

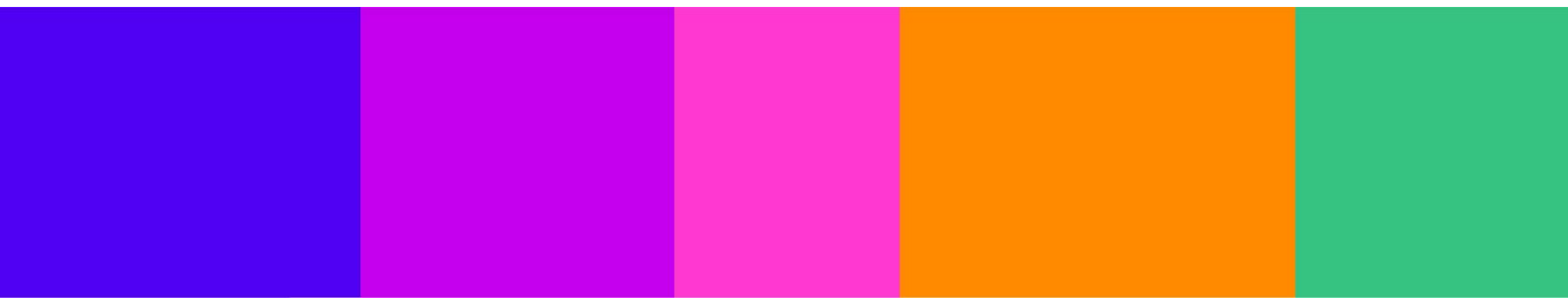


# Consultation response form

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Please complete this form in full and return to [protectingchildren@ofcom.org.uk](mailto:protectingchildren@ofcom.org.uk).

<b>Consultation title</b>	Consultation: Protecting children from harms online
<b>Organisation name</b>	The Age Verification Providers Association



## Your response

Question	Your response
<p><b>Volume 2: Identifying the services children are using Children’s Access Assessments (Section 4).</b></p>	
<p><b>Do you agree with our proposals in relation to children’s access assessments, in particular the aspects below. Please provide evidence to support your view.</b></p> <p>1. Our proposal that service providers should only conclude that children are not normally able to access a service where they are using highly effective age assurance?</p> <p>2. Our proposed approach to the child user condition, including our proposed interpretation of “significant number of users who are children” and the factors that service providers consider in assessing whether the child user condition is met?</p> <p>3. Our proposed approach to the process for children’s access assessments?</p>	<p>Confidential? – No</p> <p>1. We note the guidance has not yet defined HEAA and refer back to our suggestion made in response to the illegal harms consultation that it could be phrased as follows:</p> <p><i>Highly effective age assurance systems must demonstrate that their certified expected outcomes are such that more than 95% of children under 18 are prevented from accessing primary priority content, and more than 99% of children under 16 are prevented.</i></p> <p>We believe this is consistent with the Act:</p> <p>Safety duties protecting children: interpretation</p> <p>“provider is only entitled to conclude that it is not possible for children to access a service, or a part of it, if age verification or age estimation is used on the service with the result that children <b>are not normally able to access</b> the service or that part of it.”</p> <p>In the absence of a clear definition by Ofcom, we will need to define Highly Effective Age Assurance ourselves, through industry standards and certification schemes. We will include as part of that development process, the outcome of the investigation into the application of facial age estimation, where Ofcom is considering whether or not the reduction in the test age from 23 to 20 may have resulted in a failure to meet Ofcom’s requirements (under the interim Video Sharing Platform regime) to “effectively protect under-18s from pornographic material”. We are assuming in doing so that the</p>

