

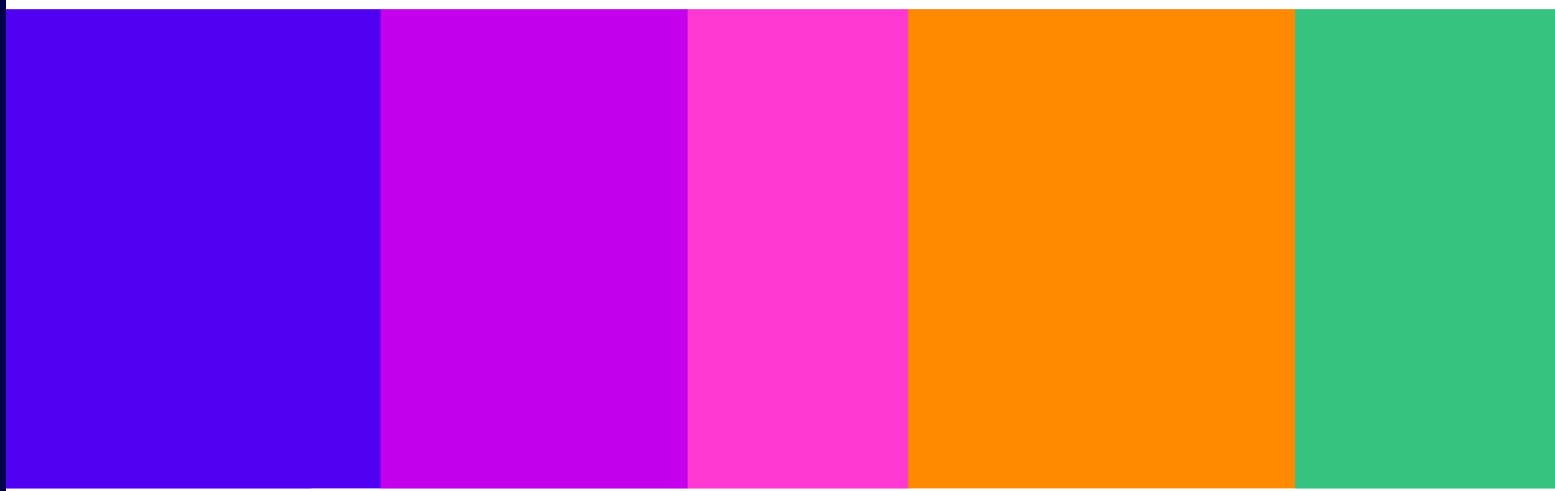
Protecting people from illegal harms online

Annexes 1-4

Consultation

Published 9 November 2023

Closing date for responses: 23 February 2024



Contents

Annex

A1. Responding to this consultation.....	3
A2. Ofcom’s consultation principles.....	6
A3. Consultation coversheet	7
A4. Consultation questions.....	8

A1. Responding to this consultation

How to respond

- A1.1 Ofcom would like to receive views and comments on the issues raised in this consultation, by 5pm on Friday 23 February 2024.
- A1.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/category-1/protecting-people-from-illegal-content-online>. You can return this by email or post to the address provided in the response form.
- A1.3 If your response is a large file, or has supporting charts, tables or other data, please email it to IHconsultation@ofcom.org.uk, as an attachment in Microsoft Word format, together with the cover sheet. This email address is for this consultation only and will not be valid after 23 February 2024.
- A1.4 Responses may alternatively be posted to the address below, marked with the title of the consultation:
- Ofcom Online Safety Team
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- A1.5 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
- send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files; or
 - upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A1.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A1.7 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt of a response submitted to us by email.
- A1.8 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A1.9 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at Annex 4. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.
- A1.10 If you want to discuss the issues and questions raised in this consultation, please email to IHconsultation@ofcom.org.uk.

Confidentiality

- A1.11 Consultations are more effective if we publish the responses before the consultation period closes. This can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish responses on the Ofcom website at regular intervals during and after the consultation period.
- A1.12 If you think your response should be kept confidential, please specify which part(s) this applies to and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A1.13 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it, either by not publishing the response at all, or by only publishing the bits that are not confidential. Sometimes we might think it is important to disclose parts of a response that have been marked as confidential for reasons of transparency, but we will consult you before we do. Occasionally we might have a legal obligation to publish information or disclose it in court, but again, as far as possible, we will let you know.
- A1.14 Even if your response is not marked as confidential, we might still decide not to publish all or part of it in certain circumstances. For example, if we have concerns about the impact on your privacy or the privacy of others, that the content of the response might facilitate the commission of crime, or about the sensitive nature of the content more generally. If we decide not to publish all or part of your response, we will still take it into account in our consideration of the matter.
- A1.15 To fulfil our pre-disclosure duty, we may share a copy of your response with the relevant government department before we publish it on our website.
- A1.16 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further in our Terms of Use.

