EXPLANATORY MEMORANDUM TO

THE ONLINE SAFETY (CSEA CONTENT REPORTING BY REGULATED USER-TO-USER SERVICE PROVIDERS) REGULATIONS 2025

2025 No. 368

1. Introduction

1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Jess Phillips MP, Minister for Safeguarding and Violence Against Women and Girls at the Home Office confirms that this Explanatory Memorandum meets the required standard.

2.2 Christian Papaleontiou, Deputy Director for Tackling Child Sexual Abuse Unit, at the Home Office confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Christopher Jones at the Home Office (email: christopher.jones50@homeoffice.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 sets out what is required of in-scope companies to comply with the requirement in the Online Safety Act 2023 (OSA) to report child sexual exploitation and abuse (CSEA) content to the National Crime Agency (NCA).

4.2 Within the OSA, the requirement to report CSEA content applies to regulated user-to-user services, search services, and combined services. However, at this time, only subsections relating to regulated user-to-user services will be commenced, and therefore this instrument only applies to in-scope user-to-user services. Subsections relating to search services and combined services will only be commenced once technical and operation pathways have been fully considered to eliminate any risk of overburdening services and the NCA.

4.3 For these purposes, in-scope companies are user-to-user online companies, including companies that allow users to upload and share user-generated content, herewith referred to as services, which provide services from within the UK or provide services from outside of the UK that have a significant number of UK users, or the UK is one of the target markets.

Where does the legislation extend to, and apply?

4.4 The extent of this instrument (that is, the jurisdiction(s) in which the instrument forms part of the law) is the United Kingdom.

4.5 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. Policy Context

What is being done and why?

5.1 Online CSEA is a crime that this Government is committed to ending, including through supporting law enforcement to act against online offenders.

5.2 The National Center for Missing and Exploited Children (NCMEC) received more than 36 million reports of suspected child sexual exploitation in 2023, a 12% increase from the previous year. Similarly, the NCA reported a 44% increase in UK industry child sexual abuse referrals in 2023. In the year to September 2024 there were over 40,026 police recorded crimes for obscene publications offences (a proxy for indecent images of children). This represents a 908% increase over the last decade from September 2013 to September 2024.

5.3 While the evidence shows increasing reporting and awareness of online CSEA, it is well acknowledged that online (as well as offline) CSEA continues to be under-reported and under-identified.

5.4 Prior to the passing of the OSA (and until the CSEA reporting provisions within the OSA come into force), reporting of CSEA content by services were undertaken on a voluntary basis and through international reporting regimes. With section 66 of the OSA, the UK will increase the reporting of CSEA content, by requiring user to user companies that provide services from within the UK, and user to user companies that provide services from outside of the UK that have UK users, which do not report to an equivalent body in another jurisdiction, to report CSEA content to the NCA.

5.5 Under section 67 of the OSA the Secretary of State (Home Secretary) is required to make Reporting Regulations about the information to be included services in CSEA reports to the NCA.

5.6 Under voluntary and international reporting regimes, reporting varies in levels of quality; some reports containing little useful information which can slow down the processing of urgent reports, leading to missed opportunities to safeguard children and pursue offenders.

5.7 This instrument creates a standardised approach for reporting to ensure services make high-quality reports to increase law enforcement's ability to safeguard children, identify offenders, and prevent re-victimisation.

5.8 This instrument, the Reporting Regulation sets out the legal requirements for services to comply with the CSEA reporting duty, including registering with the NCA to submit reports; the key responsibilities of providers who are required by section 66 OSA to report to the NCA; the format of reports; timeframe for reporting; data retention requirements; and the data that is required within a report such as information about the person submitting the report, information about the detected CSEA content, where possible the priority assessment of the content, and information about the suspected user. Where a service has registered with the NCA, however intends or decides at a later date to report to an equivalent body outside of the UK, the service must notify the NCA also in accordance with this instrument.

5.9 Should in-scope services be found to not be complying with the Reporting Regulations, Ofcom, the regulator for online safety, can take enforcement action.

What was the previous policy, how is this different?