Question	Your response
	<p>standard being applied for VSPs is intended to be the same as will be expected for HEAA.</p> <p>In the absence of numerically specific guidance as to what meets the requirement for HEAA, it is impossible for platforms to know at which level of assurance to set their solutions. This lack of clarity is in fact a deterrent for others to act, ahead of any clarity as to the definition for HEAA.</p> <p>It will emerge what is and is not sufficient to count as “highly effective”, based on adjudications of complaints and investigations. But in the absence of metrics, there will be a race to the bottom; less scrupulous platforms will document that preventing 70% of users who are under age from being exposed to primary priority harms is highly effective in their opinion. Ofcom may challenge that. The courts will struggle to determine that 70% is not sufficient if Ofcom cannot say what figure would be sufficient.</p> <p>And without some attempt to assure age at 13, which we address below at Q31, there will be little or no impact when Ofcom repeats its surveys of the age at which children are being considered adults online because they first opened a social media account by lying about their age, and platforms have computed when they turn 18 based on that misleading data point.</p>
<p><b>Volume 3: The causes and impacts of online harm to children</b></p> <p><b>Draft Children’s Register of Risk (Section 7)</b></p>	
<p><b>Proposed approach:</b></p> <p>4. Do you have any views on Ofcom’s assessment of the causes and impacts of online harms? Please provide evidence to support your answer.</p> <p>a. Do you think we have missed anything important in our analysis?</p> <p>5. Do you have any views about our interpretation of the links between</p>	<p>Confidential? – No</p>

Question	Your response
<p>risk factors and different kinds of content harmful to children? Please provide evidence to support your answer.</p> <p>6. Do you have any views on the age groups we recommended for assessing risk by age? Please provide evidence to support your answer.</p> <p>7. Do you have any views on our interpretation of non-designated content or our approach to identifying non-designated content? Please provide evidence to support your answer.</p> <p><b>Evidence gathering for future work:</b></p> <p>8. Do you have any evidence relating to kinds of content that increase the risk of harm from Primary Priority, Priority or Non-designated Content, when viewed in combination (to be considered as part of cumulative harm)?</p> <p>9. Have you identified risks to children from GenAI content or applications on U2U or Search services?</p> <p>a) Please Provide any information about any risks identified</p> <p>10. Do you have any specific evidence relevant to our assessment of body image content and depressive content as kinds of non-designated content? Specifically, we are interested in:</p> <p>a) (i) specific examples of body image or depressive content linked to significant harms to children,</p> <p>b. (ii) evidence distinguishing body image or depressive content from existing categories of priority or primary priority content.</p> <p>11. Do you propose any other category of content that could meet the</p>	

Question	Your response
<p>definition of NDC under the Act at this stage? Please provide evidence to support your answer.</p>	
<p><b>Draft Guidance on Content Harmful to Children (Section 8)</b></p>	
<p>12. Do you agree with our proposed approach, including the level of specificity of examples given and the proposal to include contextual information for services to consider?</p> <p>13. Do you have further evidence that can support the guidance provided on different kinds of content harmful to children?</p> <p>14. For each of the harms discussed, are there additional categories of content that Ofcom</p> <p>a) should consider to be harmful or</p> <p>b) consider not to be harmful or</p> <p>c) where our current proposals should be reconsidered?</p>	<p>Confidential? – No</p>
<p><b>Volume 4: How should services assess the risk of online harms?</b></p> <p><b>Governance and Accountability (Section 11)</b></p>	
<p>15. Do you agree with the proposed governance measures to be included in the Children’s Safety Codes?</p> <p>a) Please confirm which proposed measure your views relate to and explain your views and provide any arguments and supporting evidence.</p> <p>b) If you responded to our Illegal Harms Consultation and this is relevant to your response here, please signpost to the relevant parts of your prior response.</p>	<p>Confidential? – No</p>

Question	Your response
<p>16. Do you agree with our assumption that the proposed governance measures for Children's Safety Codes could be implemented through the same process as the equivalent draft Illegal Content Codes?</p>	
<p><b>Children's Risk Assessment Guidance and Children's Risk Profiles' (Section 12)</b></p>	
<p>17. What do you think about our proposals in relation to the Children's Risk Assessment Guidance?</p> <p>a) Please provide underlying arguments and evidence of efficacy or risks that support your view.</p> <p>18. What do you think about our proposals in relation to the Children's Risk Profiles for Content Harmful to Children?</p> <p>a) Please provide underlying arguments and evidence of efficacy or risks that support your view.</p> <p>Specifically, we welcome evidence from regulated services on the following:</p> <p>19. Do you think the four-step risk assessment process and the Children's Risk Profiles are useful models to help services understand the risks that their services pose to children and comply with their child risk assessment obligations under the Act?</p> <p>20. Are there any specific aspects of the children's risk assessment duties that you consider need additional guidance beyond what we have proposed in our draft?</p> <p>21. Are the Children's Risk Profiles sufficiently clear and do you think the information provided on risk factors will</p>	<p>Confidential? – No</p>

