National Audit Office

REPORT

Preparedness for online safety regulation

Ofcom, Department for Science, Innovation & Technology

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Key facts

68%
percentage of UK child internet users (aged 13–17) who had experienced at least one potential online harm in the last four weeks

2025
earliest year in which Ofcom's new online safety regulatory regime will be fully operational

£169mn
Ofcom's estimated total cumulative costs, by the end of 2024-25, of preparing for and implementing the new regime

62%	percentage of UK adult internet users (aged 18+) who had experienced at least one potential online harm in the last four weeks
4	the average number of hours spent online, per day, by UK adults in September 2022
More than 100,000	Ofcom's preliminary estimate for the number of online services which could be subject to regulation under the new regime; the number could be significantly higher
More than 40	number of regulatory documents, including codes of practice and guidance, that Ofcom will have to produce for regulated service providers
£56 million	Ofcom's estimated total cumulative spend on the regime by the end of 2022-23
346	number of full-time equivalent Ofcom staff working on online safety by the end of 2022-23
More than 450	Ofcom's estimate, in February 2023, for how many online safety staff it will need by the end of 2023-24 and beyond, an increase of more than 100 on its 2020 estimate

Summary

Introduction

1 People are increasingly living their lives online. According to research by Ofcom, 93% of UK adults have access to the internet at home, and they spent on average just under four hours online a day in September 2022. Although the internet has many benefits, there are challenges from such online activity. Of internet users in the UK, 68% of child users (aged 13-17), and 62% of adult users (aged 18+), indicated in 2022 that they had experienced at least one potential online harm in the last four weeks. Harmful content can vary in nature, from child sexual abuse material and terrorist content to online fraud and the encouragement of self-harm.

2 The government has set itself an objective of making the UK the safest place in the world to go online. To achieve this, in March 2022, the Department for Digital, Culture, Media & Sport (DCMS) introduced in the House of Commons the Online Safety Bill (the Bill). The government considers that, with this Bill, the UK will be the first country to regulate such a comprehensive range of online harms. The Bill introduces new duties on search engines, firms which host user-generated content, and providers of pornographic content, to minimise the extent of illegal content and content that is harmful to children experienced by their users. Providers failing to meet these duties will be accountable to Ofcom, the UK's existing communications regulator, in its new role as the UK's online safety regulator.

3 The Bill requires Ofcom to secure the adequate protection of citizens from harm arising from content on regulated services, through the appropriate use by service providers of systems and processes designed to reduce the risk of such harm. Ofcom has been preparing for its new regulatory role since 2020 when DCMS confirmed its decision to appoint Ofcom as the regulator for online safety.

Scope of this report

4 During our work on this report, responsibility for delivering the Online Safety Bill moved from DCMS to a new department, the Department for Science, Innovation & Technology (DSIT), after machinery-of-government changes in early 2023. In this report, we will refer to DCMS or DSIT, as appropriate, reflecting which department was responsible at that time.

5 This report examines whether the preparations undertaken by DSIT (and previously DCMS) and Ofcom for the implementation of the new online safety legislation are sufficiently advanced. Our evaluation and recommendations are based on our good practice guidance on the principles of effective regulation.[1] The report covers work undertaken by the departments and Ofcom to:

- establish the regulatory framework;
- prepare to implement the regulatory framework; and
- enable informed regulation.

Key findings

Establishing the regulatory framework

6 **Ofcom has been preparing for the new regulatory regime while Parliament has been considering the Online Safety Bill.** Ofcom has been preparing for its new duties since 2020, but this early start has meant that it has been undertaking its preparations while the regulatory regime was still being developed. Although the broad intent and ambition of the legislation have not changed, there have been significant changes to the Bill's scope, including the introduction of new duties on service providers to tackle fraudulent advertising and limit children's access to pornography, and amendments to what were previously core duties on tackling legal but harmful content for adults. The government announced further significant amendments to the Bill at the end of June 2023, including, for example, new powers for Ofcom to obtain information on a child's social media use if requested by a coroner. There have also been significant changes to the Bill's timetable. The Bill was introduced in the House of Commons in March 2022 and expected to receive Royal Assent in February 2023. However, the Bill did not enter the House of Lords until January 2023, and, as at July 2023, Royal Assent was not expected until October 2023. The scope of the regulatory regime will not be finalised until the Bill receives Royal Assent (paragraphs 1.8 and 1.9).

