



## Draft Online Safety Bill

Presented to Parliament by the Minister of State for Digital and Culture by Command of Her Majesty May 2021

# DRAFT ONLINE SAFETY BILL

A SUMMARY PREPARED BY THE AGE VERIFICATION PROVIDERS ASSOCIATION

12 MAY 2021

# THE ONLINE SAFETY BILL APPLIES ONLY TO ONLINE SERVICES WHICH OFFER USER-TO-USER OR SEARCH SERVICES TO THE UK

- A “user-to-user service” is an internet service by means of which content that is generated by a user of the service, or uploaded to or shared on the service by a user of the service (including written material or messages, oral communications, photographs, videos, visual images, music and data of any description) may be read, viewed, heard or otherwise experienced (‘encountered’) by another user, or other users, of the service.
- A “search service” is an internet service that— (a) is, or includes, a search engine and (b) is not a user-to-user service
- A “regulated service” must have links with the United Kingdom i.e.
  - a) the service has a significant number of United Kingdom users, or
  - b) United Kingdom users form one of the target markets for the service (or the only target market) or
  - c) the service is capable of being used in the United Kingdom by individuals, and
  - d) there are reasonable grounds to believe that there is a material risk of significant harm to individuals in the United Kingdom arising from:
    - i. in the case of a user-to-user service, content present on the service;
    - ii. in the case of a search service, content that may be encountered in or via search results.
- Services are exempt if their content is limited to Email, SMS and/or MMS, one-to-one live aural communications, Internal business services, ‘Limited functionality services’ and Public bodies

# THE MAIN EXEMPTION LIMITED FUNCTIONALITY SERVICES...

- A user-to-user service is exempt if the functionalities of the service are limited, such that users are able to communicate by means of the service only in the following ways—
  - a) posting comments or reviews relating to content *produced and published* by the provider of the service (or by a person acting on behalf of the provider of the service);
  - b) sharing such comments or reviews on a different internet service;
  - c) expressing a view on such comments or reviews, or on content mentioned above, by means of—
    - i. applying a “like” or “dislike” button or other button of that nature,
    - ii. applying an emoji or symbol of any kind,
    - iii. engaging in yes/no voting, or
    - iv. rating or scoring the content (or the comments or reviews) in any way (including giving star or numerical ratings).

Note: The Bill appears to leave many adult websites out-of-scope: those without any user-to-user functionality which just publish pornography; and those with only this limited functionality

# SOME DEFINITIONS TO KEEP IN MIND...

<ul style="list-style-type: none"> <li>• <b>Priority illegal content</b></li> <li>• <b>Primary priority content</b></li> <li>• <b>Priority content</b></li> </ul>	Defined in Regulations made by the Secretary of State
<ul style="list-style-type: none"> <li>• <b>Regulated content</b></li> </ul>	User-generated content, <b>except</b> — (a) emails, (b) SMS messages, (c) MMS messages, (d) comments and reviews on provider content (e) one-to-one live aural communications (f) paid-for advertisements and (g) news publisher content
<ul style="list-style-type: none"> <li>• <b>User-generated content</b></li> </ul>	Content (i) generated by a user of the service, or (ii) uploaded to or shared on the service by a user of the service, and (b) that may be encountered by another user, or other users, of the service by means of the service. Includes content uploaded by an automated tool or bot
<ul style="list-style-type: none"> <li>• <b>Comments and reviews on provider content</b></li> </ul>	Content present on the service consisting of comments on, or reviews of, content produced and published on the service by the provider of the service or by a person acting on behalf of the provider
<ul style="list-style-type: none"> <li>• <b>One-to-one live aural communications</b></li> </ul>	Content consisting of communications made in real time between users of the service by means of the service, if (and only if)— (a) the communications consist solely of speech or other sounds conveyed between two users, (b) the communications do not include, and are not accompanied by, any written message, video or other visual image, and (c) the content is not a recording of such communications.
<ul style="list-style-type: none"> <li>• <b>Paid-for advertisement</b></li> </ul>	If— (a) the provider of the service receives any consideration (monetary or non-monetary) for the advertisement (whether directly from the advertiser or indirectly from another person), and (b) the placement of the advertisement is determined by systems or processes (human or automated) that are agreed between the parties entering into the contract relating to the advertisement.
<ul style="list-style-type: none"> <li>• <b>News publisher content</b></li> </ul>	Content is within this subsection if it was generated directly on the service by a user of the service that is a recognised news publisher or is a full article not an extract

# THE ONLINE SAFETY BILL REQUIRES 'USER-TO-USER' SERVICES AND SEARCH ENGINES TO COMPLY WITH SEVERAL NEW DUTIES



The illegal content risk assessment duty



Each of the illegal content duties



The duty about rights to freedom of expression and privacy\*



The duties about reporting and redress



Each of the record-keeping and review duties

\* Note – for search engines the wording in the Bill is slightly different: “the duty to protect rights to freedom of expression and privacy”