Question	Your response
<p>help you understand the risks on your service?</p> <p>a) If you have comments or input related to the links between different kinds of content harmful to children and risk factors, please refer to Volume 3: Causes and Impacts of Harms to Children Online which includes the draft Children’s Register of Risks.</p>	
<p><b>Volume 5 – What should services do to mitigate the risk of online harms</b></p> <p><b>Our proposals for the Children’s Safety Codes (Section 13)</b></p>	
<p><b>Proposed measures</b></p> <p>22. Do you agree with our proposed package of measures for the first Children’s Safety Codes?</p> <p>a) If not, please explain why.</p> <p><b>Evidence gathering for future work.</b></p> <p>23. Do you currently employ measures or have additional evidence in the areas we have set out for future consideration?</p> <p>a) If so, please provide evidence of the impact, effectiveness and cost of such measures, including any results from trialling or testing of measures.</p> <p>24. Are there other areas in which we should consider potential future measures for the Children’s Safety Codes?</p> <p>a) If so, please explain why and provide supporting evidence.</p>	<p>Confidential? – No</p>

**Developing the Children’s Safety Codes: Our framework (Section 14)**

25. Do you agree with our approach to developing the proposed measures for the

Children’s Safety Codes?

a) If not, please explain why.

26. Do you agree with our approach and proposed changes to the draft Illegal Content Codes to further protect children and accommodate for potential synergies in how systems and processes manage both content harmful to children and illegal content?

a) Please explain your views.

27. Do you agree that most measures should apply to services that are either large services or smaller services that present a medium or high level of risk to children?

28. Do you agree with our definition of ‘large’ and with how we apply this in our recommendations?

29. Do you agree with our definition of ‘multi-risk’ and with how we apply this in our recommendations?

30. Do you agree with the proposed measures that we recommend for all services, even those that are small and low-risk?

Confidential? – No

**Age assurance measures (Section 15)**

31. Do you agree with our proposal to recommend the use of highly effective age assurance to support Measures AA1-6? Please provide any information or evidence to support your views.

Confidential? – No

**Minimum Age under terms of service**

The proposed regulations abandon any attempt to enforce the minimum age required by a platform’s terms of service, or, in cooperation with the ICO, the age of digital consent. These are clear statutory requirements which



a) Are there any cases in which HEAA may not be appropriate and proportionate?

b) In this case, are there alternative approaches to age assurance which would be better suited?

32. Do you agree with the scope of the services captured by AA1-6?

33. Do you have any information or evidence on different ways that services could use highly effective age assurance to meet the outcome that children are prevented from encountering identified PPC, or protected from encountering identified PC under Measures AA3 and AA4, respectively?

34. Do you have any comments on our assessment of the implications of the proposed Measures AA1-6 on children, adults or services?

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

35. Do you have any information or evidence on other ways that services could consider different age groups when using age assurance to protect children in age groups judged to be at risk of harm from encountering PC?

Parliament expects, not least because the Minister promised it, Ofcom and the ICO to enforce.

On the 29<sup>th</sup> November 2022, the then Secretary of State announced changes to the Online Safety Bill:

*“The Bill’s key objective, above everything else, is the safety of young people online. Not only will we preserve the existing protections, I will table a number of amendments that go further to strengthen the existing protections for children in the Bill to:*

- ***make clearer the existing expectations of platforms in understanding the age of their users and, where platforms specify a minimum age for users, require them to clearly explain in their terms of service the measures they use to enforce this and if they fail to adhere to these measures, Ofcom will be able to act.***

Consequently, at the Bill’s Report Stage on 5<sup>th</sup> December 2022, the then Minister, Paul Scully, confirmed:

*“The Bill’s key objective, above everything else, is the safety of children online, and we will be making a number of changes to strengthen the Bill’s existing protections for children. **We will make sure that we expect platforms to use age assurance technology when identifying the age of their users, and we will also require platforms with minimum age restrictions to explain in their terms of service what measures they have in place to prevent access to those below their minimum age, and enforce those measures consistently.**”* (Hansard, Volume 724, Column 46)

In answer to a question by a Labour MP Mike Amesbury about the risk of children circumventing age reassurance (sic), the minister went on to say

*“As I said, **the social media platforms will have to put in place robust age assurance and age verification for material in an accredited form that is acceptable to Ofcom, which will look at that.**”*

We also note the clear requirement under UK GDPR Article 8 for parental consent before processing the personal data of children under 13 on the legal basis of consent

for which the ICO remains responsible to enforce, but has been reluctant to do so until the Online Safety Act regime comes into force, in the interests of consistency. If Ofcom is not going to take a position on this, then the ICO no longer has any excuse to delay its enforcement of this important data protection measure, but this will lead to the inconsistent and misaligned regulatory regimes which we have been told we needed to avoid.

