

# Introduction, our duties, and navigating the Statement

This chapter provides a high-level introduction to our Statement. We detail our duties and functions, the scope of the Statement, set out next steps and explain to stakeholders how to navigate our Statement. To help improve the accessibility of our document we have included suggestions for which parts of our Statement different types of stakeholder might find most useful.

## What this section does

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- 1.1 This is the introduction to Ofcom’s Illegal Harms Statement. We call our decision documents ‘Statements’ because they are statements of our reasoning for the decisions we have made.
- 1.2 The decisions explained in this Statement will put into effect service providers’ illegal content duties and our enforcement powers under the Online Safety Act 2023 (the Act).<sup>1</sup> We consulted on the proposals which led to these decisions in three publications: our November 2023 Illegal Harms Consultation; our May 2024 Children’s Safety Consultation and our August 2024 Further Consultation on animal cruelty and human torture.
- 1.3 This section outlines our duties and functions and the scope of this Statement, sets out next steps and explains how to navigate the Statement. For definitions of terms, and an overview of which types of services are in scope of the Act, see our Glossary (Annex 3) and our Overview of regulated services chapter.

## Ofcom’s duties and online safety functions

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- 1.4 Ofcom is the independent regulator for communications services. We have regulatory responsibilities for the telecommunications, post and broadcasting sectors, as well as for online services. These include user-to-user (U2U), search and pornography services and some online video services, such as on-demand programme services (ODPS) and video-sharing platforms (VSPs) established in the UK.<sup>2 3</sup>
- 1.5 As a public authority, Ofcom must act lawfully, rationally and fairly.
- 1.6 The Communications Act 2003 (the 2003 Act) places a number of duties on us that we must fulfil when exercising our regulatory functions, including our online safety functions. The 2003 Act states that our principal duty in carrying out our functions is:
  - to further the interests of citizens in relation to communication matters; and
  - to further the interests of consumers in relevant markets, where appropriate by promoting competition.<sup>4</sup>

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<sup>1</sup> Subject in some cases to further procedures set out in the Act.

<sup>2</sup> See our Overview of regulated services chapter.

<sup>3</sup> This section provides an overview of our duties and functions. Our legal framework is set out in Annex 2.

<sup>4</sup> Section 3(1) of the 2003 Act.

- 1.7 In performing that principal duty, we must have regard to principles set out in the 2003 Act, which says that regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.<sup>5</sup>
- 1.8 In carrying out our functions Ofcom is required to secure, in particular, adequate protection of citizens from harm presented by content on regulated services, through providers using appropriate systems and processes designed to reduce the risk of harm.<sup>6</sup>
- 1.9 The 2003 Act further requires<sup>7</sup> that we must have regard to the following as they appear to us to be relevant in the circumstances.<sup>8</sup> In making our decisions, we have considered factors including, but not limited to:
- the risk of harm to citizens presented by regulated services;
  - the need for a higher level of protection for children than for adults;
  - the need for it to be clear to providers of regulated services how they may comply with their duties under the Act;
  - the need to exercise our functions 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 (and potential severity) of harm presented by the service;
  - the desirability of promoting the use of technologies which are designed to reduce the risk of harm to citizens; and
  - the extent to which providers demonstrate, in a way that is transparent and accountable, that they are complying with their duties.
- 1.10 In line with our additional duties under the 2003 Act,<sup>9</sup> we have also considered the vulnerability of children and of others whose circumstances put them in need of special protection. We have considered:
- the needs of persons with disabilities, the elderly, and of those on low incomes
  - the opinions of consumers and of members of the public generally
  - the interests of persons in the different parts of the United Kingdom
  - the interests of the different ethnic communities within the United Kingdom.

## Schedule 4 and specific additional Illegal Content Codes considerations

- 1.11 The Act sets out that Ofcom must consider the appropriateness of the measures we recommend to different kinds and sizes of services and to providers of differing sizes and capacities.<sup>10</sup> We must also have regard to the principles that:

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<sup>5</sup> We must also have regard to any other principles appearing to us to represent best regulatory practice.

<sup>6</sup> Section 3(2)(g) of the 2003 Act (as amended by section 91 of the Act).

<sup>7</sup> Section 3(4A) of the 2003 Act.

<sup>8</sup> In relation to matters to which section 3(2)(g) is relevant. The 2003 Act 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. See Volume 2 chapter 14 – Schedule 4 tests.

<sup>9</sup> Section 3(4) of the Communications Act 2003.

<sup>10</sup> Schedule 4 of the Act.