# SAFETY DUTIES ILLEGAL CONTENT RISK ASSESSMENT



To identify, assess and understand such of the following as appear to be appropriate, taking into account the risk profile that relates to services of that kind—

- a) the level of risk of individuals who are users of the service encountering the following in or via search results—
  - i. terrorism content,
  - ii. CSEA content,
  - iii. priority illegal content, and
  - iv. other illegal content, taking into account (in particular) risks presented by algorithms used by the service, and the way that the service indexes, organises and presents search results;
- b) the level of risk of functionalities of the service facilitating individuals encountering illegal content in or via search results, identifying and assessing those functionalities that present higher levels of risk;
- c) the nature, and severity, of the harm that might be suffered by individuals from the matters identified
- d) how the design and operation of the service (including the business model, governance and other systems and processes) may reduce or increase the risks identified.

# SAFETY DUTIES

## ILLEGAL CONTENT DUTIES FOR SEARCH ENGINES

- A duty, in relation to a service, to take proportionate steps to mitigate and effectively manage the risks of harm to individuals, as identified in the most recent illegal content risk assessment of the service.
- A duty to operate a service using proportionate systems and processes designed to minimise the risk of individuals encountering the following in or via search results—
  - a) priority illegal content;
  - b) 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).
- A duty to specify clearly in a publicly available statement details of policies and procedures designed to protect individuals from illegal content.
- A duty to apply the policies and procedures mentioned in that statement consistently.
- In determining whether a step, system or process is proportionate for the purposes of this section, the following must be taken into account—
  - 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.

# DUTY ABOUT RIGHTS TO FREEDOM OF EXPRESSION AND PRIVACY



- A duty to have regard to the importance of—
  - a) protecting the rights of users and interested persons to freedom of expression within the law, and
  - b) protecting users from unwarranted infringements of privacy, when deciding on, and implementing, safety policies and procedures.
- In this section “safety policies and procedures” means policies and procedures designed to secure compliance with—
  - a) any of the safety duties, or
  - b) any of the reporting and redress duties

# REPORTING AND REDRESS DUTIES FOR SEARCH ENGINES



- A duty to operate a service using systems and processes that allow users and affected persons to easily report content of the following kinds encountered in or via search results—
  - content which they consider to be illegal content;
  - content which they consider to be content that is harmful to children.
- A duty to operate a complaints procedure in relation to a service that—
  - allows for complaints to be made,
  - provides for appropriate action to be taken by the provider of the service in response to such complaints, and
  - is easy to access, easy to use (including by children) and transparent.

# REPORTING AND REDRESS DUTIES FOR SEARCH ENGINES (CONT)

- The kinds of complaints are—
  - complaints by users and affected persons about content of the following kinds encountered in or via search results—
    - i. content which they consider to be illegal content;
    - ii. content which they consider to be content that is harmful to children;
  - complaints by users and affected persons if they consider that—
    - i. the provider is not complying with a safety duty that applies in relation to the service;
    - ii. the provider is not complying with the freedom of expression and privacy duty
  - complaints by an interested person if—
    - i. the provider of a search service takes steps in order to comply with safety duties about illegal content that result in content relating to that interested person no longer appearing in search results or being given a lower priority in search results;
    - ii. the provider of a search service takes steps in order to comply with safety duties for services likely to be accessed by children that result in content relating to that interested person no longer appearing in search results or being given a lower priority in search results.
- A duty to make the policies and procedures that govern the handling and resolution of complaints publicly available and easily accessible (including to children).
- “affected person” means a person, other than a user of the service in question, who is in the UK and who is—
  - the subject of the content,
  - a member of a class or group of people with a certain characteristic (or combination of characteristics) targeted by the content,
  - 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
  - an adult providing assistance in using the 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.

# RECORD-KEEPING AND REVIEW DUTIES



- The “record-keeping and review duties” in relation to search services are the duties set out in this section.
- A duty to make and keep a written record of every risk assessment carried out under section 19.
- A duty to make and keep a written record of any steps taken to comply with a relevant duty other than steps which— (a) are described in a code of practice and recommended for the purposes of compliance with the duty in question, and (b) apply in relation to the provider and the service in question.
- 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.
- Where OFCOM consider it to be appropriate, OFCOM may, in relation to a particular search service, exempt the provider of that service from the duties above to make written records
- OFCOM must publish details of any exemption

# IN ADDITION, IF THE SERVICE OR SEARCH ENGINE IS LIKELY TO BE ACCESSED BY CHILDREN, IT MUST ALSO COMPLY WITH



Each of the children's risk assessment duties \*



Each of the duties to protect children's online safety



The duties about reporting and redress

The duties on search services extend only to their design and operation in the UK, as it affects UK users of the service.

