

## Consultation response form

Please complete this form in full and return to [vod@ofcom.org.uk](mailto:vod@ofcom.org.uk).



<b>Consultation title</b>	On-demand programme services: Consultation on guidance for ODPS providers on measures to protect users from harmful material.
<b>Full name</b>	
<b>Contact phone number</b>	
<b>Representing (delete as appropriate)</b>	Organisation
<b>Organisation name</b>	S4C
<b>Email address</b>	

## Confidentiality

We ask for your contact details along with your response so that we can engage with you on this consultation. For further information about how Ofcom handles your personal information and your corresponding rights, see [Ofcom's General Privacy Statement](#).

<b>Your details: We will keep your contact number and email address confidential. Is there anything else you want to keep confidential? Delete as appropriate.</b>	None
<b>Your response: Please indicate how much of your response you want to keep confidential. Delete as appropriate.</b>	None
<b>For confidential responses, can Ofcom publish a reference to the contents of your response?</b>	Yes

<b>Question</b>	<b>Your response</b>
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## Your response

**Question 1: Do you have any comments on proposed guidance around subsection 1 of section 368E of the Act – material likely to incite violence or hatred?**

We have two points:

Firstly, the second sentence begins with a reference to “a protected group”. The meaning of the phrase is not immediately obvious. Might it therefore be replaced with “a group of people who share a protected characteristic”?

Secondly, might the guidance in relation to the phrase “likely to incite” be expanded in terms which are the same as or similar to those already set out in OFCOM’s Broadcasting Code at section 3.1 and in the Guidance to Section Three?

**Question 2: Do you have any comments on proposed guidance around subsections 2 and 3 of section 368E of the Act – prohibited material?**

Whilst the cross-references to the European legislation are helpful and indeed essential, we feel that it would also be of assistance to refer to the various domestic legislation through which the European requirements in relation to prohibited material have been implemented. For example, under the heading ‘Terrorism’, the proposed Guidance currently refers to Article 5 of [Directive \(EU\) 2017/541](#). The domestic definition is contained in section 1 of the Terrorism Act 2000, as OFCOM’s existing Guidance on Section Three of the Broadcasting Code correctly points out.

Secondly, s368E(5)(c) refers to “other material that might impair the physical, mental or moral development of persons under the age of 18”. Despite the similarity between the wording of this section and section 1.1 of the Broadcasting Code (the only difference is that the latter refers to ‘seriously impair’ rather than ‘impair’), paragraphs 5.14-16 of the proposed Guidance seem to correlate far more with rules 1.2-1.27 of the Broadcasting Code. Given that S4C and many other broadcasters are also ODPS providers, might it also be possible for the proposed Guidance to confirm whether, and if so to what extent, rules 1.2-1.27 of the Broadcasting Code translate to paragraphs 5.14-5.16 of the proposed Guidance?

<p><b>Question 3: Do you have any comments on proposed guidance around subsections 4 - 7 of section 368E of the Act – protection of under18s (specially restricted material)?</b></p>	<p>Please would OFCOM confirm whether the guidelines have retrospective effect?</p>
	<p>Secondly, we believe that there is an error in paragraph 5.32 of the proposed Guidance in that, rather than state “<i>adult responsible for a parent</i>”, it should note “<i>adult responsible for a child</i>”.</p>
<p><b>Question 4: Do you have any comments on any other part of the proposed guidance which is not explicitly set out in questions 1-3?</b></p>	<p>No</p>
<p><b>Question 5: Do you have any comments on the impact assessment in Annex 1, and any of the potential costs incurred (including any we have not identified)?</b></p>	<p>No. S4C already provides content warnings together with a parental lock facility and selfdeclaration system.</p>