Ofcom rules out Highly Effective Age Assurance (HEAA) for this purpose “given we have limited independent evidence that age assurance technology can correctly distinguish between children in different age groups to a highly effective standard and, given this, there is a risk that this could have serious impact on children’s ability to access services.” We strongly dispute this conclusion.

First, this is a strawman argument, because it is widely recognised that strict age verification for children, given the more limited data sources, would be impractical as a general requirement at 13. This is why we, and others, have long argued for a lower standard of age assurance, perhaps termed “Broadly Effective Age Assurance” could be introduced to at least begin to reduce the age at which children are regularly opening social media accounts below the minimum age required by terms of service and UK GDPR.

This could be simply set to test if users appear through facial age estimation (or other methods such as email estimation) to be under 13. But we appreciate that Ofcom is concerned, as Melanie Dawes explained to the Today Programme on BBC Radio 4, that this could wrongly exclude too many children over 13. We believe that is easily solved, as we will explain below.

But as a first step, it is perfectly feasible with today’s state-of-the-art age estimation technology to begin to prevent very young children from opening accounts, without an unacceptable degree of exclusion due to false negatives.

For example, if Ofcom accepts that facial age estimation can be, for example, 99% effective with a two year “buffer” age, it could at least require that children who appear to be under 11 to an estimation algorithm, are prevented from opening accounts. This would mean under 0.5% of children who are in fact 13+ would be “false negatives” and would need to find some alternative way to prove their age, but would have immediately curtailed

access by almost every child under 9, most 9-year-olds and majority of 10-year-olds.

But it is also feasible to tighten the control further without an unacceptable degree of exclusion of children old enough to open an account without parental consent and in line with the usual minimum age of 13.

If a child who is 13 or older is wrongly classified as being underage, there are a number of methods of age verification which are highly effective and are already available to the vast majority of children.

First, the vast majority of children have a current passport, according to ONS figures. [7,219,650](#) children aged 13 or younger have a UK or non-UK passport. There are [9,654,163](#) children in this age group, implying that 74.8% of children would have had a passport by the time they reach 13. The figure rises to 80.4% for all under 18.

- [Research](#) by insurers Admiral found the average age children take their first trip abroad is 8, and half of kids have travelled abroad before their 5<sup>th</sup> birthday, so penetration levels for passports are already very high at 13.
- [ABTA](#) reports that 58% of families with a child 5 or under went overseas in the past year, and 57% with children aged 6-15

Perhaps more importantly, if the main concern about applying estimation at 13, with a mean average error of, say, up to two years, then the question is how many of the children who might potentially become false negatives, children who are 13, 14 or even 15 who are wrongly estimated to be below 13, have a passport to help rectify this. **The answer based on the same above referenced Official Statistics from ONS is 95.5%.** So fewer than 95,000 children would be unable to use a passport to correct this. We would only need to find a contingency, such as vouching by a recognised professional before an alternative proof of age is issued, for any of those who fell into the false negative category.

Some of those 50,000 will have a bank account, which is another option for confirming the age of a minor, so it would be even fewer.

- 2.8 million children had a bank account (2017) according to [Nationwide](#), with 750,000 new accounts opened by them a year.

Industry could simply be required to underwrite the cost of these “age checks of last resort” to guarantee that no child is unable to prove their age, even if they are undocumented, and we would certainly be prepared to facilitate a suitable scheme to meet that condition

So, for the 2.5% or fewer children without existing documentation, then vouching is available, such as the process already operated by issuers of Proof of Age Standards Scheme cards (see [Citizencard](#) for example). This is a robust and audited approach to confirming age where documentation is not available. It would be easy for Ofcom to require that platforms make this option available at no additional cost to users to guarantee accessibility and inclusivity.