The duties do not extend to

- a) content present on the website of a recognised news publisher or
- b) content, that may be encountered via search results, that—
  - i. reproduces in full an article or written item that was originally published by a recognised news publisher (and is not a screenshot or photograph of that article or item or of part of it),
  - ii. is a recording of an item originally broadcast by a recognised news publisher (and is not an excerpt of such a recording), or
  - iii. is a link to a full article or written item originally published by a recognised news publisher, or to a full recording of an item originally broadcast by a recognised news publisher.

# CHILDREN'S RISK ASSESSMENT



To identify, assess and understand such of the following as appear to be appropriate, taking into account the risk profile that relates to services of that kind—

- a) the level of risk of children who are users of the service encountering the following in or via search results—
  - i. each kind of primary priority content that is harmful to children (with each kind separately assessed),
  - ii. each kind of priority content that is harmful to children (with each kind separately assessed), and
  - iii. non-designated content that is harmful to children, giving separate consideration to children in different age groups, and taking into account (in particular) risks presented by algorithms used by the service and the way that the service indexes, organises and presents search results;
- b) the level of risk of functionalities of the service facilitating children encountering content that is harmful to children in or via search results, identifying and assessing those functionalities that present higher levels of risk;
- c) the nature, and severity, of the harm that might be suffered by children from the matters identified, giving separate consideration to children in different age groups;
- d) how the design and operation of the service (including the business model, governance and other systems and processes) may reduce or increase the risks identified.

# DUTIES TO PROTECT CHILDREN'S ONLINE SAFETY

- A duty, in relation to a service, to take proportionate steps to—
  - a) mitigate and effectively manage the risks of harm to children in different age groups, as identified in the most recent children's risk assessment of the service, and
  - b) mitigate the impact of harm arising to children in different age groups from content that is harmful to children encountered in or via search results of the service.
- A duty to operate a service using proportionate systems and processes designed to—
  - a) minimise the risk of children of any age encountering primary priority content that is harmful to children in or via search results;
  - b) 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) encountering it in or via search results.



# DUTIES TO PROTECT CHILDREN'S ONLINE SAFETY (CONT)

- A duty to specify clearly in a publicly available statement details of policies and procedures designed to protect children from—
  - a) primary priority content that is harmful to children (with each kind of primary priority content separately covered),
  - b) priority content that is harmful to children (with each kind of priority content separately covered), and
  - c) non-designated content that is harmful to children.
- A duty to apply the policies and procedures mentioned in that statement consistently.
- In determining whether a step, system or process is proportionate for the purposes of this section, the following must be taken into account—
  - 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.
- So far as a duty in this section relates to non-designated content that is harmful to children, the 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).
- The duties in this section extend only to such parts of a service as it is possible for children to access.

# PART 2

## CHAPTER 4

### ASSESSMENT ABOUT ACCESS BY CHILDREN

A provider of a regulated service must, carry out an assessment—

- (a) to determine whether it is possible for children to access the service or any part of the service, and
- (b) if it is possible for children to access the service or any part of the service, to determine whether the child user condition is met in relation to the service or any part of the service.

If a provider provides more than one regulated service, an assessment must be carried out for each service separately.

A provider is only entitled to conclude that it is not possible for children to access a service, or a part of it, if there are systems or processes in place that achieve the result that children are not normally able to access the service or that part of it.

The “child user condition” is met in relation to a service, or a part of a service, if—

- (a) there are a significant number of children who are users of the service or of that part of it, or
- (b) the service, or that part of it, is of a kind likely to attract a significant number of users who are children.

A service is to be treated as “likely to be accessed by children” if the provider’s assessment of the service concludes that—

- (a) it is possible for children to access the service or any part of it, and
- (b) the child user condition is met in relation to—
  - (i) the service, or
  - (ii) a part of the service that it is possible for children to access. .

# ASSESSMENT ABOUT ACCESS BY CHILDREN (CONT)

If a service is not treated as “likely to be accessed by children”

- (a) before making any significant change to any aspect of the design or operation of the service,
- (b) in response to evidence about reduced effectiveness of any systems or processes that are in place, or
- (c) in response to evidence about a significant increase in the number of children using the service.

A provider must keep written records of every assessment under this section.

If a provider fails to carry out an assessment of a service as required by this section, that service is to be treated as “likely to be accessed by children” for the purposes of this Part until such time as the provider carries out an assessment.

- (a) the reference to a “significant” number includes a reference to a number which is significant in proportion to the total number of UK users of a service or (as the case may be) a part of a service;
- (b) whether the test is met is to be based on evidence about who actually uses a service, rather than who the intended users of the service are.

In this section references to children are to children in the UK

OFCOM must prepare and publish guidance for providers of regulated services to assist them in complying with their duties to carry out assessments.