Next steps

- A1.17 Following this consultation period, Ofcom plans to publish a statement in Winter 2024.
- A1.18 If you wish, you can register to receive email updates alerting you to new Ofcom publications.

Ofcom's consultation processes

- A1.19 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 2.
- A1.20 If you have any comments or suggestions on how we manage our consultations, please email us at consult@ofcom.org.uk. We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and individual users, who are less likely to give their opinions through a formal consultation.

A1.21 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:

A1.22 Corporation Secretary

Ofcom

Riverside House

2a Southwark Bridge Road

London SE1 9HA

Email: corporationsecretary@ofcom.org.uk

A2. Ofcom's consultation principles

Ofcom has seven principles that it follows for every public written consultation:

Before the consultation

- A2.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. If we do not have enough time to do this, we will hold an open meeting to explain our proposals, shortly after announcing the consultation.

During the consultation

- A2.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A2.3 We will make the consultation document as short and simple as possible, with an overview of no more than two pages. We will try to make it as easy as possible for people to give us a written response.
- A2.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A2.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A2.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

- A2.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish the responses on our website at regular intervals during and after the consultation period. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

A3. Consultation coversheet

Basic details

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

Confidentiality

Please tick below what part of your response you consider is confidential, giving your reasons why

- Nothing ☐
- Name/contact details/job title ☐
- Whole response ☐
- Organisation ☐
- Part of the response ☐

If you selected 'Part of the response', please specify which parts:

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

Yes ☐ No ☐

Declaration

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom aims to publish responses at regular intervals during and after the consultation period. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

A4. Consultation questions

A4.1 We welcome views and evidence on the questions below. It is not necessary to answer every question – please answer those on which you have a view.

Volume 2: The causes and impacts of online harm

Ofcom's Register of Risks

Question 1: Do you have any comments on Ofcom's assessment of the causes and impacts of online harms? Do you think we have missed anything important in our analysis? Please provide evidence to support your answer.

Question 2: Do you have any views about our interpretation of the links between risk factors and different kinds of illegal harm? Please provide evidence to support your answer.

Volume 3: How should services assess the risk of online harms?

Governance and accountability

Question 3: Do you agree with our proposals in relation to governance and accountability measures in the illegal content Codes of Practice? Please provide underlying arguments and evidence of efficacy or risks to support your view.

Question 4: Do you agree with the types of services that we propose the governance and accountability measures should apply to?

Question 5: Are you aware of any additional evidence of the efficacy, costs and risks associated with a potential future measure to requiring services to have measures to mitigate and manage illegal content risks audited by an independent third-party?

Question 6: Are you aware of any additional evidence of the efficacy, costs and risks associated with a potential future measure to tie remuneration for senior managers to positive online safety outcomes?

Service's risk assessment

Question 7: Do you agree with our proposals? Please provide the underlying arguments and evidence that support your views.

Specifically, we would also appreciate evidence from regulated services on the following:

Question 8: Do you think the four-step risk assessment process and the Risk Profiles are useful models to help services navigate and comply with their wider obligations under the Act?

Question 9: Are the Risk Profiles sufficiently clear and do you think the information provided on risk factors will help you understand the risks on your service? ¹

Record keeping and review guidance

Question 10: Do you have any comments on our draft record keeping and review guidance?

Question 11: Do you agree with our proposal not to exercise our power to exempt specified descriptions of services from the record keeping and review duty for the moment?

Volume 4: What should services do to mitigate the risk of online harms?

Our approach to the Illegal content Codes of Practice

Question 12: Do you have any comments on our overarching approach to developing our illegal content Codes of Practice?

Question 13: Do you agree that in general we should apply the most onerous measures in our Codes only to services which are large and/or medium or high risk?

Question 14: Do you agree with our definition of large services?

Question 15: Do you agree with our definition of multi-risk services?

Question 16: Do you have any comments on the draft Codes of Practice themselves? ²

Question 17: Do you have any comments on the costs assumptions set out in Annex 14, which we used for calculating the costs of various measures?

Content moderation (User to User)

Question 18: Do you agree with our proposals? Please provide the underlying arguments and evidence that support your views.

Search moderation (Search)

Question 19: Do you agree with our proposals? Please provide the underlying arguments and evidence that support your views.

Automated content moderation (User to User)

Question 20: Do you agree with our proposals? Do you have any views on our three proposals, i.e. CSAM hash matching, CSAM URL detection and fraud keyword

¹ If you have comments or input related the links between different kinds of illegal harm and risk factors, please refer to Volume 2: Chapter 5 Summary of The causes and impacts of online harm).

² See Annexes 7 and 8.

detection? Please provide the underlying arguments and evidence that support your views.

Question 21: Do you have any comments on the draft guidance set out in Annex 9 regarding whether content is communicated 'publicly' or 'privately'?

