

**Research Briefing**

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# Online Advertising



## Summary

- 1 Online advertising sector
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- 3 Current regulation
- 4 Perceived harms: online paid-for advertising
- 5 Recent developments

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## Summary

Online advertising is a marketing strategy that uses online services to deliver paid-for adverts or promotional messages to consumers. It is also referred to as digital advertising. It is the fastest growing area of advertising globally. The dominance of online advertising in the UK reflects a shift in consumer consumption habits over the last decade from traditional media (such as newspapers and television) to online formats.

Large ad-funded platforms seek to attract potential consumers by offering their core services for free. In addition to capturing their attention, platforms collect contextual or personal information/data about consumers to help their advertising business. Such platforms include, but are not limited to, search engines and social media sites. For businesses (in particular, small and medium sized enterprises (SMEs)), targeted digital advertising is highly cost effective. For consumers, accessing free online services generally means accepting targeted advertising that sits alongside the content they enjoy.

The Government's stated aim is to maintain a pro-innovation and proportionate approach to digital regulation. While noting the benefits of online paid-for advertising, the Government recognises that it also carries risks across the content, media placement and targeting of the ads. Potential harms include misleading and fraudulent ads, legal but harmful ads (such as those which target vulnerable groups), and illegal harms. The Government has stated that "market participants across the advertising ecosystem (from advertisers to publishers and all those in between) have a collective responsibility to tackle the harms created to society".

There is a separate Library briefing on [Consumer protection: online scams](#). It considers the scale of the problem, the different types of scams, and who are the targeted victims.

This briefing considers how the online advertising ecosystem operates, the size and value of the sector, and its current regulation. It also examines the [Online Safety Bill](#) currently progressing through Parliament, which aims to protect internet users from the devastating impact of fraudulent paid-for adverts. If enacted, the Bill would impose a new legal duty on large social media platforms and search engines to put in place proportionate systems and processes to prevent fraudulent paid-for adverts appearing on their services, and to quickly take them down if they do appear.

This briefing also considers the Government's [Online Advertising Programme](#), concerned with the regulatory framework for paid-for online advertising and the transparency and accountability of the supply chain. The aim of the Programme is to bring more of the major players under regulation.

Other initiatives and proposed regulatory interventions that would impact on online advertising are also looked at in this briefing. These include a [Plan for Digital Regulation](#), reforms to promote competition in digital markets, and the delivery of a new data protection regime. Finally, this paper considers a new UK-wide restriction on paid-for online advertising of less healthy food or drink contained in the [Health and Care Act 2022](#). This restriction was to be implemented on 1 January 2023 but has been delayed until **1 October 2025**.

# 1 Online advertising sector

## 1.1 Value of online advertising

According to the Department for Digital, Culture, Media and Sport (DCMS), [global investment in ad spend is predicted to be in the region of \\$700 billion by the end of 2022](#), with digital advertising contributing to around half of that figure.<sup>1</sup> The total turnover of the UK advertising industry in 2019 was an estimated £40 billion; it generated £17 billion in Gross Value Added (GVA) and exported £4 billion in services.<sup>2</sup>

Digital advertising is the largest and fastest growing segment in the UK advertising sector. In its [Online Advertising Programme Consultation paper](#) (March 2022), the DCMS describes the importance of online advertising:

Advertising spend across all channels in the UK was £23.9 million in 2019, up 31% from 2012 [...]. Online advertising has come to sit at the heart of the digital economy and spending has steadily grown over the period to reach £14.3 million in 2019, a huge increase of 144% since 2012. The advertising market is dynamic, and businesses have moved towards the channels that are giving them access to large audiences and demonstrating positive returns on investment. This has meant advertising has moved away from some channels with TV, print and direct mail seeing decreased spending over the period.<sup>3</sup>

Although hit by the economic impact of the pandemic, the UK advertising industry is described as having made a remarkable comeback.<sup>4</sup> An [Advertising Association expenditure report](#) (PDF) predicted that UK ad spend would total £29.3 billion in 2021, a year-on-year increase of 24.8%.<sup>5</sup> While [online advertising spending in the UK was £16.47 billion in 2020](#).<sup>6</sup>

This growth in online advertising reflects a shift in consumer habits from traditional media (such as newspapers and television) to online formats. According to the DCMS, over four-fifths of the adult population used the internet in 2021, with the average time spent online per week increasing from

<sup>1</sup> Department for Digital, Culture, Media & Sport press release, [Major law changes to protect people from scam adverts online](#), 8 March 2022, see also WARC, [Global Ad Trends: Ad Investment 2021/22](#)

