EXPLANATORY MEMORANDUM TO

THE ONLINE SAFETY ACT 2023 (PRE-EXISTING PART 4B SERVICES ASSESSMENT START DAY) REGULATIONS 2024

2024 No. 571

1. Introduction

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

2. Declaration

2.1 Saqib Bhatti, Parliamentary Under Secretary of State (Minister for Tech and the Digital Economy) 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 Harms, at the Department for Science, Innovation and Technology confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 For any queries regarding the instrument, contact George Cutts and Emma Irwin at the Department for Science, Innovation and Technology: telephone: 07710 025 629 or email: george.cutts@dsit.gov.uk and emma.irwin@dsit.gov.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 These regulations specify the "assessment start day" from which Video-Sharing Platforms (VSPs) known as "pre-existing Part 4B Services" are subject to the requirement to complete assessments in line with sections 9 (illegal content risk assessment duties), 11 (children's risk assessment duties), 14 (assessment duties: user empowerment) and 35 (children's access assessments) of the Online Safety Act.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument is the United Kingdom.

4.3 The territorial application of this instrument is the United Kingdom.

5. Policy Context

What is being done and why?

5.1 This instrument takes the first step in transitioning a group of 22 services, which are currently regulated under the VSP regulatory regime, to the new online safety regulatory regime created under the 2023 Act. The instrument sets the date on which the relevant VSPs become subject to the requirements in the 2023 Act to complete illegal content risk assessments, children's access assessments and where applicable, children's risk assessments. VSPs will have three months to complete the assessments from the date specified in this instrument or from the date at which the relevant

Ofcom guidance is published, whichever is later. Service providers who are not regulated under the VSP regime will be required to begin their assessments when the relevant guidance is published by Ofcom, without the need for any additional legislation. This instrument is necessary to make this the case for the relevant group of VSPs.

What was the previous policy, how is this different?

5.2 A group of 22 video-sharing platforms (VSPs) are currently regulated under the VSP regime set out in Part 4B of the Communications Act 2003, which obliges relevant VSPs (known as "pre-existing Part 4B services") to comply with rules around protecting users from harmful videos. This framework will be replaced by the duties applying to regulated user-to-user services set out in the 2023 Act. Ofcom is now the independent regulator for online safety following Royal Assent of that Act in October 2023, and is developing and consulting on guidance and codes of practice that will set out how online platforms can meet their duties. This instrument takes the first step in moving the group of VSPs described above to the new online safety regime.

6. Legislative and Legal Context

How has the law changed?

6.1 The group of VSPs described above will be required to complete illegal content risk assessments, and children's access assessments. Services defined as "Category 1" services will also be required to comply with additional duties relating to user empowerment under the Act. However, the groups described above will not be subject to the full safety duties in the 2023 Act until the VSP regime is wholly repealed. The regime will be repealed once a second and final statutory instrument is made.

Why was this approach taken to change the law?

6.2 The approach to the design of this Instrument ensures the timings for VSPs are broadly aligned with other service providers not regulated by the VSP regime in completing the assessments required by the 2023 Act, and provides services with at least four months' notice of the risk assessment requirements, based on the expected timeframes for Ofcom's publication of the illegal content risk assessment guidance, to avoid undue burdens on platforms.

7. Consultation

Summary of consultation outcome and methodology

7.1 DSIT officials have consulted Ofcom in the development of this instrument. A public consultation has not taken place as it would not be proportionate to the impact of this instrument in setting the date VSPs are subject to the requirements in the 2023 Act. Consultation is not a prerequisite for the Secretary of State to exercise this power.

8. Applicable Guidance

8.1 As the new regulator for online safety, Ofcom is developing and consulting on guidance and codes of practice that will set out how platforms can meet their duties. Ofcom expects to publish guidance on illegal content risk assessments later this year and publish the children's access assessment guidance in early 2025.

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 an assessment was undertaken during the development of the 2023 Act.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because this Instrument specifically focuses on the group of 22 UK-established VSPs subject to requirements to complete the relevant risk assessments provided for by the 2023 Act.

9.3 The legislation does impact small or micro businesses.

9.4 The Online Safety Act contains a number of specific exemptions to ensure the framework remains targeted and proportionate. Its design means that low-risk services will only have to put in place measures which reflect the risk of harm to their users and the size and capacity of the service provider. This ensures that small services will not be subject to disproportionate burdens.

9.5 There is no, or no significant, impact on the public sector because the 2023 Act itself does not regulate the public sector; however, it should be noted that following Royal Assent of the Act, Ofcom is the new regulator for online safety in the UK and is responsible for ensuring regulated services take appropriate steps to protect their users online.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is covered by the requirements in the 2023 Act. Under section 178(1) and (2) of that Act, the Secretary of State must review the operation of the regulatory framework provided for in the Act, 2-5 years after the last of the provisions of Part 3 of the Act comes into force.

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, Saqib Bhatti, Parliamentary Under Secretary of State (Minister for Tech and the Digital Economy) at the Department for Science, Innovation and Technology has made the following statement:

"A statutory review clause would not be proportionate due to the time limited nature of this instrument and the wider review required under the Online Safety Act 2023."

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 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

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").