



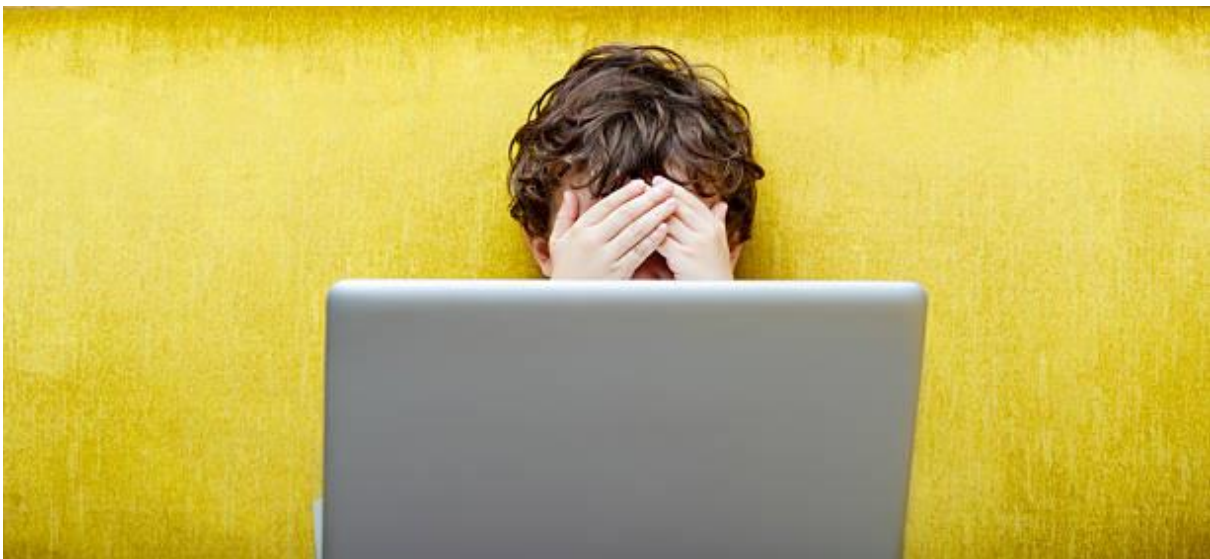
Briefing Paper 6 | July 2024

UK Online Safety Act 2023

Overview

The Children, Education and Home Affairs Scrutiny Panel (hereafter, 'the Panel') discussed the United Kingdom's Online Safety Act 2023 at its meeting on 12th February 2024 and asked its officers to conduct research on the legislation, including what impact it would have in Jersey and whether any extensions or equivalent legislation had been discussed.

Whilst the Panel's remit does not include the digital sector, the Panel's interest in the legislation relates to the protections that it would put in place for children and young people.



Introduction

The [Online Safety Act](#) (OSA) is the UK's framework to improve and regulate certain internet services and digital communications. Legislation in other jurisdictions includes the EU Digital Services Act ([DSA](#)) made by the European Commission, and the Online Safety and Media Regulation Act 2022 ([OSMR](#)) in Ireland.

Under the OSA, Ofcom has been granted powers as the online safety regulator of certain internet services for and in connection with communications offences and for connected purposes. The OSA will come into effect through a [phased process](#) and Ofcom is expected to publish [codes of practice](#) and guidance clarifying aspects of the OSA:

- **Phase 1: illegal harms duties.** Draft codes and guidance on these duties were published on 9th November 2023, to be followed by a consultation and statement on final decisions in Autumn 2024. In due course, the codes of practices will be laid before Parliament (subject to the approval of the UK Secretary of State for Science, Innovation and Technology).
- **Phase 2: child safety, pornography and the protection of women and girls.** [Draft guidance on age assurance](#) was published in December 2023, draft codes of practice



relating to protection of children is scheduled to be shared in Spring 2024, and final codes of practice on protection of children and draft guidance on protecting women and girls by Spring 2025.