# CHAPTER 6

## MEANING OF “CONTENT THAT IS HARMFUL TO CHILDREN” ETC

- “Content that is harmful to children”, in relation to a regulated service, means content that is—
  - a) (in the case of a user-to-user service) regulated content in relation to that service, and
  - b) either—
    - i. of a description designated in regulations made by the Secretary of State as primary priority content that is harmful to children
    - ii. of a description designated in such regulations as priority content that is harmful to children, or
- Content is within this subsection if the provider of the service has reasonable grounds to believe that the nature of the content is such that there is a material risk of the content having, or indirectly having, a significant adverse physical or psychological impact on a child of ordinary sensibilities (“C”).
  - In the case of content which may reasonably be assumed to particularly affect people with a certain characteristic (or combination of characteristics), or to particularly affect a certain group of people, the provider is to assume that C possesses that characteristic (or combination of characteristics), or is a member of that group (as the case may be).
- Content is included if the provider of the service has reasonable grounds to believe that there is a material risk of the fact of the content’s dissemination having a significant adverse physical or psychological impact on a child of ordinary sensibilities (“C”), taking into account (in particular)—
  - a) how many users may be assumed to encounter the content by means of the service, and
  - b) how easily, quickly and widely content may be disseminated by means of the service.

# AND THE LARGEST 'CATEGORY 1' SERVICES MUST COMPLY WITH



Each of the adults' risk assessment duties



Each of the duties to protect adults' online safety



The duty about rights to freedom of expression and privacy



Each of the duties to protect content of democratic importance



Each of the duties to protect journalistic content



The duties about reporting and redress

# ADULT RISK ASSESSMENT



An “adults’ risk assessment” of a service of a particular kind means an assessment to identify, assess and understand such of the following as appear to be appropriate, taking into account the risk profile that relates to services of that kind—

- a. the user base;
- b. the level of risk of adults who are users of the service encountering the following by means of the service—
  - a. (i) each kind of priority content that is harmful to adults (with each kind separately assessed), and
  - b. (ii) other content that is harmful to adults,
- c. how easily, quickly and widely content may be disseminated by means of the service;
- d. the level of risk of harm to adults presented by different descriptions of content that is harmful to adults;
- e. the level of risk of functionalities of the service facilitating the presence or dissemination of content that is harmful to adults, identifying and assessing those functionalities that present higher levels of risk;
- f. the different ways in which the service is used, and the impact that has on the level of risk of harm that might be suffered by adults;
- g. the nature, and severity, of the harm that might be suffered by adults from the matters identified in accordance with paragraphs (b) to (e);
- h. how the design and operation of the service (including the business model, governance and other systems and processes) may reduce or increase the risks identified.

# CATEGORY I SERVICES

## SAFETY DUTIES PROTECTING ADULTS:

- (1) The “duties to protect adults’ online safety” in relation to user-to-user services are the duties set out in this section.
- (2) A duty to specify in the terms of service—
  - (a) how priority content that is harmful to adults is to be dealt with by the service (with each such kind of priority content separately covered), and
  - (b) identified in the most recent adults’ risk assessment (if any kind of such content has been identified), is to be dealt with by the service.
- (3) A duty to ensure that—
  - (a) the terms of service referred to in subsection (2) are clear and accessible, and
  - (b) those terms of service are applied consistently.
- (4) In this section “adults’ risk assessment” has the meaning given by section 7(10).
- (5) See also, in relation to duties under this section, section 12(2) (duties about rights to freedom of expression and privacy).

# DUTIES ABOUT RIGHTS TO FREEDOM OF EXPRESSION AND PRIVACY



## *All services*

- A duty to have regard to the importance of—
  - (a) protecting users' right to freedom of expression within the law, and
  - (b) protecting users from unwarranted infringements of privacy, when deciding on, and implementing, safety policies and procedures.

## *Category 1 services*

- A duty— (a) when deciding on safety policies and procedures, to carry out an assessment of the impact that such policies or procedures would have on—
  - (i) the protection of users' right to freedom of expression within the law, and
  - (ii) the protection of users from unwarranted infringements of privacy; and
- (b) to carry out an assessment of the impact of adopted safety policies and procedures on the matters mentioned in paragraph (a)(i) and (ii).
- A duty to— (a) keep an impact assessment up to date, and (b) publish impact assessments.
- A duty to specify in the terms of service, or in a publicly available statement, the positive steps that the provider has taken in response to an impact assessment to—
  - (a) protect users' right to freedom of expression within the law, and
  - (b) protect users from unwarranted infringements of privacy.

# CATEGORY I SERVICES

## DUTIES TO PROTECT CONTENT OF DEMOCRATIC IMPORTANCE

- The “duties to protect content of democratic importance” in relation to user-to- user services are the duties set out in this section.
- (2) A duty to operate a service using systems and processes designed to ensure that the importance of the free expression of content of democratic importance is taken into account when making decisions about— (a) how to treat such content (especially decisions about whether to take it down or restrict users’ access to it), and (b) whether to take action against a user generating, uploading or sharing such content.
- (3) A duty to ensure that the systems and processes mentioned in subsection (2) apply in the same way to a diversity of political opinion.
- (4) A duty to specify in the terms of service the policies and processes that are designed to take account of the principle mentioned in subsection (2), including, in particular, how that principle is applied to decisions mentioned in that subsection.
- (5) A duty to ensure that— (a) the terms of service referred to in subsection (4) are clear and accessible, and (b) those terms of service are applied consistently.
- (6) For the purposes of this section content is “content of democratic importance”, in relation to a user-to-user service, if— (a) the content is— (i) news publisher content in relation to that service, or (ii) regulated content in relation to that service; and (b) the content is or appears to be specifically intended to contribute to democratic political debate in the United Kingdom or a part or area of the United Kingdom.
- (7) In this section, the reference to “taking action” against a user is to giving a warning to a user, or suspending or banning a user from using a service, or in any way restricting a user’s ability to use a service.
- (8) For the meaning of “news publisher content” and “regulated content”, see section 39.

