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# Gaming and the Online Safety Act

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# Agenda

1. Introduction to the OSA

2. Illegal content duties

3. Child safety duties

4. Categorisation & additional duties

5. Litigation risks

6. In summary

# Things to think about

- **You can't just fall into compliance.**

    - You need to perform, document and maintain risk assessments.

    - There are active recording-keeping and reporting obligations.

    - You have to establish risk management arrangements and governance (including staff policies and procedures)

- **This will affect game design and UX**.

    - Design of functionalities, algorithms and other features needs to comply.

    - Proactive content moderation is required, as well as in-game reporting systems and complaints procedures, and user support.

    - Age assurance technologies will require engineering time and spend.

- **Your legal documents need to change**

    - Terms of Service and User Policies (including user access/blocking) need updating

# Introduction to the OSA

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# What is the OSA?

- Makes certain **online service providers** legally responsible for online safety through duties to:

    1. Identify, mitigate and manage risks in their services from both:

        - **illegal content and activity**; and

        - **content harmful to children**.

    2. Ensure their services are designed and operated to:

        - provide a **higher standard of protection to children**;

        - protect users' **rights and freedoms**; and

        - provide **transparency** and **accountability**.

- Regulated by **Ofcom**, the UK regulator for communications services.

# Who does the OSA apply to?

- "*Regulated services*", which include:

  - **User-to-user (U2U) services** where people can create and share content, or interact with each other – e.g., social media platforms and dating apps, photo and video sharing platforms, online marketplaces, **gaming services**.

  - **Search services** where people can search other websites or databases – e.g., search engines.

  - **Services publishing or displaying certain pornographic content**

# Who does the OSA apply to?

- Games with an online feature or user-to-user elements

- Text or voice chat functionality

- User-generated content shared

- VR/metaverse functionality

- Livestreaming and/or content creation

- Clan or guild system

- **Exemptions:**
  - Limited functionality services
  - Single-player offline games

# Who does the OSA apply to?

- Has relevant "*links with the UK*", including where the service:

  - has a **significant number** of UK users – this number will depend on the service's risk profile;

  - has the UK as a **target market**; or

  - is **accessible** in the UK and may present a "*material risk of significant harm*".

# Main duties

- **Illegal content duties**

  - All in-scope U2U and search services

- **Child protection duties**

  - All in-scope U2U and search services "likely to be accessed by children"

- **Additional duties**

  - In-scope U2U services which meet Category 1 or 2B thresholds

  - In-scope search services which meet Category 2A thresholds

# Privacy v Safety

- Section 22(3) cross-cutting duty

- Extensive content moderation (including containing criminal/sensitive personal data) and use of automated tools to do so

- Age verification

- Scanning private messages

# Ofcom



Already regulates broadcasting and video-sharing platforms

Unusually central role in regime

Drafts and publishes detailed Codes of Practice and guidance

Publications so far:

- Illegal Harms Code of Practice
- Age Assurance Guidance
- Childrens' Access Assessment Guidance

Due any day:

- Child Safety Code of Practice

# Ofcom's enforcement powers

**Ofcom is empowered to enforce the OSA by:**

- serving a **provisional notice of contravention**;
- serving various types of **confirmation decision** (i.e., requiring remedial action); and/or
- issuing **fines** up to the highest of **£18 million** or **10% of global annual turnover**.

**It also has information gathering powers, including to:**

- require personnel from a service provider to attend an interview;
- to enter and inspect premises;
- require service to provide information; and/or
- open an investigation

**It is also possible to impose restriction or blocking orders-** depriving a service of key infrastructure or preventing it from being available in the UK.

# Illegal content

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# What is "illegal content"?

- For the purposes of the OSA, this means "*content that amounts to a relevant offence*" – either:

  - a "**priority offence**" (i.e., one relating to a "*priority illegal harm*"); or

  - another type of harm where **individuals are the intended victims**,

  but **not** offences related to:

  - IP infringement;

  - safety or quality of goods; or

  - performance of a service by an unqualified person.

# What is "illegal content"? Cont'd

- Terrorism offenses

- Child sexual exploitation and abuse (CSEA), including child sexual abuse material (CSAM)

- Hate offences

- Harassment, stalking, threats and abuse

- Controlling or coercive behaviour

- Intimate image abuse

- Extreme pornography

- Sexual exploitation of adults

- Human trafficking

- Unlawful immigration

- Fraud and financial offences

- Proceeds of crime offences

- Drugs and psychoactive substances offences

- Firearms, knives and other weapons offences

- Encouraging or assisting suicide

- Foreign interference

- Animal cruelty

Ofcom has grouped "*priority offences*" into (for now) 17 types of **priority illegal harm**:

"*Priority illegal content*" is content amounting to a priority offence.