- **Phase 3: transparency, user empowerment, and other duties on categorised services.** Consultation on draft transparency guidance in mid-2024, publish the register of categorised services by the end of 2024, publish draft proposals regarding the additional duties on these services in early 2025; and issue transparency notices in mid-2025.

Key provisions of the OSA

The [impact assessment](#) published in connection with the OSA detailed that it supports five of the Government's policy objectives:

1. To increase user safety online
2. To preserve and enhance freedom of speech online
3. To improve law enforcement's ability to tackle illegal content online
4. To improve users' ability to keep themselves safe online
5. To improve society's understanding of the harm landscape

The following is a summary of the main aspects of the OSA, as outlined by UK Government [guidance](#)¹:

- The OSA will make social media companies legally responsible for **keeping children and young people safe online**. It will protect children by making social media platforms:
 - Remove illegal content quickly or prevent it from appearing in the first place, including content which promotes self-harm.
 - Prevent children from accessing harmful and age-inappropriate content.
 - Enforce age limits and age-checking measures.
 - Ensure the risks and dangers posed to children on the largest social media platforms are more transparent, including the publication of risk assessments.
 - When problems do arise, parents and children should have clear and accessible ways to report them.
- The OSA will **protect adults** in three ways through a 'triple shield':
 - All in scope services will need measures in place to prevent their services being used for illegal activity and to remove any illegal content that does appear.
 - Category 1 services (the largest and most-high risk services) must remove content that is banned by their own terms and conditions.
 - Category 1 services must also empower their adult users with tools that give them greater control over the content that they see and who they engage with.
- **Tackling illegal content:** Some content that children and adults encounter online is already illegal. The OSA will force social media platforms to remove illegal content.

¹ <https://www.gov.uk/guidance/a-guide-to-the-online-safety-bill> (accessed on 19th February 2024)



The OSA is also bringing in new offences, such as making it illegal to make content that promotes self-harm with the intent that this will stop it appearing at all (and not just about removing existing content). Platforms will also be required to think about site design to reduce the likelihood of them being used for criminal activity in the first place. Illegal content that platforms will need to remove will include:

- child sexual abuse
- controlling or coercive behaviour
- extreme sexual violence
- fraud
- hate crime
- inciting violence
- illegal immigration and people smuggling
- promoting or facilitating suicide
- promoting self-harm
- revenge porn
- selling illegal drugs or weapons
- sexual exploitation
- terrorism



- **Content that is harmful to children:** Some content is not illegal but could be harmful or age inappropriate for children and platforms will be required to protect children from seeing it. The categories of harmful content include:
 - pornographic content
 - content that does not meet a criminal threshold, but which promotes, encourages, or provides instructions for suicide, self-harm or eating disorders.
 - content that depicts or encourages serious violence.
 - bullying content.
- The online safety laws will mean **social media companies will have to keep underage children off their platforms.**
 - Many social media companies set the age limits on their platforms, for example 13 years old. Children younger than this will not be allowed an account.
 - Age assurance technologies can be used to verify people's ages online.
 - Going forward, social media companies will have to say what technology they are using, if any, and show they are enforcing their age limits.
- Adults will have **more control** over the content they see:
 - The largest platforms will be required to offer adult users tools so they can have greater control over the kind of content they see and who they engage with online. This includes giving them the option of filtering out unverified users, which will help stop anonymous trolls from contacting them.
 - The largest platforms will have to provide adult users with tools to help reduce the likelihood that they will encounter certain types of content. These categories of content are set out in the Bill and include content



