or image classification, which analyses content to assess whether it is content of a particular kind (for example, illegal content). Content identification technology is not regarded as proactive technology if it is used in response to a report from a user or other person about particular content.

A1.57 User profiling technology means technology which analyses (any or all of) relevant content (as defined in section 231(8)), user data, or metadata relating to relevant content or user data, for the purposes of building a profile of a user to assess characteristics such as age. However, technology which analyses data specifically provided by a user for the purposes of the provider verifying or estimating the user's age in order to decide whether to allow the user to access a service (or part of a service) or particular content, but which does not analyse any other data or content, is not regarded as user profiling technology.

A1.58 Behaviour identification technology means technology which analyses (any or all of) relevant content (as defined in section 231(8)), user data, or metadata relating to relevant content or

[78] The measures set out in Section 27(4) of the Act in respect of illegal content and Section 29(4) of the Act in respect of children's online safety.
[79] Paragraphs 9(3), 9(4) and 9(5) of Schedule 4 to the Act.
[80] This refers to protecting the privacy of users from a breach of any statutory provision or rule of law concerning privacy that is relevant to the use or operation of a USER-TO-USER or search service (including any provisions concerning the processing of personal data), paragraph 10(4) of Schedule 4 to the Act.

user data, to assess a user's online behaviour or patterns of online behaviour (for example, to assess whether a user may be involved in, or be the victim of, illegal activity). But behaviour identification technology is not regarded as proactive technology if it is used in response to concerns identified by another person or an automated tool about a particular user.

A1.59 Ofcom has power to include a proactive technology measure in a Code of Practice for the purpose of compliance with the safety duties in relation to illegal content set out in sections 10(2) or (3) (for User-to-user service providers), or in sections 27(2) or (3) (for search services).[81] However, that power is subject to the following constraints:

a) A proactive technology measure may not recommend the use of technology which operates (or may operate) by analysing user-generated content communicated privately, or metadata relating to such content.[82]
b) A proactive technology measure may be included in a Code of Practice in relation to services of a particular kind or size only if Ofcom is satisfied that the use of the technology by such services would be proportionate to the risk of harm that the measure is designed to safeguard against (taking into account, in particular, Ofcom's risk profile relating to such services published under section 98 (paragraphs A1.75-A1.77)[83]
c) In deciding whether to include a proactive technology measure in a Code of Practice, Ofcom must have regard to the degree of accuracy, effectiveness and lack of bias achieved by the technology in question. Ofcom may also refer in the Code of Practice to existing industry or technical standards for the technology (where they exist), or set out principles in the Code of Practice designed to ensure that the technology or its use is (so far as possible) accurate, effective and free of bias.[84]

Relationship between provider duties and Ofcom's Codes of Practice

A1.60 Providers of a regulated user-to-user or search service who take or use the measures described in a Code of Practice which are recommended for the purpose of complying with a relevant duty will be treated as having complied with that relevant duty.[85] Further, providers who take or use the relevant recommended measures that incorporate safeguards to protect users' rights to freedom of expression within the law, and to protect the privacy of users, respectively, will be treated as having complied with the freedom of expression and privacy duties set out in sections 22(2)-(3), for user-to-user service providers, and sections 33(2)-(3), for search services, respectively.[86]

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[81] Paragraph 13(3) of Schedule 4 to the Act sets out that a proactive technology measure may also be recommended for the purpose of compliance with the children's online safety duties set out in section 12(2) or (3) of the Act (in relation to User-to-user service providers) or section 29(2) or (3) of the Act (in relation to search services), or for the purpose of compliance with the fraudulent advertising duties set out in section 38(1) or 39(1) of the Act.
[82] See paragraph 13(4) of Schedule 4 to the Act. For factors which Ofcom must particularly consider when deciding whether content is communicated "publicly" or "privately" by means of a user-to-user service for these purposes, see section 232.
[83] See paragraph 13(5) of Schedule 4 to the Act.
[84] See paragraph 13(6) of Schedule 4 to the Act. This requirement does not apply to proactive technology which is a kind of age verification or age estimation technology: see paragraph 13(7) of Schedule 4 to the Act.
[85] Section 49(1) of the Act.
[86] Section 49(2)-(3) of the Act.

A1.61 Where a provider adopts an alternative measure to those described in a Code of Practice in order to comply with a relevant duty, it must have particular regard to the importance of protecting the right of users and (in the case of search services) interested persons to freedom of expression within the law, and protecting the privacy of users.[87]

A1.62 When it is assessing whether a provider of a service is compliant with a relevant duty where that provider has adopted an alternative measure, Ofcom must consider the extent to which an alternative measure taken or in use by the provider extends across the relevant duties (i.e. under sections 10(4), 12(8), or 29(4)), and, where appropriate, that it incorporates safeguards for the protection of the right of users and (in the case of search services) interested persons to freedom of expression within the law, and protection of the privacy of users.[88]

Effect of the Codes of Practice

A1.63 Failure to comply with a provision of a Code of Practice does not in itself make the provider liable to legal proceedings in a court or tribunal, although the Code will be admissible in evidence in legal proceedings, and any such court or tribunal must take a provision of the Code into account when determining a question which is relevant to that provision, as long as the question relates to a time when the provision was in force.[89] [90] [91] Similarly, Ofcom must take into account a provision of a Code of Practice when determining a question which is relevant to that provision, as long as the question relates to a time when the provision was in force.[92]

The process for making Codes of Practice and guidance

Codes of Practice

A1.64 The Act specifies the procedure which applies to Ofcom when issuing, or amending, Codes of Practice.

A1.65 In the course of preparing a draft Code of Practice, Ofcom must consult various persons specified in section 41(6) and 41(7) of the Act. These include the Secretary of State; persons who represent services and their users; persons who represent the interests of children and those who have suffered harm as a result of matters to which the Codes relate; persons with expertise in equality issues, human rights, public health, criminal law enforcement, national security, innovation and emerging technology; and other public bodies such as the Information Commissioner and the Children's Commissioner, Domestic Abuse Commissioner and Commissioner for Victims and Witnesses.

A1.66 Once Ofcom has prepared a draft Code (or draft amendments to a Code), we must submit it to the Secretary of State.[93] The Secretary of State must either issue a direction under section 44 of the Act or lay the draft before Parliament. If either House of Parliament resolves not to approve the draft Code within the 40-day period, Ofcom cannot issue that draft Code and

[87] Section 49(5) of the Act.
[88] Section 49(6) of the Act.
[89] Section 50(1) of the Act.
[90] Section 50(2) of the Act.
[91] Section 50(3) of the Act.
[92] Section 50(4) of the Act.
[93] Section 43 of the Act.

must prepare another draft. If no such resolution is made, Ofcom must issue the draft Code in that form and it will come into force 21 days later.[94] [95]

A1.67 The Secretary of State may direct Ofcom to modify a draft Code for exceptional reasons relating to national security, public health or safety or foreign relations or, in the case of a terrorism or CSEA Code, for reasons of national security, public health or safety or exceptional reasons relating to foreign relations.[96] If a draft terrorism or CSEA Code has been the subject of a review under section 47(2), or Ofcom has submitted a statement to the Secretary of State under section 47(3)(b) in respect of such a Code, the Secretary of State can only issue a direction to modify the draft for reasons of national security or public safety. A direction given under section 44 cannot require Ofcom to include any particular measure in a Code and must set out the Secretary of State's reasons for requiring modifications (unless it would be against the interests of national security, public safety or relations with the government of a country outside the UK i.e. foreign relations). Ofcom must comply with any direction and submit a revised Code as soon as reasonably practicable. When the Secretary of State is satisfied that no further modifications to the draft are required, the draft must be laid before Parliament.