<sup>2</sup> Department for Digital, Culture, Media & Sport press release, [Major law changes to protect people from scam adverts online](#), 8 March 2022, see also Office for National Statistics, [Non-financial business economy: sections A to S](#), 21 June 2021

<sup>3</sup> Department for Digital, Culture, Media & Sport, [Online Advertising Programme Consultation](#), 9 March 2022

<sup>4</sup> Ibid

<sup>5</sup> [UK ad spend to exceed £29BN this year with increased recovery predictions](#), Advertising Association & WARC [online], 28 October 2021, (accessed 12 December 2022)

<sup>6</sup> Ibid

14 hours to just under 25 hours from 2010 to 2020.<sup>7</sup> Ofcom has stated that with this growth in internet consumption, “advertising has become the primary source of revenue for many online businesses” and “underpins the provision of key online services such as search and social media”.<sup>8</sup>

Ad-funded platforms attract consumers by offering their core services for free. To target advertising, they also collect contextual or personal information/data about consumers. Such platforms include, but are not limited to, search engines and social media sites. For businesses, especially SMEs, “digital Ad tech advertising<sup>9</sup> offers high levels of personalisation and efficiency in reaching audiences, which is cost effective”.<sup>10</sup> For consumers, free access to the services and content they enjoy means accepting advertising that is targeted at them.

## 1.2

## Channels for digital advertising

There are two main channels for digital advertising: search advertising and display advertising. Search advertising consists of paid-for listings in search results, while display advertising includes ads that appear on websites visited through a browser (usually in a rectangular box).

### Search advertising

Paid-for search advertising is used by advertisers to display ads in search engine results; the ads displayed mirror the search item. The two leading search engines are Google and Bing. According to the Competition and Markets Authority (CMA), search advertising accounted for a total ad spend of £7.3 billion in 2019. It is the largest category of digital advertising in the UK.<sup>11</sup>

Search advertising is typically bought through agencies or a ‘self-service’ ad platform, which allows advertisers (or the business itself) to build and deliver ads without having to involve a third-party vendor or salesperson. Such platforms host “an end-to-end” service, where data, statistics and payment arrangements are all in one place.<sup>12</sup>

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<sup>7</sup> Department for Digital, Culture, Media & Sport, [Online Advertising Programme Consultation](#), 9 March 2022

<sup>8</sup> Ofcom, [Online Nation 2019 Report](#), 30 May 2019

<sup>9</sup> **Ad tech** is a set of technologies used for managing advertisements across channels (including search display, video, mobile and social) with functions for targeting, design, bid management, analytics, optimization and automation of digital advertising

<sup>10</sup> Department for Digital, Culture, Media & Sport, [Online Advertising Programme Consultation](#), 9 March 2022

<sup>11</sup> Competition and Markets Authority, [Online platforms and digital advertising market study](#), 3 July 2019

<sup>12</sup> Department for Digital, Culture, Media & Sport, [Online Advertising Programme Consultation](#), 9 March 2022

## Open display advertising

This type of online advertising uses text, images and URLs that link to the advertiser's website; once the user clicks on the advert they are taken to the product page. The content of these ads can be static, animated, or audio-visual (e.g., banner ads or leader board). Open display advertising can appear across any website or app that sells its advertising space in this way (e.g., news publishers' sites and e-commerce sites etc).

## Social media display advertising

With social media advertising, adverts are displayed to the target audience through social media platforms (e.g., Facebook/Meta, Snapchat, Instagram etc). This type of advertising is highly targeted, using technology to serve adverts to niche consumers in real time. This display advertising may involve banner ads, widgets, takeovers or influencers to advertise a brand.

According to the DCMS, up to 80% of online advertising expenditure is generated by Meta, which owns various social media platforms such as Facebook and Instagram.<sup>13</sup> YouTube, owned by Google, has the second-highest share of display advertising.<sup>14</sup>

Other digital advertising formats, include the following.

## Classified advertising

Online classified advertising (such as on Facebook Marketplace or Gumtree) are a cheaper alternative to large display campaigns. This type of advertising has a low entry barrier, so it is more accessible to small businesses.

## Content marketing

Content marketing can involve native advertising (i.e., ads designed specifically not to look like an ad, but like the rest of the content on the page), sponsored content and influencer marketing. Content marketing is often embedded into either user-generated or editorial content and signposted by phrases such as "sponsored by", "presented by" or "in partnership with". The DCMS describes content marketing as follows:

Put simply, content marketing is paid-for advertising content which intentionally resembles that of the editorial content of the publisher or influencer.

