

Consultation on Online Safety Information Guidance

Consultation

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1. Overview

- 1.1 Ofcom is the online safety regulator in the UK. The [Online Safety Act 2023](#) ('the Act') gives Ofcom powers to require and obtain information we need for the purposes of exercising, or deciding whether to exercise, our online safety duties and functions. We are consulting on draft guidance to help services, and other stakeholders, to understand when and how we might use these powers.

What we are proposing – in brief

We propose to introduce guidance for stakeholders about the use of our information gathering powers under the Act.

Our proposed guidance explains when and how we might exercise our powers. It is intended to be flexible to allow us to consider the individual circumstances in which we might use our powers, and to inform stakeholders about the factors we may take into account when deciding whether to exercise them or not. It also explains the legal duties imposed on regulated services and other third parties in relation to information gathering, and sets out our expectations on how services or other third parties should respond when we exercise our information gathering powers.

The overview section in this document is a simplified high-level summary only. The proposals we are consulting on, and our reasoning are set out in the full document and in our draft guidance appearing at Annex 1.

- 1.2 We invite responses to our consultation on the proposed guidance by **5pm on 4 October 2024**. Details on how to respond to this consultation are set out in Annex 2 of this document. Having considered responses to this consultation, we aim to publish the final guidance, and our statement explaining how we have taken consultation responses into account, by early 2025.

2. Introduction

- 2.1 It is important that the information that Ofcom relies on to carry out our functions under the Act is robust, so that we can carry out our regulatory functions effectively and proportionately. The range of statutory information gathering powers conferred on Ofcom by the Act give us the legal tools to obtain information in support of our online safety functions.
- 2.2 Although we are not obliged to publish guidance on our online safety information gathering powers, we consider that such guidance may be helpful to stakeholders. Statutory information gathering powers are a well-established regulatory tool – Ofcom has for many years had information gathering powers under other legislation besides the Act which are available where we are carrying out our other regulatory functions. However, many stakeholders affected by the Act, including services regulated by the Act and other stakeholders such as coroners and bereaved families, may not have experience of statutory information requests.
- 2.3 In addition to statutory information requests, the Act also confers on Ofcom a variety of other information gathering powers which are not available in those other areas of Ofcom’s remit, and we consider that guidance on these may also be beneficial for stakeholders. For example, Ofcom’s powers under the Act include powers to require providers of regulated services (and, in some cases, certain others) to:
- a) generate information by performing tests;
 - b) take steps to enable a person authorised by Ofcom to remotely view certain information in real-time;
 - c) provide information about the use of a regulated service by a child whose death is under investigation, to enable Ofcom to respond to a request for information from a coroner or Procurator Fiscal; or
 - d) appoint a skilled person to prepare a report, for example to assist Ofcom to identify a failure to comply with regulatory requirements.
- 2.4 The proposed guidance will also enable us to be transparent about our approach to these powers and give stakeholders the opportunity to comment on our proposed approach.
- 2.5 The draft guidance, attached at Annex 1, is intended to help stakeholders understand:
- a) the extent of our information gathering powers under the Act;
 - b) how and when we might use them; and
 - c) the legal duties on stakeholders to comply with our information gathering powers and the potential consequences of failing to comply when we exercise these powers.
- 2.6 It also provides an overview of the persons who may be legally bound by each of Ofcom’s information gathering powers (see Table 2.2 in the draft guidance at Annex 1).
- 2.7 This consultation document provides an overview of our draft guidance and invites comment from stakeholders. It also sets out how we have taken account of the comments that we received in response to our 9 November 2023 consultation: [Consultation: Protecting people from illegal harms online](#) (‘Illegal Harms Consultation’), which contained a summary

of our information gathering powers and some brief comments on our approach to exercising them.¹

2.8 The remainder of this document follows the structure of the proposed guidance, as set out in Table 1 below. For each section of the guidance, it:

- a) summarises the section;
- b) sets out how we have taken into account any relevant responses to our Illegal Harms Consultation; and
- c) asks a consultation question.

Table 2.1. Structure of online safety information powers guidance

Section in the draft guidance	Section/ Schedule in the Act	What the section covers (relevant powers)	Location in the draft guidance (paragraph)
Section 2	N/A	Introduction, covering the scope and status of this guidance	A2.1 – A2.12
Section 3	N/A	Ofcom’s general approach to information gathering, including how we typically decide how to use our powers, how we will treat confidential information, how we will handle personal data and how we will disclose information	A3.1 – A3.54
Section 4	s100 - s103	The power to issue information notices, including:	A4.1 – A4.82
		<ul style="list-style-type: none"> • specific considerations for section 100 notices requiring the performance of a test 	A4.34 – A4.44
		<ul style="list-style-type: none"> • specific considerations for section 100 notices requiring the remote viewing of certain information under section 100(3) (‘Remote Viewing Information Notice’) 	A4.45 – A4.62
		<ul style="list-style-type: none"> • specific considerations for section 101(1) notices requiring the provision of information relating to the use of a service by a child who has died (‘Coroner Information Notice’²) 	A4.63 – A4.76
<ul style="list-style-type: none"> • requirement to name a senior manager under section 103 	A4.77 – A4.82		
Section 5	s104	Skilled persons’ reports	A5.1 – A5.17
Section 6	s106	Interviews	A6.1 – A6.18
Section 7	Sch12	Entry, inspection and audit	A7.1 – A7.44
Section 8	N/A	The duties imposed on services and other persons and the consequences of non-compliance with any of these information gathering powers	A8.1 – A8.12

¹ See [Volume 6 Chapter 28](#).

² Ofcom may issue an information notice under section 101 for the purpose of responding to a request from information from a coroner (in England, Wales and Northern Ireland) or a Procurator Fiscal (in Scotland). For convenience, we refer only to coroners in this document, but references to coroners include references to Procurators Fiscal in Scotland.