A1.68 If a draft Code has been laid before Parliament following a direction and modifications under section 44(1), (2) or 3(b) of the Act then the affirmative procedure applies.[97] If a draft terrorism or CSEA Code has been the subject of a direction and modifications under section 44(3)(a), (4) or (5) then the negative procedure applies.[98]

A1.69 Ofcom must publish each Code (or amendments to a Code) within three days of when it is issued.[99] Where we withdraw a Code of Practice, we must publish a notice to that effect.[100]

A1.70 We must keep each Code we publish under review.[101] The Secretary of State can require us to review a terrorism or CSEA Code for reasons of national security or public safety, and we must carry out such a review as soon as reasonably practicable. We must then make any necessary changes to the Code, or if we consider no changes are required, submit a statement to the Secretary of State explaining why.[102]

A1.71 Subject to the Secretary of State's approval, Ofcom may make minor amendments to a Code without consultation or laying the amendments before Parliament.[103]

A1.72 The safety duties apply to providers from the day on which the first relevant Code comes into force.[104]

Guidance

A1.73 The Act sets out various procedural requirements relating to the other forms of guidance that Ofcom is required to produce.

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[94] See Sections 45(5) and (6) of the Act.
[95] See Section 45(4) of the Act.
[96] Section 44 of the Act.
[97] Which is set out in section 45(4) of the Act.
[98] Which is set out in section 45(5) of the Act.
[99] Section 46 of the Act.
[100] Section 46(3) of the Act.
[101] Section 47 of the Act.
[102] Section 47(3) of the Act.
[103] Section 48 of the Act.
[104] Section 51 of the Act.

A1.74 In relation to the Illegal Content Judgements Guidance, Ofcom is required to consult before producing the guidance (or revised or replacement guidance) and publish the guidance.[105]

A1.75 Ofcom must also publish the Risk Profiles prepared under section 98 and from time-to-time review and revise the risk assessments and Risk Profiles so as to keep them up to date. Ofcom is further required to consult the Information Commissioner before producing our guidance (or revised or replacement guidance) about risk assessments under section 99. We must revise this guidance from time to time in response to further risk assessments under section 98 or to revisions of the Risk Profiles. Ofcom must publish this guidance.

A1.76 Under section 52, Ofcom must produce guidance for providers to assist them in complying with their duties set out in sections 23 or 34 regarding record-keeping and review and section 36 regarding children's access assessments. Ofcom must also produce guidance for Category 1 services relating to their duties set out in section 14 (assessments related to the adult user empowerment duty set out in section 15(2)) and section 18 (news publisher content). Ofcom must consult the Information Commissioner before producing this guidance (expect for the news publisher content guidance) and publish the guidance.

A1.77 In relation to Ofcom's guidance about enforcement action, we must consult the Secretary of State, the Information Commissioner and such other persons we consider appropriate before producing the guidance (or revised or replacement guidance) and publish the guidance.[106]

A1.78 Schedule 13 to the Act refers to Ofcom's penalty guidelines issued under section 392 of the Communications Act 2003 ('CA 2003') insofar as they are relevant to penalties imposed under the Act. Ofcom must consult on these guidelines, in particular the Secretary of State, and publish the guidelines in a way we consider appropriate for bringing them to the attention of persons who are likely to be affected by them. The penalty guidelines may be included in the same document as the enforcement guidance.[107]

A1.79 Impact assessments provide a valuable way of assessing the options for regulation and showing why the chosen option(s) was preferred. They form part of best practice policy making. This is reflected in section 7 of the CA 2003, which means that Ofcom generally must carry out impact assessments in cases where it appears to us our proposals are important. Proposals that are important for the purposes of this section include preparing (or amending) a Code of Practice under section 41 of the Act; proposals which would be likely to have a significant effect on businesses or the general public; or where there is a major change in Ofcom's activities. As a matter of policy, Ofcom is committed to carrying out impact assessments in the great majority of our policy decisions. Our impact assessment guidance sets out our general approach to how we assess and present the impact of our proposed decisions.[108] [109]

A1.80 As set out in section 7(5) of the CA 2003, Ofcom has discretion as to the substance and form of an impact assessment, and this will depend on the particular proposals being made. However, impact assessments which relate to proposals about Codes specifically or anything else for the purposes of the carrying out of Ofcom's online safety functions under the Act

[105] Section 193 of the Act.
[106] Section 151 of the Act.
[107] Section 151(6) of the Act.
[108] As amended by section 93 of the Act.
[109] Ofcom (2023), Impact assessment guidance.

must include an assessment of the likely impact of implementing the proposal on small and micro businesses.[110]

Ofcom's duties relating to risk

A1.81 Ofcom must carry out risk assessments to identify and assess the risks of harm to individuals in the UK presented by:

a) illegal content on user-to-user services and the use of such services for the commission or facilitation of priority offences;
b) illegal content that is search content encountered on search services; and
c) content that is harmful to children and the risk it presents to children in different age groups.[111]

A1.82 We must also prepare and publish a Register of Risks that reflects the findings of our risk assessments as well as Risk Profiles for user-to-user service providers and search services that relate to each risk of harm.[112] [113]

A1.83 Ofcom is also required to issue guidance relating to how providers can comply with the risk assessment duties.[114]

Information gathering and enforcement

A1.84 The Act gives Ofcom broad powers regarding information gathering for the purposes of discharging our functions, including powers:

a) to require information generally from providers (by notice) for the purposes of exercising, or deciding whether to exercise, functions;[115]
b) to appoint a skilled person to provide a report to Ofcom for certain purposes relating to compliance;[116]
c) to require certain individuals to attend interviews and answer questions;[117] and
d) of entry, inspection and audit.[118]

A1.85 Ofcom is responsible for enforcing compliance with the duties in the Act on providers of regulated services. The duties on providers are generally enforceable by Ofcom where there are reasonable grounds for believing that a provider has failed, or is failing, to comply.[119]

A1.86 Sanctions for non-compliance may include requiring payment of a financial penalty of up to £18m or 10% of qualifying worldwide revenue.[120] In certain circumstances, Ofcom may apply to a court to take business disruption measures against platforms.[121] Ofcom may also, if certain conditions are met, issue notices requiring providers to use accredited technology or

[110] Section 93 of the Act.
[111] Section 98(1) of the Act.
[112] Section 98(4) of the Act.
[113] Section 98(5) of the Act.
[114] Section 99 of the Act.
[115] Section 100 of the Act.
[116] Section 104 of the Act.
[117] Section 106 of the Act.
[118] Section 107 of the Act.
[119] Section 130 of the Act.
[120] Schedule 13 of the Act.
[121] See Sections 144 to 148 of the Act.

to develop or source technology to prevent users from encountering, or to identify and take down, terrorism content that is communicated publicly or CSEA content that is communicated publicly or privately.[122]

A1.87 Part 8 of the Act relates to appeals against Ofcom's decisions about the register under section 95 of the Act (regarding categorisation of services) and against Ofcom notices, while Part 9 relates to the Secretary of State's functions in respect of regulated services.

A1.88 Part 10 of the Act creates various new communications offences, some of which we refer to in our regulatory outputs. These offences include false and threatening communications offences and the offence of sending photographs or films of genitals.

[122] Section 121 of the Act.

A2. Duties of providers and Ofcom in relation to illegal content (Part B)

A2.1 This part of this Annex sets out in more detail the duties relating to illegal harms, as they apply to providers of user-to-user service providers; providers of search services; and to Ofcom, and which are relevant to this consultation.