5.10 There are no previous arrangements for services to report where they thought appropriate as there was no legal requirement for them to report to an existing law enforcement body in the UK. However, many providers, now regulated by the OSA, are based in the USA which does require those companies to report certain CSEA offences to NCMEC. NCMEC has forwarded any reports concerning offenders based in the UK-to-UK law enforcement.

6. Legislative and Legal Context

How has the law changed?

6.1 Currently, reporting of CSEA content by services, including user to user services in-scope of the OSA, happens on a voluntary basis and through international reporting regimes. However, by commencing section 66, the UK will require user-to-user services regulated by the Online Safety Act to report to the National Crime Agency ("NCA") if they do not already report CSEA content to a body which is equivalent to the NCA outside the UK. This requirement is limited to those services that provide services from within the UK, and those that provide services from outside of the UK that have UK users.

6.2 The Secretary of State is required by section 67 of the OSA to make regulations, that clearly stipulate requirements to ensure high-quality reporting to enable effective law enforcement action.

Why was this approach taken to change the law?

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

7. Consultation

Summary of consultation outcome and methodology

7.1 The Home Office was required to consult Ofcom and the NCA in developing the Reporting Regulations. In addition, the Home Office consulted with the Devolved Governments, the Information Commissioner's Office, the Internet Watch Foundation, the National Center for Missing and Exploited Children, the National Police Chiefs' Council, and GCHQ, given vested interest and related expertise. The private consultation took place from 5 November 2024 to 3 December 2024, with all partners endorsing the content of the Reporting Regulations. Feedback from this consultation primarily centred on minor changes, including amendments to reflect that these regulations only apply to user-to-user providers, consistency in language and terminology and a small number of requests for added clarity to enable services to better understand the Reporting Regulations. The consultation was conducted privately, and feedback has been incorporated into the Reporting Regulations, where deemed appropriate and relevant.

8. Applicable Guidance

8.1 This instrument sets out the legal requirements for services to comply with the CSEA reporting provisions within the OSA. There is no legal obligation for the Government or the NCA to produce and publish any further guidance; the regulations in this

instrument will set out what companies must do to comply with the reporting duty at section 66 of the OSA.

8.2 However, the NCA has indicated that it will produce guidance, in parallel with the CSEA reporting provisions coming into force, for services to provide further operational clarity on reporting to the NCA. This guidance will focus on supplementary information, outside of the legal requirements within this instrument, and in time will also include updates to the reporting system. Where changes are needed to the Reporting Regulations, this will be done through producing another instrument.

8.3 Additionally, to support services understand their regulatory obligations when making judgements about whether content is illegal content, including CSEA content, services are to follow Ofcom's Illegal Content Judgements Guidance. [1]

8.4 Ahead of this instrument and the other CSEA provisions within the OSA coming into force, the Home Office will provide communications through appropriate channels to alert services of the duty to report CSEA content to the NCA in-line with the Reporting Regulations.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment on the OSA 2023, including the CSEA reporting was published in October 2024.[2]

9.2 As detailed below, there is expected to be minimal impact on services as a result of the CSEA reporting duty, including Reporting Regulations covered by this instrument.

9.3 As detailed below, there is no direct cost to Government, the NCA or UK police forces as a result of this instrument.

9.4 However, there will be costs associated with the requirement to report CSEA content to the NCA. The Government will fund the NCA to facilitate the functions of the Designated Reporting Body. The Impact Assessment provided illustrative scenarios on the number of UK services estimated to report into the NCA and number of reports by each platform. Given limitations of the data available, and until there is a clearer indication of the actual volumes of reports by services, it is difficult to estimate the actual costs to the NCA and therefore Government.

9.5 Similarly, until number of reports expected is clearer, it is difficult to establish the impact that the requirement to report CSEA content to the NCA will have on UK police forces.

9.6 Given that many services in scope of the CSEA duty, and therefore this instrument, will have parent or subsidiary businesses based outside of the UK that already report content, modelling suggests that reporting will be relatively low. Furthermore, the costs are considered proportionate given that these provisions will increase law enforcement's ability to safeguard children, identify offenders, and prevent re-victimisation.

[1] Illegal Content Judgements Guidance (ICJG)

[2] https://assets.publishing.service.gov.uk/media/6716222b9242eecc6c849b09/Online_Safety_act_enactment_impact_assessment.pdf

Impact on businesses, charities, and voluntary bodies

9.7 There is no impact on charities or voluntary bodies because legislation within the OSA 2023 does not apply to such organisations.