3. Ofcom's general approach to online safety information gathering

Summary of section 3 of the draft guidance

- 3.1 Section 3 of the draft guidance explains Ofcom's general approach to information gathering and addresses issues that are common to the exercise of all our information gathering powers under the Act. It covers:
- a) the **purpose of information gathering**. Broadly speaking, the information gathering powers conferred by the Act give us the legal tools to obtain information for the purpose of exercising, or deciding whether to exercise, any of our online safety functions;
 - b) **Ofcom's general duties** when exercising information gathering powers. When exercising these powers, we must have regard to a range of matters set out in the Act and in the Communications Act 2003 ('Communications Act');
 - c) **how we will use our information gathering powers**, including:
 - i) exercising our powers in a reasonable and proportionate way;
 - ii) dealing with information provided voluntarily; and
 - iii) using information for a different purpose from that for which it was collected;
 - d) how we will deal with **confidential information**. Where requested in a statutory information notice, recipients must provide the information requested, even if they consider that the information, or any part of it, is confidential. Recipients should clearly identify confidential information and explain in writing why it is confidential;
 - e) **disclosure of information**, including:
 - i) the circumstances set out in legislation in which we may disclose information that we have gathered;
 - ii) the process we expect to follow if we propose to disclose information; and
 - iii) how we will deal with freedom of information requests;
 - f) how we will deal with **personal data**. We may use our information gathering powers to obtain personal data if we consider that this information is necessary and relevant for the purpose of our functions. However, in all cases Ofcom will seek to limit the personal data which it requires to that which is necessary for the performance of our functions under the Act;
 - g) **information security**. We will keep information in line with our [records and information management policy](#); and
 - h) **service of notices**. This section explains how we will serve notices that require people to provide information.

Illegal Harms Consultation responses

- 3.2 Respondents to the Illegal Harms Consultation provided a range of comments that are relevant to Section 3 of the draft guidance. We have grouped them below as:
- a) general comments about Ofcom’s online safety information gathering powers;
 - b) comments regarding transparency in the use of these powers; and
 - c) data management.
- 3.3 We summarise each set of comments, and provide our response, below.

General comments

- 3.4 Stakeholders expressed differing views about Ofcom’s information gathering powers in general. A number of stakeholders including [Self Space One](#) considered that information gathering does not go far enough to promote compliance. [Self Space One](#) and another respondent said that Ofcom’s approach to information gathering, as expressed in the Illegal Harms Consultation, was too reserved and may undermine efforts to effect change from big tech organisations, particularly in relation to the prevalence of illegal content. [The Board of Deputies of British Jews](#) supported our information gathering powers and approach on the basis they appear to allow Ofcom to effectively investigate breaches of the rules.
- 3.5 [Oxford Disinformation and Extremism Lab \(OxDel\)](#) said that the freedom of expression of some groups, including civil society organisations, academic researchers and human rights advocates, could be curtailed by these powers. It argued that advances in information gathering and data collection would erode public trust in the legislation and that we should have a clear scope to target powers to where it is necessary to gather information.
- 3.6 In relation to proportionality, [Google](#) would welcome a distinction between information requests sent in relation to compliance issues and information requests to support Ofcom’s other regulatory functions, arguing that the most intrusive powers should be reserved for the most serious enforcement issues. A number of stakeholders called for a proportionate approach to information gathering and enforcement to avoid the process being intrusive and burdensome. One respondent believed that Ofcom will use its information gathering powers in a proportionate way and agrees that reserving use of ‘invasive’ powers underscores Ofcom’s commitment to minimally intrusive regulation.

Our response

- 3.7 Information gathering powers are one of many tools at our disposal. They are not in and of themselves a tool to secure compliance with substantive obligations. Rather, they provide us with the means to gather important insights and evidence to ensure compliance, and to exercise our other regulatory functions. For example, we expect to regularly use information gathering powers during an investigation which seeks to ensure, and promote, compliance. However, we may use many of our information gathering powers for purposes which are not limited to our enforcement functions. For example, an information notice under section 100(1) may be used for the purpose of exercising, or deciding whether to exercise, any of our online safety functions under the Act. We have already issued a number of information notices under this section for purposes that are not directly related to compliance issues, for example to inform our proposals for the fees regime.

- 3.1 We disagree that our proposed approach to information gathering is too reserved and does not go far enough to promote compliance. The approach we have set out in the accompanying draft guidance reflects the legal framework provided by the Act, including that the use of these information gathering powers must be reasonable and proportionate. In connection with proportionality, we explain in paragraph A3.11 of the draft guidance that we would generally seek the least intrusive methods of achieving our objectives; but that in many cases exercising one of our information gathering powers will be the most effective way to obtain robust and reliable evidence. When faced with a choice of which of our information gathering powers to use, we will exercise the power that imposes the least burden on stakeholders without compromising our ability to fulfil our objectives. We consider this to be consistent with our duty to exercise information gathering powers in a proportionate manner.³ Paragraph A3.13 of the draft guidance provides further information about the factors we will take account of when deciding whether to exercise an information gathering power, including why Ofcom needs the information and the potential impact on the person from whom we are obtaining the information.
- 3.2 We recognise that some of our information gathering powers, namely our power to issue a Remote Viewing Information Notice under section 100(3) of the Act, and our powers of entry, inspection and audit under Schedule 12 to the Act, may have significant impacts on stakeholders. Therefore, we say at paragraphs A4.53 and A7.2 of the draft guidance that we do not expect to use these powers as often as we expect to exercise our more general information notice powers under section 100, and that these powers will typically be reserved for more serious or complex cases. However, we may decide that it is reasonable and proportionate to use these powers in an appropriate case.
- 3.3 Lastly, we disagree that the information gathering powers under the Act will curtail freedom of expression. Parliament has provided Ofcom with information gathering powers under the Act to enable Ofcom to perform its statutory functions. We recognise that certain duties imposed by the Act, and certain aspects of Ofcom’s regulation (e.g. measures that Ofcom includes in Codes of Practice), could potentially impact freedom of expression.⁴ However, we do not consider that this impact derives from the exercise of Ofcom’s information gathering powers. Further, we can only exercise these powers in a reasonable and proportionate manner. In making this assessment, we will consider (among other factors) any potential impacts of the exercise of our information gathering powers on users’ rights (see paragraph A3.13(f) of the draft guidance).

³ Ofcom may only issue information notices under sections 100(1) or 101(1) in a way that is proportionate to the use to which the information is to be put in the exercise of Ofcom’s functions: see sections 100(4) and 101(4). Further, in performing its principal duties under section 3(1) of the Communications Act, Ofcom is required to have regard to the principles under which regulatory activities should be (amongst other things) proportionate: see section 3(3)(a) of the Communications Act.

⁴ Where we include measures in Codes of Practice, we assess that the measure is proportionate and does not unduly interfere with users’ rights to freedom of expression. See, for example, paragraph 11.22 of Ofcom, [‘Protecting people from illegal harms online: Volume 4: How to mitigate the risk of illegal harms – the illegal content Codes of Practice’](#), consultation published 9 November 2023.