A2.2 This Annex does not cover other duties set out in the Act (except where relevant to illegal harms). Duties relating to the protection of children are addressed in Part C of this Annex. Duties related to user empowerment; the protection of content of democratic importance, news publisher content or journalistic content; fraudulent advertising; and other provisions of the Act are outside the scope of this consultation and will be addressed separately.

Provider duties in relation to illegal content

A2.3 As summarised in paragraphs A2.5-A2.7 and A2.20-A2.23, the Act imposes "duties of care" on providers of regulated user-to-user service providers; and providers of regulated search services in relation to, among other things, "illegal content" (defined under section 59 of the Act. Under the Act, "illegal content" is defined as "content that amounts to a relevant offence".[123] For user-to-user service providers, some of the duties apply in relation to the use of the service in question for the commission or facilitation of the defined priority offences identified in the Act.

A2.4 The duties in relation to illegal content are set out in detail below.

Providers of User-to-user service providers

A2.5 Providers of user-to-user service providers are given specific duties under the Act in relation to illegal content. These "Illegal content duties" include: "Illegal content risk assessment duties"; and "Safety duties about illegal content".[124] [125]

A2.6 Providers of user-to-user service providers are also subject to "additional duties" which are relevant, among other things, to illegal content. These additional duties are as follows:

a) "Duties about content reporting and complaints procedures", which include:

   i) "Duties about content reporting", and[126]
   ii) "Duties about complaints procedures" and[127]

b) so-called "Cross-cutting duties", which include:

   i) "Duties about freedom of expression and privacy"; and[128]

[123] Section 59 of the Act.
[124] Section 9 of the Act.
[125] Section 10 of the Act.
[126] Section 20 and 20A of the Act.
[127] Section 21 of the Act.
[128] Section 22 of the Act.

ii) "Record-keeping and review duties".[129]

A2.7 These are set out in more detail below. Section 7 of the Act states that all providers of regulated user-to-user service providers must comply with these duties (and the other duties set out under section 7(2)).

Risk assessment requirement

A2.8 These duties only apply to:

a) the design, operation and use of the service in the United Kingdom, and
b) in the case of a duty that is expressed to apply in relation to users of a service, the design, operation and use of the service as it affects United Kingdom users of the service.[130]

Combined services

A2.9 Where the user-to-user service providers is a combined service (i.e. providing both a regulated user-to-user and regulated search service), these duties will not apply to:

a) the search content of the service,
b) any other content that, following a search request, may be encountered as a result of subsequent interactions with internet services, or
c) anything relating to the design, operation or use of the search engine.[131]

A2.10 However, the duties of care that apply to regulated search services in relation to illegal content (paragraphs A2.20-A2.23), will still apply.

Illegal Content Duties

Illegal content risk assessment duties

A2.11 Providers of regulated user-to-user service providers have a duty to carry out a suitable and sufficient illegal content risk assessment at the specific times set out in Schedule 3 to the Act, taking appropriate steps to keep it up to date and carrying out a new risk assessment before making significant changes to the service's design or operation.[132] Further details on the risk assessment duties can be found in our December 2024 Illegal Harms Statement.[133]

Safety duties about illegal content

A2.12 Providers of regulated user-to-user service providers have specific safety duties in relation to illegal content as set out under Section 10 of the Act. These duties are as follows:

a) A duty, in relation to a service, to take or use proportionate measures relating to the design or operation of the service to—

i) prevent individuals from encountering priority illegal content by means of the service,
ii) effectively mitigate and manage the risk of the service being used for the commission or facilitation of a priority offence, as identified in the most recent illegal content risk assessment of the service, and

[129] Section 23 of the Act.
[130] Section 8(3) of the Act.
[131] Section 8(2) of the Act.
[132] Section 9(2) of the Act.
[133] Annex 2, Part B, paragraphs A2.11 to A2.14.

iii) effectively mitigate and manage the risks of harm to individuals, as identified in the most recent illegal content risk assessment of the service.[134]

b) A duty to operate a service using proportionate systems and processes designed to—

i) minimise the length of time for which any priority illegal content is present; and
ii) where the provider is alerted by a person to the presence of any illegal content, or becomes aware of it in any other way, swiftly take down such content.[135]

c) A duty to operate a service using proportionate systems and processes designed to take down—

i) content in relation to which an intimate image content report is made to the provider (see section 20A(2)), and
ii) any other content identified by the provider as the same, or substantially the same, as that content,
iii) as soon as reasonably practicable, and no later than 48 hours, after the provider receives the report.

d) A duty to include the following provisions in the terms of service:[136]

i) Provisions specifying how individuals are to be protected from illegal content. In particular, the terms of service must address how the provider intends to comply with the duty above at paragraph A2.12(b).[137] [138]
ii) Provisions giving information about any proactive technology (see paragraphs A1.56-A1.59 above) used by a service for the purpose of compliance with the duties set out at paragraphs A2.12(a) or (b) above. This includes setting out the kind of technology that is being used, when it is used, and how it works.[139]
iii) Such provisions must be clear and accessible.[140]

e) A duty to apply the provisions of the terms of service referred to above in paragraph A2.12(c) consistently.[141]

A2.13 A Provider of a category 1 service will also have a duty to summarise in the terms of service the findings of the most recent illegal content risk assessment of a service (including as to levels of risk and as to nature, and severity, of potential harm to individuals).[142]

A2.14 The duties set out at paragraphs A2.12(a) & (b) apply across all areas of the provider's user-to-user service providers, including the way it is designed, operated and used as well as content present on the service. Among other things, these duties require the provider of a service, if it is proportionate to do so, to take or use measures in the following areas:[143]

a) regulatory compliance and risk management arrangements,

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[134] Section 10(2)(a)-(c) of the Act.
[135] Section 10(3)(a)-(b) of the Act.
[136] Terms of service is defined under section 237 of the Act as: "in relation to a user-to-user service, means all documents (whatever they are called) comprising the contract for use of the service (or of part of it) by United Kingdom users".
[137] Section 10(5) of the Act.
[138] In relation to paragraph A2.12(b)(i), the provider must specifically address terrorism content, CSEA content, and other priority illegal content.
[139] Section 10(7) of the Act.
[140] Section 10(8) of the Act.
[141] Section 10(6) of the Act.
[142] Section 10(9) of the Act.
[143] Section 10(2)-(3) of the Act.

b) design of functionalities, algorithms and other features,
c) policies on terms of use,
d) policies on user access to the service or to particular content present on the service, including blocking users from accessing the service or particular content,
e) content moderation, including taking down content,
f) functionalities allowing users to control the content they encounter,
g) user support measures, and
h) staff policies and practices.[144]

A2.15 In determining what is "proportionate" for the purposes of the safety duties, the following factors, in particular, are relevant:

a) all the findings of the most recent illegal content risk assessment, including as to levels of risk and as to nature, and severity, of potential harm to individuals, and
b) the size and capacity of the provider of a service.[145]

Other relevant powers and duties

A2.16 There are several other duties in the Act which are relevant to the proposals covered in this consultation.

A2.17 As referred to above, section 66 contains a requirement to report CSEA content to the NCA. Specifically, this section requires:

a) a UK provider of user-to-user services to use systems and processes which secure (so far as possible) that the provider reports all detected and unreported CSEA content present on the service to the NCA (a non-UK provider of a user-to-user service must only do so in relation to UK-linked CSEA content); and
b) a UK provider of a search service to use systems and processes which secure (so far as possible) that the provider reports all detected and unreported CSEA content present on websites or databases capable of being searched by the search engine to the NCA (a non-UK provider of a search service must only do so in relation to UK-linked CSEA content).