- a) Providers must be able to understand which measures apply to their service;
  - b) The measures must be sufficiently clear, and at a sufficiently detailed level, that providers understand what they entail in practice;
  - c) The measures must be proportionate and technically feasible; and
  - d) The measures that apply to services of various kinds and sizes must be proportionate to our assessment of the risk of harm presented by services of that kind or size.
- 1.12 We must also ensure that the measures described in the Illegal Content Codes are compatible with pursuit of a list of online safety objectives set out in Schedule 4 and that we include measures relating to each of the areas specified in sections 10(4) and 27(4). Each of these are explained in more detail in Volume 2 chapter 14.
- 1.13 Under the 2003 Act, we are also required to conduct impact assessments when preparing a Code or amendment to a Code, including an assessment of the impact on small and micro businesses.<sup>11</sup>
- 1.14 We consider that assessing measures based on our impact assessment criteria is the right approach to ensuring our Codes protect users from illegal content online while also protecting their rights and enabling service providers to operate and innovate in the market. We are open to revisiting the best way to assess our measures within our obligations as the regime develops.

## Human rights

- 1.15 It is unlawful for Ofcom to act in a way which is incompatible with the European Convention on Human Rights ('ECHR').<sup>12</sup>
- 1.16 Of particular relevance to Ofcom's functions under the Act are the right to freedom of expression (Article 10 ECHR) and the right to privacy (Article 8 ECHR). In formulating our decisions in this Statement, we have carefully analysed where we have identified the potential for interference with ECHR rights, to make sure any such interference is proportionate.
- 1.17 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 the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.
- 1.18 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.

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<sup>11</sup> Section 7 of the 2003 Act, as amended by section 93 of the Act.

<sup>12</sup> Section 6 of the Human Rights Act 1998.

- 1.19 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).
- 1.20 These are qualified rights. But the need for any interference with these rights must be construed strictly and established convincingly. Any interference must be prescribed by or in accordance with the law; pursue a legitimate aim<sup>13</sup>; and be necessary in a democratic society - in other words, it must be proportionate to the legitimate aim pursued and corresponding to a pressing social need.
- 1.21 In considering whether impacts on these rights are proportionate, our starting point is to recognise that Parliament has determined that providers of regulated services must take proportionate measures to protect users from illegal content and, where relevant, the commission and facilitation of priority offences. We therefore start from the position that UK users should be protected from the harms set out in the Act and place weight on all the specific evidence of harm set out in our Register of Risks. A substantial public interest exists in these outcomes. Overall, we have sought to strike a fair balance between securing adequate protections for users from harm (and their human rights in respect of this) and the ECHR rights of users, other interested persons (including for example, persons who host websites or who may be featured in content on regulated services or whose content might be on those services regardless of whether or not they are service users) and service providers, as relevant.

## Equality impact assessment and Welsh language

- 1.22 We have considered the equality impacts of the Codes and guidance set out in this Statement, detailing our understanding of any particular impacts on protected groups in the UK.
- 1.23 Where relevant and to the extent we have discretion to do so in the exercise of our functions, we have considered the potential impacts on opportunities to use the Welsh language and the need to treat the Welsh language no less favourably than English (in accordance with Welsh language standards).
- 1.24 We have set out our considerations on these matters in Annex 4.

## Scope of this Statement

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- 1.25 This illegal harms Statement is the first step in putting into effect the new online safety regulatory regime established by the Act. It accompanies our Risk Assessment, Illegal Content Codes of Practice and associated guidance that are needed for the regime around illegal content to come into force. These are our 'regulatory documents'.
- 1.26 This document outlines our approach and the reasons for our decisions on the following regulatory documents which, together, will guide providers in understanding and meeting their duties under the Act:
- **'Ofcom Risk Assessment'**: our [Register of Risks](#) sets out our full assessment of where and how illegal harms manifest online and the factors that give rise to risks of harm.

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<sup>13</sup> As set out in Articles 8(2), 9(2), 10(2) and 11(2). The relevant legitimate aims that Ofcom acts in pursuit of in the context of our functions under the Act include the prevention of crime and disorder, public safety and the protection of health or morals, and the protection of the rights and freedoms of others.

