

The Rt. Hon. Oliver Dowden CBE, MP
Secretary of State for Digital, Culture, Media And Sport
100 Parliament St, Westminster,
London
SW1A 2BQ

12th January 2021

Dear Secretary of State

Online Safety Bill - provision for Better Regulation measures

Congratulations on delivering a comprehensive and welcome response to the Government's consultation on Online Harms.

We test that Age Check systems work. This includes providing independent 3rd party certification for age check systems, age assurance services, age appropriate design and other age-related eligibility functions. We have been working closely with your Department, the ICO, UKAS and Ofcom on developing the Age Check Certification Scheme, alongside contributing to the Verification of Children Online (VoCO) work and the SafetyTech Network established with the support of your department. This includes being one of the pilot schemes (the only one in this sector) for gaining formal approval from the ICO and UKAS under the General Data Protection Regulations.

I also chair the UK Government's Expert Panel on Age Restrictions (which comes under the auspices of the BEIS Office for Product Safety & Standards), but I am writing today in my capacity as Chief Executive of the Age Check Certification Scheme.

I simply want to recommend strongly at this early stage in the drafting process for the new Online Harms legislation that provisions are included to empower Ofcom to approve Certification Schemes. It is important that this enabling power is in the primary legislation for the reasons explained below and learning from previous errors in legislative drafting.

The powers that I am referring to are effectively the equivalent of [s.17](#) of the Data Protection Act 2018 and Schedule 5 of that Act, adjusted for context and applicable to the powers of duties of OFCOM under the Online Harms legislation. It is important for the effective functioning of the Act and the policy objectives set out by your department that these powers are in the primary legislation.

The UK Government's Better Regulation Strategy highlights the importance of 'earned recognition' in the proportionate and effective application of business regulation. The concept of Earned Recognition is described the [Regulators' Code](#).

"Regulators, in making their assessment of risk, should recognise the compliance record of those they regulate, including using earned recognition approaches and

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should consider all available and relevant data on compliance, including evidence of relevant external verification.”

To be trusted and recognised, certification should be within the [UK's Quality Infrastructure](#), including ensuring that Conformity Assessment Bodies, like us, have [UKAS Accreditation](#).

We draw your attention to this now, as a result of lessons learnt from the failed attempt to develop a Certification Scheme by the British Board of Film Classification for the Digital Economy Act. Your predecessors learnt that attempting to grant approval to a certification process without the necessary powers in primary legislation gave cause for serious concerns in industry and led to the Joint Committee on Statutory Instruments to issue an adverse “[Report](#) for the Unexpected Use of Powers”. This was quite a damning indictment of the attempt to give ‘statutory authority’ to a process that had not received parliamentary endorsement on the face of the enabling legislation. The Committee highlighted that:

“It is wrong in principle to invite Parliament to give approval to the regulator’s enforcement policy, data protection arrangements or proposed non-statutory certification scheme with a view to bestowing on this material the status of statutory guidance endorsed by Parliament.”

As a result, if these provisions are not included in the initial drafting, we would expect there to be pressure to add them during the passage the Bill in the Lords.

Certification is broadly used by regulators as a means of reducing the burden on the public purse. Including the suitable enabling provisions in primary legislation allowing regulators to approve industry-led self-regulation schemes is already common. Such powers are given to the [ICO](#), the [FCA](#) and, in other policy areas, [Ofcom](#) and other regulators.

The benefit of such schemes is that they encourage an industry to police itself, allowing the regulator to focus its attention on those bad actors who do not attempt to comply, or need advice in how to comply, which can also be offered by the scheme’s auditors. As the choice and cost of certification falls upon the industry, it also offers best value for taxpayers.

We would be happy to engage directly with your officials to develop these ideas further, and wish you well in guiding the Bill through Parliament.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Tony Allen', written in a cursive style.

Tony Allen
Chief Executive
Age Check Certification Services Limited

Cc Sarah Connolly, DCMS
Rachael Bishop, DCMS