1 National Audit Office, *Principles of effective regulation*, May 2021.

7 **The full regulatory regime will be put in place in phases over the two years after Royal Assent.** Ofcom's new powers are expected to come into force two months after Royal Assent to the Bill has been granted. Ofcom then needs to put in place detailed codes of practice and guidance which set out the details of the regulatory regime. This process will involve extensive consultation with a wide range of stakeholders, including industry, and is dependent in some areas on the passing of secondary legislation. Ofcom will finalise all relevant codes and guidance in phases from 2024, and, as at June 2023, it did not expect the regulatory regime to be fully operational until 2025. During this period, there will continue to be uncertainty around the regulatory regime's final details, such as how service providers will be categorised in order to determine the exact duties they will face. In July 2022, Ofcom produced a roadmap setting out how it intended to implement the new regime after Royal Assent, but this assumed Royal Assent early in 2023. In June 2023, it published an update to the roadmap, confirming the phased approach to its production of codes and guidance, but with a new assumed date for Royal Assent of autumn 2023. The update did not, however, contain detailed dates for the timings of the various phases. There is a risk that the regime will become fully operational later than 2025 if further significant changes, such as those announced by the government at the end of June 2023, are included in the Bill (paragraphs 1.10 and 1.11).

8 **Ofcom has identified its early priorities for action once its powers start to come into force after Royal Assent.** Ofcom will still have lots to do to develop the regime. For example, it will have to produce more than 40 regulatory documents, including formal codes of practice and guidance for regulated service providers. In the initial stage after its powers start to come into force, Ofcom is prioritising action against some of the most serious online harms, for example, tackling illegal content and protecting children. However, the duties placed on service providers are not enforceable until the relevant codes of practice and guidance are published and the relevant parts of the regulatory regime fully implemented. Even then, enforcing these duties could be challenging for Ofcom as some service providers may deliberately choose not to comply with the regime out of criminal or malign intent, despite Ofcom taking enforcement action, and most have no UK corporate or economic presence. Users may not notice a significant change to their online experience at first. Ofcom has recognised that some stakeholders might expect immediate changes on the Bill's Royal Assent or might be unaware that Ofcom will have no specific powers to address individual pieces of harmful content. It has therefore put in place a communications strategy for managing these expectations and addressing misunderstandings (paragraphs 1.12 to 1.16).

Preparing to implement the framework

9 **Ofcom has made a good start to its preparations.** Ofcom has taken a structured approach to preparing for the new regime and established appropriate programme management and governance arrangements for setting it up. Its preparations are broadly on track against its latest planned timetable. In March 2023 Ofcom rated the programme's overall progress as 'Amber' (that is, a delay of less than four weeks or objectives in terms of scope and budget possibly at risk, but with mitigating actions agreed), highlighting uncertainties in the Bill's timetable as a risk to its plans. Any further significant changes to the scope of the Bill, such as those announced by the government at the end of June 2023, risk creating a gap in Ofcom's preparations (paragraphs 2.2, 2.4 and 2.5).

10 **Government has enabled Ofcom to commit significant resources to preparing for the new regulatory regime up to 2023-24, but funding for 2024-25 is unclear.** Government agreed to Ofcom funding the upfront costs for preparing for the new regime from Wireless Telegraphy Act 2006 receipts, which Ofcom would have otherwise handed to the Exchequer.[2] The government expected that the setting up of the new regulatory regime would be completed in 2023-24. Ofcom would then start to recover both its upfront costs, and the ongoing costs of the regime, from fees levied on the industry from 2024-25, making the regime self-financing from that date. However, as at May 2023, Ofcom expected that it would start to recover its online safety costs in 2025-26, a year later than originally expected due to the changes to the Bill's timetable. Ofcom has also identified that it will need extra resources to take on increases in the scope of the regime, such as the inclusion of fraudulent advertising. As at April 2023, Ofcom estimated that its cumulative costs in preparing for and implementing the regime could total £169 million by the end of 2024-25, of which about £56 million will have been incurred by the end of 2022-23. Ofcom is in the process of finalising its funding requirement for 2024-25 and seeking agreement for this funding from DSIT and HM Treasury. Changes to the Bill's timetable also mean that the details of the fee regime remain uncertain (paragraphs 2.6 to 2.9).