- **‘Service Risk Assessment Guidance’**: Ofcom’s guidance for service providers on conducting their own risk assessment for illegal harms. All providers need to ensure their assessments for each service they provide are ‘suitable and sufficient’, and take appropriate steps to keep it up to date. Our guidance lays out the steps that providers can take to ensure that they are meeting these requirements, including a proposed universal four-step process that has been informed by industry best practice in risk assessments. To further assist providers with their risk assessment, we have produced a set of **‘Risk Profiles’** which provide a short, accessible summary of the factors we consider are associated with a heightened risk of illegal harms. These Risk Profiles are contained within the Service Risk Assessment Guidance and draw on the analysis set out in our Register of Risks and serve to summarise the main findings of the Register.

**All providers of user-to-user and search services in scope of the Act must complete their illegal content risk assessments within three months of us publishing this final illegal content risk assessment guidance. Providers will need to be prepared to complete these assessments by mid-March 2025, and we will expect specific providers to disclose their risk assessments to us from 31 March 2025**

- **‘Record Keeping and Review Guidance’**: Ofcom’s guidance for service providers on how to comply with their duties to make and keep written records of their risk assessments and the measures they take to comply with their safety duties and reporting and complaints duties, as well as their duty to review their compliance with those duties.
- **Illegal Content ‘Codes of Practice’ for U2U services and for search services**: these set out recommended measures that service providers can take to comply with their illegal content safety duties and their reporting and complaints duties. While service providers are not required to follow the Codes, under the Act, providers which follow them will be treated as compliant with the duties to which they relate.
- When these Codes come into force, the duties to which they relate will come into force. These Codes are not in force yet – see paragraph 1.28 below on next steps.
- **‘Illegal Content Judgements Guidance’ (ICJG)**: service providers need to know what illegal content is to carry out their risk assessment and comply with their safety duties. This guidance will help providers assess whether content is illegal. Providers can use the ICJG to help them make these judgements, or rely on their Terms and Conditions, as long as these prohibit all illegal content in the UK.<sup>14</sup>
- **‘Enforcement Guidance’**: This sets out how we expect to exercise our new enforcement powers under the Act.<sup>15</sup>
- **‘Guidance on content communicated “publicly” and “privately”**: consistent with the Act, where the Codes recommend the use of proactive technology, those measures do not recommend its use on content communicated privately on the service. This guidance will assist providers in determining which content is communicated ‘publicly’ and ‘privately’ on their services.

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<sup>14</sup> For more detail on this point please see paragraph 1.4 of the Introduction to the ICJG.

<sup>15</sup> In our November 2023 Illegal Harms Consultation, we consulted on our approach to information gathering. We separately published our Online Safety Information Guidance Consultation in July 2024: <https://www.ofcom.org.uk/online-safety/illegal-and-harmful-content/consultation-online-safety-information-guidance/>. We plan to publish our Statement on this in early 2025.

## Next steps

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- 1.27 Most of the regulatory documents we are publishing with this Statement come into force on the date of publication. As stated above, the publication of the Risk Assessment Guidance also starts the clock for existing service providers to carry out their first illegal content risk assessments under the Act. These must be completed by three months from the date of this Statement (16 March 2025).
- 1.28 The Codes of Practice are the only regulatory products not yet in force, but we have submitted them to the Secretary of State to be laid before Parliament. Subject to the Parliamentary process, we intend to align the date for the Codes to come into force with the deadline for providers' illegal content risk assessments to be completed.

## How to use and navigate this document

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- 1.29 It is important that the set of documents that form our Illegal Harms Statement is accessible and clear to navigate for a range of audiences. We have responded to feedback received to our November 2023 Illegal Harms Consultation and have taken steps to improve accessibility and navigation. For example, we have:
- reviewed the presentation and structure of our documents on our website to make it clearer;
  - produced a series of digital tools for service providers to easily find out whether they are in scope of the regime and to help them understand how to meet their illegal content safety duties<sup>16</sup>;
  - included further explanation about how our decisions reflect Ofcom's wider strategy for online safety.
- 1.30 We have also replicated materials we produced last time which provide high-level summaries:
- [A summary of our decisions](#) and which U2U and search services they apply to.
  - [A summary of each chapter](#), setting out what the chapter is about, what stakeholder feedback we received, and what our decisions are.
- 1.31 We will also engage with relevant stakeholders following publication of this Statement.
- 1.32 We are aware that different stakeholders reading this Statement will have different sets of priorities, and may therefore be interested in different parts of our decisions. We have also taken into account that smaller service providers, civil society organisations and interested individuals are likely to have less time and resource to engage with our decisions.
- 1.33 We have set out our views (numbered 1 to 5) of which elements of our overall Statement package might be of most use to different kinds of stakeholders.
- 1) **Small/medium sized service providers:** may want to start with our digital tool when available and review our summary documents where appropriate, before turning to our risk assessment guidance, followed by our Codes (supplemented by our other guidance documents).