This type of advertising is sometimes quite hard for consumers to spot and relies on the influencer, publisher or platform to declare that it is paid-for

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<sup>13</sup> [Social Media Advertising - UK](#), Statista [online], undated, (accessed 12 December 2022)

<sup>14</sup> Department for Digital, Culture, Media & Sport, [Online Advertising Programme Consultation](#), 9 March 2022

content. There is no single form of content marketing, and it can be designed in myriad ways. The growing popularity of content marketing conveys a strategic shift as many brands consider more subtle ways of selling their products and services. These efforts involve creating content or promoting experiences that consumers enjoy, while simultaneously conveying a brand message.<sup>15</sup>

As part of their advertising campaigns, brands increasingly use “influencers”, those with a large social media following. It has been estimated that, globally, the influencer market is worth \$13.8 billion.<sup>16</sup> Instagram is the leading platform for influencers.

As highlighted by the DCMS, in recent years, there has been growth in new online media and advertising formats, including in-game, live influencer and voice, amongst others. As these formats grow, the advertising chain is expected to evolve further.<sup>17</sup>

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<sup>15</sup> Department for Digital, Culture, Media & Sport, [Online Advertising Programme Consultation](#), 9 March 2022

<sup>16</sup> [Influencer marketing in the United Kingdom \(UK\) – statistics and facts](#), Statista [online], 27 September 2021, (accessed 12 December 2022)

<sup>17</sup> Department for Digital, Culture, Media & Sport, [Online Advertising Programme Consultation](#), 9 March 2022

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## 2 Online advertising ecosystem: how it operates

### 2.1 Overview

As outlined in the previous section, there are two main channels for paid for digital advertising: search advertising and display advertising.

Display advertising can further be divided into display advertising from “owned-and-operated” platforms and “open display” advertising:

- With ‘owned-and-operated’ platform advertising, large digital platforms (e.g., Google, Facebook, Amazon) sell their own advertising inventory (i.e., ad space on their own websites) through their own ad tech interface within their so-called “walled gardens”.
- In contrast, with “open display” advertising, the vast majority of publishers (e.g., newspapers) sell their advertising inventory to a wide range of advertisers through a complex chain of third-party advertising intermediaries, also called “ad tech providers”.

In practice, advertisers often use a combination of these supply chains to reach audiences. Further information is provided below.

### 2.2 Players

The digital advertising ecosystem is complex and fast changing, but at its heart it is based on demand and supply. It involves advertisers - who want to deliver promotional materials through various online platforms, such as search engines, social media, websites, and other channels - and publishers who have ad space they want to sell.

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#### Demand side

**Advertisers**,<sup>18</sup> working with a brand, form the ‘demand side’ of the market. They want to purchase advertising space to reach their target audience.

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<sup>18</sup> **Advertisers** are individuals, businesses, organisations which direct the content of a message within an online advertisement, directly or indirectly, to influence choice, opinion, or behaviour. Advertisers typically work alongside **media buying agencies** or **creative agencies** to develop and shape their message to produce the intended outcome (e.g., greater engagement/sales).

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## Supply side

Advertising space is provided by **digital platforms and publishers**,<sup>19</sup> who form the ‘supply side’ of the market and can sell access to their audiences to fund their businesses. **Advertising inventory** is the number of advertisements, or amount of ad space, a publisher has available to sell to an advertiser.

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## Advertising intermediaries

Between the demand and supply sides of the market, are **advertising intermediaries**.<sup>20</sup> These companies and technologies may operate to facilitate transactions, access data or provide other services. The range of advertising intermediaries between platforms and publishers are known as **‘ad tech’ or ‘ad tech stack’**.<sup>21</sup>

Some intermediaries help advertisers through better targeting, dynamic creatives or analytics and measurement. The main participants are media agencies<sup>22</sup>; advertiser ad services (used by advertisers/media agencies to deliver, track and analyse campaigns); and **demand-side platforms (DSPs)**. DSPs provide a platform that allows advertisers and media agencies to buy advertising space from many sources (based on the buyer’s objectives and on data about the final user).

Other intermediaries, like **Supply Side Platforms (SSPs)** help publishers generate more revenue with multiple ad networks and others find creative ways to implement new premium ad placements (e.g., sliders<sup>23</sup>).

Further information about the roles of DSPs and SSPs is provided below (**section 2.3**).