A2.18 The duties on providers of search services apply to providers of combined services in relation to the search engine of the service. Providers' reports under this section must meet the requirements set out in regulations made by the Secretary of State under section 67 of the Act, including in relation to time frames.

A2.19 Section 64 of the Act contains requirements relating to user identity verification. Providers of Category 1 services must offer all adult users of the service in the UK the option to verify their identity. The provider must also include clear and accessible provisions in the terms of service explaining how the verification process works. Ofcom must issue guidance for providers of Category 1 services to assist them in complying with this duty.[146]

[144] Section 10(4) of the Act.
[145] Section 10(10) of the Act.
[146] Section 65 of the Act.

Providers of search services

A2.20 Providers of regulated search services are also given specific duties under the Act in relation to illegal content. These "Illegal content duties for all search services" include: "Illegal content risk assessment duties"; and "Safety duties about illegal content".[147] [148]

A2.21 Providers of regulated search services are also subject to additional duties which are relevant to illegal content, but also apply to other types of content and in respect of other regulatory requirements as set out under the Act. These are:

a) "Duties about content reporting and complaints procedures", which include:

   i) The "Duty about content reporting", [149] and
   ii) "Duties about complaints procedures";[150] and

b) the "Cross-cutting duties", which include:

   i) "Duties about freedom of expression and privacy";[151] and
   ii) "Record-keeping and review duties".[152]

A2.22 The Illegal content duties for all search services; Duties about content reporting and complaints procedures; and the Cross-cutting duties that apply to providers of search services are set out in more detail below.

A2.23 These duties only apply to:

a) the search content of the service,
b) the design, operation and use of the search engine in the United Kingdom, and
c) in the case of a duty that is expressed to apply in relation to users of a service, the design, operation and use of the search engine as it affects United Kingdom users of the service.[153]

Illegal content duties for all search services

Illegal content risk assessment duties

A2.24 Providers of regulated user-to-user service providers have a duty to carry out a suitable and sufficient illegal content risk assessment at the specific times set out in Schedule 3 to the Act, taking appropriate steps to keep it up to date and carrying out a new risk assessment before making significant changes to the service's design or operation. Further details on the risk assessment duties can be found in the December 2024 Statement.[154]

Safety duties about illegal content

A2.25 Providers of regulated search services have specific Safety duties in relation to illegal content as set out under section 27 of the Act. These duties are as follows:

a) A duty, in relation to a service, to take or use proportionate measures relating to the design or operation of the service to effectively mitigate and manage the risks of harm to

[147] Section 26 of the Act.
[148] Section 27 of the Act.
[149] Section 31 of the Act.
[150] Section 32 of the Act.
[151] Section 33 of the Act.
[152] Section 34 of the Act.
[153] Section 25 of the Act.
[154] Section 9(2) of the Act.

individuals, as identified in the most recent illegal content risk assessment of the service (paragraph A2.27).[155]

b) A duty to operate a service using proportionate systems and processes designed to minimise the risk of individuals encountering search content of the following kinds—

   i) priority illegal content; and
   ii) other illegal content that the provider knows about (having been alerted to it by another person or become aware of it in any other way).[156]

c) A duty to include provisions in a publicly available statement specifying how individuals are to be protected from search content that is illegal content.[157]
d) A duty to apply the provisions of the statement referred to at paragraph 2.25(c) above consistently.[158]
e) A duty to include provisions in a publicly available statement giving information about any proactive technology (paragraphs A1.56-A1.58) used by a service for the purpose of compliance with a duty set out in sections 27(2) or (3) (paragraphs A2.25(a) or (b) above) (including the kind of technology, when it is used, and how it works).[159]
f) A duty to ensure that the provisions of the publicly available statement referred to in sections 27(5) and (7) (paragraphs 2.25(c) & (e)) are clear and accessible.[160]

A2.26 The duties set out in paragraphs 2.25(a)-(b) above apply across all areas of a service, including the way the search engine is designed, operated and used as well as search content of the service. Among other things, these duties require the provider of a service to take or use measures in the following areas, if it is proportionate to do so:

a) regulatory compliance and risk management arrangements,
b) design of functionalities, algorithms and other features relating to the search engine,
c) functionalities allowing users to control the content they encounter in search results,
d) content prioritisation,
e) user support measures, and
f) staff policies and practices.[161]

A2.27 In determining what is 'proportionate' for the purposes of the safety duties for search services, the following factors, in particular, are relevant:

a) all the findings of the most recent illegal content risk assessment (including as to levels of risk and as to nature, and severity, of potential harm to individuals), and
b) the size and capacity of the provider of a service.[162]

Ofcom's duties in relation to illegal content

A2.28 The Act gives specific duties to Ofcom in relation to illegal content. These are set out below.

[155] Section 27(2) of the Act.
[156] Section 27(3) of the Act.
[157] Section 27(5) of the Act.
[158] Section 27(6) of the Act.
[159] Section 27(7) of the Act.
[160] Section 27(8) of the Act.
[161] Section 27(4) of the Act.
[162] Section 27(10) of the Act.

Ofcom sector risk assessment

A2.29 Ofcom is under a duty to carry out a risk assessment to identify and assess the risks of harm to individuals in the UK caused by:

a) illegal content on user-to-user services and by the use of user-to-user service providers for the commission and/or facilitation of priority offences (the ''illegality risks");
b) illegal content that appears to individuals in search results encountered on search services ("risk of harm from illegal content" and, together with the "illegality risks", the "risks of harm").[163]

A2.30 It has a discretion whether to combine these or consider them separately (also with the risk of harm to children under section 98(1)(c)).[164]

A2.31 Ofcom's risk assessment must, among other things, identify the characteristics of user-to-user and search services (which include functionalities, user base, business model and governance, and other systems and processes) that are relevant to the risks of harm and assess the impact of these characteristics on the risks of harm.[165]

Register of Risks and Risk Profiles

A2.32 Ofcom must prepare and publish a register of risks that reflects the findings of its risk assessments (the 'Register of Risks'). The Register of Risks must be prepared as soon as reasonably practicable after completion of the risk assessments.[166]

A2.33 Further to the Register of Risks, after completing its risk assessments, Ofcom must prepare and publish Risk Profiles for user-to-user services and search services that relate to each risk of harm, as applicable (the 'Risk Profiles'). In preparing the Risk Profiles, Ofcom can group user-to-user service providers and search services as appropriate and having regard to (i) the characteristics of the services and (ii) the risk levels and other matters identified in the risk assessment.[167]

A2.34 Ofcom must review and revise the risk assessments and the Risk Profiles from time to time to keep them up to date.[168]

Risk assessment guidance for services

A2.35 Ofcom must prepare and publish guidance to help user-to-user service providers and search services comply with their duties to prepare illegal content risk assessments under sections 9 and 26 respectively (the 'Risk Assessment Guidance' or 'RAG') (paragraphs A2.32-A2.37).[169]

A2.36 Ofcom must prepare the RAG as soon as reasonably practicable after having published the risk profiles relating to the risks of harm.

A2.37 Ofcom must revise and publish an updated RAG when it carries out a new risk assessment and/or revises the risk profiles.[170]

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[163] Sections 98(1)(a) & (b) of the Act.
[164] Sections 98(3) of the Act.
[165] Sections 98(2) & (11) of the Act.
[166] Section 98(4) of the Act.
[167] Section 98(5)-(7) of the Act.
[168] Section 98(8) of the Act.
[169] Sections 99(1) & (2) of the Act.
[170] Sections 99(5) of the Act.