This is all achievable today. With some determination and will, Ofcom could go further to enable age verification at 13. The systems in place to check adult ages against authoritative databases such as the electoral roll or credit reference agencies, can easily be applied to confirm the age of children from relevant databases, if Ofcom takes the initiative to work with the owners of such data across government – education, health and benefits databases would all solve this problem.

We note the comments of eight peers who were regularly engaged in the consideration of the Act in the House of Lords which we endorse

*It's possible that Ofcom officials are concerned that age assurance for children below the age of 18 is hard to achieve with today's technology. If that is the case, we would respectfully suggest that this concern does not align with existing industry practice where a range of age assurance methods are already being deployed to estimate the age or age range of users for safety, privacy and commercial reasons. There is also clear evidence over the last decade that the regulated companies invest time and money in child safety technology when regulators require them to do so. And when legislation is in place, such as the Age-Appropriate Design Code, tech development has followed swiftly.*

*The Act anticipates that age estimation strategies will be part of the regulatory standards and so your decision to require a single standard of age assurance (“highly effective”) goes against*

*the terms of the Act and the intentions of Parliament. We are bewildered at the decision to do nothing at all to protect children under 13, and at the same time give regulated companies safe harbour...*

*Throughout the Act's passage through parliament, both HMG and Ofcom repeatedly assured us that the Act gave you the powers required to protect children. At no point did Ofcom raise concerns that the powers were insufficient, indeed when parliamentarians raised concerns about ensuring that age assurance was developed to create age-appropriate services, or that terms should be mandatory – we were told that 'the Children's Code would do that'. So, we are confused as to why you have chosen not to."*

It would not be in keeping with either the letter or the spirit of the Online Safety Act to give up on any attempt to enforce the minimum age required by terms of service, and indeed by GDPR and the age-appropriate design code. Ofcom can add regulations to mitigate fully the risk of exclusion through guaranteeing alternative options for verification for children who lack documents or records.

We draw the attention of Ofcom to the latest work of [euCONSENT ASBL](#) in developing a tokenized, double-blind, device-based interoperable solution for age assurance. This can be used to enable other sites and apps to easily assure the age of all users once they have completed a single, initial age check with a participating age assurance provider.

This solution will distinguish between differing levels of assurance, so it will be possible to require that only tokens created based on checks which meet the standard for Highly Effective Age Assurance can be used when that is required, while tokens from a "broadly effective age assurance" process could be accepted for lower risk use-cases.

<p>36. Do you agree with our proposals? Please provide the underlying arguments and evidence that support your views.</p> <p>37. Do you agree with the proposed addition of Measure 4G to the Illegal Content Codes?</p> <p>a) Please provide any arguments and supporting evidence.</p>	<p>Confidential? – No</p>
<p><b>Search moderation (Section 17)</b></p>	
<p>38. Do you agree with our proposals? Please provide the underlying arguments and evidence that support your views.</p> <p>39. Are there additional steps that services take to protect children from the harms set out in the Act?</p> <p>a) If so, how effective are they?</p> <p>40. Regarding Measure SM2, do you agree that it is proportionate to preclude users believed to be a child from turning the safe search settings off?</p> <p>The use of Generative AI (GenAI), see Introduction to Volume 5, to facilitate search is an emerging development, which may include where search services have integrated GenAI into their functionalities, as well as where standalone GenAI services perform search functions. There is currently limited evidence on how the use of GenAI in search services may affect the implementation of the safety measures as set out in this code. We welcome further evidence from stakeholders on the following questions and please provider arguments and evidence to support your views:</p> <p>41. Do you consider that it is technically feasible to apply the proposed code measures in respect of GenAI</p>	<p>Confidential? – No</p>

functionalities which are likely to perform or be integrated into search functions?

42. What additional search moderation measures might be applicable where GenAI performs or is integrated into search functions?

**User reporting and complaints (Section 18)**

43. Do you agree with the proposed user reporting measures to be included in the draft Children’s Safety Codes?

a) Please confirm which proposed measure your views relate to and explain your views and provide any arguments and supporting evidence.

b) If you responded to our Illegal Harms Consultation and this is relevant to your response here, please signpost to the relevant parts of your prior response.

44. Do you agree with our proposals to apply each of Measures UR2 (e) and UR3 (b) to all services likely to be accessed by children for all types of complaints?

a) Please confirm which proposed measure your views relate to and explain your views and provide any arguments and supporting evidence.

b) If you responded to our Illegal Harms Consultation and this is relevant to your response here, please signpost to the relevant parts of your prior response.