# CATEGORY I SERVICES

## DUTIES TO PROTECT JOURNALISTIC CONTENT:

- (1) The “duties to protect journalistic content” in relation to user-to-user services are the duties set out in this section. (2) A duty to operate a service using systems and processes designed to ensure that the importance of the free expression of journalistic content is taken into account when making decisions about—
  - (a) how to treat such content (especially decisions about whether to take it down or restrict users’ access to it), and
  - (b) whether to take action against a user generating, uploading or sharing such content.
- (3) A duty, in relation to a decision by a provider to take down content or to restrict access to it, to make a dedicated and expedited complaints procedure available to a person who considers the content to be journalistic content and who is— (a) the user who generated, uploaded or shared the content on the service, or (b) the creator of the content (see subsection (11)).
- (4) A duty to make a dedicated and expedited complaints procedure available to users of a service in relation to a decision by the provider of the service to take action against a user because of content generated, uploaded or shared by the user which the user considers to be journalistic content.
- (5) A duty to ensure that— (a) if a complaint about a decision mentioned in subsection (3) is upheld, the content is swiftly reinstated on the service; (b) if a complaint about a decision mentioned in subsection (4) is upheld, the action against the user is swiftly reversed.
- (6) A duty to specify in the terms of service— (a) by what methods content present on the service is to be identified as journalistic content; (b) how the importance of the free expression of journalistic content is to be taken into account when making decisions mentioned in subsection (2); (c) the policies and processes for handling complaints in relation to content which is, or is considered to be, journalistic content.
- (7) A duty to ensure that— (a) the terms of service referred to in subsection (6) are clear and accessible, and (b) those terms of service are applied consistently.
- (8) For the purposes of this section content is “journalistic content”, in relation to a user-to-user service, if— (a) the content is— (i) news publisher content in relation to that service, or (ii) regulated content in relation to that service; (b) the content is generated for the purposes of journalism; and (c) the content is UK-linked.
- (9) For the purposes of this section content is “UK-linked” if— (a) United Kingdom users of the service form one of the target markets for the content (or the only target market), or (b) the content is or is likely to be of interest to a significant number of United Kingdom users.
- (10) In this section references to “taking action” against a user are to giving a warning to a user, or suspending or banning a user from using a service, or in any way restricting a user’s ability to use a service.
- (11) In this section the reference to a person who is the “creator” of content is a reference to any of the following—
  - (a) in the case of news publisher content, the recognised news publisher in question;
  - (b) an individual who— (i) created the content, and (ii) is in the United Kingdom;
  - (c) an entity which— (i) created the content, and (ii) is incorporated or formed under the law of any part of the United Kingdom

# PART TWO

## CHAPTER 5: CODES OF PRACTICE ABOUT DUTIES

- OFCOM must prepare a code of practice for providers of regulated services describing recommended steps for the purposes of compliance with duties set out in the safety duties about illegal content so far as relating to terrorism and CSEA content.
- OFCOM must prepare one or more codes of practice for providers of regulated services describing recommended steps for the purposes of compliance with the relevant duties
- Where a code of practice is in force, OFCOM may— (a) prepare amendments of the code of practice; (b) prepare a code of practice as a replacement for a code of practice previously prepared; (c) withdraw the code of practice.
- Before preparing a code of practice or amendments under this section, OFCOM must consult—
  - a) the Secretary of State,
  - b) persons who appear to OFCOM to represent providers of regulated services,
  - c) persons who appear to OFCOM to represent the interests of UK users of regulated services,
  - d) persons who appear to OFCOM to represent the interests of children (generally or with particular reference to online safety matters),
  - e) persons who appear to OFCOM to represent the interests of persons who have suffered harm as a result of encountering content online,
  - f) persons whom OFCOM consider to have relevant expertise in equality issues and human rights, in particular— (i) the right to freedom of expression set out in Article 10 of the Convention, and (ii) the right to respect for a person’s private and family life, home and correspondence set out in Article 8 of the Convention,
  - g) persons whom OFCOM consider to have expertise in public health, science or medicine that is relevant to online safety matters,
  - h) persons whom OFCOM consider to have expertise in innovation, or emerging technology, that is relevant to online safety matters, and
  - i) such other persons as OFCOM consider appropriate.
- Before preparing certain codes of practice or amendments, OFCOM must also consult persons whom OFCOM consider to have expertise in the enforcement of the criminal law and the protection of national security that is relevant to online safety matters.