Illegal Content Codes for user-to-user and search

Ofcom's duty to prepare and issue Codes of Practice in relation to illegal content

A2.38 Ofcom must prepare and issue Codes of Practice for providers of regulated user-to-user services and providers of regulated search services. The Codes of Practice must describe the measures Ofcom recommends these providers take for the purposes of complying with:

a) their respective safety duties in respect of illegal content (see sections 10 and 27, paragraphs A2.12-A2.15 and A2.29-A2.31), so far as they relate to:

   i) Terrorism content or offences, as set out in Schedule 5 of the Act;[171] and
   ii) CSEA content or offences, as set out in Schedule 6 of the Act;[172] and

b) the relevant duties (except to the extent they overlap with paragraphs A2.38(a)(i) and (ii) above).[173] These include: the safety duties in respect of illegal content (paragraphs A2.12-A2.15 and A2.29-A2.31); content reporting duties (paragraphs A1.13-A1.18); and complaints procedure duties (paragraphs A1.19-A1.20).[174]

A2.39 Schedule 4 to the Act sets out general principles and online safety objectives which the Codes must follow, as well as what content must be included. These are set out in Annex A1 above.

Illegal Content Judgements Guidance

A2.40 Providers of regulated user-to-user or search services complying with their duties as set out above will need to make judgments about whether content is content of a particular kind, on the basis of all relevant information reasonably available to them.[175] This includes decisions in relation to whether a provider has reasonable grounds to infer that content is content is illegal content, or illegal content of a particular kind.[176]

A2.41 In order to make a judgement that content is illegal content, providers will need reasonable grounds to infer that all of the elements necessary for the commission of the offence, including the mental elements, are present or satisfied, and that no defence to the offence may be successfully relied upon.[177] [178]

A2.42 To assist providers in making these judgments in relation to illegal content, Ofcom must produce and publish Illegal Content Judgments Guidance ('ICJG').[179]

[171] Section 41(1) of the Act.
[172] Section 41(2) of the Act.
[173] Section 41(3) of the Act.
[174] Section 41(10) of the Act.
[175] Section 192 of the Act.
[176] Sections 192(4) & (5) of the Act.
[177] Section 192(6)(a) of the Act.
[178] Section 192(6)(b) of the Act.
[179] Section 193 of the Act.

A3. Duties of providers and Ofcom in relation to the protection of children (Part C)

A3.1 This annex sets out the duties relating to the protection of children, as they apply to providers of user-to-user services; providers of search services; and to Ofcom.

A3.2 This annex does not cover other duties set out in the Online Safety Act 2023 (the Act), except where relevant to the protection of children. We have not referred to aspects of the legal and regulatory framework which relate to illegal content, which are covered in Part B of this Annex above. This annex sets out the duties relating to the protection of children, as they apply to providers of user-to-user services; providers of search services; and to Ofcom, and which are relevant to this consultation.[180]

A3.3 We have also not referred to aspects of the legal framework which relate to Phase 3 of our implementation roadmap, such as transparency, user empowerment and other duties on categorised services.

Provider duties in relation to children's access assessments (user-to-user and search)

A3.4 The Act places providers of regulated user-to-user services and providers of regulated search services under a duty to conduct a suitable and sufficient children's access assessment and to keep a written record of the same, in an easily understandable form.[181]

A3.5 A children's access assessment first involves determining whether it is possible for children in the UK to access all or part of the service.[182] [183] The Act provides that a service can only conclude that it is not possible for children in the UK to access the service if age verification or age estimation is used on the service with the result that children are ordinarily prevented from accessing the service.[184] [185]

A3.6 If a provider determines that it is possible for children in the UK to access all or part of the service, the provider must go on to consider whether the child user condition is met in relation to all or the relevant part of that service.[186] That will be the case where:

a) There are a significant number of children in the UK who are users of the service or of the relevant part of it, or

[180] Online Safety Act 2023.
[181] Section 36 of the Act.
[182] Section 35(1)(a) and (5)(a) of the Act.
[183] Services do not need to assess whether parts of the service which are not, or are not included in, the user-to-user part of the service or a search engine can be accessed by children in the UK. See section 35(5)(b) of the Act.
[184] Or the relevant part of the service, as applicable.
[185] Section 35(2) of the Act.
[186] Section 35(1)(b) of the Act.

b) The service, or the relevant part of it, is of a kind likely to attract a significant number of users who are children in the UK.[187]

A3.7 In relation to limb (a), the Act provides that whether or not the test is met should be assessed using evidence about actual users (and not who the intended users are).[188] If the number of users that are children in the UK is significant in proportion to the total number of UK users of the service (or the relevant part of it), then the number of children in the UK who are users is significant.[189]

A3.8 Providers who provide more than one user-to-user or search service must carry out a separate children's access assessment for each service.[190]

A3.9 Part 1 of Schedule 3 to the Act specifies the deadline by which providers must complete their first children's access assessment. Providers of services in operation immediately before the publication of our Children's Access Assessments Guidance (see paragraph 2.22 of the guidance) are required to complete the first children's access assessment relating to the service within three months of the date on which that guidance is published (i.e., by 16 April 2025).[191] Providers of services that start up or otherwise become Part 3 services after the publication of our Children's Access Assessments Guidance must complete their first children's access assessment within three months of becoming a Part 3 service (see paragraph 2.23 and 2.24 of the guidance).[192]

A3.10 If, having conducted a children's access assessment, a provider determines that a service (or the relevant part of it) is not likely to be accessed by children, then it must carry out a further children's access assessment no more than one year later.[193] Such a provider is also required to carry out a further assessment:

a) Before making any significant change to any aspect of the service's design or operation to which such an assessment is relevant;
b) In response to evidence about reduced effectiveness of age verification or age estimation that is used on the service in order to achieve the result that children are not normally able to access the service or part of it;[194] or
c) In response to evidence about a significant increase in the number of children using the service.[195]

A3.11 Ofcom is required to issue guidance for user-to-user and search services to assist with completing the children's access assessment.[196]

When services will be likely to be accessed by children

A3.12 Section 37 of the Act sets out when a service will be treated as likely to be accessed by children for the purposes of the Act.

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[187] Section 35(3) of the Act.
[188] Section 35(4)(b) of the Act.
[189] Section 35(4)(a) of the Act.
[190] Section 36(5) of the Act.
[191] Children's access assessments
[192] Different provisions apply to providers of video-sharing platform (VSP) services currently regulated by Part 4B of the Communications Act 2003 as set out in Part 3 of Schedule 3. However, in practice all VSPs are subject to the same deadlines as other Part 3 services.
[193] Section 36(3) of the Act.
[194] Section 35(2) of the Act.
[195] Section 36(4) of the Act.
[196] Section 52(3)(b) of the Act.

a) First, this will be the case where a children's access assessment carried out by the provider of the service concludes that it is possible for children in the UK to access all or part of the service and the child user condition is met in relation to the service or the part of the service that it is possible for children to access (paragraphs A3.1-A3.7).[197] In that case, the service will be treated as likely to be accessed by children from the date on which the children's access assessment is completed.[198]

b) Second, this will be the case where the provider of the service fails to carry out the first children's access assessment by the deadline specified in Schedule 3 to the Act.[199] In that case, the service will be treated as likely to be accessed by children from the date by which the assessment should have been completed until the first children's access assessment has been completed.[200] [201]

c) Third, the Act provides that in specific circumstances Ofcom can take action which will result in a service being treated as likely to be accessed by children for the purposes of the Act. This will be the case where, following an investigation into the failure to complete a children's access assessment in accordance with the relevant requirements, we determine that it is possible for children in the UK to access the service (or the relevant part of it) and the child user condition is met in relation to the service (or the relevant part of it) and, as such mandate that the children's safety duties must be complied with by the provider.[202] [203] [204] In that case, the service will be treated as likely to be accessed by children from the date specified by Ofcom.[205] Ofcom has the power to specify the circumstances in which the service will cease to be treated as likely to be accessed by children.[206] [207]

Duties of providers of user-to-user services likely to be accessed by children

Safety duties relating to the protection of children

A3.13 Providers of regulated user-to-user services likely to be accessed by children have specific safety duties in relation to children's online safety as set out under section 12 of the Act.