45. Do you agree with the inclusion of the proposed changes to Measures UR2 and UR3 in the Illegal Content Codes (Measures 5B and 5C)?

Confidential? – No

a) Please provide any arguments and supporting evidence.



**Terms of service and publicly available statements (Section 19)**

46. Do you agree with the proposed Terms of Service / Publicly Available Statements measures to be included in the Children’s Safety Codes?

a) Please confirm which proposed measures your views relate to and provide any arguments and supporting evidence.

b) If you responded to our illegal harms consultation and this is relevant to your response here, please signpost to the relevant parts of your prior response.

47. Can you identify any further characteristics that may improve the clarity and accessibility of terms and statements for children?

48. Do you agree with the proposed addition of Measure 6AA to the Illegal Content Codes?

a) Please provide any arguments and supporting evidence.

Confidential? – No

**Recommender systems (Section 20)**

49. Do you agree with the proposed recommender systems measures to be included in the Children’s Safety Codes?

a) Please confirm which proposed measure your views relate to and provide any arguments and supporting evidence.

b) If you responded to our illegal harms consultation and this is relevant to your response here, please signpost to the relevant parts of your prior response.

Confidential? – No

50. Are there any intervention points in the design of recommender systems that we have not considered here that could effectively prevent children from being recommended primary priority content and protect children from encountering priority and non-designated content?

51. Is there any evidence that suggests recommender systems are a risk factor associated with bullying? If so, please provide this in response to Measures RS2 and RS3 proposed in this chapter.

52. We plan to include in our RS2 and RS3, that services limit the prominence of content that we are proposing to be classified as non-designated content (NDC), namely depressive content and body image content. This is subject to our consultation on the classification of these content categories as NDC. Do you agree with this proposal? Please provide the underlying arguments and evidence of the relevance of this content to Measures RS2 and RS3.

- Please provide the underlying arguments and evidence of the relevance of this content to Measures RS2 and RS3.

### **User support (Section 21)**

53. Do you agree with the proposed user support measures to be included in the Children's Safety Codes?

a) Please confirm which proposed measure your views relate to and provide any arguments and supporting evidence.

b) If you responded to our Illegal harms consultation and this is relevant to your response here, please signpost

Confidential? – No

to the relevant parts of your prior response.

**Search features, functionalities and user support (Section 22)**

54. Do you agree with our proposals? Please provide underlying arguments and evidence to support your views.

55. Do you have additional evidence relating to children’s use of search services and the impact of search functionalities on children’s behaviour?

56. Are there additional steps that you take to protect children from harms as set out in the Act?

a) If so, how effective are they?

As referenced in the Overview of Codes, Section 13 and Section 17, the use of GenAI to facilitate search is an emerging development and there is currently limited evidence on how the use of GenAI in search services may affect the implementation of the safety measures as set out in this section. We welcome further evidence from stakeholders on the following questions and please provide arguments and evidence to support your views:

57. Do you consider that it is technically feasible to apply the proposed codes measures in respect of GenAI functionalities which are likely to perform or be integrated into search functions? Please provide arguments and evidence to support your views.

Confidential? – No

**Combined Impact Assessment (Section 23)**

58. Do you agree that our package of proposed measures is proportionate, taking into account the impact on children's safety online as well as the implications on different kinds of services?

Confidential? – No

**Statutory tests (Section 24)**

59. Do you agree that our proposals, in particular our proposed recommendations for the draft Children's Safety Codes, are appropriate in the light of the matters to which we must have regard?  
a) If not, please explain why.

Confidential? – No

**Annexes**

**Impact Assessments (Annex A14)**

60. In relation to our equality impact assessment, do you agree that some of our proposals would have a positive impact on certain groups?

61. In relation to our Welsh language assessment, do you agree that our proposals are likely to have positive, or more positive impacts on opportunities to use Welsh and treating Welsh no less favourably than English?

a) If you disagree, please explain why, including how you consider these proposals could be revised to have positive effects or more positive effects, or no adverse effects or fewer adverse effects on opportunities to use Welsh and treating Welsh no less favourably than English.

Please complete this form in full and return to [protectingchildren@ofcom.org.uk](mailto:protectingchildren@ofcom.org.uk).