Do you have any relevant evidence on:

Question 22: the accuracy of perceptual hash matching and the costs of applying CSAM hash matching to smaller services;

Question 23: the ability of services in scope of the CSAM hash matching measure to access hash databases/services, with respect to access criteria or requirements set by database and/or hash matching service providers;

Question 24: the costs of applying our CSAM URL detection measure to smaller services, and the effectiveness of fuzzy matching for CSAM URL detection;

Question 25: the costs of applying our articles for use in frauds (standard keyword detection) measure, including for smaller services; and

Question 26: an effective application of hash matching and/or URL detection for terrorism content, including how such measures could address concerns around 'context' and freedom of expression, and any information you have on the costs and efficacy of applying hash matching and URL detection for terrorism content to a range of services.

Automated search moderation (Search)

Question 27: Do you agree with our proposals? Please provide the underlying arguments and evidence that support your views.

User reporting and complaints (U2U and search)

Question 28: Do you agree with our proposals? Please provide the underlying arguments and evidence that support your views.

Terms of service and Publicly Available Statements

Question 29: Do you agree with our proposals? Please provide the underlying arguments and evidence that support your views.

Question 30: Do you have any evidence, in particular on the use of prompts, to guide further work in this area?

Default settings and user support for child users (U2U)

Question 31: Do you agree with our proposals? Please provide the underlying arguments and evidence that support your views.

Question 32: Are there functionalities outside of the ones listed in our proposals, that should explicitly inform users around changing default settings?

Question 33: Are there other points within the user journey where under 18s should be informed of the risk of illegal content?

Recommender system testing (U2U)

Question 34: Do you agree with our proposals? Please provide the underlying arguments and evidence that support your views.

Question 35: What evaluation methods might be suitable for smaller services that do not have the capacity to perform on-platform testing?

Question 36: We are aware of design features and parameters that can be used in recommender system to minimise the distribution of illegal content, e.g. ensuring content/network balance and low/neutral weightings on content labelled as sensitive. Are you aware of any other design parameters and choices that are proven to improve user safety?

Enhanced user control (U2U)

Question 37: Do you agree with our proposals? Please provide the underlying arguments and evidence that support your views.

Question 38: Do you think the first two proposed measures should include requirements for how these controls are made known to users?

Question 39: Do you think there are situations where the labelling of accounts through voluntary verification schemes has particular value or risks?

User access to services (U2U)

Question 40: Do you agree with our proposals? Please provide the underlying arguments and evidence that support your views.

Do you have any supporting information and evidence to inform any recommendations we may make on blocking sharers of CSAM content? Specifically:

Question 41: What are the options available to block and prevent a user from returning to a service (e.g. blocking by username, email or IP address, or a combination of factors)? What are the advantages and disadvantages of the different options, including any potential impact on other users?

Question 42: How long should a user be blocked for sharing known CSAM, and should the period vary depending on the nature of the offence committed?

Question 43: There is a risk that lawful content is erroneously classified as CSAM by automated systems, which may impact on the rights of law-abiding users. What steps can services take to manage this risk? For example, are there alternative options to immediate blocking (such as a strikes system) that might help mitigate some of the risks and impacts on user rights?

Service design and user support (Search)

Question 44: Do you agree with our proposals? Please provide the underlying arguments and evidence that support your views.

Cumulative assessment

Question 45: Do you agree that the overall burden of our measures on low risk small and micro businesses is proportionate?

Question 46: Do you agree that the overall burden is proportionate for those small and micro businesses that find they have significant risks of illegal content and for whom we propose to recommend more measures?

Question 47: We are applying more measures to large services. Do you agree that the overall burden on large services proportionate?

Statutory tests

Question 48: Do you agree that Ofcom's proposed recommendations for the Codes are appropriate in the light of the matters to which Ofcom must have regard? If not, why not?

Volume 5: How to judge whether content is illegal or not?

The Illegal Content Judgements Guidance (ICJG)

Question 49: Do you agree with our proposals, including the detail of the drafting? What are the underlying arguments and evidence that inform your view?

Question 50: Do you consider the guidance to be sufficiently accessible, particularly for services with limited access to legal expertise?

Question 51: What do you think of our assessment of what information is reasonably available and relevant to illegal content judgements?

Volume 6: Information gathering and enforcement powers, and approach to supervision

Information powers

Question 52: Do you have any comments on our proposed approach to information gathering powers under the Online Safety Act?

Enforcement powers

Question 53: Do you have any comments on our draft Online Safety Enforcement Guidance

Annex 13: Impact assessments

Question 54: Do you agree that our proposals as set out in Chapter 16 (reporting and complaints), and Chapter 10 and Annex 6 (record keeping) are likely to have positive, or more positive impacts on opportunities to use Welsh and treating Welsh no less favourably than English?

Question 55: If you disagree, please explain why, including how you consider these proposals could be revised to have positive effects or more positive effects, or no adverse effects or fewer adverse effects on opportunities to use Welsh and treating Welsh no less favourably than English.