Being transparent about our use of information gathering powers

- 3.4 A number of stakeholders' responses related to either transparency reporting or researcher access to data and the publication of recurrent information and data from services. Some of these appeared to conflate our information gathering powers with our functions in connection with transparency reporting and researcher access. In this document we have focused on the responses relating specifically to information gathering powers.⁵
- 3.5 [Global Partners Digital](#) emphasised the importance of Ofcom being transparent about its use of information notices and when taking enforcement action. It said that this is crucial to build trust with services and users.
- 3.6 Some stakeholders, including [Yotj](#), [Christchurch Call Advisory Network](#) and [UK Finance](#) said that Ofcom should use information gathering powers to require public monitoring and reporting and to be as transparent as possible about its activities. Further [Yotj](#) called for more transparency by the publication of information notices and data by Ofcom.
- 3.7 [Institute for Strategic Dialogue \(ISD\)](#) observed that the researcher access to data provisions in the Act is weaker than the EU's Digital Services Act, and Ofcom should therefore make use of information gathering powers to plug the gap in researcher access.
- 3.8 [Christchurch Call Advisory Network](#) also said that without sufficient public reporting, it was concerned that Ofcom could use information notices to circumvent legal protection in place of user privacy.

Our response

- 3.9 We agree that it is important to build trust with services and users by being transparent about the use of our information gathering powers. This is why we have decided to produce and consult on the accompanying draft guidance, even though the Act does not require us to do so.
- 3.10 The scope of the draft guidance to which this consultation relates is limited to Ofcom's information gathering powers. Ofcom has separate functions in relation to transparency reporting which includes a duty to require categorised services to produce and publish transparency reports about the service.⁶ Ofcom is required to produce its own transparency reports based on information contained in those produced by providers of categorised services⁷ and is also required to produce a report about researchers' access to information about online safety matters.⁸
- 3.11 Our information gathering powers complement, but are different to, our functions in relation to transparency reporting and researcher access. As noted above, information gathering powers enable us to obtain the information we need to exercise our online safety functions. Importantly, Ofcom may gather information from people other than categorised services, where this is reasonable and proportionate in the context of the function that Ofcom is exercising.

⁵ We are today consulting on our guidance in relation to the transparency reporting duties that apply to categorised services. We will also be consulting on researcher access in due course.

⁶ Section 77 of the Act.

⁷ Section 159 of the Act.

⁸ Section 162 of the Act.

- 3.12 Where Ofcom exercises an information gathering power, the information provided in response is sent directly to Ofcom. Under section 393 of the Communications Act, Ofcom cannot disclose information it has obtained with respect to a particular business without the consent of the person carrying on that business, unless this is permitted for specific, defined purposes (and in many cases only to specific persons).⁹ Consistent with this restriction, we are unable to publish all of the information we gather, as disclosing information in contravention of section 393 is a criminal offence. We have provided further information about our approach to the disclosure of information in the draft guidance from paragraph A3.22.
- 3.13 The protection provided by section 393 has an important purpose. Where we gather information that stakeholders consider to be confidential or commercially sensitive, it is important that those stakeholders have confidence that we will handle that information appropriately and will not disclose this further unless there are good reasons, and it is lawful, to do so. Without this protection there is a risk that stakeholders will be unwilling to provide us with the information we need to exercise our functions or will be otherwise obstructive. This could ultimately hinder our ability to obtain such information effectively and ultimately undermine trust in the online safety regime.
- 3.14 We note that stakeholders have called for even more transparency around the use of our information gathering powers, requesting the publication of information notices we issue. We do not think it would be proportionate, nor helpful to stakeholders, to publish each information notice that we issue, and we do not take this approach in other areas of our remit. However, we do provide clarity as to the performance of our regulatory functions by publishing our regulatory consultations and statements and our enforcement decisions. In accordance with the principle of transparency, and to ensure fairness to our stakeholders, these documents set out the evidence upon which we have based our decisions or proposals (unless disclosure of this evidence is prohibited, for example by section 393 of the Communications Act).
- 3.15 As regards user privacy specifically, within our draft guidance (from paragraph A3.40) we set out that in many cases it will not be necessary to obtain personal data to allow us to perform our online safety functions. Personal data is defined in Article 4 of the UK GDPR as information relating to an identified or identifiable natural person. However, there may be circumstances in which obtaining personal data is necessary, including user data. For example, where a coroner has requested from Ofcom information about content encountered by a deceased child, and Ofcom has decided to exercise its power under s101(1) to issue a Coroner Information Notice to require a service provider to provide such content, that content may, depending on the case, include personal data related to other living users. In all cases, Ofcom will seek to limit the personal data which it requires under its information gathering powers to that which is necessary for the performance of our functions under the Act.¹⁰

⁹ Communications Act, section 393(2)-(7).

¹⁰ Consistent with UK GDPR, Article 5(1), which provides for 'data minimisation', including that personal data shall be 'limited to what is necessary in relation to the purposes for which they are processed.'

Data management

- 3.16 A few stakeholders sought further information on how Ofcom manages and stores data it has gathered to protect commercial confidentiality and user privacy, and how it protects vulnerable users. One respondent also sought assurances that data will be managed in a way that also avoids data loss and limits data retention.

Our response

- 3.17 Ofcom has extensive experience handling confidential information, and ensuring information is appropriately protected is central to Ofcom's work and our reputation as the UK's communications regulator (as noted above). Within our draft guidance we set out our approach to handling confidential information. From paragraph A3.19 of the draft guidance we explain our expectations of stakeholders in relation to confidential information. In particular, we have outlined that when providing their response to information requests, stakeholders should clearly identify any confidential information and explain their reasons for considering it confidential. We also explain that ultimately it is for Ofcom to decide what is, and is not, confidential. Further, from paragraph A3.22 of the draft guidance we set out our approach to disclosing information, including confidential information, and the process we expect to follow if we propose to disclose information, including that we will normally first explain our intention to disclose the information and give the provider of the information the opportunity to make representations about the proposed disclosure.
- 3.18 In relation to user privacy, as noted above, our draft guidance addresses our approach to obtaining personal data (see from paragraph A3.40) and that we will not disclose personal data unless we consider that is necessary to do so and that we have a legal basis to do so under data protection law. Further, as noted in the same section of the draft guidance, Ofcom's [General Privacy Statement](#) contains further information about how Ofcom will handle personal data. These parts of the guidance apply equally to personal data belonging to vulnerable users.
- 3.19 Lastly, our draft guidance sets out that information we gather will be held and used in accordance with our [Records and Information Management Policy](#), which also addresses the length of time for which Ofcom will retain information it gathers.

Consultation question 1: Ofcom's general approach to information gathering (Section 3 of the draft guidance)

Do you have any comments on Ofcom's proposed general approach to information gathering, as outlined in Section 3 of the draft guidance?

