A1. Legal Annex

Scope of the Act

A1.1 The Act provides for a new regulatory framework which has the general purpose of making the use of regulated internet services safer for individuals in the UK.[1] In addition to its general online safety objectives for all UK users, the Act introduces specific duties for providers, including obligations under section 75 in relation to the disclosure of information about the use of the service by deceased child users.

A1.2 This section sets out the duties relating to the disclosure of information about the use of a service by deceased child users, as they apply to providers of relevant services and to Ofcom, and which are relevant to this consultation.

A1.3 Internet services within the scope of the new 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
c) a provider of internet services on which "provider pornographic content" is published or displayed.[4]

A1.4 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). Regulated services have links to the UK if the service has a significant number of UK users of if UK users form one of the target markets or the only target market.[5] A user-to-user or search 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 on the service or search content of the service.[6]

A1.5 All regulated user-to-user and search services have to comply with duties in the Act relating to illegal content and, if they are likely to be accessed by children, protecting children from content that is harmful to them. In addition, the Act establishes a number of categories of regulated user-to-user and search services to which additional duties apply. Category 1 and Category 2B relate to different kinds of regulated user-to-user services, with Category 1 being the largest services.[7] Category 2A relates to search services.[8] The Secretary of State is responsible for setting threshold conditions for these categories based

[1] Section 1(1) of the Act.
[2] Section 3(1) of the Act.
[3] Section 3(4) of the Act. Search engine is defined in section 229 of the Act as including (a) "a service or functionality which enables a person to search some websites or databases (as well as a service or functionality which enables a person to search (in principle) all websites or databases)", but as not including (b) "a service which enables a person to search just one website or database".
[4] Section 79(2) of the Act.
[5] Section 4(5) of the Act.
[6] Section 4(6) of the Act.
[7] Sections 95(10)(a) and (c) of the Act.
[8] Section 95(10)(b) of the Act.

on the number of users of the service, its functionalities and other relevant factors.[9] Ofcom is required to maintain and publish the register of the services in each category.[10] We refer to these categorised services as "relevant services" in this consultation and our draft Guidance.

A1.6 Services appearing on the register of categorised services, as set out above, are required to comply with some or all of a range of additional duties, including the Deceased Child User duties. These are set out in the table below.[11]

Table 1: Overview of additional duties

Categories	Category 1	Category 2A	Category 2B
Categorised services must comply with additional duties relating to the below:			
Transparency reporting	✓	✓	✓
Enhanced requirements on risk assessments and record keeping	✓	✓	
Additional terms of service duties	✓		
Protections for news publisher and journalistic content and content of democratic importance	✓		
Providing user identify verification options	✓		
Prevention of fraudulent advertising	✓	✓	
Disclosure of information about use of the service by a deceased child user	✓	✓	✓

Provider duties in relation to deceased child users

A1.7 In the following sections, we summarise the provisions of section 75 of the Act which apply to providers of relevant services.

Duties about the Terms of Service

A1.8 A provider of a relevant service must make it clear in the terms of service what their policy is about dealing with requests from parents of a deceased child for information about the child's use of the service.[12]

A1.9 A provider of a relevant service must include clear and accessible provisions in the terms of service -

[9] These have been set out in the Online Safety Act 2023 (Category 1, Category 2A and Category 2B Threshold Conditions) Regulations 2025.
[10] Section 95(2) of the Act. Ofcom is in the process of preparing the first register of categorised services. We plan to publish this around July 2026. See Ofcom's approach to implementing the Online Safety Act.
[11] For further information about the additional duties on categorised services, please see our 2024 Call for Evidence.
[12] Section 75(1) of the Act.

a) specifying the procedure for parents of a deceased child to request information about the child's use of the service;

b) specifying what evidence (if any) the provider will require about the parent's identity or relationship to the child; and

A1.10 giving sufficient detail to enable child users and their parents to be reasonably certain about what kinds of information would be disclosed and how information would be disclosed.[13]

Duties about responding to requests for information and updates

A1.11 A provider of a relevant service must respond in a timely manner to requests from parents of a deceased child for information about the child's use of the service or for updates about the progress of such information requests.[14]

Duties about having a support function

A1.12 A provider of a relevant service must have a dedicated helpline or section of the service, or some similar means ("support function"), by which parents can easily find out what they need to do to obtain information and updates in those circumstances, and the terms of service must provide details.[15]

Duties about operating a complaints procedure

A1.13 A provider of a relevant service must operate a complaints procedure in relation to the service that -

a) allows for complaints to be made by parents of a deceased child who consider that the provider is not complying with its duties under section 75 of the Act;
b) provides for appropriate action to be taken by the provider of the service in response to such complaints, and
c) is easy to access, easy to use and transparent.[16]

A1.14 A provider of a relevant service must include in the terms of service provisions which are easily accessible specifying the policies and processes that govern the handling and resolution of such complaints.[17]

Ofcom's duties in relation to deceased child users

A1.15 The Act gives a specific duty to Ofcom to produce and publish guidance for regulated user-to-user and search services to assist them in complying with their deceased child user duties in Section 75 of the Act.[18]

[13] Section 75(3) of the Act.
[14] Section 75(4) of the Act.
[15] Section 75(2) of the Act.
[16] Section 75(5) of the Act.
[17] Section 75(6) of the Act.
[18] Sections 76(1) and 76(2) of the Act.