[197] Section 37(2) of the Act.
[198] Section 37(3) of the Act.
[199] Section 37(4) of the Act.
[200] Section 37(5) of the Act.
[201] If the conclusion of that assessment is that it is possible for children in the UK to access all or part of the service and the child user condition is met, then the service will continue to be treated as likely to be accessed by children by virtue of section 37(2) of the Act.
[202] Such a failure may arise either in circumstances in which no children's access assessment has been completed at all or in circumstances in which an assessment has been completed but the relevant requirements have not been complied with, for example, because the assessment that has been completed is not suitable and sufficient.
[203] Sections 135(4) and (5) of the Act give Ofcom the power to make such a determination.
[204] See paragraphs A3.1-A3.9 for further detail on when it is 'possible for children in the UK to access the service' and the 'child user condition'.
[205] The date will be specified in a confirmation decision given to the provider of the service under sections 132 and 135 of the Act.
[206] Section 135(5)(b) of the Act.
[207] The circumstances will be specified in a confirmation decision given to the provider of the service under sections 132 and 135 of the Act.

These duties extend to such parts of a service as it is possible for children to access.[208] [209] The duties are as follows:

a) A duty, in relation to a service, to take or use proportionate measures relating to the design or operation of the service to effectively –

   i) mitigate and manage the risks of harm to children in different age groups, as identified in the most recent children's risk assessment of the service (see section 11(6)(g)) of the Act), and
   ii) mitigate the impact of harm to children in different age groups presented by content that is harmful to children present on the service.[210]

b) A duty to operate a service using proportionate systems and processes designed to –

   i) prevent children of any age from encountering, by means of the service, primary priority content (PPC) that is harmful to children;[211]
   ii) protect children in age groups judged to be at risk of harm from other content that is harmful to children (or from a particular kind of such content), as assessed by the provider of a service in the most recent children's risk assessment of the service, from encountering it by means of the service.[212] [213] [214]

c) The duty in paragraph i) above requires a provider to use age verification or age estimation (or both) that is of such a kind, and used in such a way, that it is highly effective at correctly determining whether or not a particular user is a child, to prevent children of any age from encountering PPC that is harmful to children which the provider identifies on the service, except where –

   i) a term of service indicates (in whatever words) that the presence of that kind of PPC that is harmful to children is prohibited on the service, and
   ii) that policy applies in relation to all users of the service.[215]

d) A duty to include provisions in the terms of service specifying –

   i) how children of any age are to be prevented from encountering PPC that is harmful to children (with each kind of PPC separately covered);
   ii) how children in age groups judged to be at risk of harm from priority content (PC) that is harmful to children (or from a particular kind of such content), as assessed by the provider of a service in the most recent children's risk assessment of the service, are to be protected from encountering it, where they are not prevented from doing so (with each kind of PC separately covered);[216] and
   iii) how children in age groups judged to be at risk of harm from non-designated content (NDC) that is harmful to children (or from a particular kind of such content), as

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[208] A provider is only entitled to conclude that it is not possible for children to access a service, or a part of it, if age verification or age estimation is used on the service with the result that children are not normally able to access the service or that part of it: see section 13(6) of the Act.
[209] Section 13(5) of the Act.
[210] Section 12(2) of the Act.
[211] With the harm arising by virtue of the nature of the content rather than the fact of its dissemination: see section 13(4) of the Act. This includes PC that is harmful to children as well as NDC that is harmful to children.
[212] With the harm arising by virtue of the nature of the content rather than the fact of its dissemination: see section 13(4) of the Act. This includes PC that is harmful to children as well as NDC that is harmful to children.
[213] Section 13(3) of the Act.
[214] Section 12(3) of the Act.
[215] Section 12(4)-(6) of the Act.
[216] Section 13(3) of the Act.

assessed by the provider of a service in the most recent children's risk assessment of the service, are to be protected from encountering it, where they are not prevented from doing so.[217] [218]

e) A duty to apply the provisions of the terms of service referred to in paragraph (d) above consistently.[219]
f) If a provider takes or uses a measure designed to prevent access to the whole of the service or a part of the service by children under a certain age, a duty to –
   i) include provisions in the terms of service specifying details about the operation of the measure, and
   ii) apply those provisions consistently.[220]
g) A duty to include provisions in the terms of service giving information about any proactive technology used by a service for the purpose of compliance with a duty set out in paragraph a) or b) above (including the kind of technology, when it is used, and how it works).[221] [222]
h) A duty to ensure that the provisions of the terms of service referred to in paragraphs d), e) and f) above are clear and accessible.[223] [224]

A3.14 So far as the above duties relate to non-designated content (NDC) that is harmful to children, the relevant duty is to be taken to extend only to addressing risks of harm from the kinds of such content that have been identified in the most recent children's risk assessment (if any have been identified).[225]

A3.15 The duties set out in paragraphs A3.10(a) and A3.10(b) apply across all areas of a service, including the way it is designed, operated and used as well as content present on the service, and (among other things) require the provider of a service to take or use measures in the following areas, if it is proportionate to do so:[226]

a) Regulatory compliance and risk management arrangements,
b) Design of functionalities, algorithms and other features,
c) Policies on terms of use,
d) Policies on user access to the service or to particular content present on the service, including blocking users from accessing the service or particular content,
e) Content moderation, including taking down content,
f) Functionalities allowing for control over content that is encountered, especially by children,
g) User support measures, and
h) Staff policies and practices.[227]

A3.16 Age verification or age estimation to identify who is or is not a child user or which age group a child user is in are examples of measures which (if not required by section 12(4) of the Act:

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[217] Section 13(3) of the Act.
[218] Section 12(9) of the Act.
[219] Section 12(10) of the Act.
[220] Section 12(11) of the Act.
[221] Those paragraphs refer to the provisions in section 12(2) and (3) of the Act.
[222] Section 12(12) of the Act.
[223] Those paragraphs refer to the provisions in section 12(9), (11) and (12) of the Act.
[224] Section 12(13) of the Act.
[225] Section 13(2) of the Act.
[226] Those paragraphs refer to the provisions in section 12(2) and (3) of the Act.
[227] Section 12(8) of the Act.

see paragraph A3.10c)) may be taken or used (among others) for the purpose of compliance with a duty set out in paragraph A3.10a) or A3.10b).[228]

A3.17 Providers of Category 1 services likely to be accessed by children are also subject to a duty to summarise in the terms of service the findings of the most recent children's risk assessment of a service (including as to levels of risk and as to nature, and severity, of potential harm to children).[229]

A3.18 In determining what is 'proportionate' for the purposes of the safety duties set out above, the following factors, in particular, are relevant:

a) All the findings of the most recent children's risk assessment (including as to levels of risk and as to nature, and severity, of potential harm to children), and
b) The size and capacity of the provider of the service.[230]