Please provide any information or evidence in support of your comments.

4. Information notices

Summary of section 4 of the draft guidance

- 4.1 An information notice is a means through which we formally gather the specific information we need to carry out our functions. This section of the guidance explains the different types of information notices, as listed below, and covers:
- a) **when we may issue information notices** under section 100, which allows us to require the provision or generation of information that we require to exercise, or decide whether to exercise, our functions. It also describes to whom section 100 notices may be issued;
 - b) Ofcom's **Information Registry**, the central team within Ofcom that typically manages all Ofcom's formal information requests;
 - c) the **typical process** for receiving and responding to an information notice, including:
 - i) draft information notices;
 - ii) content of the notice; and
 - iii) responding to the notice;
 - d) specific considerations for **section 100 notices requiring the performance of a test**. This section provides guidance on:
 - i) the parameters of the test;
 - ii) test datasets;
 - iii) test environments; and
 - iv) information generated by the test;
 - e) specific considerations for **Remote Viewing Information Notices under section 100(3)**. This provision allows Ofcom to view, in real time, information about algorithms and functionalities of services regulated by the Act. The draft guidance covers:
 - i) when we might use this power;
 - ii) when and how we might require the performance of a demonstration or test;
 - iii) data protection considerations; and
 - iv) receiving and responding to a Remote Viewing Information Notice;
 - f) specific considerations for **Coroner Information Notices under section 101(1)**. On receiving a request from a coroner for information relating to an investigation into the death of a child, Ofcom has discretion to issue a Coroner Information Notice. The draft guidance sets out:
 - i) to whom such a notice may be issued;
 - ii) how we expect to exercise this discretion;
 - iii) data protection considerations; and
 - iv) disclosure of information obtained under a Coroner Information Notice;
 - g) requirement to **name a senior manager**. Where we send an information notice under section 100 or 101 to a regulated service provider, and that provider is an entity, we may require it to name a relevant senior manager who may reasonably be expected to be in a position to ensure compliance with the notice. This section of the guidance provides an overview of the power and how we typically expect to use it.

Illegal Harms Consultation responses

- 4.2 Stakeholder comments relevant to section 4 of the draft guidance, and our response to them, are set out below. The topics covered are:
- a) Information requests;
 - b) Remote viewing power;
 - c) Coroner Information Notices; and
 - d) Requirement to name a senior manager.

Information requests

- 4.3 [techUK](#) said that Ofcom should ensure that information requests are narrowly framed by default and that broad requests that ‘fish’ for information should be avoided.
- 4.4 Both [Meta and WhatsApp](#) and [techUK](#) welcomed that we would, where appropriate, send information notices in draft form first. They said this should be our standard approach to allow constructive engagement on the scope of the request and provide the opportunity to discuss any issues in responding, such as data being unavailable in the requested form, or issues producing the data in the designated timeframe.
- 4.5 [Evri](#) stated that Ofcom should consider how services manage requests to be able to allocate resources, such as stakeholders receiving multiple requests, the time of year the request is issued and allowing sufficient time to respond.
- 4.6 Some stakeholders raised issues relating to smaller services; [5rights-foundation](#) stated that it is important Ofcom can support services to respond and comply, and [Federation of Small Businesses](#) asked that small businesses be given the opportunity to engage and potentially challenge any oppressive requests. [Institute for Strategic Dialogue \(ISD\)](#) argued that although proportionality is an important consideration for smaller services in particular, all platforms that pose significant risks to online safety should be expected to respond in full to information requests.

Our response

- 4.7 In relation to the scope of information requests, as noted above, we have a legal duty to be proportionate in our use of information gathering powers.¹¹ As set out at paragraph A3.11 of our draft guidance, we will consider on a case-by-case basis whether exercising an information gathering power would be reasonable and proportionate for the relevant purpose, in line with our regulatory principles to seek the least intrusive regulatory methods of achieving our objectives.
- 4.8 When issuing an information notice under sections 100 or 101, we are legally required to specify or describe why the information is needed by Ofcom, as set out in paragraph A4.26. This will provide ensure that recipients are clear as to the purpose for which Ofcom is requiring information.

¹¹ Ofcom may only issue information notices under sections 100(1) or 101(1) in a way that is proportionate to the use to which the information is to be put in the exercise of Ofcom’s functions: see sections 100(4) and 101(4). Further, in performing its principal duties under section 3(1) of the Communications Act, Ofcom is required to have regard to the principles under which regulatory activities should be (amongst other things) proportionate: see section 3(3)(a) of the Communications Act.

- 4.9 Further, when deciding whether to exercise our information gathering powers, we will consider the size and capacity of the stakeholder and the resources required to provide the information, as set out in paragraph A3.13(b). We will also ensure that the time period to respond to the information notice is reasonable and proportionate to the information requested. As set out in paragraph A4.32 this may include asking for the information to be provided in a phased approach which allows the recipient a longer time to provide information that may take longer to obtain or generate, and a shorter time to provide information that may be quicker to collect or produce.
- 4.10 In relation to coordinating requests for information, our Information Registry coordinates requests centrally so we can better consider the regulatory burden placed on stakeholders. This is set out from paragraph A4.15 of the draft guidance.
- 4.11 Our draft guidance sets out the typical process we will follow when issuing information notices: see from paragraphs A4.22. This includes that we will typically send a draft notice prior to issuing a final notice. We agree that constructive engagement in advance of sending a final notice allows us to make sure we have worded and targeted it clearly enough, so that we get the information we need, and the recipient can respond within the set time period. However, there are times when it is likely to be appropriate to issue an information notice without engaging informally beforehand, and we set out some examples of these circumstances in our draft guidance.
- 4.12 If a stakeholder considers that the exercise of an information gathering power is disproportionate or unclear, they should contact Ofcom as soon as possible to discuss this. We will seek to resolve issues through constructive engagement where possible. In relation to the [Federation of Small Businesses](#)' point that small businesses should be given the opportunity to challenge any oppressive requests, we note that, if a recipient considers that the exercise of that information gathering power is unlawful, they may challenge the exercise of that power by way of judicial review.

Remote viewing power

- 4.13 [Meta and WhatsApp](#) responded that the power to issue a Remote Viewing Information Notice is an intrusive measure that would likely require significant resources from the service provider. Both [Meta and WhatsApp](#) and [techUK](#) consider that this power should only be used when there are no reasonable alternatives and in more serious or complex cases. [Meta and WhatsApp](#) considers that other, less intrusive powers should be used as a first step before use of the remote viewing power.
- 4.14 [Global Partners Digital](#) and [techUK](#) also raised concerns around security, user safety and privacy risks. [Global Partners Digital](#) would like Ofcom to introduce additional safeguards, for example by limiting access to a testing environment where there is no user data, or by not having access to live data. [Google](#) also agreed that our remote viewing power should be used in a proportionate way with appropriate safeguards.