11 **Ofcom has undertaken significant organisational work to prepare for its new responsibilities.** In September 2020, Ofcom restructured so that online safety would be embedded in its organisation, and it expanded its technology group. In April 2023, it created a new Online Safety Group with responsibility for strategy delivery and policy development. This Group also contains a dedicated supervision unit, responsible for promoting the compliance of small providers and for managing relationships with what Ofcom expects to be the 20 largest and riskiest service providers, in line with lessons Ofcom learned from its existing regulation of video-sharing platforms. Ofcom is confident that this new structure will enable it to respond quickly to new and emerging harms but acknowledged that it has more to do to embed more responsive ways of working (paragraphs 2.10 to 2.12).

2 These receipts arise from Ofcom's issuing of licences for civil use of the radio spectrum.

12 Ofcom has significantly expanded its capacity and capabilities since 2020, but challenges remain, for example, in recruiting the extra staff it needs. In July 2020, Ofcom identified that it would require almost 350 extra staff by 2023-24 and beyond to meet its new responsibilities, an increase of more than 35% on its total staff at the end of 2019-20.[3] Its progress in delivering this requirement has been broadly in line with its schedule. By March 2023, it had 346 staff in place, based in London, Edinburgh and a new hub in Manchester. However, in February 2023, it revised its estimate of staff needed to more than 450 by the end of 2023-24 and beyond, an increase of more than 100 on its 2020 figure, due to its establishment of a dedicated supervision unit and the need for more staff to cover increases in the regulatory regime's scope. As at April 2023, it had yet to seek the agreement of DSIT or HM Treasury to the funding it requires for future years. Ofcom had initially focused its recruitment efforts on roles to support the legislative process and set up operations. However, once the regime is under way, some of these staff will transition to supervision roles (paragraphs 2.13 to 2.15, 2.17 and 2.18).

Enabling informed regulation

13 Ofcom has prepared a substantial initial evidence base to inform its implementation of the new regime. As at April 2023, it had completed 24 research projects and had a further 90 either planned or under way. This included, for example, work during 2021-22 with six service providers to understand their approaches to content moderation and measurement of online harms. However, as at the start of July 2023, it was working to identify the impact on its plans for future research of the amendments to the Bill announced by the government at the end of June 2023. Ofcom has also drawn on its existing regulatory experience, including that of regulating video-sharing platforms, and has engaged with other regulators, including those overseas. It has undertaken early engagement with industry, meeting some of the providers likely to be subject to the new legislation. Representatives from industry told us that they appreciated Ofcom's efforts to engage, but some were concerned about the potential burden of compliance, citing examples of requests from Ofcom for information that would require significant effort to answer (paragraphs 3.2 and 3.4 to 3.10).

14 The Bill will bring a large number of overseas firms into Ofcom's regulatory remit for the first time, creating significant monitoring challenges. Based on preliminary research carried out by Ofcom, the number of online services subject to regulation could total more than 100,000 and could be significantly higher. The great majority of these will be based overseas and will not have been regulated by Ofcom before and are therefore unfamiliar with it. Monitoring this scale of services will require automated data collection and analysis systems, and the IT capability to support these, which Ofcom is currently developing (paragraphs 3.11 and 3.12).