# FURTHER PROVISION ABOUT CODES OF PRACTICE

- In preparing a code of practice or amendments, OFCOM must—
  - a) consider the appropriateness of provisions of the code of practice to different kinds and sizes of regulated services and to providers of differing kinds, sizes and capacities;
  - b) have regard to the principles that —
    - i. providers of regulated services must be able to understand which provisions of the code of practice apply in relation to a particular service they provide;
    - ii. the steps described in the code of practice must be sufficiently clear, and at a sufficiently detailed level, that providers understand what those steps entail in practice;
    - iii. the steps described in the code of practice must be proportionate and feasible, recognising that steps that are proportionate or feasible for providers of a certain kind, size or capacity may not be proportionate or feasible for providers of a different kind, size or capacity;
    - iv. the steps described in the code of practice that apply in relation to regulated services 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.

# FURTHER PROVISION ABOUT CODES OF PRACTICE

- A code of practice may—
  - a) make different provision with regard to—
    - i. regulated user-to-user services, and
    - ii. regulated search services;
  - b) make different provision with regard to regulated user-to-user services of different kinds or regulated search services of different kinds; and
  - c) otherwise differentiate between regulated services, and between providers of regulated services, in such manner as OFCOM consider appropriate.
- A code of practice may apply in relation to a person who provides a regulated service from outside the UK.
- Steps described in a code of practice may relate only to the design or operation of a regulated service— (a) in the UK, or (b) as it affects UK users of the service
- Steps described in a code of practice which are recommended for the purposes of compliance with any of the relevant duties must be designed in the light of the principles below and (where appropriate) incorporate safeguards for the protection of the matters mentioned in the principles.
  - 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
  - the importance of protecting users from unwarranted infringements of privacy.

# THE ONLINE SAFETY OBJECTIVES FOR USER-TO-USER SERVICES

- OFCOM must ensure that steps described in the codes of practice are compatible with pursuit of the online safety objectives.
- The online safety objectives for regulated user-to-user services are—
  - a) to design and operate a service in such a way that—
    - i. the systems and processes for regulatory compliance and risk management are effective and proportionate to the size and nature of the 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. the service provides a higher standard of protection for children than for adults, (vi) the different needs of children at different ages are taken into account,
    - vi. there are adequate controls over access to the service by adults, and
    - vii. 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) to design and assess the service with a view to protecting 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.

# THE ONLINE SAFETY OBJECTIVES FOR SEARCH ENGINES

The online safety objectives for regulated search services are—

- a) to design and operate a service in such a way that—
  - i. the systems and processes for regulatory compliance and risk management are effective and proportionate to the size and nature of the 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 sections 21 and 22,
  - 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;
- b) to assess use of the service by, and impact on, children in different age groups; and
- c) to design and assess the search engine with a view to protecting UK users 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.

# CODE OF PRACTICE APPROVAL PROCESS AND STATUS

- Ofcom submits a code of practice to the Secretary of State
  - The SoS can direct Ofcom to modify it based on government policy, national security or public safety
  - The SoS may not require OFCOM to include in a code of practice provision about a particular step recommended to be taken by providers of regulated services.
- It is laid before Parliament as soon as reasonably practicable
- Parliament has 40 days to resolve not to approve it
- Ofcom must then issue it and it comes into force 21 days later
- The SoS may at any time require OFCOM to review a code of practice
- A provider of a regulated user-to-user or search service is to be treated as complying with a duty if
  - a) the provider takes the steps described in a code of practice which are recommended for the purposes of compliance with the duty in question (so far as the steps are relevant to the provider and the service in question) and
  - b) OFCOM are satisfied that— (i) terrorism content is not prevalent, and is not persistently present, in search results of the service, and (ii) CSEA content is not prevalent, and is not persistently present
- When assessing whether a provider of a regulated service is compliant with a relevant duty where the provider has acted otherwise than by taking a step described in a code of practice which is recommended for the purposes of compliance with the duty, OFCOM must consider the extent to which the alternative steps taken by the provider— (a) achieve the online safety objectives (so far as they are relevant to the service and the duty in question), and (b) (where appropriate) incorporate safeguards for the protection
- A code of practice is admissible in evidence in legal proceedings.
- Duties only apply when the code of practice relating to it comes into force.

