

A summary of the 'likely to be accessed' guidance impact assessment

1. Impact assessment context

Following best practice and the guidance in our 'Impact Assessment Framework'¹, we deem it appropriate to conduct a proportionate impact assessment of our proposed guidance intervention to increase regulatory certainty around 'likely to be accessed' linked to the Children's code.

We have produced a draft initial assessment, as summarised in Table 1 below. We are seeking feedback on our identified impacts, as well as any other insights stakeholders can provide on impacts, via the consultation on the draft guidance.

It is important to note that we do not intend for this summary to provide an exhaustive assessment of impacts. It is just an initial overview of our considerations. We will develop our impact assessment work further as we move towards final publication of the guidance, post consultation.

2. A summary of the draft impact assessment

Table 1 provides a summary of our draft impact assessment.

Table 1: Impact assessment summary

1: Problem definition	<p>We have seen an increasing amount of research showing that children are likely to be accessing services aimed at adults and that these pose data protection harms, with children losing control of their data or being manipulated to give more data, in addition to content harms.</p> <p>As a result, we revised our position in September 2022 to clarify that adult-only services are within the scope of the Children's code if they are likely to be accessed by a significant number of children.</p> <p>However, the code does not provide detail on what constitutes a significant number of children.</p>
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¹ The ICO's draft Impact Assessment Framework is under a period of public consultation between January and April 2023.

<p>2: Rationale for intervention</p>	<p>The lack of clarity around what constitutes a significant number of children creates uncertainty and poses a risk to conformance with the code, which enhances the potential for harms and market failure.</p> <p>The ICO’s supervision of the code has shown that the code’s success is at risk of being undermined by organisations claiming they are not in scope of the code, as they are not likely to be accessed by a ‘significant’ number of children. Addressing the likely to be accessed scope issue ensures that we can more effectively influence high risk sites likely to be accessed by children through supervision and engagement.</p> <p>The wider UK policy landscape on this topic matter has not progressed at the rate envisaged. For example the Online Safety Bill has still not passed, resulting in increased demand for enhancement and use of existing policy levers, such as the Children’s code.</p>
<p>3: Options appraisal</p>	<p>Options to provide a solution to the likely to be accessed scope issue to increase regulatory certainty and enhance supervision are:</p> <ol style="list-style-type: none"> 1. do nothing, 2. provide guidance with numeric thresholds to ISS, 3. provide guidance to support ISS to undertake a ‘likely to be accessed’ test using a non-exhaustive list of criteria, 4. update the language in the code scope section. <p>These options were appraised against various critical success factors and Option 3 was identified as the preferred option at this time.</p>
<p>4: Detail of proposed intervention</p>	<p>Providing guidance in the form of FAQs, case studies and a non-exhaustive list of factors so providers of ISS can determine if they are likely to be accessed by a ‘significant’ number of children, and are thus in scope of the code. This includes defining ‘significant’ and ‘substantial and identifiable’ in the context of the code.</p> <p>It is intended the guidance will be either revised or replaced in the event that the DPDI Bill currently being considered by Parliament is passed, resulting in changes having to be made to the code. In this event, the ICO could update the language</p>

of the code and ensure alignment with other regulators using the phrase 'significant'.

5: Cost-benefit analysis

The costs and benefits of the intervention have been identified, quantitatively and qualitatively, as far as is possible and proportionate. There are significant evidence gaps around the quantification of the number of ISS providers, which limit our ability to monetise impacts.

	Benefits	Costs
Children	<ul style="list-style-type: none"> Reduction in harms and improved outcomes for children. 	<ul style="list-style-type: none"> Reduced access to services perceived as useful.
Those with parental responsibility	<ul style="list-style-type: none"> Reduction in anxiety and stress related to children suffering harms. 	<ul style="list-style-type: none"> Parents required to support children to access websites with parental consent.
ISS providers	<ul style="list-style-type: none"> Greater regulatory certainty and confidence in implementing measures to prevent access. Increased trust and confidence amongst customers and wider society, as well as reputational benefits. 	<ul style="list-style-type: none"> Familiarisation costs with additional guidance (initial estimate of approx. £13 per affected ISS). Resource costs of applying criteria and assessing likelihood to be accessed. Cost of putting measures in place for those now determined in scope. Chilling effects of less adults willing to access services if additional identification steps required impacting revenues.
Other enterprise providers	<ul style="list-style-type: none"> Age assurance tech providers will see increased demand for their product. 	<ul style="list-style-type: none"> Some enterprises could face loss of revenue from targeted advertising.
The ICO	<ul style="list-style-type: none"> Enhanced enforcement with increased regulatory certainty. 	<ul style="list-style-type: none"> Up-front resource cost of policy clarification and developing associated guidance.

		<ul style="list-style-type: none"> • Efficiencies from expanded guidance for advice and support to providers of ISS. 	
	<p>Wider society</p>	<ul style="list-style-type: none"> • Lower cost to society in supporting children who are harmed through their use of adult sites. • Benefits to users of adult sites in knowing they are less likely to come across children when they are specifically looking to communicate with adults (eg on dating sites). 	<ul style="list-style-type: none"> • Cost to adult users of going through additional effort to access elements of services. • Reduced use of services as a result of chilling effects caused by perceived lack of anonymity. • Potential harm through actual or perceived privacy risk of use of certain age verification measures.
<p>Overall our assessment suggests that the benefits, in particular through reducing the potential harms for children and the related benefits to wider society, outweigh the costs identified.</p>			
<p>6: Monitoring and evaluation</p>	<p>The Children’s code has an extensive ongoing evaluation programme, which is expected to report in spring 2023. This will include recommendations for future evaluation of the code and should reflect how any additional guidance issued related to the code will be evaluated to assess effectiveness, together with any areas for improvement, or unintended consequences of policy.</p>		