- that does not meet a criminal threshold but promotes or encourages eating disorders or self-harm, or is racist, antisemitic or misogynistic.
- The OSA will already protect children from seeing this content. These platforms must also proactively offer these tools to all their registered adult users, so it is easy for them to decide whether to use these tools or not. The tools must be effective and easy to access and could include human moderation, blocking content flagged by other internet users or sensitivity and warning screens.
- The OSA will tackle **repeat offenders**:
 - The UK Law will require social media companies to assess how their platforms could allow abusers to create anonymous profiles, and take steps to ban repeat offenders, preventing them from creating new accounts and limiting what new or suspicious accounts can do.
- How the OSA will be **enforced**:
 - Ofcom, the UK regulator for communications services, is being put in charge as a regulator to check that platforms are protecting their users.
 - Platforms will have to show they have processes in place to meet the requirements set out by the OSA. Ofcom will check how effective those processes are at protecting internet users from harm.
 - Ofcom will have powers to take action against companies which do not follow their new duties. Companies will be fined up to £18 million or 10 percent of their annual global turnover (whichever is greater). Criminal action will be taken against senior managers who fail to follow information requests from Ofcom. Ofcom will also be able to hold companies and senior managers (where they are at fault) criminally liable if the provider fails to comply with Ofcom's enforcement notices in relation to specific child safety duties or to child sexual abuse and exploitation on their service.
 - In the most extreme cases, with the agreement of the courts, Ofcom will be able to require payment providers, advertisers and internet service providers to stop working with a site, preventing it from generating money or being accessed from the UK.
 - Ofcom will have the power to take action against all social media and technology companies anywhere in the world if they are accessible to UK users.

Impact of the OSA on the Crown Dependencies

The OSA does not extend to cover the Crown Dependencies and the [explanatory notes](#) published alongside the OSA indicate the territorial extent of being limited to the four constituent parts of the UK (England, Scotland, Wales, and Northern Ireland).

In 2022, the Isle of Man Government asked the UK Government to include the ability to extend some (or all) of the UK Online Safety Bill to the [Isle of Man](#).

In respect of Jersey's position, in a hearing on 7h March 2024, the Minister for Children and Families advised the Panel that:



There was a decision not to be included under the U.K. legislation back in 2022 and that instead we would develop and update our own legislation, which includes the Violence Against Women and Girls report recommendations.²

The Violence Against Women and Girls Taskforce report (published November 2023) directly addressed the possible use of a permissive extent clause in relation to the OSA:

As a self-governing state, Jersey has the right to debate and draft its own pieces of legislation. However, due to our status as a UK crown dependency, we can request that certain pieces of UK legislation are extended to the island through a “permissive extent clause”. This means that Jersey could access some of the protections afforded by the Online Safety Bill, such as the regulation of online social media platforms and search engines by Ofcom, if certain provisions of the Bill were extended to the island.

The UK Department that holds responsibility for the Online Safety Bill - Digital, Culture, Media and Sport (DCMS) - contacted the Government of Jersey to seek clarification of our position regarding the extension of certain provisions of the Online Safety Bill to Jersey. However, the UK Government’s recognition of the importance of gaining the consent of crown dependencies before extending UK legislation has fluctuated in recent years, as was well publicised in 2018 and 2019 in relation to issues with regard to the extension of UK fishing legislation. As a result, Minister’s directed officers to request that no permissive extent clauses for Jersey be included within the UK Online Safety Bill. Whilst the Taskforce recognises the importance of preserving Jersey’s autonomy, and that an extension of the Bill may not be desirable or appropriate, we do have concerns around the regulation of online platforms, such as Facebook and Instagram, on the island. Without an extension of the Bill to Jersey, Ofcom has no ability to regulate these platforms or hold them accountable if they fail to protect islanders from harmful content. Moreover, there is currently no alternative regulatory body that would have the power to do so in Jersey. For this reason, the Taskforce recommends that the Government of Jersey ensures that similar protections to those afforded by the UK Online Safety Bill, in relation to the regulation of online platforms to ensure they are protecting their users, are brought in through other means. The Taskforce has been advised that alignment with the European Commission’s Digital Services Act may represent a suitable alternative course of action.³

Relevant legislation in Jersey

Jersey has laws against harmful content that could constitute cyberbullying, harassment or a perceived threat of violence, but this does not create offences for making harmful content that is covered by the OSA or place any responsibility on social media companies or online platforms to manage the content accessible by children.