## 2.3 Online advertising supply chains

Supply chains are the ‘channels’ advertisers use to reach consumers. As mentioned above, there are two primary channels through which advertisers can purchase advertising space online:

- search advertising
- and display advertising

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<sup>19</sup> **Publishers and platforms** attract audiences and provide opportunities for advertising placement. The term **‘online platform’** encompasses a range of services including social media, video sharing platforms (VSPs), creative content outlets, marketplaces and search engines

<sup>20</sup> **Intermediaries** (third party agents) – businesses and/or services which connect buyers and sellers (e.g., through programmatic trading), facilitate transactions, and leverage data to provide buyers of advertising space with targeting options for online advertising

<sup>21</sup> **Ad tech** is used to refer to all ad tech intermediaries, including DSPs, SSPs and ad servers

<sup>22</sup> **Advertising or media agencies** primarily engage in preparing advertising (writing copy, artwork, graphics, and other creative work) and placing such advertising in periodicals, newspapers, radio and television, or other advertising media for clients on a contract or fee basis. Some advertising agencies are vertically integrated and have their own proprietary ad tech

<sup>23</sup> A **slider** is a term that refers to a slideshow on a website, for example, a revolving carousel that displays products

Display advertising can further be divided into: ‘owned and operated’ or ‘walled gardens’ systems, and the open display market.

## ‘Owned and Operated’ or ‘Walled Garden’ model

With the ‘owned-and-operated’ model, large ad funded platforms (such as Google and Facebook, Amazon) sell their own advertising inventory (i.e., ad space on their own websites) through their own ad tech interface within their so-called “walled gardens”. In other words, advertisers buy space directly from the platforms who offer an integrated ad buying service.

These platforms operate closed supply chains, meaning they deliver marketing channels and targeting services in-house. As highlighted by the DCMS, these large platforms have complete control.<sup>24</sup> They effectively own the relationship with both the audience/consumers and advertiser, with no other party involved in the buying and selling of its advertising inventory (other than, perhaps, a media agency).<sup>25</sup>

Google, Facebook/Meta and some other platforms offer advertisers “self-service options”. This is designed to encourage smaller operators to directly purchase advertising at a low entry point.

## Open display markets

In the open display advertising market, publishers (e.g., newspapers and other content and app providers) sell their advertising inventory to a wide range of advertisers. To achieve the complicated task of selecting an ad to be served to an individual in real time and establishing the price to be paid for doing so, publishers and advertisers rely on a complex vertical chain of intermediaries, called “ad tech providers” (also known as the ‘ad tech stack’).

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### Supply side

On the supply side, there are publisher ad servers and supply side platforms (SSPs), which include ad exchanges. SSPs provide the technology to automate the sale of digital inventory. They allow real-time auctions by connecting to multiple demand-side platforms (DSPs), collecting bids from them, determining the winning bidder and sending a bid back to the publishers. They also determine which buyers can bid and which data to disclose to buyers.<sup>26</sup>

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### Demand side

On the demand side, there are demand-side platforms (DSPs) and advertiser ad servers. DSPs are services that enable advertisers and media agencies to buy advertising space from multiple SSPs.

DSPs enable advertisers to store their ads, use algorithms to process user data and identify matches with the advertisers’ audience, assess the value of

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<sup>24</sup> Department for Digital, Culture, Media & Sport, [Online Advertising Programme Consultation](#), 9 March 2022

<sup>25</sup> Ibid, section 2.2.2

<sup>26</sup> European Commission (Expert Group for the Observatory on the Online Platform Economy), [Market power and transparency in open display advertising – a case study](#), 2021

each impression and optimize bid prices to help them buy the best matched ad slots.<sup>27</sup> One of the main roles of DSPs is to provide advertisers with the ability to target users in real time. DSPs can provide access to their own proprietary data and allow advertisers to use data through integrations with Data Management Platforms (DMPs).<sup>28</sup>

The DCMS makes the following distinction between publishers in the open display market (such as online news publishers) and platforms operating ‘owned-and-operated’ systems:

Platforms tend to oversee the process of matching adverts to advertising space, whereas publishers are at the receiving end of the open display supply chain, and thus may have little control over what is advertised in their inventory. There is also a key difference in the scale, reach and resources available to these players which means we would expect any regulation in relation to their role to be proportionate. Open display publishers often rely on advertising for their financial sustainability and declining ad revenue has led some publishers to develop alternative business models. Many publishers apply controls over the quality and content of advertising on their sites due to reputational damage risks.