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<sup>16</sup> We will publicise the service to regulated firms when it is available to use.

- 2) **Civil society organisations:** may be particularly interested in the reasoning for our decisions, starting with the Overview, and chapter summaries. They may identify areas of specific interest to read in more detail, for example research on specific harms or information on particular measures.
- 3) **Large service providers:** will most likely want to use a combination of all our materials, including the digital tool, but we expect their initial focus to be on the risk assessment guidance, Codes and other guidance documents themselves.
- 4) **Individuals within service providers:**
  - Compliance lawyers may well want to focus on our Codes and guidance documents, particularly our risk assessment guidance.
  - Trust and safety workers may want to focus on the Register of Risks, Codes on content moderation and search moderation, and the ICJG.
- 5) **Individuals who have a broader interest in online safety:** Might wish to begin with the Overview and summary of our decisions.

1.34 Our illegal harms Statement is broken down into our **Overview** and **Context** documents, **three main volumes** setting out our reasoning for our decisions, **a number of annexes**, and our **regulatory documents**.

- Our **Overview** document gives a high-level summary of our decisions, and how this Statement links to our wider strategy for implementing the Online Safety regime.
- This introduction is one of four **context chapters**:
  - > Introduction, our duties, and navigating the Statement (this document);
  - > Overview of Illegal Harms;
  - > Overview of the regulated sectors;
  - > Our approach to developing Codes measures.
- **Volume 1, ‘Governance and Risk Management’**, sets out our reasoning for our decisions on governance and risk assessment, in line with our strategic objective to promote stronger safety governance and risk assessment in online services. It contains:
  - > Chapter 1: Introduction to the volume
  - > Chapter 2: Register of Risks and Risk Profiles
  - > Chapter 3: Risk Assessment Guidance for Service Providers
  - > Chapter 4: Record-keeping and review
  - > Chapter 5: Governance and accountability
- **Volume 2, ‘Service Design and User Choice’**, outlines our reasoning relating to our decisions on the steps providers need to take to ensure their services are designed with safety in mind and to ensure that they are providing users with greater choice and control over their online experience. These decisions are reflected in a series of provisions in our ‘Codes of Practice’. This is in line with our objectives for online services to be designed and operated with safety in mind; and to promote greater choice and control for users. It contains our decisions on:

- > Chapter 1: Introduction to the volume
  - > Chapter 2: Content moderation
  - > Chapter 3: Search moderation
  - > Chapter 4: Automated content moderation
  - > Chapter 5: Automated search moderation
  - > Chapter 6: Reporting and complaints
  - > Chapter 7: Recommender systems
  - > Chapter 8: U2U settings, functionalities, and user support
  - > Chapter 9: Search design, functionalities, and user support
  - > Chapter 10: Terms of service and publicly available statements
  - > Chapter 11: User access
  - > Chapter 12: User controls
  - > Chapter 13: Combined Impact Assessment
  - > Chapter 14: Statutory Tests
- **Volume 3, Transparency, Trust and other guidance** provides transparency and guidance to services to help them better protect users, in line with our objective to build trust in service providers and in the regulatory regime. It contains the reasoning relating to:
    - > Chapter 1: Introduction to the volume
    - > Chapter 2: Ofcom’s Illegal Content Judgements Guidance
    - > Chapter 3: Ofcom’s enforcement powers
    - > Chapter 4: Guidance on content communicated ‘publicly’ and ‘privately’ under the Online Safety Act
- We have seven **regulatory and guidance documents**. We expect service providers to use these resources to ensure compliance with the illegal content safety duties:
    - > Risk Assessment Guidance;
    - > Register of Risks and Risk Profiles;
    - > Record-Keeping and Review Guidance;
    - > Illegal Content Codes of Practice for U2U services;
    - > Illegal Content Codes of Practice for search services;
    - > Ofcom’s Illegal Content Judgements Guidance;
    - > Online Safety Enforcement Guidance;
    - > Guidance on content communicated ‘publicly’ and ‘privately’ under the Online Safety Act.



- We also have five **annexes**:
  - > Annex 1: Further stakeholder responses
  - > Annex 2: Legal Framework Overview (Part A) and Duties of Providers and Ofcom in relation to illegal content (Part B)
  - > Annex 3: Glossary
  - > Annex 4: Equality Impact Assessment and Welsh language assessment
  - > Annex 5: Assumptions on costs and further analysis on costs and benefits