EXPLANATORY MEMORANDUM TO

THE ONLINE SAFETY SUPER-COMPLAINTS (ELIGIBILITY AND PROCEDURAL MATTERS) REGULATIONS 2025

2025 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Science, Innovation and Technology (DSIT) and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Baroness Jones of Whitchurch, Parliamentary Under-Secretary of State for the Future Digital Economy 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 of 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 John Sexton at the Department for Science, Innovation and Technology Telephone: 07511 161702 or email: osaimplementation@dsit.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument establishes the relevant eligibility criteria and procedure for super-complaints made under section 169 of the Online Safety Act 2023[1] ("the OSA"). Once this instrument has commenced, this will enable eligible entities (bodies) to make super-complaints about systemic online safety issues to Ofcom, the online safety regulator. The issues that super-complaints can cover is set out in section 169 of the OSA and include where any feature of one or more regulated services, or conduct of any one or more providers of such services, is, appears to be, or presents a material risk of i) causing significant harm to users or members of the public, ii) significantly adversely affecting the right of users or members of the public to freedom of expression, or iii) otherwise having a significant adverse impact on users or members of the public.

4.2 Only eligible entities are able to make super-complaints under section 169(1) of the OSA. As per section 169(4), the Regulations must specify that the entity must be a body representing the interests of users of regulates services, or members of the public, or a particular group of such users or members of the public. This is set out in regulation 2(2). There are wider mechanisms in the OSA which enable users to report content. Indeed, all in scope services will be required to have systems and processes to

[1] https://www.legislation.gov.uk/ukpga/2023/50/enacted

enable users and other affected persons to report instances of certain types of content, for example illegal content.

4.3 This instrument also sets out procedural requirements to be followed for an eligible entity to submit an admissible complaint for consideration by Ofcom and requirements for how Ofcom must respond to such a complaint, in line with the requirement under section 170(1) and (2) of the OSA.

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 super-complaints mechanism is an important part of the OSA's overall complaints handling, reporting and redress mechanisms. It will enable entities that are deemed eligible, according to the criteria set out in these Regulations, to raise concerns with Ofcom about systemic issues in relation to regulated services, which Ofcom will be required to respond to. Super-complaints will also perform a vital role in ensuring that Ofcom is aware of the issues users are facing, issues they might otherwise not have been made aware of, helping them to focus priorities, target resources and take action against systemic failings.

5.2 Section 169 of the OSA establishes a mechanism for bodies to make super-complaints to the regulator. To make the regime operational, there are certain criteria and procedural requirements that need to be created. These Regulations support this by defining the eligible entity criteria for would-be complainants, and the procedural arrangements that must be followed by entities during submission and by Ofcom during assessment of a complaint.

5.3 As required by section 169 of the OSA, the first eligibility entity criterion requires the entity must be a body representing the interests of users of services regulated by the OSA, or members of the public, or a particular group of users or members of the public. The second criterion ensures that eligible entities can be relied upon to be independent from services that are regulated by the OSA. However, if an entity receives funding from a regulated service or has a representative(s) from a regulated service involved in its governance, this does not stop them from being eligible, so long as there are still necessary governance and accountability mechanisms in place to ensure they are not unduly influenced. The third criterion ensures that entities routinely contribute to discussions about online safety matters and do so as an expert. This could include, for example, being called upon to comment on online safety matters in the press. Note that, to demonstrate expertise entities cannot rely on self-generated material posted on social media. The final criterion is that the entity can be relied upon to consider any guidance published by Ofcom.

5.4 Ofcom will be required to consider whether an entity meets the eligibility criteria within 30-days. This can be reduced to 15-days where an entity has previously been found to be eligible within the past 5 years, starting from the day that Ofcom initially determined they were eligible. In such instances, an entity can submit a statement which sets out that there have been no changes to the information previously

submitted regarding the first two eligibility criteria (as in paragraph 5.3). In addition, they will need to submit information to show how they continue to contribute, as an expert, to discussions about online safety matters. Ofcom is required to write to an entity and explain whether Ofcom has determined that it is eligible or not. There is no restriction on an entity trying again to become eligible in the future if it is first rejected.