In Jersey, a consultation was undertaken between 31st March 2015 and 19th June 2015 to consider the “[Review of legislation on harmful electronic communications](#)”. The results of this were used to inform legislative updates and the States Assembly approved the

² [Transcript](#) – Quarterly Hearing with the Minister for Children and Families – 7th March 2024, p.14

³ [‘The issue of violence against women and girls in Jersey’](#), a report by the Taskforce on Violence Against Women and Girls, November 2023, p. 91



[Telecommunications \(Amendment No. 3\) and Crime \(Miscellaneous Provisions\) \(Jersey\) Law 2016](#) (as per P.19/2016) in October 2016.

The changes as a result of the approval of P.19/2016 were:

- Amending the Telecommunications (Jersey) Law 2002 to expand the scope of the offence to include improper use of the telecommunications system
“The substituted Article 51 would prohibit improper use of any telecommunications system (not just a public telecommunications system such as the telephone network). An offence of sending a message or other matter that is (or conveys anything that is) grossly offensive or of an indecent, obscene or menacing character would be committed only if the sender knew or intended the message to be of such a character or was aware of the risk that the message would be viewed as such by a reasonable member of the public. An offence would also be committed where a person sends a false message or persistently uses a telecommunications system for the purpose of causing annoyance, inconvenience or needless anxiety to another. The penalty for an offence under Article 51 would be increased to a maximum of 2 years’ imprisonment and an unlimited fine (either or both of which may be imposed by the court, under Article 13(3) of the Interpretation (Jersey) Law 1954).”
- Amendments to the Crime (Disorderly Conduct and Harassment) (Jersey) Law 2008:
“The amendments made by Article 2 would have the effect of permitting the court to make or impose a restraining order on conviction for any offence (not only an offence of harassment), if the court is satisfied that it is necessary to do so to protect the victim or any person named in the order from further conduct which would amount to harassment, or from a perceived threat of violence. The penalties for an offence of harassment, and for breach of a restraining order, are increased correspondingly with the change to the Telecommunications (Jersey) Law 2002, to a maximum of 2 years imprisonment and an unlimited fine.”

In 2016 the Economic and International Affairs Scrutiny Panel undertook a [review](#) of the proposed Telecommunications (Amendment No. 3) and Crime (Miscellaneous Provisions) (Jersey) Law 201- (P.19/2016) and published a [comments paper](#) at the time.

Children and Young People (Jersey) Law 2022

In March 2024 Jersey approved the [Children and Young People \(Jersey\) Commencement Act 2024](#), for the [Children and Young People \(Jersey\) Law 2022](#) (C&YP Law). The obligations for protection of children and young people in online and digital spaces under the overriding objective of the C&YP has not yet been explored or researched by the Panel, however, for background reference:

The overriding objective of the C&YP Law is to “*promote and support the wellbeing, and safeguard the welfare, of children and young people*”. To discharge the functions of the C&YP Law the specific duties (as per Article 2 of the C&YP Law) are:

- a. have regard to the overriding objective;



- b. take all appropriate measures to ensure that children and young people are protected against all forms of unlawful discrimination;
- c. have the best interests of children and young people as a primary consideration;
- d. have regard to the views of children and young people on all matters affecting them, with due allowance being made for age and maturity; and
- e. promote the health and development of children and young people.

As per Article 3 of the C&YP Law, the duties are placed on:

- Responsible Ministers (named in the law as Minister for Children and Education⁴, Minister for Health and Social Services, Minister for Justice and Home Affairs and Minister for Housing and Communities).
- Corporate parents (as per the Schedule of the C&YP Law) includes public authorities, schools, nurseries and day care accommodation, and certain bodies operating at arm's length from the States including any such bodies in receipt of funding or grants from the States.
- Safeguarding partners (the people listed in Article 5(1) of the C&YP Law) namely: the Government's Chief Executive Officer, the chief officers of the administrations of the States for which the responsible Ministers (apart from the Minister for Housing and Communities), and the Chief Officer of the States of Jersey Police Force.
- Relevant providers refers to a provider of services for children or young people or a provider of related services.



