

## The UK's Online Safety Act 2023

### What is the Online Safety Act?

The Online Safety Act (OSA) is a new piece of legislation in the UK, designed to improve online safety by imposing new duties on online platforms and search engines. These duties are wide-ranging, but focus on implementing proportionate systems and processes to curb illegal content and content that is harmful to children. It is often compared to the EU's Digital Services Act (DSA), but is in some ways much more far-reaching.

The OSA will be regulated by the UK's existing communications regulator, Ofcom. Breach of the new rules can carry penalties of up to £18 million or 10% of global turnover (whichever is higher).

The OSA received Royal Assent on 26 October 2023. However, but most of the duties in the law will not become binding until the publication of various pieces of secondary legislation and guidance from Ofcom. Ofcom has published its timeline for these publications, with the first obligations starting to apply from the end of 2025.

### Will the OSA apply to my services?

The OSA regulates three main types of services:

- **User-to-user services**, meaning an internet service where user-generated-content (whether uploaded or generated directly on the service) can be encountered by other users of the service.
- **Search services**, i.e. search engines.
- Providers of online pornographic content.

In addition, certain providers deemed as being **particularly high risk** due to their functionality or large user-base will be designated as **Category 1, Category 2A** and **2B** services and be subject to more extensive obligations (not dissimilar to the DSA's "VLOPs"). These designations will follow in secondary legislation.

Some services are designated as exempt, including email and instant messaging services, and services with only limited UGC functionality (e.g. only allowing reviews or 'below the fold' comments).

### Does it have extra-territorial reach?

The OSA is designed to protect UK users, but it nonetheless has extra-territorial reach. It will apply to any provider of a user-to-user or search service that "**has links**" to the UK, meaning that:

- the service has a "significant number" of UK users; or
- UK users form one of the target markets for the service.

Providers who are subject to the OSA are expected to register with Ofcom.



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### Key contact



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## What are the new obligations under the OSA?

The OSA introduces a large number of new duties, the specifics of which vary depending on the nature of the service and whether it is a Category 1, 2A or 2B service. In summary, the key duties are:



### Risk Assessments

Duties to conduct a risk assessment regarding illegal content (i.e. criminal content) on the platform; and content that may be harmful to children (children meaning under 18s).



### Children's Access Assessments

A duty to conduct a "children's access assessment", i.e. an assessment as to whether it is possible for children to access your service and whether your service is likely to be accessed by children.



### Systems and processes regarding illegal content

Duties to use proportionate measures relating to the design and operation of the service to protect users from illegal content, including minimising the length of time for which illegal content is available.



### Systems and processes regarding children's safety

Duties to use proportionate measures relating to the design and operation of the service to mitigate and manage the risk of harm to children. This includes age-gating and age verification.



### Content reporting and complaints procedures

Duties to allow users and affected persons to easily report illegal content, and operate a complaints procedure.



### Freedom of expression and privacy

So-called "cross-cutting" duties to have particular regard to the importance of freedom of expression, privacy and personal data when deciding on safety measures under the OSA.



### Terms of service

Duties to include additional transparency in the platform's terms of service, to implement those terms consistently, and ensure they are clear and accessible.



### Record keeping

Duties to keep records of risk assessments and measures taken to comply with the duties.

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The designated 'higher risk' services will have additional duties regarding fraudulent advertising, transparency reporting, and duties to protect journalistic content.

## Forthcoming Codes of Practice

The OSA states that a provider will be treated as complying with a particular duty if it takes or uses the measures described in the relevant Code of Practice. Although not mandatory, these Codes of Practice are going to be crucial in helping organisations understand and comply with their new obligations under the law.

Ofcom is expected to publish draft Codes of Practice in Autumn 2023.

**If you would any advice or further information regarding the UK's Online Safety Act, please do get in touch with us.**