5.5 Should Ofcom determine that an entity is eligible, it must then assess the complaint including an assessment of whether the complaint itself is admissible and publish a response to the complaint within a relevant period. The information that must be included in a super-complaint is set out in regulation 4. This includes, for example, that super-complaints must be accompanied by current, objective and relevant evidence – such as research – and an explanation of how this evidence supports the complaint. Ofcom will handle the process for submitting super-complaints.

5.6 Ofcom's assessment of the complaint must be done within 90 days, starting with when the 30-day eligibility assessment period ends or when the 15-day period ends, in the case of retained eligibility status. The process will end with Ofcom informing the entity of its determination and publishing a response. In publishing a response, Ofcom may need to refer to or publish evidence provided by entities. In such instances, Ofcom usual practice is to work with relevant stakeholders to ensure sensitive information is not in appropriately released. If Ofcom is rejecting all or part of the eligible entities' complaint, they must set out the grounds on which it is rejected.

5.7 Ofcom must reject a complaint for various reasons, as set out in regulation 5(1), this includes, for example, where an entity is not eligible and where it does not meet the requirements in section 169(1) of the OSA. Ofcom may reject super-complaints in various circumstances. This includes, for example, where the complaint is being considered by another court or regulator. In the former instance, Ofcom will reject the complaint in full. In the latter, Ofcom has the power to consider the relevant part of the complaint, if another part is being considered by another regulator.

5.8 The whole super-complaints process must therefore typically be completed within 120 days, which reduces to 105 days in the event that an entity has retained eligibility status. However, Ofcom has the power to 'stop the clock' during the 120- or 105-day period. This is set out in regulations 8 and 9 and pertains to where Ofcom considers that they need more information from the entity to be able to determine whether the entity is eligible or consider the complaint. In such circumstances, Ofcom may extend the period from the day they have requested information to the day they receive it.

5.9 Entities must not submit more than one complaint in a six-month period, and Ofcom can reject the complaint if it breaks this rule, except in specific circumstances. These circumstances are set out in regulations 10(2)-(4) and include where Ofcom has previously rejected a complaint on the grounds that it was being considered by a court or a different regulator, and this is no longer the case. This exception also applies where an entity has already submitted one complaint (referred to in the instrument as complaint C) and instead want Ofcom to consider a different complaint (complaint D). Super-complaints should not merely repeat the substance of another complaint that has been made publicly available by Ofcom within the last two years and Ofcom will reject a complaint on this basis, unless there has been a material change of circumstance since that complaint has been made, such as new evidence emerging.

5.10 This criteria has been decided upon following an eight-week consultation run under the previous government. If necessary, the Regulations can be updated in the future by laying a new instrument.

What was the previous policy, how is this different?

5.11 Prior to the OSA, there was no specific framework for the regulation of online content and the prevention of online harms in the UK. Therefore, there was no access to any process to make a super-complaint, as exists in other regulatory regimes and sectors (such as banking and policing).

6. Legislative and Legal Context

How has the law changed?

6.1 The provisions of the OSA are novel in the UK – including those introducing the new super-complaints regime. These are the first regulations to be made under sections 169(3) and 170(1) and enable the super-complaints regime to operate by setting out the eligibility criteria that entities must satisfy and procedural matters relating to super-complaints.

Why was this approach taken to change the law?

6.2 The Regulations are necessary to enable the super-complaints regime to operate. Only eligible entities can submit a super-complaint under section 169 and an entity is only an "eligible entity" if it meets criteria specified in the Regulations. In addition, section 170(1) requires the Secretary of State to make regulations containing provision about procedural matters relating to super-complaints.

7. Consultation

Summary of consultation outcome and methodology

7.1 The previous government consulted on the eligible entity criteria and procedural requirements for the online safety super-complaints regime between 16 November 2023 and 11 January 2024[2]. The consultation received 40 responses from across civil society groups, the tech industry, the public, and regulators. The Welsh Government was also one of the respondents to the super-complaint's consultation. A summary of consultation responses was published on 16 April 2024[3].

7.2 The consultation asked 19 questions seeking views on a range of proposals for super-complaints, including content of the eligibility criteria, evidential requirements, pre-notification, deadlines, restrictions and limitations on super-complaints, a stop-the-clock facility, and detailed procedural requirements, including requirements on submission of a complaint and Ofcom's obligations in response.