# FURTHER PROVISION ABOUT CODES OF PRACTICE

- The provider is to assess impact on C by reference to children across the age-range, and the content is to be regarded as included if the provider has reasonable grounds to believe that there is a material risk of impact as mentioned in the relevant subsection on a child of any particular age.
- Where the provider has knowledge, relevant to the content, about a particular child at whom content is directed, or who is the subject of it, the law is to be read as if the reference to a child of ordinary sensibilities were a reference to that particular child, taking into account any of the following things that are known to or inferred by the provider—
  - a) that child’s characteristics;
  - b) that child’s membership of a certain group of people.
- The reference to a risk of content “indirectly” having a significant adverse physical or psychological impact on a child is a reference to a risk of either of the following—
  - a) content causing an individual to do or say things to a targeted child that would have a significant adverse physical or psychological impact on such a child;
  - b) content causing a child to act in a way that— (i) has a significant adverse physical or psychological impact on that child, or (ii) increases the likelihood of such an impact on that child.
- For the purposes of this section—
  - a) illegal content is not to be regarded as included and
  - b) content is not to be regarded as included if the risk of physical or psychological impact flows from—
    - i. the content’s potential financial impact,
    - ii. the safety or quality of goods featured in the content, or
    - iii. the way in which a service featured in the content may be performed (for example, in the case of the performance of a service by a person not qualified to perform it).

# FURTHER PROVISION ABOUT CODES OF PRACTICE

- “non-designated content that is harmful to children” means content that is harmful to children but that is not—
  - a) primary priority content that is harmful to children, or
  - b) priority content that is harmful to children; “primary priority content” and “priority content” that is harmful to children’ mean content of a description designated as such in regulations;
- In relation to a regulated user-to-user service, the terms “content that is harmful to children”, “primary priority content that is harmful to children”, “priority content that is harmful to children” and “non-designated content that is harmful to children” are to be taken to include material which, if it were present on the service, would be content within the definition in question
- “targeted child”, in relation to content, means a child—
  - a) who is the subject of the content, or
  - b) who is a member of a class or group of people with a certain characteristic (or combination of characteristics) targeted by the content.

## PART 4

# CHAPTER 3: RISK ASSESSMENTS BY OFCOM

- OFCOM must carry out a risk assessment to identify, assess and understand the risks of harm to individuals presented by regulated services.
- The risk assessment must, amongst other things— (a) assess the levels of risk of harm presented by regulated services of different kinds, including by giving separate consideration to— (i) the risk of harm to individuals in the UK presented by illegal content, (ii) the risk of harm to children in the UK, in different age groups, presented by content that is harmful to children, and (iii) the risk of harm to adults in the UK presented by content that is harmful to adults; (b) identify characteristics of different kinds of regulated services that are relevant to such risks of harm, and assess the impact of those kinds of characteristics on such risks.
- OFCOM must develop risk profiles for different kinds of regulated services, categorising the services as OFCOM consider appropriate, taking into account— (a) the characteristics of the services, and (b) the risk levels and other matters identified in the risk assessment.
- As soon as reasonably practicable after completing a risk assessment, OFCOM must publish a report on the findings.
- OFCOM must ensure that the risk assessment is kept up to date.
- The “characteristics” of a service include the functionalities of the service, its user base, business model, governance and other systems and processes.

# PART FOUR

## CHAPTER 6: ENFORCEMENT STEPS

1. A provisional notice of enforcement action
2. period allowed for representations
3. a confirmation decision
  - a) imposing requirements
    - only in relation to the design or operation of a regulated service— (a) in the UK, or (b) as it affects UK users of the service)
    - But nota requirement to use technology to identify a particular kind of content present on the service with a view to taking down such content
  - b) imposing an appropriate and proportionate penalty of whichever is the greater of—
    - (a) £18 million, and
    - (b) 10% of the person's qualifying worldwide revenue.
  - c) c) doing both those things.

# SERVICE RESTRICTION ORDERS

- A service restriction order is an order imposing requirements on one or more persons who provide an ancillary service in relation to a regulated service
- OFCOM may apply to the court for a “service restriction order” in relation to a regulated service where OFCOM consider that—
  - a) the provider of the regulated service has failed to comply with an enforceable requirement referred to in section 82 that applies in relation to the regulated service,
  - b) the failure is continuing, and
  - c) either—
    - i. the provider has failed to comply with a requirement imposed by a confirmation decision that is of a kind mentioned in section 83(5) relating to the failure,
    - ii. the provider has failed to pay a penalty imposed by a confirmation decision relating to the failure (and the confirmation decision did not impose any requirements mentioned in section 83(5)),
    - iii. the provider would be likely to fail to comply with a confirmation decision if given, or
    - iv. the circumstances of the failure or the risks of harm to individuals in the UK are such that it is appropriate to make the application without having given a provisional notice of enforcement action, without having given a confirmation decision, or (having given a confirmation decision) without waiting to ascertain compliance with the decision.
- The court may make a service restriction order imposing requirements on a person in relation to the relevant service if the court is satisfied—
  - a) as to the grounds
  - b) that the person provides an ancillary service in relation to the relevant service,
  - c) that it is appropriate to make the order for the purposes of preventing harm to individuals in the UK, and the order is proportionate to the risk of such harm,
  - d) that it is appropriate to make the order before a provisional notice of enforcement action or confirmation decision has been given, or before compliance with a confirmation decision has been ascertained (as the case may be), and
  - e) if no notice of the application has been given to the non-compliant provider, or to the persons on whom requirements are being imposed, that it is appropriate to make the order without notice.