3 All staffing figures are for the full-time equivalent (FTE) number of staff.

15 **DSIT and Ofcom have yet to finalise their plans for evaluating how well the new regime is working once it is in place, and not all the data required for evaluation are available.** DSIT and Ofcom are planning to evaluate the effectiveness of regulation once the regime has begun. However, such evaluation, by nature of the harms involved, will be challenging, and the eventual effectiveness of the new online safety regulatory regime is only partly dependent on the successful implementation of preparations for its introduction. DSIT is progressing its evaluation plans; as at April 2023, work on its evaluation framework was under way. However, there were important evaluation-related gaps in its evidence base that need addressing to enable it to measure the regime's effectiveness. Filling these gaps will require DSIT and Ofcom to discuss their respective data collection plans as part of their ongoing liaison over evaluation. Ofcom is advancing its own evaluation plans and intends to have identified a short set of evaluation metrics by the time the Bill receives Royal Assent, with a longer list in place by 2025 when the regulatory regime becomes fully operational. Ofcom acknowledges that it will need to fine-tune the regulatory regime after it becomes fully operational, and that the ability to evaluate the effectiveness of the existing regime and future changes will be crucial to this (paragraphs 3.13 to 3.15 and 3.17).

Conclusion on value for money

16 Securing adequate protection of citizens from online harm will be a big new role for Ofcom. It has been preparing for the introduction of the new regulatory regime for online safety at the same time as Parliament has been considering the Online Safety Bill establishing the regime. As a result, Ofcom has had to take account of significant changes to both the regime's scope and timing. Ofcom has made a good start to its preparations and has taken the steps it could reasonably have done by this point: compiling an evidence base to inform its implementation of the new regime; putting in place the capacity, capabilities and organisational design it needs to begin operating the regime; and engaging with stakeholders. It estimates that its cumulative costs in preparing for and implementing the regime could total £169 million by the end of 2024-25, of which £56 million will have been incurred by the end of 2022-23. The full regulatory regime will, however, only come into effect in phases over the two years after the Bill's Royal Assent, and Ofcom still has lots to do in terms of finalising its arrangements.

17 Ofcom will need to manage several risks in implementing the new regulatory regime in a way that delivers value for money. It will need to move quickly to cover any gaps in its preparations arising from the significant amendments to the Online Safety Bill announced by the government at the end of June 2023 and any further changes before the Bill receives Royal Assent. It has also yet to secure the funding it needs for the extra staff it has identified that it will require. It will need to regulate a very large number of services, the great majority of which have not been regulated before and are unfamiliar with Ofcom and how it works, and which have no UK corporate or economic presence. It will need to cover its costs by introducing fees so that the regime becomes self-financing. It will also need to obtain good-quality data to monitor the compliance of services and to evaluate its own effectiveness and that of the regime. Furthermore, it will be vital for Ofcom to secure public trust by managing the public's expectations about the regime's impact in its early years. This is a significant set of challenges, and Ofcom has already started to consider how it will address them.

Recommendations

18 We make recommendations in four areas. In each of these, both Ofcom and DSIT recognise the need to further develop existing plans, particularly as they begin to implement the full regulatory regime.

Ofcom's external communication

Ofcom should:

a **manage the public's expectations about the regime's impact and Ofcom's role during implementation** to give confidence in the credibility of the new regime with the public, industry and others; and

b **develop its plans to inform industry about its requirements**, particularly ensuring its data requests are coordinated and proportionate, and establishing how it will collect feedback, in particular from smaller, non-categorised companies.

Ofcom's financial management

Ofcom should:

c **establish how it will manage the financial risks** presented by the additional year of set-up and increased staffing need; as it does so, it should report transparently on its set-up costs through its normal reporting mechanisms, including its annual report and accounts; and

d **clarify its overall approach to long-term financial management**, including the scope of its financial modelling and its assumptions about the future costs and funding of the regime.

Ofcom's internal skills and capacity

Ofcom should:

e **identify how it will reach the capability and capacity it needs and keep this relevant and up to date** so that it is equipped to keep abreast of technology developments, the development of new online services and platforms, and changes to user behaviour as the regime is implemented and becomes operational.

Monitoring and evaluation

DSIT should:

f **work with Ofcom to identify how the data Ofcom plans to collect as part of its evaluation activities will support DSIT's own evaluation** of the effectiveness of the regime and the achievement of its policy objectives.

Ofcom should:

g **ensure that its processes for collecting data from service providers and its generation of automated information about these are providing it with data of sufficient quality** to inform its regulatory duties and enable it to adapt its approach if the data show it is not achieving its aims.