9.8 The impact on services in reporting CSEA content in-line with the Reporting Regulations is expected to be minimal, and to some extent is controllable by the organisation (for example, whether they use automated reporting). The cost for identifying CSEA is already part of the services' costs within their identification and moderation process, however processes will vary, with some proactively identifying CSEA using automation while others relying on user reports and human moderation.

9.9 To report CSEA content, services will need to set up an account on an NCA portal. Based on consultation with the NCA, the costs for businesses of setting up an account is expected to be minimal.

9.10 The cost of reporting CSA content is the time it takes to send a report of the identified content or activity to the NCA, which translates to the cost of an employee's time, unless the process is automated. Based on engagement with stakeholders, the impact of sending a manual report is estimated to be 5-10 minutes of an employee's time per report. When applied to the hourly cost of a regulatory professional, this provides an estimated cost per report of £2.15 - £4.30. Applying this to the estimated number of reports per year results in a total cost to business across the appraisal period of £0.10 million, ranging from £0.03 - £0.20 million. Per platform reporting to the NCA, costs of reporting are expected to be minimal. However, these estimates are likely to reflect a lower bound, as they do not account for any costs relating to setting up an automated reporting system, given a lack of data on these costs, and uncertainty on how many businesses may undertake this following the CSEA duty, including the Reporting Regulations covered by this instrument, coming into force. Further costs may accrue to services if they undertake other processes as part of submitting a report, such as an investigation of a user's account or supervisory checks on a report. Due to a lack of data on the proportion of businesses who may undertake these processes and the costs associated with them, these are unquantified.

9.11 The legislation will impact small or micro businesses, but it is not possible to estimate the anticipated volume given limitations of the data available from which to estimate the overall number of businesses in scope. However, data from NCMEC on reports by services in 2022, including user-to-user services, suggests that smaller technology services report less than the big technology services. The cost to smaller organisations to report is therefore likely to be low on average, as they are likely to identify fewer instances of CSA to report to the NCA.

9.12 Many services in scope of the online safety regime will have parent or subsidiary businesses based outside of the UK that already report CSEA, and therefore not required to report CSEA to the NCA. It is uncertain how many additional services will report into the NCA as the UK's designated body as a result of the OSA, and how many reports of CSEA content the NCA will receive. However, based on numbers reporting to NCMEC, modelling indicates an average of 37 additional services estimated to report in the NCA due to the OSA, reporting between 35 and 105 reports per year.

9.13 The total costs to the NCA resulting CSEA reporting duty including the Reporting Regulations, covered by this instrument, are estimated to range from £12 million to £27 million with a central scenario of £19 million (2023 prices) over an appraisal period of 10 years. The number of services reporting to the NCA is estimated to grow

in line with the number of services in-scope of the OSA, at a rate of 2%, with the number of reports per service estimated to grow at 11% per year.

9.14 Until a service completes a risk assessment and begins to proactively tackle CSEA (if it does not already), the volume of CSEA content that will be detected per platform is difficult to estimate and therefore costs to services in scope of the CSEA reporting duty, the NCA and therefore the Government and UK police forces are difficult to estimate.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 In this instrument, the Reporting Regulations have been informed by law enforcement needs, the technical capabilities of the NCA's reporting system and relevant wider legislation, including the UK GDPR and Data Protection Act 2018. The Reporting Regulations will be regularly monitored and reviewed in-line with linked legislations, policies, and procedures to ensure they continue to be relevant, appropriate, and proportionate.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument will be laid on 20 March 2025 and will come into force on 3 November 2025, which will provide sufficient time for services to understand what may be required of them, to comply with the Act's CSEA reporting provisions, including the Reporting Regulations. Parliamentarians may seek confirmation that services can continue to act as they do now, including reporting under international law, to existing reporting bodies and law enforcement, during this period. Suspected CSEA cases with a UK nexus made via alternative channels, including reports made internationally, will continue to be passed to UK law enforcement. Where necessary, reactive clarity will be provided to enhance understanding to those who seek it.

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").