Ofcom's general duties

A1.16 The Communications Act 2003 ("CA 2003") places a number of duties on Ofcom that we must fulfil when exercising our regulatory functions, including our online safety functions. Section 3(1) of the CA 2003 states that it shall be our principal duty, in carrying out our functions:

a) To further the interests of citizens in relation to communication matters; and
b) To further the interests of consumers in relevant markets, where appropriate by promoting competition.

A1.17 In performing that principal duty, we are required to have regard to principles set out in the CA 2003 under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, as well as any other principles appearing to us to represent best regulatory practice.

A1.18 In carrying out our functions Ofcom is required to secure, in particular, the adequate protection of citizens from harm presented by content on regulated services, through the appropriate use by providers of such services of systems and processes designed to reduce the risk of such harm (section 3(2)(g) of the CA 2003 as amended by section 91(2) of the Act).

A1.19 Section 3(4A) of the CA 2003 further provides that in relation to matters to which section 3(2)(g) is relevant, we must have regard to the following as they appear to us to be relevant in the circumstances:

a) the risk of harm to citizens presented by content on regulated services;
b) the need for a higher level of protection for children than for adults;
c) the need for it to be clear to providers of regulated services how they may comply with their duties under the Act;
d) the need to exercise our functions so as to secure that providers may comply with such duties by taking or using measures, systems or processes which are proportionate to the size or capacity of the provider and the level of risk of harm presented by the service;
e) the desirability of promoting the use by providers of technologies which are designed to reduce the risk of harm to citizens presented by content on regulated services and the extent to which providers demonstrate, in a way that is transparent and accountable, that they are complying with their duties.

A1.20 Section 3(4) of the CA 2003 sets out other matters to which Ofcom must, to the extent they appear to us relevant in the circumstances, have regard, in performing our duties. They include the desirability of promoting competition and encouraging investment and innovation in relevant markets; the vulnerability of children and of others whose circumstances put them in need of special protection; the needs of persons with disabilities, the elderly and of those on low incomes; the desirability of preventing crime and disorder; the opinions of consumers and of members of the public generally; and the different interests of persons in the different parts of the United Kingdom and of the different ethnic communities within the United Kingdom.

Statement of Strategic Priorities for Online Safety

A1.21 On 2 July 2023, the Government's Statement of Strategic Priorities for Online Safety ("SSP") was designated, after previously being laid in draft before Parliament.[19]

A1.22 This sets out the Government's desired outcomes which Ofcom must have regard to when exercising its regulatory functions and outlines, as one of the five priorities, the importance of 'transparency and accountability' in ensuring that parents are treated with respect when requesting information from services following the death of a child.

A1.23 Ofcom responded to this by way of letter dated 25 July 2025.[20] We have had regard to the SSP, and in particular the Government's expectation that relevant services respond to parents' requests in a humane and transparent way, when making our proposals concerning the Guidance.

Human rights

A1.24 As a public authority, Ofcom must act in accordance with its public law duties to act lawfully, rationally and fairly, and it is unlawful for Ofcom to act in a way which is incompatible with the European Convention of Human Rights ('ECHR').

A1.25 Of particular relevance to Ofcom's functions under the Act are the right to freedom of expression (Article 10 ECHR)[21] and the right to privacy (Article 8 ECHR).[22] We have had particular regard to these rights when developing the draft Guidance, to ensure that our recommendations for compliance and good practice are appropriate and proportionate to ensure greater clarity and transparency for bereaved parents, and do not disproportionately infringe these or other ECHR rights.[23] Any interference with these ECHR rights must be prescribed by law; pursue a legitimate aim and be necessary in a democratic society. The interference must be proportionate to the legitimate aim pursued and corresponding to a pressing social need. In formulating our proposals, we have carefully analysed the potential for interference with ECHR rights. We consider it unlikely that our approach to the draft Guidance will result in any interference. This analysis is set out in Annex A2.

Impact assessment

A1.26 Impact assessments provide a valuable way of evaluating the options for regulation and showing why the chosen option(s) was preferred. They form part of best practice policy

[19] Department for Science, Innovation & Technology, 2 July 2025, Final Statement of Strategic Priorities for Online Safety.
[20] Ofcom, 25 July 2025, Letter to Government on the Statement of Strategic Priorities for Online Safety.
[21] The right to freedom of expression includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authority. Article 10(2) of the ECHR states that this right may be restricted in certain circumstances.
[22] Article 8(1) of the ECHR states that everyone has the right to respect for his private and family life, his home and his correspondence. Article 8(2) sets out limited qualifications stating that public authorities must not interfere with the exercise of this right unless necessary in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
[23] Other ECHR rights which may also be relevant to Ofcom's functions under the Act are the right to freedom of thought, conscience and religion (Article 9 ECHR) and the right to freedom of assembly and association (Article 11 ECHR).

making. This is reflected in section 7 of the CA 2003, which requires Ofcom to carry out and publish an assessment of the likely impact of implementing a proposal which would be likely to have a significant impact on businesses or the general public, or when there is a major change in Ofcom's activities. As a matter of policy, Ofcom is committed to carrying out impact assessments in a large majority of our policy decisions. Our impact assessment guidance sets out our general approach to how we assess and present the impact of our proposed decisions. We set out our impact assessment in relation to these proposals in Annex A2.

Equality and Welsh language impact assessments

A1.27 See Annex A2 for more information about how Ofcom has applied its duties under the Equality Act 2010 and the Northern Ireland Act 1998, as well as our duties relating to the Welsh language, in producing the draft Guidance.