Our response

- 4.15 We set out specific considerations that apply to Remote Viewing Information Notices from paragraph A4.45 of the draft guidance onwards. While we consider there may be circumstances in which we consider that the use of this power is appropriate and necessary, we recognise stakeholders' concerns about the use of this power and have set out in the draft guidance that the use of this power will typically be reserved for more serious or complex cases (see paragraph A4.53. We also set out in the draft guidance that we will seek

the least intrusive regulatory methods of achieving our objectives and that when faced with a choice of which of our information gathering powers to use, we will exercise the power that imposes the least burden on stakeholders without compromising our ability to fulfil our objectives (paragraph A3.11). Paragraph A3.13 of our draft guidance sets out some factors we will generally take into account when exercising any of our information gathering powers, and paragraph A4.52 sets out some further factors that we may take into account in deciding whether to issue a Remote Viewing Information Notice.

- 4.16 We have considered cybersecurity and data protection issues and set out our proposed approach in paragraphs A4.55 and A4.56 of our draft guidance. For example, we set out that:
- a) we will not be able to directly control the service while remotely viewing the performance of a test, as any test required by Ofcom would be performed by the employees of the service itself;
 - b) we will seek to limit the personal data which we remotely view to that which is necessary for the performance of our functions. In addition, we will discuss with the recipient of our information notice what personal data (if any) we consider relevant, and practical arrangements to ensure that, to the extent possible, we are not viewing personal data that is unlikely to be relevant.
- 4.17 Further, from paragraph A4.35, we provide guidance about our approach to information notices that require the performance of a test. This guidance applies to any Remote Viewing Information Notice that requires the performance of a test. In this section, we address the parameters of the test, test datasets, test environments and information generated by the test. In relation to test environments, our draft guidance states that we will generally request that a test is undertaken on a dedicated server for testing software applications, where this is available. However, if a test environment is unavailable, we may request a test using the ‘live’ test environment. In this circumstance, any data processing would need to comply with data protection law.

Coroner Information Notices

- 4.18 Where Ofcom has received a formal request for information from a coroner in connection with an investigation or inquest into the death of a child, section 101 of the Act empowers Ofcom to issue an information notice to gather information from relevant services for the purpose of responding to the coroner’s request. In our draft guidance, we refer to Ofcom’s request for information issued under section 101 as a Coroner Information Notice.
- 4.19 Further, where Ofcom has received a formal request for information from a coroner, Ofcom has a discretion to produce a report to the coroner that addresses any matters that may be relevant.¹² Ofcom may also issue a Coroner Information Notice for the purpose of preparing such a report.
- 4.20 In relation to Coroner Information Notices, [5rights-foundation](#) said that any information guidance we produce would benefit from setting out how the section 101 power will apply, to support the understanding of relevant persons involved with such notices. There has also been interest in this power outside the specific context of our Illegal Harms Consultation, including from bereaved families and people with lived experiences of online harms.

¹² Section 163 of the Act.

Our response

- 4.21 Working within the legal framework set by the Act, we want to ensure that there are appropriate processes in place to support a coroner’s investigation or inquest into the death of a child where the child’s use of online services may have been a factor.
- 4.22 Our power to issue Coroner Information Notices commenced on 1 April 2024. At that time, we published a factsheet about our approach to issuing Coroner Information Notices.¹³ The Chief Coroner in England and Wales has also issued guidance to coroners in those jurisdictions, which sets out practical considerations that may be relevant when coroners request information from Ofcom.¹⁴ We are also engaging with relevant authorities in Scotland and Northern Ireland.
- 4.23 Coroners who wish to discuss a potential request with us should contact CoronersSupport@ofcom.org.uk.
- 4.24 In our draft guidance, we have set out additional information about our approach to issuing Coroner Information Notices. This includes:
- a) a description of the power (from paragraph A4.63);
 - b) our expectation as to the information that a coroner’s request for information to us would include (paragraph A4.70);
 - c) our discretion to issue a Coroner Information Notice (from paragraph A4.72). In this regard, our draft guidance notes that, where a coroner provides the information set out in paragraph A4.70, we are more likely to be satisfied that it is proportionate to issue a Coroner Information Notice;
 - d) our expectation that we will engage with coroners informally before they request information from us (paragraph A4.72). The purpose of this engagement is to understand the coroner’s requirements in a particular case, to discuss the reasonableness of the proposed request, and to seek to agree on the parameters of each individual request;
 - e) data protection considerations (from paragraph A4.74); and
 - f) our approach to disclosing information obtained under a Coroner Information Notice (from A4.75).

Requirement to name a senior manager

- 4.25 A number of stakeholders, including [Action for Primates](#), [Born Free Foundation](#), and [Wildlife and Countryside Link](#) welcomed the focus on senior manager liability. [Meta and WhatsApp](#) also agreed that in certain circumstances, where a service is otherwise unlikely to comply, this power may incentivise compliance.
- 4.26 However, both [Meta and WhatsApp](#) and [Global Partners Digital](#) suggested that Ofcom should only use senior management liability in limited circumstances. [Meta and WhatsApp](#) considered that this power would also place a disproportionate burden on service providers in identifying a senior manager for each notice, particularly when a notice is likely to require information that spans the remit of many senior personnel. [Meta and WhatsApp](#) therefore considered that senior manager liability should be reserved to situations where services will not adequately comply with the notice without the use of this power.

¹³ <https://www.ofcom.org.uk/online-safety/protecting-children/information-gathering/>

¹⁴ HHJ Thomas Teague, Chief Coroner, ‘[Guidance No 46: Obtaining information regarding social media use](#)’, 2 April 2024.

Our response

- 4.27 Within our draft guidance, we set out that Ofcom will decide whether to use the power to require a senior manager to be named on a case-by-case basis. The function of the named senior manager is, in essence, to oversee the completion of the information notice, to ensure that the information notice is complete, accurate and in the format and manner required by Ofcom, and that the information requested is provided by the deadline set. When deciding whether to exercise this power, we will consider whether it is necessary and proportionate to do so and will take account of the service's history of compliance and co-operation with Ofcom, including its compliance with previous requests for information, where appropriate, as well as the burden this requirement would place on the service and the individual manager named. We have set out draft guidance on our power to request a senior manager to be named from paragraph A4.77.

