

The Online Safety Bill: An overview

The Online Safety Bill is about reducing harm caused by the operation of some "user-to-user services" (social media) and search engines. Since the draft Bill, there are now two add-on chunks: fraudulent advertising and age verification for pornography. In addition, requirements for user verification are added as a separate section within the adult safety duties. The Bill appoints OFCOM as regulator of the regime.

The regime's duties of care require regulated companies to do risk assessments of harms arising from certain types of content and the operation of the service. Companies then must put in place effective and proportionate mitigation plans. This is not just about take down but also about how algorithms work and how the service is designed. OFCOM regulates whether the risk assessment and mitigation is "suitable and sufficient". OFCOM also has some role in identifying risks and developing codes of practice to help with compliance.

The principal duties focus on illegal content, content harmful to children and content harmful to adults (there are other duties such as record keeping etc). Within these duties, some types of harmful content are seen as 'priority'. There is a list of priority illegal content in the Bill (Schedule 7) but priority content in relation to the other two categories will be specified in secondary legislation. Content harmful to adults is regulated comparatively weakly to that considered harmful to children or that which is illegal.

The new rules for pornography providers apply wider than social media and search (to "internet services" that display "regulated provider pornographic content") requiring that in the UK children must not normally be able to encounter such content online, using measures such as age verification.

The Bill has size and 'functionality' -based categories of services. These have been said elsewhere by Government to account for the largest sources of risk: Category 1 – user-to-user platforms that are of significant size and functionality, Category 2(a) large search engines, Category 2(b) other user-to-user platforms passing a size threshold. The thresholds will be contained in secondary legislation acting on OFCOM's advice. Services need to carry out a Children's Access Assessment (CAA) to determine whether or not they have to comply with the children's duties.

Category 1 services have to consider: harm to adults, anonymity rules to allow users to avoid content from unverified accounts and protection of both journalistic content and 'content of democratic importance' when applying the regime. All regulated services are required to take account of rights to freedom of expression and privacy.

Broadcast and print media, already regulated or self-regulated, has a carve-out so that it is not caught by the regime when distributed on regulated social media and search services.

New rules on fraudulent online advertising apply only to category 1 and category 2(a) services.

If OFCOM decides a platform has failed in its safety duty then it may make orders to correct behaviour and fine the service. *In extremis*, OFCOM can apply to the courts to injunct companies providing, say banking and advertising, to a platform and require them to stop or as a last resort order internet service providers to not carry and offending service.

The Bill is a framework regime - OFCOM and the Secretary of State have to provide guidance on how most aspects of the regime works and a plethora of secondary legislation before the regime gets going (likely 2024).

March 2022