

[GB] Repeal of the video-sharing platforms regime

IRIS 2023-6:1/25

*Alexandros K. Antoniou
University of Essex*

On 3 May 2023, Ofcom (the UK's independent communications regulator) gave an update on the repeal of the video-sharing platform (VSP) regulatory framework and what this means for providers in moving to the new online safety regime.

Background

On 5 December 2022, the UK Government set out the process for repealing the VSP regime in an amendment to the forthcoming Online Safety Bill (OSB). The OSB establishes a new regulatory framework to achieve "the adequate protection of citizens from harm presented by content on regulated services, through the appropriate use by providers of such services of systems and processes designed to reduce the risk of such harm" (cl. 82(2)). The regime is structured around a risk assessment and risk mitigation framework and will apply to certain online services, including user-to-user services, such as Facebook, and search services, such as Google. Regulated service providers will have duties relating to (among others): illegal content, protecting children, user empowerment, content of democratic importance, news publisher content and journalistic content, freedom of expression and privacy, and fraudulent advertising.

The OSB regime will apply to a wide range of services, with different sizes, reach and risk levels, including social media platforms, online forums, messaging apps, some online games where users might interact with other users, and sites hosting pornographic content. All services currently in scope of the VSP regime will also be in scope of the new online safety regime. As well as UK service providers, the OSB will apply to providers of regulated services based outside the UK if they fall within its scope, e.g. because such services have a significant number of UK users (cl. 3(5)).

The bill establishes Ofcom as the regulator, giving it the power to levy fines against non-compliant providers, and make senior managers liable to imprisonment for not complying with a direction to provide Ofcom with information. At the time of writing, the bill is at Committee Stage in the House of Lords. The government plans to introduce more amendments when the OSB reaches Report Stage in the Lords. Details of the legislation are still being debated and some of its provisions are liable to change.

Repeal of the VSP regime

Schedule 17 of the OSB sets out how VSPs will move from being regulated under the VSP regime to being regulated under the online safety framework. Schedule 3, Part 3 of the same bill details the timings for when VSPs providers will need to begin conducting the risk assessments that will be required under the OSB.

The OSB is expected to come into force two months after it gains Royal Assent (RA). After the commencement of the bill, all pre-existing, UK-established VSPs (i.e. platforms that meet the scope and jurisdiction criteria under Part 4B of the Communications Act 2003) *will enter a transition period*. The end date of this period will be specified by the Secretary of State for Science, Innovation and Technology in secondary legislation. After RA, Ofcom will no longer accept new notifications from VSPs. If the platform is first provided on or after that date, it will instead be regulated under the OSB.

During the transition period, pre-existing, UK-established VSPs will not have to comply with most OSB-related duties (this exemption will apply to platforms that meet the notification criteria when the bill comes into force). If a VSP is a dissociable section of a larger service, another part of which qualifies as a regulated service under the OSB, then the exemption will only apply to the VSP part of that service. The non-VSP part will be treated during transition like any other regulated service in the scope of the OSB.

During the transition period, Ofcom will continue exercising its regulatory powers under the VSP regime (for Ofcom's report on its first year of VSP regulation, see IRIS 2023-1:1/18). Already existing UK-established VSPs will be required to comply with Ofcom information requests and notifications for fees. The OSB requires the Secretary of State to provide platforms with at least 6 months' notice of the repeal date (this is likely to happen during the transition period). In the period preceding the formal repeal of the VSP regime, pre-existing, UK-established VSPs will be required to conduct illegal content risk assessments, child access assessments, and children's risk assessments. The precise timings for when they will have to do this have not yet been determined.

Following the end of the transition period, pre-existing, UK-established VSPs will be regulated under the new online safety regime and OSB duties will apply in full. Ofcom will be expected to recover the initial costs of setting up the OSB regime and meet its ongoing costs by charging fees to regulated services with revenue at or above a set threshold. According to a Written Ministerial Statement published on 19 April 2023, regulated services with revenue meeting the said thresholds are expected to be charged from the financial year 2025-26 or later.

The bill continues its journey through parliament, so these provisions may change over the coming months. In its July 2022 roadmap to regulation, Ofcom set out its plans for putting online safety laws into practice, and what it expects from tech firms as the countdown to the new regime continues. Delays to the OSB since the

publication of the roadmap are likely to affect expected timescales for implementing the legislation. Expected plans are still dependent on the final shape of the OSB.

Repeal of the VSP regime: what you need to know

https://www.ofcom.org.uk/online-safety/information-for-industry/vsp-regulation/repeal-of-the-vsp-regime?utm_medium=email&utm_campaign=Weekly%20publications%20update%205%20May%202023&utm_content=Weekly%20publications%20update%205%20May%202023+CID_11ea5eff17a7295b0b163f908f8a44b4&utm_source=updates&utm_term=Repeal%20of%20the%20Video-Sharing%20Platform%20regulatory%20regime

Ofcom letter to Peers on Ofcom's preparations for the online safety regime

https://www.ofcom.org.uk/_data/assets/pdf_file/0030/260697/letter-to-peers-online-safety-implementation.pdf

Online safety: Ofcom's roadmap to regulation

<https://www.ofcom.org.uk/online-safety/information-for-industry/roadmap-to-regulation>

OSB Government Amendments at Lords Committee Stage (Statement UIN HCWS726)

<https://questions-statements.parliament.uk/written-statements/detail/2023-04-19/hcws726>

