

## SCHEDULES

### SCHEDULE 11

Section 94

#### CATEGORIES OF REGULATED USER-TO-USER SERVICES AND REGULATED SEARCH SERVICES: REGULATIONS

##### *Regulations specifying threshold conditions for categories of Part 3 services*

- 1 (1) The Secretary of State must make regulations specifying conditions (“Category 1 threshold conditions”) for the user-to-user part of regulated user-to-user services relating to each of the following—
- (a) number of users of the user-to-user part of the service,
  - (b) functionalities of that part of the service, and
  - (c) any other characteristics of that part of the service or factors relating to that part of the service that the Secretary of State considers relevant.
- (2) The Secretary of State must make regulations specifying conditions (“Category 2A threshold conditions”) for the search engine of regulated search services and combined services relating to each of the following—
- (a) number of users of the search engine, and
  - (b) any other characteristics of the search engine or factors relating to the search engine that the Secretary of State considers relevant.
- (3) The Secretary of State must make regulations specifying conditions (“Category 2B threshold conditions”) for the user-to-user part of regulated user-to-user services relating to each of the following—
- (a) number of users of the user-to-user part of the service,
  - (b) functionalities of that part of the service, and
  - (c) any other characteristics of that part of the service or factors relating to that part of the service that the Secretary of State considers relevant.
- (4) Regulations under this paragraph must specify the way or ways in which the relevant threshold conditions may be met, and that may be by meeting the conditions in any specified combination, subject to the rule that—
- (a) in relation to the Category 1 threshold conditions and the Category 2B threshold conditions, at least one specified condition about number of users or functionality must be met, and
  - (b) in relation to the Category 2A threshold conditions, at least one specified condition about number of users must be met.
- (5) In making regulations under sub-paragraph (1), the Secretary of State must take into account the likely impact of the number of users of the user-to-user part of the service, and its functionalities, on how easily, quickly and widely regulated user-generated content is disseminated by means of the service.
- (6) In making regulations under sub-paragraph (2), the Secretary of State must take into account the likely impact of the number of users of the search engine on the level

of risk of harm to individuals from search content that is illegal content or search content that is harmful to children.

- (7) In making regulations under sub-paragraph (3), the Secretary of State must take into account the likely impact of the number of users of the user-to-user part of the service, and its functionalities, on the level of risk of harm to individuals from illegal content and content that is harmful to children disseminated by means of the service.
- (8) In this paragraph “specified” means specified in the regulations.

*Procedure for first regulations under paragraph 1*

- 2 (1) This paragraph describes the procedure that must be followed in relation to the making of the first regulations under each of sub-paragraphs (1), (2) and (3) of paragraph 1.
- (2) In the case of regulations under paragraph 1(1), within the period of six months beginning with the day on which this Act is passed, OFCOM must carry out research into—
- (a) how easily, quickly and widely regulated user-generated content is disseminated by means of regulated user-to-user services,
  - (b) the number of users and functionalities of the user-to-user part of such services, and
  - (c) such other characteristics of that part of such services or factors relating to that part of such services as OFCOM consider to be relevant to specifying the Category 1 threshold conditions.
- (3) In the case of regulations under paragraph 1(2), within the period of six months beginning with the day on which this Act is passed, OFCOM must carry out research into the following aspects of the search engine of regulated search services and combined services—
- (a) the prevalence of search content that is illegal content and search content that is harmful to children,
  - (b) the number of users of the search engine, and
  - (c) such other characteristics or factors as OFCOM consider to be relevant to specifying the Category 2A threshold conditions.
- (4) In the case of regulations under paragraph 1(3), within the period of six months beginning with the day on which this Act is passed, OFCOM must carry out research into—
- (a) the dissemination of illegal content and content that is harmful to children by means of regulated user-to-user services,
  - (b) the number of users and functionalities of the user-to-user part of such services, and
  - (c) such other characteristics of that part of such services or factors relating to that part of such services as OFCOM consider to be relevant to specifying the Category 2B threshold conditions.
- (5) OFCOM must provide the Secretary of State with advice based on the research under sub-paragraph (2), (3) or (4) (as the case may be) as to the provision which OFCOM consider it is appropriate for the regulations in question to make.
- (6) Such advice may include advice that the regulations should include another characteristic or factor in addition to number of users and (in the case of regulations

under paragraph 1(1) or (3)) functionalities, and what that other characteristic or factor should be.