Consultation question 2: Information notices (Section 4 of the draft guidance)

a) Information notices

Do you have any comments on Ofcom's proposed approach to the process for issuing and responding to information notices.

b) Requiring a test

Do you have any comments on our proposed approach to information notices that require recipients to perform a test?

c) Remote viewing

Do you have any comments on our proposed approach to Remote Viewing Information Notices? For example, to the factors that we may take into account when considering whether to issue a Remote Viewing Information Notice.

d) Coroner Information Notices

Do you have any comments on our proposed approach to issuing Coroner Information Notices for the purpose of responding to requests for information by investigating authorities in connection with an investigation or inquest into the death of a child?

e) Naming a senior manager

Do you have any comments on the section relating to naming a senior manager who is in a position to ensure compliance with an information notice?

Please provide any information or evidence in support of your comments.

5. Reports by a skilled person under section 104

Summary of section 5 of the draft guidance

- 5.1 Section 104 of the Act grants us the power to appoint a skilled person, or to require the provider of a service to appoint a skilled person, to provide a report ('a skilled person's report') in certain circumstances. This section of the draft guidance sets out:
- what a 'skilled person' is;
 - when we might require a skilled person's report, with some examples; and
 - the typical process we expect to follow.

Illegal Harms consultation responses

- 5.2 A number of respondents including [Yoti](#), [NSPCC](#), [Meta and WhatsApp](#), [Microsoft](#) and [Global Partners Digital](#) noted that they would like further clarity on skilled person's reports, including, for example: who might be considered as a skilled person, how Ofcom may assess their skills and the factors we would consider when approving a skilled person. [Meta and WhatsApp](#) also said it would welcome further clarity on when a skilled person may be appointed as a supervisory tool, the factors we will take into account when deciding whether to appoint a skilled person and the level and payment of the skilled person's fees.
- 5.3 [NSPCC](#) was concerned that a service could be required to appoint a skilled person, particularly before Ofcom issues a notice under section 121 requiring a service to use accredited technology to deal with terrorism content or CSEA content (or both), due to the risk of bias. Conversely, [Meta and WhatsApp](#) stated that Ofcom's default position should require the service provider to appoint the skilled person as the service will, in most cases, be best placed to identify a skilled person with the required knowledge and expertise.
- 5.4 Several stakeholders referenced the FCA's approach to skilled persons reviews, noting their publicly accessible list of skilled persons which regulated firms can select from ([Global Partners Digital](#)), and the detailed guidance they have produced ([Meta and WhatsApp](#)).

Our response

- 5.5 We have set out further information on our skilled person powers in our draft guidance, section A5, which covers when we might require a skilled person's report, and the typical process we will follow when exercising our skilled person power.
- 5.6 Paragraph A5.3 sets out the purposes for which we may exercise the skilled person power as set out in section 104 of the Act. Those purposes include assisting us to identify and assess a service's failure (or possible failure) to comply with certain enforceable requirements. However, they also extend to developing our understanding of the nature and level of risk of a failure to comply with enforceable requirements.
- 5.7 We have explained in paragraphs A5.1 and A5.5 who could act as a skilled person. Pursuant to the Act, a skilled person must be a person appearing to Ofcom to have the skills necessary to prepare a report about the relevant matters and, where the appointment is to be made

by the provider, who is nominated or approved by Ofcom.¹⁵ A skilled person could be a person, firm or organisation that is independent from the service or service provider.

- 5.8 This description of who may be a skilled person is broad, due to the wide coverage of matters that a skilled person may be required to report on. We do not consider it necessary or appropriate to limit skilled persons to a particular industry, sector or organisation.
- 5.9 We also explain at paragraph A5.14(b) that, where we request that the service provider selects a skilled person for our approval, we will only approve a skilled person if they (among other things) have the skills necessary to address the matters specified in the notice, and there are no conflicts of interest that may affect their ability to give an objective opinion.
- 5.10 In relation to costs, we note the provider of the service is liable for the payment, directly to the skilled person, of the skilled person's remuneration and expenses relating to the preparation of the report.¹⁶ The cost of a skilled person's report will vary depending on the matters to be explored in the report. Paragraph A3.13(f) sets out that, in considering whether to exercise our powers, we will consider the potential impacts or costs involved, and that we will be reasonable and proportionate.
- 5.11 We note [Meta and WhatsApp's](#) comment that Ofcom's default position should be to require the service to appoint a skilled person. As noted at paragraph A5.13 of the draft guidance, we will decide whether to appoint the skilled person, or whether to require the service provider to appoint them, on a case-by-case basis. However, in circumstances where we are looking to issue a notice to deal with terrorism content or CSEA content (or both) under section 121(1), we must appoint a skilled person.¹⁷
- 5.12 Finally, we note the comment that the FCA has a publicly available panel of skilled persons. As set out in our Illegal Harms Consultation, in general, we do not expect to use our powers to obtain a skilled person's report as often as our information notices power, and these will typically be reserved for more serious or complex cases. As such, where we are to appoint a skilled person, we will consider the procurement model that is most appropriate as we begin to use this power and will keep this under review as our experience develops.

Consultation question 3: Skilled persons' reports (Section 5 of the draft guidance)

Do you have any comments on our approach to skilled persons' reports? This might include the examples of when we might consider it necessary to require a skilled person's report, and the typical process that we propose to follow.

Please provide any information or evidence in support of your comments.

¹⁵ Section 104(5) of the Act.

¹⁶ Section 104(8) of the Act.

¹⁷ Section 122(1) provides that we may give a notice under section 121(1) to a provider only after obtaining a report from a skilled person appointed by OFCOM under section 104(1).

6. Interviews under section 106

Summary of section 6 of the draft guidance

- 6.1 Where a service has failed, or is failing, to comply with a requirement imposed by any enforceable requirement as set out in section 131 of the Act, or to comply with a notice to deal with terrorism and CSEA content, we may decide to open an investigation.¹⁸ Once we have opened an investigation, we may require an individual to attend an interview to answer questions and provide explanations on any matter relevant to the investigation by issuing a notice under section 106 of the Act.¹⁹
- 6.2 This section of the draft guidance sets out:
- a) when we might use this power, including the individuals whom we can require to attend an interview; and
 - b) the typical process we expect to follow.

Illegal Harms consultation responses

- 6.3 No responses relevant to this section were received.

Consultation question 4: Interviews (Section 6 of the draft guidance)

Do you have any comments on the section of the draft guidance dealing with the power to require an individual to attend an interview?

Please provide any information or evidence in support of your comments.

¹⁸ Section 105 of the Act.