# Illegal content duties: summary

| Duty | Description |
|---|---|
| **Safety duties (i.e. content moderation)** | Prevent users encountering and minimise the presence of priority illegal content, including swift take down.<br><br>Effectively mitigate and manage the risk of:<br>• The service being used to facilitate a priority offence.<br>• Harm to individuals. |
| **Terms of Service** | Include provisions on:<br>1. How the service protects users from illegal content.<br>2. Any proactive technologies being used.<br>3. Users' rights to claim for breach of contract if their content is disabled in breach of the ToS. |
| **Freedom of expression** | Have particular regard to the importance of protecting the freedom of expression and privacy rights of users. |
| **Reporting & complaints** | Allow users and other affected persons to easily report illegal content.<br><br>Operate a relevant complaints procedure. |
| **Record keeping** | Keep records of risk assessments and measures taken to comply with the above obligations. |

# Key deadlines

| Duty | Description |
|---|---|
| **Illegal content risk assessment** | 4-step process which involves:<br>1. Understanding all 17 of the priority illegal harms.<br>2. Assessing the risk of each harm based on the service's characteristics (e.g., user base, design features and algorithms, business model, risk mitigation measures).<br>3. Deciding what measures are needed, then implementing and recording them.<br>4. Regularly reviewing compliance and updating assessments as appropriate (i.e., where the service undergoes a significant change).<br><br>Had to be carried out by **16 March 2025.** |
| **CSEA content** | Report UK-linked CSEA content to the National Crime Agency.<br><br>**Not yet in force**. |

# Gaming-specific challenges

**Risk Assessments**. Understand how your game's content, features, and players may create or encounter harm — especially through user-generated content and player interactions.

**Terms & Transparency.** Clearly explain in your terms and policies how players are protected. Provide accessible, age-appropriate explanations on safety measures (e.g. FAQs, policies) .

**Content Moderation.** Evaluate your moderation stack – consider real-time tools for text, image, and voice. Leverage existing databases and tools where possible (e.g. CSEA prevention).

**Reporting & Takedown**. Ensure granular reporting tools and fast response processes (including user-blocking. Train internal teams to handle escalations and recognise OSA-relevant risks and harms.

**Safety by Design.** Embed safety into game design for future releases – identify risk points across user journeys and addressing them early.

# Protecting children

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# Children's Access Assessments

There are additional obligations for regulated services which are "***likely to be accessed by children***" based on a 2-stage **children's access assessment**:

1. **Is possible for children to normally access (part of) the service?**

   If the answer is "no" because the service has "***highly effective age assurance***" in place, there is no need to proceed further – e.g.:

   - Photo ID matching
   - Facial age estimation
   - Mobile-network operator age checks
   - Credit card checks
   - Email-based age estimation

2. **Are there already or is the service likely to attract a significant number of children users?**

   - A "significant number" is one which is (cautiously) considered to be material in the context of a specific service.
   - A service may be "likely to attract" children users whether or not it actively targets them – e.g., where its design or content would appeal to children.

# Content that is "harmful to children"

- "***Primary priority content***", which includes:
  - non-text-based pornographic content;
  - content which encourages, promotes or provides instructions for suicide, self-harm or eating disorders.

- "***Priority content***", which includes:
  - abusive content which targets sensitive characteristics;
  - content that incites hatred;
  - content that encourages serious violence or injury; or
  - bullying content.

- "***Non-designated content***", which includes content presenting a material risk of significant harm to an appreciable number of children in the UK.

# Child protection duties: summary

| Duty | Description |
|---|---|
| **Safety duties (content control & moderation)** | Effectively mitigate and manage the risk of harm to children of different age groups (including from content that is harmful to children).<br><br>Prevent all children from encountering primary priority content (including by age verification or estimation).<br><br>Protect children of age groups deemed at risk of harm from other harmful content. |
| **Terms of Service** | Include provisions on:<br>1. How the service protects child users from such harmful content.<br>2. How certain age groups are judged to be at risk and then protected.<br>3. Any proactive technologies being used.<br>4. The findings of its most recent children's risk assessment. |
| **Codes of Practice** | Comply with the Ofcom Children's Safety Code for U2U Services and ICO Children's Code. |
| **Reporting & complaints** | Allow users and other affected persons to easily report content that is harmful to children.<br><br>Operate a relevant complaints procedure. |
| **Record keeping** | Keep records of risk assessments and measures taken to comply with the above obligations. |

# Key deadlines

| Duty | Description |
|---|---|
| **Children's access assessment** | 2-stage assessment (as previously set out).<br><br>To be carried out by **16 April 2025**. |
| **Children's risk assessment** | 4-step process which involves:<br>1. Understanding the kinds of content that are harmful to children.<br>2. Assessing the risk of harm from these kinds of content based on the service's characteristics (e.g., user base, design features and algorithms, business model, risk mitigation measures).<br>3. Deciding what measures are needed, then implementing and recording them.<br>4. Regularly reviewing compliance and updating assessments as appropriate (i.e., where the service undergoes a significant change).<br><br>Due in **July 2025** (3 months after the publication of guidance due in April 2025). |

# Gaming-specific challenges

**Age-Specific Risk Assessments**
Assess risks based on **distinct child age brackets**. Any measures should reflect the **needs and vulnerabilities** of different groupings.