# ACCESS RESTRICTION ORDERS

- An access restriction order is an order imposing requirements on one or more persons who provide an access facility in relation to a regulated service
- OFCOM may apply to the court for an access restriction order in relation to a regulated service where OFCOM consider that either
  - i. a service restriction order or an interim service restriction order has been made in relation to the failure, and it was not sufficient to prevent significant harm arising to individuals in the UK as a result of the failure, or
  - ii. the likely consequences of the failure are such that if a service restriction order or an interim service restriction order were to be made, it would be unlikely to be sufficient to prevent significant harm arising to individuals in the UK as a result of the failure
- An application by OFCOM for an access restriction order must—
  - a) specify the regulated service in relation to which the application is made
  - b) specify the provider of that service
  - c) specify the grounds on which the application is based, and contain evidence as to such grounds,
  - d) specify the persons on whom (in OFCOM's opinion) the requirements of the order should be imposed,
  - e) contain evidence as to why OFCOM consider that the persons mentioned in paragraph (d) provide an access facility in relation to the relevant service, and specify any such access facility provided

# ACCESS RESTRICTION ORDERS

- OFCOM must inform the Secretary of State as soon as reasonably practicable after an access restriction order has been made.
- Where a person who provides an access facility takes steps or puts in place arrangements required by an access restriction order, OFCOM may, by notice, require that person to (where possible) notify persons in the UK who attempt to access the relevant service via that facility of the access restriction order (and where a confirmation decision has been given to the non-compliant provider, the notification must refer to that decision).
- A facility is an “access facility” in relation to a regulated service if the person who provides the facility is able to withdraw, adapt or manipulate it in such a way as to impede access (by means of that facility) to the regulated service (or to part of it) by UK users of that service.
- Examples of access facilities include—



- a) internet access services by means of which a regulated service is made available, and
- b) application stores through which a mobile application for a regulated service may be downloaded or otherwise accessed.



THANK YOU

[IAIN@AVPASSOCIATION.COM](mailto:IAIN@AVPASSOCIATION.COM)

IAIN CORBY

07811 409769

PART	CHAPTER	SECTIONS		SECTIONS
<b>1 OVERVIEW AND KEY DEFINITIONS</b>				
<b>2 PROVIDERS OF REGULATED SERVICES: DUTIES OF CARE</b>	1 INTRODUCTION			
	2 PROVIDERS OF USER-TO-USER SERVICES: DUTIES OF CARE	<i>User-to-user services: duties of care Risk assessments</i>	<i>Safety duties Freedom of expression etc</i>	<i>User reporting and redress Record-keeping and review</i>
	3 PROVIDERS OF SEARCH SERVICES: DUTIES OF CARE	<i>Search services: duties of care Risk assessments</i>	<i>Safety duties Freedom of expression and privacy</i>	<i>User reporting and redress Record-keeping and review</i>
	4 ASSESSMENT ABOUT ACCESS BY CHILDREN			
	5 CODES OF PRACTICE			
	6 INTERPRETATION OF PART 2			
<b>3 OTHER DUTIES OF SERVICE PROVIDERS</b>	1 TRANSPARENCY REPORTS			
	2 FEES			
<b>4 OFCOM'S POWERS AND DUTIES IN RELATION TO REGULATED SERVICES</b>	1 GENERAL DUTIES			
	2 REGISTER OF CATEGORIES OF SERVICES			
	3 RISK ASSESSMENTS			
	4 USE OF TECHNOLOGY IN RELATION TO TERRORISM CONTENT AND CHILD SEXUAL EXPLOITATION AND ABUSE CONTENT			
	5 INFORMATION	<i>Information power Information offences</i>	<i>Skilled persons' reports Investigations and interviews</i>	<i>Powers of entry and inspection Disclosure of information</i>
	6 ENFORCEMENT POWERS	<i>Provisional notices and confirmation decisions Non-payment of fee</i>	<i>Non-compliance with use of technology notice Business disruption measures</i>	<i>Publication of enforcement action Guidance</i>
	7 COMMITTEES, RESEARCH AND REPORTS			
	8 MEDIA LITERACY			

PART	CHAPTER	SECTIONS		SECTIONS
<b>5 APPEALS AND SUPER-COMPLAINTS</b>	1 APPEALS			
	2 SUPER-COMPLAINTS			
<b>6 SECRETARY OF STATE'S FUNCTIONS IN RELATION TO REGULATED SERVICES</b>		<i>Strategic priorities</i> <i>Directions to OFCOM</i>		<i>Guidance</i> <i>Annual report</i>
<b>7 GENERAL AND FINAL PROVISIONS</b>		<i>Providers of regulated services</i> <i>Users of regulated services</i> <i>Supplementary provision about offences</i> <i>Extra-territorial application</i>		<i>Service of notices</i> <i>Repeals</i> <i>Regulations</i> <i>Interpretation</i> <i>Final provisions</i>