- (7) As soon as reasonably practicable after OFCOM provide advice as mentioned in sub-paragraph (5)—
  - (a) OFCOM must publish the advice, and
  - (b) the Secretary of State must make the regulations.
- (8) If the regulations include provision which differs in any material respect from provision advised by OFCOM, the Secretary of State must publish a statement which explains why the Secretary of State has departed from that advice.
- (9) A statement mentioned in sub-paragraph (8) must be published—
  - (a) no later than the time at which the regulations to which the statement relates are made, and
  - (b) in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons who may be affected by it.
- (10) The Secretary of State may give OFCOM extra time to carry out their research in the case of regulations under paragraph 1(2) or (3), but OFCOM must carry out such research within the period of 18 months beginning with the day on which this Act is passed.
- (11) The Secretary of State may not make regulations under paragraph 1 until OFCOM have carried out research and provided advice to the Secretary of State as required by this paragraph.

*Procedure for amending or replacing regulations under paragraph 1*

- 3 (1) Regulations in force under paragraph 1(1) may not be amended or replaced by further regulations under that provision except following further research carried out by OFCOM into the matters mentioned in paragraph 2(2).
- (2) Regulations in force under paragraph 1(2) may not be amended or replaced by further regulations under that provision except following further research carried out by OFCOM into the matters mentioned in paragraph 2(3).
- (3) Regulations in force under paragraph 1(3) may not be amended or replaced by further regulations under that provision except following further research carried out by OFCOM into the matters mentioned in paragraph 2(4).
- (4) The further research in question—
  - (a) may be initiated by OFCOM or carried out in response to a request from the Secretary of State, and
  - (b) may be in as much depth as OFCOM consider appropriate.
- (5) A request from the Secretary of State to OFCOM to carry out further research must indicate why the Secretary of State considers that to be necessary.
- (6) Where such research is carried out, OFCOM must provide the Secretary of State with advice as to whether, in OFCOM's opinion—
  - (a) it is appropriate to make changes to the regulations in question, specifying the changes that OFCOM recommend, or
  - (b) it is not appropriate to make any changes to the regulations in question.

- (7) OFCOM must publish such advice as soon as reasonably practicable after providing it to the Secretary of State.
- (8) Where, following such advice, regulations are amended or replaced by further regulations under the provision in question (“new regulations”)—
  - (a) if the new regulations include provision which differs in any material respect from provision advised by OFCOM, the Secretary of State must publish a statement explaining the departures from that advice;
  - (b) if OFCOM’s advice was as mentioned in sub-paragraph (6)(b), the Secretary of State must publish a statement explaining the reasons for the new regulations.
- (9) Where OFCOM’s advice is as mentioned in sub-paragraph (6)(a) and the Secretary of State does not make new regulations, the Secretary of State must, as soon as reasonably practicable, publish a statement explaining that decision.
- (10) A statement mentioned in sub-paragraph (8) must be published no later than the time at which the regulations to which the statement relates are made.
- (11) A statement mentioned in sub-paragraph (8) or (9) must be published in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons who may be affected by it.
- (12) Sub-paragraphs (1) to (3) do not apply to regulations made only for the purpose of correcting existing regulations under paragraph 1.

*Publication of OFCOM’s advice under paragraphs 2 and 3*

- 4 (1) In arranging for the publication of advice under paragraph 2(7)(a) or 3(7), OFCOM must have regard to the need to exclude from publication, so far as that is practicable, matters which are confidential in accordance with sub-paragraphs (2) and (3).
- (2) A matter is confidential under this sub-paragraph if—
  - (a) it relates specifically to the affairs of a particular body, and
  - (b) publication of that matter would or might, in OFCOM’s opinion, seriously and prejudicially affect the interests of that body.
- (3) A matter is confidential under this sub-paragraph if—
  - (a) it relates to the private affairs of an individual, and
  - (b) publication of that matter would or might, in OFCOM’s opinion, seriously and prejudicially affect the interests of that individual.

*Interpretation*

- 5 References in this Schedule to the number of users of a user-to-user part of a service or a search engine are to the number of United Kingdom users of such a part or search engine.
- 6 In this Schedule the “characteristics” of a user-to-user part of a service or a search engine include its user base, business model, governance and other systems and processes.
- 7 In this Schedule—

“content that is harmful to children” has the same meaning as in Part 3 (see section 60);

“illegal content” has the same meaning as in Part 3 (see section 59);

“regulated user-generated content” has the same meaning as in Part 3 (see section 55);

“search content” has the same meaning as in Part 3 (see section 57).