**Age Assurance**
Implement reliable and proportionate **age verification** to control access to both the game and specific features, based on age. Do this in a privacy-preserving manner (e.g., on device).

**Communication & Reporting**
Use **child-friendly language** in terms and reporting tools. Ensure complaint/reporting mechanisms are **accessible, transparent**, and easy to use.

**In-Game Prompts & Guidance**
Include **in-game safety tips** and encourage safe behavior (particularly for younger users).

**Parental Controls**
Offer **easy-to-use parental controls** that allow parents to manage features, playtime, and interactions effectively.

# Categorisation and Additional Duties

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# Categorisation of services

- Category 1, 2A and 2B services will have additional duties to protect users

- Ofcom are currently working on categorisation register – to be published Summer 2025

| Category | Service | No. monthly users | Functionality(ies) |
|---|---|---|---|
| **1** | U2U | 34 million | Content recommender system |
| | | 7 million | Content recommender system **and** allows forwarding / sharing of regulated user-generated content (UGC) to other users. |
| **2A** | Search | 7 million | **Does not** only allow search of selected websites or databases, **nor** facilitated by an arrangement reliant on an API or other technical means to present results. |
| | Combined* | | |
| **2B** | U2U | 3 million | Allows direct (private) messaging between users. |

# Categorisation and additional duties

| Categories | Category 1 | Category 2A | Category 2B |
|---|:---:|:---:|:---:|
| **Categorised services must comply with additional duties relating to the below:** | | | |
| Transparency reporting | ✅ | ✅ | ✅ |
| Enhanced requirements on risk assessments and record keeping | ✅ | ✅ | |
| Additional terms of service duties | ✅ | | |
| Protections for news publisher and journalistic content, and content of democratic importance | ✅ | | |
| Providing user empowerment features | ✅ | | |
| Providing user identity verification options | ✅ | | |
| Prevention of fraudulent advertising | ✅ | ✅ | |
| Disclosure of information about use of the service by a deceased child user | ✅ | ✅ | ✅ |

# Key deadlines

| Action by Ofcom | Description |
|---|---|
| **Information Notices** | Being issued **now** to service providers who may be categorised by Ofcom. |
| **Categorisation register** | Ofcom will review the responses to information notices from service providers and will decide which services to categorise.<br><br>It will publish these decisions in a categorisation register, due in **June or July 2025.** |
| **Transparency Notices** | Will be issued to categorised service providers some time between **August and November 2025** |
| **Consultation on additional duties** | Will be run **October 2025-March 2026**.<br><br>Codes of Practice on additional duties will be published after this (so likely not enforceable before **Summer 2026**). |

# Categorisation challenges

The OSA anticipates challenges against categorisation decisions, having included specific provisions for these appeals:

- Forum = Upper Tribunal of General Regulatory Chamber.

- Judicial review principles to be applied:

  - Irrationality

  - Fairness

  - Illegality

# User claims?

- Class action risk:
  - Breach of contract?
  - Negligence?
  - Competition?

🚫 No specific right to damages

⚠️ But remind users about breach of contract rights

⚖️ And use CoPs as evidence in any proceedings

✓ <u>In theory </u>intermediary defences still apply

# In summary

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# Key takeaways

**Safety**

Mitigate illegal content, protect children online

**Age assurance**

Proportionate age verification/estimation to restrict underage access to inappropriate content or features

**Content moderation**

Deploy and test systems for detecting, removing, and limiting exposure to harmful content.

**Assessments**

Illegal Content, Children's Access (deadline *16 April 2025.*), Children's Risk

**Record-keeping**

Keep records to demonstrate compliance.

**Terms of Service**

Updates to cover moderation, user protections etc.

**User reporting**

Implement tools and user empowerment options (e.g. content filters, muting, blocking).

**Safety by Design**

Ensure safety by design — including default settings, parental controls, and safe social features.

**Categorisation**

Expected this Summer … but look out for information notices *now*

**Scope**

Games with an online feature or user-to-user elements with links with the UK

# Today's speakers

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