⁴ Now Minister for Children and Families, following approval of the [Ministerial Offices \(Jersey\) Amendment Order 2024](#) on 27th February 2024



Report by the Taskforce on Violence Against Women and Girls (VAWG)

As referenced above, the VAWG report referenced the OSA and recommendation 10 of its report was:

The Government of Jersey should ensure that similar protections to those afforded by the UK Online Safety Bill, in relation to the regulation of online platforms to ensure they are protecting their users, are brought in through other means.⁵

The Minister for Justice and Home Affairs has accepted all of the VAWG report recommendations. The response to recommendation 10 was:

Recommendation 10 – Regulation of Online Platforms

The Taskforce recommended that the Government of Jersey should regulate online platforms to ensure they are protecting their users.

Next Steps

Regulating online spaces controlled by international platforms is always challenging for smaller jurisdictions like Jersey. While we will try to provide Islanders with a level of protection similar to that of the UK or EU, we will also try to offer citizens a quicker remedy through efficient law enforcement than would be possible in larger countries with more complex enforcement structures.

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On 24th April 2024 the Minister for Justice and Home Affairs provided the Panel with some further detail, and also made reference to the VAWG taskforce recommendation 11, which related to the commitment to strengthen the legal framework to better protect Islanders from online and technology facilitated abuse:

“The Online Safety Act 2023 enacted a number of legislative reforms that strengthen the legislation framework around online safety in England and Wales. These developments include introducing regulation on online platforms to ensure they were protecting their users, and the introduction of a number of offences around non-consensual intimate image abuse. A number of the Violence Against Women and Girls Taskforce recommendations were informed by the Act, and so work to implement these recommendations will result in legislation development similar to those brought in by that particular Act. Officers are exploring those options to introduce the regulation of online platforms through alignment with the European Commission Digital Services Act. A number of offences around non-consensual intimate image abuse and cyberstalking will be introduced via amendments to the Sexual Offences (Jersey) Law 2018 and the introduction of a new stalking offence. I think sometimes it is better for us to see what parts of that legislation are more relevant to us. It goes back to 2022, I believe, so from my perspective I am not familiar with the whole of the U.K. legislation, so I think it is important that we do not always necessarily just take it as it is sort of

⁵ [‘The issue of violence against women and girls in Jersey’](#), a report by the Taskforce on Violence Against Women and Girls, November 2023, p. 91

⁶ [‘Addressing Violence Against Women and Girls in Jersey’](#), Response to the Taskforce report from the Minister for Justice and Home Affairs, 27th March 2024, p.



thing, and so I think for us sometimes it is better to do our own legislation and look at the way that it works.”⁷

Ministerial responsibility for the Government’s online safety policy

The Minister for Sustainable Economic Development typically has responsibility for the Digital Economy, Broadcasting, and Telecommunications. The Minister for Justice and Home Affairs is leading the Ministerial response to the VAWG recommendations. Based on previous formal delegations⁸, the Minister for Children and Families would be expected to have responsibility for co-ordinating policies to safeguard children and support children’s well-being.

Conclusion:

It is not clear whether Jersey will indirectly benefit from legislative changes in other jurisdictions, such as the UK’s OSA or the EU’s DSA, or whether Jersey based users would be classed in a ‘rest of world’ category. If the latter, there could be a risk that Islanders could see different content or be subject to different access criteria (such as age restrictive features) that would be a protective feature for users elsewhere.

Further clarity would be useful to assess how the legislative work that is being developed as a result of the VAWG Report Recommendations (particularly recommendations 10 and 11) crossover with the OSA and DSA.

The role of the UK’s regulator Ofcom is significant in ensuring the Online Safety Act is being enforced. If Jersey pursues its own legislation, further clarity about enforcement would be useful to understand the effectiveness of proposed legislation that is unique to Jersey but is intended to have the same effect and provide similar protection to the OSA.

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⁷ [Transcript](#) – Quarterly Hearing with the Minister for Justice and Home Affairs – 24th April 2024, p. 24
⁸ [r.10-2023.pdf \(gov.je\)](#) [this is the most recently published Article 30A report]