EXPLANATORY MEMORANDUM TO

THE ONLINE SAFETY ACT 2023 (PRIORITY OFFENCES) (AMENDMENT) REGULATIONS 2025

2025 No. [XXXX]

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Science, Innovation and Technology and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Kanishka Narayan, Parliamentary Under-Secretary of State for AI and Online Safety, at the Department for Science Innovation and Technology confirms that this Explanatory Memorandum meets the required standard.

2.2 Daniel Okubo, Deputy Director for Online Safety Policy and Regulation, at the Department for Science, Innovation and Technology confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Max Pumphrey at the Department for Science, Innovation and Technology can be contacted by email at the following address with any queries regarding the instrument: email: osaimplementation@dsit.gov.uk. Alternatively, the department can be contacted by telephone: 020 7215 3000.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument amends the Online Safety Act 2023 (OSA). The OSA gives certain internet services duties to protect their users from illegal content and activity online. Within these duties, regulated user-to-user and search service providers have additional obligations for 'priority offences.' Section 3 of the OSA defines a 'user-to-user service' as an internet service by means of which content that is generated directly on the service by a user of the service, or uploaded to or shared on the service by a user of the service, may be encountered by another user, or other users, of the service. It defines a 'search service' as an internet service that is, or includes, a search engine.

4.2 These priority offences are set out in Schedules 5 (terrorism offences), 6 (offences related to child sexual exploitation and abuse), and 7 (other priority offences) to the OSA. Together these reflect the most serious and prevalent illegal content and activity.

4.3 This instrument inserts the offence of 'sending etc photograph or film of genitals' ('cyberflashing') from section 66 of the Sexual Offences Act 2003 (SOA) and 'encouraging or assisting serious self-harm' ('self-harm offence') from section 184 of the OSA into the list of 'priority offences' in Schedule 7 to the OSA. These offences

relate to sending photograph or film of genitals as set out in section 66A of the SOA and encouraging or assisting serious self-harm.

Where does the legislation extend to, and apply?

4.4 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland, and Northern Ireland.

4.5 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, Scotland, and Northern Ireland.

5. Policy Context

What is being done and why?

5.1 The Secretary of State is empowered under section 222 of the OSA to amend Schedules 5, 6, and 7, which set out the 'priority offences' for provider's illegal content duties. Section 222(3) enables the Secretary of State to add new offences to Schedule 7 (priority offences), where they consider it appropriate to do so because of factors including the prevalence of the relevant kind of content and the risk and severity of harm it poses to UK users. The Secretary of State decided it was appropriate to add cyberflashing and self-harm offences as priority offences because of these factors.

5.2 The OSA creates a regulatory regime which gives user-to-user and search service providers new duties with respect to user-generated content they host – or that can be accessed – via their services. These include 'illegal content safety duties'. As part of these duties, the OSA establishes duties for 'priority offences'. Priority offences are the most prevalent and harmful offences, presenting greatest risk to users on in-scope services. These offences are set out in Schedules 5, 6, and 7 to the OSA. Providers need to do a separate risk assessments for each different kind of 'priority illegal content'. User-to-user service providers will need to implement systems and processes to reduce the risks their services are used to commit or facilitate priority offences and prevent users from encountering content which amount to priority offences. Search services must put in place systems and processes to reduce the likelihood users encounter content that amount to priority offences.

5.3 Providers will have the 'priority' illegal content duties for the cyberflashing and self-harm offences. This will ensure that providers focus on tackling cyberflashing content and self-harm content on their services, and this will lead to greater protection from these kinds of content for UK users.

What was the previous policy, how is this different?

5.4 Currently the cyberflashing and self-harm offences are 'relevant offences' but not 'priority offences' for the purpose of providers' OSA illegal content duties. Platforms need to do a single, general risk assessment covering all non-priority 'illegal content' ('relevant offences' and, where relevant, put in systems to mitigate and manage identified risks, including content moderation systems.

5.5 Ofcom is the regulator for the OSA and sets out steps providers can take in codes of practice and guidance[1]. It has published this documentation for the illegal content duties, which took effect in March 2025. Ofcom has included some provisions about how providers can identify cyberflashing and self-harm content which will continue to

[1] https://www.ofcom.org.uk/online-safety/illegal-and-harmful-content/statement-protecting-people-from-illegal-harms-online

be relevant. The codes of practice include recommendations about measures (such as content moderation and user reporting measures) that providers can put in place to tackle illegal content, including cyberflashing and self-harm content.