Providers' judgements about whether content is harmful to children

A3.19 Section 192 of the Act sets out the approach to be taken by providers to judgements about the status of content including where:

a) A system or process operated or used by a service provider for the purpose of compliance with relevant requirements (including the duties and requirements under the Act), or
b) A risk assessment required to be carried out by Part 3,
c) involves a judgement by a provider about whether content is content of a particular kind.[231]

A3.20 Such judgements are to be made on the basis of all relevant information that is reasonably available to a provider, where the following factors, in particular, are relevant:

a) The size and capacity of the provider; and
b) Whether a judgement is made by human moderators, by means of automated systems or processes or by means of automated systems or processes together with human moderators.[232]

A3.21 In considering a provider's compliance with section 192 requirements, Ofcom may take into account whether providers' judgements follow the approaches set out in this section (including judgements made by means of automated systems or processes, alone or together with human moderators).[233]

Duties of providers of search services likely to be accessed by children

Safety duties relating to the protection of children

A3.22 Providers of regulated search services likely to be accessed by children have specific safety duties in relation to children's online safety as set out under section 29 of the Act. These

[228] Those paragraphs refer to the provisions in section 12(2) and (3) of the Act.
[229] Section 12(14) of the Act.
[230] Section 13(1) of the Act.
[231] Section 192(1) of the Act.
[232] Section 192(2) and (3) of the Act.
[233] Section 192(8) of the Act.

duties extend to such parts of a service as it is possible for children to access.[234] The duties are as follows:

a) A duty, in relation to a service, to take or use proportionate measures relating to the design or operation of the service to effectively –

   i) mitigate and manage the risks of harm to children in different age groups, as identified in the most recent children's risk assessment of the service (section 28(5)(e) of the Act), and
   ii) mitigate the impact of harm to children in different age groups presented by content that is harmful to children present on the service.[235]

b) A duty to operate a service using proportionate systems and processes designed to –

   i) minimise the risk of children of any age encountering search content that is PPC that is harmful to children;[236] and
   ii) minimise the risk of children in age groups judged to be at risk of harm from other content that is harmful to children (or from a particular kind of such content), as assessed by the provider of a service in the most recent children's risk assessment of the service, encountering search content of that kind.[237] [238] [239]

c) A duty to include provisions in a publicly available statement specifying how children are to be protected from search content of the following kinds –

   i) Primary priority content (PPC) that is harmful to children (with each kind of PPC separately covered),
   ii) Priority content (PC) that is harmful to children (with each kind of PC separately covered), and
   iii) Non-designated content (NDC) that is harmful to children.[240]

d) A duty to –

   i) ensure that the provisions of the publicly available statement referred to in paragraph A3.19(c) are applied consistently;[241]
   ii) include provisions in a publicly available statement giving information about any proactive technology (see paragraphs A1.56-A1.59) used by a service for the purpose of compliance with a duty set out in paragraph a) or b) (including the kind of technology, when it is used and how it works);[242] and
   iii) ensure that the provisions of the publicly available statement are clear and accessible.[243]

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[234] Section 30(5) of the Act. A provider is only entitled to conclude that it is not possible for children to access a service, or a part of it, if age verification or age estimation is used on the service with the result that children are not normally able to access the service or that part of it: see section 30(6) of the Act.
[235] Section 29(2) of the Act.
[236] With the harm arising by virtue of the nature of the content rather than the fact of its dissemination: see section 30(4) of the Act.
[237] With the harm arising by virtue of the nature of the content rather than the fact of its dissemination: see section 30(4) of the Act.
[238] Section 30(3) of the Act.
[239] Section 29(3) of the Act.
[240] Section 29(5) of the Act.
[241] Section 29(6) of the Act.
[242] Section 29(7) of the Act.
[243] Section 29(8) of the Act.

A3.23 So far as the above duties relate to non-designated content (NDC) that is harmful to children, the relevant duty is to be taken to extend only to addressing risks of harm from the kinds of such content that have been identified in the most recent children's risk assessment (if any have been identified).[244]

A3.24 The duties set out in paragraphs A3.19(a) and A3.19(b) (section 29(2) and (3) of the Act) apply across all areas of a service, including the way the search engine is designed, operated and used as well as search content of the service, and (among other things) require the provider of a service to take or use measures in the following areas, if it is proportionate to do so:

a) Regulatory compliance and risk management arrangements,
b) Design of functionalities, algorithms and other features relating to the search engine,
c) Functionalities allowing for control over content that is encountered in search results, especially by children,
d) Content prioritisation,
e) User support measures, and
f) Staff policies and practices.[245]

A3.25 Providers of Category 2A services likely to be accessed by children are additionally subject to a duty to summarise in a publicly available statement the findings of the most recent children's risk assessment of a service (including as to levels of risk and as to nature, and severity, of potential harm to children).[246]

A3.26 In determining what is 'proportionate' for the purposes of the safety duties for search services likely to be accessed by children, the following factors, in particular, are relevant:

a) All the findings of the most recent children's risk assessment (including as to levels of risk and as to nature, and severity, of potential harm to children), and
b) The size and capacity of the provider of a service.[247]

Ofcom's duties in relation to the protection of children

A3.27 The Act gives specific duties to Ofcom in relation to the protection of children. These are set out below.

Ofcom sector risk assessment

A3.28 Ofcom is under a duty to carry out a risk assessment to identify and assess the risks of harm to children in the UK, in different age groups, presented by content that is harmful to children.[248] [249]

A3.29 Ofcom's risk assessment must, among other things, identify the characteristics of user-to-user and search services (which include functionalities, user base, business model and

[244] Section 30(2) of the Act.
[245] Section 29(4) of the Act.
[246] Section 29(9) of the Act.
[247] Section 30(1) of the Act.
[248] Section 98(1)(c) of the Act.
[249] Ofcom has discretion in relation to whether to combine the risk assessments with the risk assessments relating to illegal content it is required to carry out under section 98(1)(a) and (b) of the Act. Ofcom may assess regulated user-to-user services and regulated search services separately or together. Section 98(3) of the Act.

governance, and other systems and processes) that are relevant to the risks of harm and assess the impact of these characteristics on the risks of harm.[250]

Children's Register of Risks and Children's Risk Profiles

A3.30 Ofcom must prepare and publish a register of risks that reflects the findings of its sector risk assessment.[251] The Children's Register must be prepared as soon as reasonably practicable after completion of the risk assessment.[252]

A3.31 Further to the Children's Register, after completing its risk assessments, Ofcom must prepare and publish risk profiles for user-to-user services and search services that relate to each risk of harm, as applicable (the Children's Risk Profiles, which are incorporated in the Children's Risk Assessment Guidance). In preparing the Children's Risk Profiles, Ofcom can group user-to-user services and search services as appropriate and having regard to (i) the characteristics of the services and (ii) the risk levels and other matters identified in the risk assessment.[253]

A3.32 Ofcom must review and revise the risk assessments and the Children's Risk Profiles from time to time to keep them up to date.[254]

Risk assessment guidance for services

A3.33 Ofcom must prepare and publish guidance to help user-to-user services and search services comply with their duties to prepare children's risk assessments under sections 11 and 28 respectively (the Children's Risk Assessment Guidance).[255]

A3.34 Ofcom must prepare the Children's Risk Assessment Guidance as soon as reasonably practicable after having published the risk profiles relating to the risks of harm to children.[256]

A3.35 Ofcom must revise and publish updated Children's Risk Assessment Guidance when it carries out a new risk assessment and/or revises the risk profiles.[257]

Protection of Children Codes of Practice for user-to-user and search

Ofcom's duty to prepare and issue Protection of Children Codes of Practice in relation to the protection of children

A3.36 Ofcom must issue Protection of Children Codes of Practice (Codes) for regulated user-to-user and search services containing measures recommended for the purposes of compliance with certain duties including:

a) The protection of children safety duties in sections 12 and 29;
b) The content reporting duties in sections 20 and 31; and
c) The complaints procedure duties in sections 21 and 32.