¹⁹ Section 106 of the Act.

7. Powers of audit, entry and inspection under Schedule 12

Summary of section 7 of the draft guidance

- 7.1 Schedule 12 to the Act grants Ofcom the power to authorise persons to:
- a) enter and inspect certain premises without a warrant;²⁰
 - b) apply for and execute a warrant to enter and inspect certain premises;²¹ and/or
 - c) carry out audits on a service (which may also involve entering and inspecting premises).²²
- 7.2 For each of these powers, Section 7 of the draft guidance sets out:
- a) when we might use these powers; and
 - b) the typical process we expect to follow.
- 7.3 Our draft guidance notes at paragraph A7.2 that, in general, our use of powers of entry, inspection and audit will typically be reserved for more serious or complex cases.

Illegal Harms consultation responses

- 7.4 No responses relevant to this section were received.

Consultation question 5: Entry with or without a warrant (Section 7 of the draft guidance)

Do you have any comments on our proposed approach to our power to enter and inspect premises, either with or without a warrant?

Consultation question 6: Audit (Section 7 of the draft guidance)

Do you have any comments on our proposed approach to Ofcom's power to carry out an audit?

Please provide any information or evidence in support of your comments.

²⁰ Paragraphs 2-3 of Schedule 12 to the Act.

²¹ Paragraphs 5-15 of Schedule 12 to the Act. A warrant is a legal document issued by the court that grants us certain powers specified within it.

²² Paragraph 4 of Schedule 12 to the Act.

8. Consequences of failure to comply with information gathering powers

Summary of section 8 of the draft guidance

- 8.1 Section 8 of the draft guidance addresses the consequences of a failure to comply with Ofcom’s online safety information gathering powers. These could include:
- a) enforcement action by Ofcom. In relation to enforcement action, Section 8 provides:
 - i) a list of the information powers that may be subject to enforcement action (Table 8.1);
 - ii) an overview of who we may take enforcement action against; and
 - iii) a reference to our [Online Safety Enforcement Guidelines](#); or
 - b) for some of these information gathering powers, criminal liability for business entities and/or individuals. In relation to criminal liability, Section 8 provides a table of the possible offences and defences associated with these information gathering powers, and the possible consequences of committing an offence (Table 8.2).

Illegal Harms consultation responses

- 8.2 No responses relevant to this section were received.

Consultation question 7: Consequences of failure to comply with an information power (Section 8 of the draft guidance)

Do you have any comments on the potential consequences of a failure to comply with any of the information gathering powers covered in the draft guidance? This might be either on breaches that may be subject to enforcement action by Ofcom, or those that may constitute criminal offences.

Consultation question 8: Additional comments

Do you have any other comments on the draft guidance?

Please provide any information or evidence in support of your comments.

9. Impact assessment

9.1 This chapter sets out our Impact Assessment, our Equality Impact Assessment, and our Welsh Language Impact Assessment.

Impact assessment

- 9.2 Section 7 of the Communications Act requires us to carry out and publish an assessment of the likely impact of implementing a proposal which would be likely to have a significant impact on businesses or the general public, or when there is a major change in Ofcom's activities. In accordance with section 7(4B) of the Communications Act, we have to consider the likely impact on small and micro businesses in relation to proposals connected with our online safety functions. As a matter of policy Ofcom is committed to carrying out and publishing impact assessments in relation to the great majority of our policy decisions, although the form of that assessment will depend on the particular nature of the proposal.
- 9.3 Our draft guidance on online safety information gathering powers is intended to help interested persons understand our statutory information gathering powers under the Act, when and how we might use each power, and the potential consequences of non-compliance. As such this guidance does not in itself impose any additional burdens on providers of regulated services or any other persons who might end up being subject to these powers, including small and micro businesses. Rather, by explaining our approach, it is intended to assist providers in understanding the regime and our approach, and therefore should help to reduce the future burden on affected persons as to what such a request might involve. We therefore do not consider we need to separately consider the costs the draft guidance might pose on businesses.
- 9.4 Information gathering powers are an important part of allowing us to gather information we need to meet our legal duties. Paragraphs A3.11-3.13 of the draft guidance explain that we will consider on a case-by-case basis whether exercising any information gathering power would be reasonable and proportionate. In connection with proportionality, we would generally seek the least intrusive regulatory methods of achieving our objectives. When deciding whether and how to exercise an information gathering power, the factors that we will consider include the size and capacity of the stakeholder, the resources required to provide the information, whether the information could be obtained in a less intrusive way, and any other potential impacts or costs involved. We will therefore consider the impact and proportionality of each individual information request. Paragraph A4.22 of the draft guidance explains that we will typically send a draft information notice prior to issuing a final notice to allow the recipient to comment before the notice is finalised.
- 9.5 In setting out our proposals in the draft guidance we have also considered the way in which our information gathering powers could impact human rights:
- a) First, we recognise that our power to gather personal data may impact upon the right to privacy. However, as set out from paragraph A3.40 of the draft guidance, we will seek to limit the personal data which we require under our information gathering powers to that which is necessary for the performance of our functions under the Act.
 - b) Second, we recognise that some of our powers may impact upon the right to the peaceful enjoyment of property. These are our powers to enter and inspect premises

(with²³ and without²⁴ a warrant) and to conduct an audit.²⁵ However, as set out from paragraph A3.11 of the draft guidance, we must exercise all our information gathering powers in a reasonable and proportionate manner. Further, we state in section A7 of the draft guidance that:

- i) in general, our use of these powers will typically be reserved for more serious or complex cases;
 - ii) we recognise that entering and inspecting premises is a significant step and is one we do not anticipate taking often;
 - iii) we are only likely to enter and inspect premises where our other information gathering powers are unlikely to enable us to obtain the information we need;
 - iv) we have no power to enter domestic premises; and
 - v) where we do enter and inspect premises, this will be done at a reasonable hour, unless it appears that the purpose of the search would be frustrated or seriously prejudiced by entering at a reasonable hour
- c) Third, we have considered whether our information gathering powers could have an impact on freedom of expression. However, as set out at paragraph 3.3 above, we do not think that this is the case.