5.6 Adding the cyberflashing and self-harm offences to Schedule 7 (priority offences), means service providers will need to focus on tackling these types of content, carrying out specific risk assessments for it and potentially putting in specialised measures which will lead to greater protection from these kinds of content for UK users.

6. Legislative and Legal Context

How has the law changed?

6.1 Schedule 7 to the OSA will be updated to change the status of cyberflashing and assisting serious self-harm offences from 'relevant offences' to 'priority offences'.

Why was this approach taken to change the law?

6.2 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 As set out above at paragraph 5.2, section 222 of the OSA empowers the Secretary of State to add to the list of priority offences in Schedules 5, 6 and 7 to the OSA where they consider it appropriate to do so because of factors including the prevalence of the relevant kind of content and the risk and severity of harm it poses to UK users. The Secretary of State decided to add cyberflashing and self-harm offences as priority offences after considering evidence about these factors, on the basis of which the Secretary of State considered it appropriate to do so.

8. Applicable Guidance

8.1 Under the OSA, Ofcom is obliged to produce codes of practice for providers[2]. These set out proportionate steps providers can take to fulfil their duties, including their illegal content duties for cyberflashing and assisting serious self-harm as 'priority offences' (among other offences).

8.2 Ofcom is also obliged to produce guidance for providers, to assist them in fulfilling their illegal content duties[3]. This includes guidance on how providers should make judgements about illegal content such as the cyberflashing and self-harm offences[4], and how they should carry out their risk assessments for illegal content such as the cyberflashing and self-harm offences[5].

[2] https://www.ofcom.org.uk/siteassets/resources/documents/online-safety/information-for-industry/illegal-harms/illegal-content-codes-of-practice-for-user-to-user-services-24-feb.pdf?v=391889 and https://www.ofcom.org.uk/siteassets/resources/documents/online-safety/information-for-industry/illegal-harms/illegal-content-codes-of-practice-for-search-services-24-feb.pdf?v=391888

[3] https://www.ofcom.org.uk/online-safety/illegal-and-harmful-content/statement-protecting-people-from-illegal-harms-online

[4] https://www.ofcom.org.uk/siteassets/resources/documents/online-safety/information-for-industry/illegal-harms/illegal-content-judgements-guidance-statement-updated-30-july-2025.pdf?v=403556

[5] https://www.ofcom.org.uk/siteassets/resources/documents/online-safety/information-for-industry/illegal-harms/risk-assessment-guidance-and-risk-profiles.pdf?v=390984

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because the impacts are expected to be minimal and fall below the de minimis threshold. The changes brought about by the instrument are estimated to result in approximately £0.8 million equivalent annual direct cost to business (EANDCB) in total.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on businesses, charities or voluntary bodies because this change does not (in itself) significantly affect their duties under the OSA.

9.3 The legislation does not impact small or micro businesses for the same reason as set out in paragraph 9.2.

9.4 While the changes do empower Ofcom to require regulated providers to take more action to tackle illegal cyberflashing and self-harm content, the OSA also requires Ofcom to ensure the measure it recommends for providers are proportionate relative to risk and to providers' differing sizes and capacities, among other factors.

9.5 There is no, or no significant, impact on the public sector because these bodies will not usually have duties under the OSA, as public sector websites are not usually of a kind that will be in scope.

9.6 In addition, the instrument will not significantly increase burdens on Ofcom. The instrument empowers Ofcom to recommend measures for cyberflashing and self-harm content. There is already some provision in Ofcom's codes of practice and guidance about this content (given their current status as 'relevant offences' for the OSA 'illegal content duties').

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The OSA imposes obligations on both Ofcom and the Secretary of State to review the functioning of the Act's illegal content duties. This will encompass the inclusion of the new cyberflashing and self-harm offences as priority offences for providers' duties.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Kanishka Narayan has made the following statement: "In my view it is not appropriate in the circumstances to make provision for review in this instrument, as the Online Safety Act already makes provision for wider review of the Online Safety Act regulation. This review must take place within two years of the last provisions in the regulatory framework being implemented, and must consider matters including how effective the framework is in ensuring that the regulation of services is proportionate."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Parliamentary Under-Secretary of State for AI and Online Safety has made the following statement regarding Human Rights: "In my view the provisions of the Online Safety Act 2023 (Priority Offences) (Amendment) Regulations 2025 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").