[250] Section 98(2) and (11) of the Act.
[251] Ofcom, Children's Register of Risks
[252] Section 98(4) of the Act.
[253] Section 98(5)-(7) of the Act.
[254] Section 98(8) of the Act.
[255] Section 99(3) and (6) of the Act.
[256] Section 99(3) of the Act.
[257] Section 99(5) of the Act.

A3.37 Schedule 4 to the Act sets out general principles and online safety objectives which the Codes must follow, as well as what content must be included. These are discussed further in Annex A1 above.

Age assurance

A3.38 In deciding whether to recommend the use of age assurance, or which kinds of age assurance to recommend, in a code of practice as a measure recommended for the purpose of compliance with any of the duties set out in paragraphs A3.10(a) or A3.10(b) (these apply to user-to-user services) or paragraphs A3.19(a) or A3.19(b) (these apply to search services) Ofcom must, in addition to the general principles and principles in relation to freedom of expression and privacy set out above, have regard to the following:[258] [259] [260]

a) The principle that age assurance should be effective at correctly identifying the age or age-range of users;
b) Relevant standards set out in the latest version of the code of practice under section 123 of the Data Protection Act 2018 (age-appropriate design code);
c) The need to strike the right balance between –
    i) the levels of risk and the nature, and severity, of potential harm to children which the age assurance is designed to guard against, and
    ii) protecting the right of users and (in the case of search services or the search engine of combined services) interested persons to freedom of expression within the law;
d) The principle that more effective kinds of age assurance should be used to deal with higher levels of risk of harm to children;
e) The principle that age assurance should be easy to use, including by children of different ages and with different needs;
f) The principle that age assurance should work effectively for all users regardless of their characteristics or whether they are members of a certain group; and
g) The principle of interoperability between different kinds of age assurance.[261]

A3.39 If a code of practice does recommend age assurance for the purpose of complying with the duties set out paragraphs A3.10(a) or A3.10(b) (these apply to user-to-user services) then it must also describe measures for the purpose of complying with the following duties:[262]

a) The duties regarding the inclusion of clear information in the terms of service described in paragraphs A3.13(d)-(h);[263] and
b) The duties regarding complaints about age assurance described in paragraph A1.21(e).[264]

A3.40 If a code of practice does recommend age assurance for the purpose of complying with the duties set out in paragraphs A3.19(a) or A3.19(b) (these apply to search services) then it must also describe measures for the purpose of complying with the following duties:[265]

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[258] These are the duties in section 12(2) or (3) of the Act.
[259] These are the duties in section 29(2) or (3) of the Act.
[260] Paragraph 12(1) of Schedule 4 to the Act.
[261] Paragraph 12(1) and (2) of Schedule 4 to the Act.
[262] These are the duties in section 12(2) or (3) of the Act.
[263] These are the duties in section 12(9), (11) and (13) of the Act.
[264] These are the duties in section 21(2) and (3) of the Act. See in particular section 21(5)(e) (complaints about age assurance).
[265] These are the duties in section 29(2) or (3) of the Act.

a) The duties regarding the inclusion of clear information in the publicly available statement described in paragraphs A3.22(c) and (d);[266] and
b) The duties regarding complaints about age assurance.[267]

A3.41 A provider of a user-to-user service likely to be accessed by children is required to use age verification or age estimation (or both) to prevent children of any age from encountering PPC that is harmful to children which the provider identifies on the service.[268] The age verification or age estimation must be of such a kind, and used in such a way, that it is highly effective at correctly determining whether or not a particular user is a child.[269]

A3.42 Part 5 of the Act imposes specific duties on service providers that display or publish pornographic content on their online services. Further detail is set out below at paragraphs A3.47-A3.49. In decision which kinds and uses of age verification or age estimation for the purposes of compliance with the duty set out in section 12(3)(a) of the Act, Ofcom must have regard to the guidance issued in relation to examples of kinds and uses of age verification and estimation that are, or are not, highly effective at correctly determining whether or not a particular user is a child.[270]

A3.43 The Act makes clear that a code of practice may:

a) Refer to industry or technical standards for age assurance (where they exist); and/or
b) Elaborate on the principles mentioned in paragraphs (a) and (c) to (g) of paragraph A3.38 (in relation to age assurance).[271]

Children's Access Assessments Guidance

A3.44 Ofcom is required to issue guidance for user-to-user and search services to assist with determining whether their services are likely to be accessed by children (i.e. completing the children's access assessment).[272]

Guidance on Content Harmful to Children

A3.45 Ofcom must produce guidance which gives examples of content that Ofcom considers to be (or not to be) primary priority content (PPC) and priority content (PC) that is harmful to children.[273]

Record-Keeping and Review Guidance

A3.46 Ofcom must produce guidance for providers of regulated user-to-user and search services to assist them in complying with their record-keeping and review duties (sections 23 (user-to-user) and 34 (search)) – paragraphs A1.37-A1.38 (user-to-user), and A1.39-A1.42 (search).[274]

[266] These are the duties in section 29(5) and (8) of the Act.
[267] These are the duties in section 32(2), (3) and (5)(d) of the Act.
[268] Section 12(3)(a) and (4) of the Act.
[269] Section 12(6) of the Act.
[270] Paragraph 12(4) of Schedule 4 to the Act.
[271] Paragraph 12(8) of Schedule 4 to the Act.
[272] Section 52(3)(b) of the Act.
[273] Section 53 of the Act.
[274] Section 52(3) of the Act.

Part 5 guidance

A3.47 Duties in Part 5 of the Act (the Part 5 duties) apply where regulated provider pornographic content (as defined in section 79 of the Act) is published or displayed by a provider of an internet service (or on behalf of such a provider) on that internet service. These duties include a requirement for service providers to implement highly effective age assurance to ensure that children are not normally able to encounter regulated provider pornographic content displayed on their service.[275]

A3.48 Ofcom must produce guidance for providers of internet services which fall within scope of Part 5 to help them comply with the duties outlined above.[276] To that end, Ofcom must include examples of the kinds and uses of age assurance that are, or are not, highly effective at determining whether or not a user is a child. The guidance must also set out the principles that Ofcom proposes to apply when determining if a service provider has complied with the duties in section 81 of the Act, and examples of circumstances where we are likely to consider that they have not complied with each of those duties.[277] See our Guidance on highly effective age assurance and other Part 5 duties[278] for more information on the Part 5 duties and the services to which they apply.

A3.49 In addition to the Part 5 guidance, we have also issued Guidance on highly effective age assurance, to assist providers of regulated user-to-user and search services (Part 3 services) in implementing highly effective age assurance for the purpose of fulfilling their regulatory obligations under the Act. We have sought to ensure a consistent approach to highly effective age assurance across the Part 5 guidance and the Part 3 guidance.

[275] Section 81(2) and (3) of the Act.
[276] Section 82(1) of the Act.
[277] Section 82(2) of the Act.
[278] Ofcom, Guidance on highly effective age assurance and other Part 5 duties.