7.3 Other than for one or two notable exceptions, respondents indicated overall support for the super-complaints policy proposals. However, the informed feedback also included questions on practicalities of operation, constructive criticism and, in some instances, alternatives and counterproposals.

7.4 The Department also ran official level roundtables attended by up to 40 representatives, the first attended by a majority of civil society groups (who represented a wide spectrum of harms and issues addressed by the OSA, including child safety, violence against women and girls, freedom of speech, privacy and consumer protection), and a second event hosted by techUK, attended by industry, user-to-user platforms (including social media) and search services.

[2] https://www.gov.uk/government/consultations/super-complaints-eligible-entity-criteria-and-procedural-requirements

[3] https://assets.publishing.service.gov.uk/media/661d088808c3be25cfbd3dcf/super_complaints_eligible_entity_criteria_and_procedural_requirements_summary_of_responses.pdf

7.5 We have listened to those views and incorporated many of them into our evolved policy development, making positive changes to the eligibility criteria and procedural matters. A policy response document[4] has been published alongside laying the statutory instrument which sets out a full summary of the changes we have made to our original proposals, the rationale behind those changes, and where we have opted to continue with the original consultation proposals.

8. Applicable Guidance

8.1 Ofcom is required, under section 171 of the OSA, to produce and publish guidance about super-complaints. This guidance must include guidance about the criteria required for eligible entities, procedural matters related to super-complaints and any other aspect that Ofcom considers it appropriate to include. Ofcom will consult on draft guidance before publication, as per the roadmap published in October 2024[5].

8.2 Ofcom will produce guidance to help complainants understand what is needed to submit a complaint and to set out how they will handle complaints. Though the guidance does not need to be in place before a complaint is brought, it will help guide complaints on how to make a strong submission. Ofcom will consult on the guidance as soon as possible before finalising it, giving stakeholders an additional opportunity to have their voice heard.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument as the potential impact on business remains well below the Equivalent Annual Net Direct Cost to Business (EANDCB) threshold of £10m. The benefits of this policy in terms of addressing online harms have already been covered by the Act's enactment impact assessment[6]. A 'de minimis' assessment (DMA) has been prepared for this instrument.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant impact on business, charities or voluntary bodies because the super-complaints regime is voluntary in nature. Eligible entities will be able to assess whether the benefit (in terms of achieving their organisational objectives of countering harms) of making a complaint is greater than the cost incurred and decide their approach accordingly.

9.3 The legislation may impact small or micro businesses as they may be eligible entities. However, there is no detail on the entities that would qualify as eligible as they are not pre-designated, and so it is not possible to estimate the number that are small or micro businesses.

9.4 It would not be appropriate to exempt small or micro businesses from this instrument as, if they were removed from scope, they would not be able to make super-complaints even if they perceived a benefit.

[4] https://www.gov.uk/government/consultations/super-complaints-eligible-entity-criteria-and-procedural-requirements
[5] https://www.ofcom.org.uk/siteassets/resources/documents/online-safety/information-for-industry/roadmap/2024/ofcoms-approach-to-implementing-the-online-safety-act-2024.pdf?v=383285
[6] Benefits section – page 68 onwards, https://www.gov.uk/government/publications/online-safety-act-enactment-impact-assessment

9.5 It is not possible to assess the impact on the public sector as there is no pre-designated list of eligible entities. However, in theory, public sector organisations will be able to submit super-complaints should they meet the relevant eligibility requirements.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is to assess its impact as part of broader monitoring of implementation of the OSA regulatory framework. Section 178 of the OSA requires that the Secretary of State carry out a review of the framework between two and five years after all of Part 3 of the OSA comes into force. A report must be published and laid before Parliament.

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, Baroness Jones of Whitchurch has made the following statement "it is not appropriate in the circumstances to make provision for review as this instrument will be reviewed as part of the wider review of the OSA regulatory framework. This review is due to take place two to five years after the last provisions in Part 3 of the Act come into force".

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 the Future Digital Economy and Online Safety has made the following statement regarding Human Rights:

"In my view the provisions of the Online Safety Super-Complaints (Eligibility and Procedural Matters) 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").