Equality impact assessment

- 9.6 We have given careful consideration to whether our proposals will have a particular impact on persons sharing protected characteristics (broadly including race, age, disability, sex, sexual orientation, gender reassignment, pregnancy and maternity, marriage and civil partnership and religion or belief in the UK and also dependents and political opinion in Northern Ireland), and in particular, whether they may discriminate against such persons or impact on equality of opportunity or good relations. This assessment helps us comply with our duties under the Equality Act 2010 and the Northern Ireland Act 1998.
- 9.7 When thinking about equality we think more broadly than persons that share protected characteristics identified in equalities legislation and think about potential impacts on various groups of persons (see paragraph 4.7 of our [impact assessment guidance](#)).
- 9.8 We do not consider that our proposals will in themselves have any adverse equality impacts. As noted above, our proposals should provide additional certainty and transparency to stakeholders, by setting clear expectations around when and how we might use each power, and the potential consequences of non-compliance. In some instances, we expect that there will be a positive impact on some equality groups. For example, in circumstances where neurodiverse individuals are involved in responding to statutory information notices.

²³ Paragraph 7 of Schedule 12 to the Act.

²⁴ Paragraph 2 of Schedule 12 to the Act.

²⁵ To the extent that this involves a power to require a provider of a regulated service to permit an authorised person to enter and inspect premises: see paragraph 4(2)(a) of Schedule 12 to the Act.

Welsh language

- 9.9 The Welsh language has official status in Wales. To give effect to this, certain public bodies, including Ofcom, are required to comply with certain Welsh language standards.²⁶ Accordingly, we have considered:
- a) the potential impact of our policy proposals on opportunities for persons to use the Welsh language;
 - b) the potential impact of our policy proposals on treating the Welsh language no less favourably than the English language; and
 - c) how our proposals could be formulated so as to have, or increase, a positive impact; or not to have adverse effects or to decrease any adverse effects.
- 9.10 Ofcom’s powers and duties in relation to online safety regulation are set out in the Act and must be exercised in accordance with our general duties under section 3 of the Communications Act. In formulating our proposals in this consultation, where relevant and to the extent we have discretion to do so in the exercise of our functions, we have considered the potential impacts on opportunities to use Welsh and treating Welsh no less favourably than English. We do not think that our proposals set out in this consultation will have any adverse treatment of the Welsh language, and we do not consider that there is scope, acting within our powers, to formulate our proposed guidance differently so as to have increased positive effects on these matters.
- 9.11 We will continue to issue some statutory information notices in Welsh, where required by Welsh stakeholders. We do not intend to translate our guidance into Welsh.

²⁶ The [Welsh language standards](#) with which Ofcom is required to comply are available on our website.

A1. Draft Online Safety Information Powers Guidance

The [annexed guidance](#) has been published as a separate document.

A2. Responding to this consultation

How to respond

- A2.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on 4 October 2024.
- A2.2 You can download a response form from <https://www.ofcom.org.uk/online-safety/illegal-and-harmful-content/consultation-online-safety-information-guidance>. You can return this by email or post to the address provided in the response form.
- A2.3 If your response is a large file, or has supporting charts, tables or other data, please email it to OSinfoguidance@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 4 October 2024.
- A2.4 Responses may alternatively be posted to the address below, marked with the title of the consultation:
- The Enforcement Team
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- A2.5 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.
- A2.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A2.7 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.
- A2.8 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.
- A2.9 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed in section 13 of this document. 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.
- A2.10 If you want to discuss the issues and questions raised in this consultation, please email OSinfoguidance@ofcom.org.uk.

Confidentiality

- A2.11 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.
- A2.12 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.
- A2.13 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.
- A2.14 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.
- A2.15 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.
- A2.16 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

- A2.17 Following this consultation period, Ofcom plans to publish a statement in early 2025.
- A2.18 If you wish, you can register to receive mail updates alerting you to new Ofcom publications.

Ofcom's consultation processes

- A2.19 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in section 11 of this document.
- A2.20 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 residential consumers, who are less likely to give their opinions through a formal consultation.

A2.21 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:

A2.22 Corporation Secretary
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA
Email: corporationsecretary@ofcom.org.uk

A3. Ofcom's consultation principles

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

Before the consultation

A3.1 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

A3.2 We will be clear about whom we are consulting, why, on what questions and for how long.

A3.3 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.

A3.4 When setting the length of the consultation period, we will consider the nature of our proposals and their potential impact. We will always make clear the closing date for responses.

A3.5 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.

A3.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

A3.7 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.

A4.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 email 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)

A5. Consultation questions

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.

In considering your response, it might be helpful to note the summaries of stakeholder responses to our Illegal Harms Consultation, which contained a summary of our information gathering powers and some brief comments on our approach to exercising them. These summaries along with our responses are contained in sections 3 to 8 of this document.

Where possible, please also provide any information or evidence in support of your comments.

Consultation question 1: Ofcom’s general approach to information gathering (Section 3 of the draft guidance)

Do you have any comments on Ofcom’s proposed general approach to information gathering, as outlined in Section 3 of the draft guidance?

Consultation question 2: Information notices (Section 4 of the draft guidance)

a) Information notices

Do you have any comments on Ofcom’s proposed approach to the process for issuing and responding to information notices.

b) Requiring a test

Do you have any comments on our proposed approach to information notices that require recipients to perform a test?

c) Remote viewing

Do you have any comments on our proposed approach to Remote Viewing Information Notices? For example, to the factors that we may take into account when considering whether to issue a Remote Viewing Information Notice.

d) Coroner Information Notices

Do you have any comments on our proposed approach to issuing Coroner Information Notices for the purpose of responding to requests for information by investigating authorities in connection with an investigation or inquest into the death of a child?

e) Naming a senior manager

Do you have any comments on the section relating to naming a senior manager who is in a position to ensure compliance with an information notice?

Consultation question 3: Skilled persons’ reports (Section 5 of the draft guidance)

Do you have any comments on our approach to skilled persons’ reports? This might include when we might decide to require a skilled person’s report, and the typical process that we propose to follow.

Consultation question 4: Interviews (Section 6 of the draft guidance)

Do you have any comments on the section of guidance dealing with the power to require an individual to attend an interview?

Consultation question 5: Entry with or without a warrant (Section 7 of the draft guidance)

Do you have any comments on our proposed approach to entry either with or without a warrant? This might include the typical process and our interpretation of the requirement to have regard to the Home Office's code of practice on powers of entry.

Consultation question 6: Audit (Section 7 of the draft guidance)

Do you have any comments on our proposed approach to the power for Ofcom to carry out an audit to assess compliance?

Consultation question 7: Consequences of failure to comply with an information power (Section 8 of the draft guidance)

Do you have any comments on the potential consequences of a failure to comply with any of the information gathering powers covered in the draft guidance? This might be either on breaches that may be subject to enforcement action by Ofcom, or those that may constitute criminal offences.

Consultation question 8: Additional comments

Do you have any other comments on the draft guidance?

Please provide any information or evidence in support of your views.