The CMA market study identified that some publishers of online content rely on large digital platforms, such as Google and Facebook’s user-facing services, to host content or for referrals of traffic to their online properties, which they can then monetarise by displaying advertising to these visitors. They concluded that those publishers face an imbalance of bargaining power with Google and Facebook, which disadvantages their businesses in several ways including restrictions on their ability to control their own content and data, to manage traffic to their websites and to target advertising.<sup>29</sup>

## 2.4 Programmatic advertising technology

**Programmatic advertising** uses automated systems and processes to buy and sell digital advertising space using audience data in real time. This market has experienced a rapid growth in Europe, outpacing non-programmatic advertising since 2016 and amounting to EUR 16.8 billion in 2018.<sup>30</sup>

Using programmatic advertising technology to buy and sell digital advertising space means that the selection, pricing and delivery of adverts to selected audiences is organised through automated computerised algorithms. The targeting of audiences is heavily reliant on the use of data (usually a combination of personal and contextual data) by platforms and intermediaries. In recent years, new rules regulating the use of cookies have

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<sup>27</sup> Ibid

<sup>28</sup> Ibid

<sup>29</sup> Department for Digital, Culture, Media & Sport, [Online Advertising Programme Consultation](#), 9 March 2022

<sup>30</sup> European Commission (Expert Group for the Observatory on the Online Platform Economy), [Market power and transparency in open display advertising – a case study](#), 2021

influenced the trend towards using contextual rather than personal data in programmatic advertising.

According to the DCMS, programmatic technology has opened-up advertising markets to SMEs, enabling them to target their advertising cheaply and efficiently.<sup>31</sup> On the supply side, publishers of any size can sell space programmatically to a greater range of advertisers.

A new development has been the formation of “programmatic ad exchanges”, like [AppNexus](#). This is a platform for advertisers and publishers to buy and sell their online display inventory in real time, known as “real time bidding”.

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<sup>31</sup> Department for Digital, Culture, Media & Sport, [Online Advertising Programme Consultation](#), 9 March 2022

## 3 Current regulation

### 3.1 CAP Code

In the UK, paid-for online advertising is regulated through the [UK Code of Non-Broadcast Advertising and Direct & Promotional Marketing](#) (known as the CAP Code) and consumer protection legislation. Compliance with the CAP Code is overseen by the [Advertising Standards Authority](#) (ASA), who holds advertisers primarily responsible for the creative content, media placement and audience targeting of their online ads. The ASA also places responsibilities on others involved in preparing or publishing marketing communications (such as agencies, publishers, and other service suppliers) to comply with the CAP Code.

There is a separate Library briefing on the [Regulation of advertising by the ASA](#).<sup>32</sup> The ASA has also published guidance, [Innovate to regulate- policing ads online](#).<sup>33</sup>

A criticism of the current self-regulation approach to online advertising is that the ASA has relatively restricted powers based around ‘naming and shaming’ and banning offending ads.<sup>34</sup> A further criticism is that whilst parties involved in preparing or publishing ads have a role to play in ensuring the ads are honest and responsible, “there are limited circumstances in which online service providers are held by the ASA to exercise primary control over the creative content and audience targeting of adverts”.<sup>35</sup>

Platforms and intermediaries have their own governing principles, terms of service and community guidelines. They also have certain obligations under consumer law, for example, a duty to trade fairly under the [Consumer Protection from Unfair Trading Regulations 2008](#). However, as highlighted by the DCMS, “there are often limited obligations on them to share information relating to monitoring, performance and propriety”,<sup>36</sup> with no standardised practice across industry.

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<sup>32</sup> [Regulation of advertising by the ASA](#), Commons Library briefing, CBP-6130, 20 August 2020

<sup>33</sup> [Innovate to regulate- policing ads online](#), Advertising Standards Authority [online], 8 July 2021 (accessed 12 December 2022)

<sup>34</sup> Department for Digital, Culture, Media & Sport, [Online Advertising Programme Consultation](#), 9 March 2022

<sup>35</sup> Ibid

<sup>36</sup> Ibid

A further concern for the DCMS is that many larger platforms offer ‘self-service’ advertising buying services, where there is little vetting for advertisers:

As a result, bad actors often operate with relative impunity, using online advertising as a means to perpetrate fraud or advertise other illegal or legal but harmful products and services, with limited oversight.<sup>37</sup>

The DCMS wants ‘transparency’ and ‘accountability’ spread across the supply chain, so that intermediaries, platforms, and publishers play a greater role in the regulation of online paid for advertising.<sup>38</sup>

Regarding influencer marketing, the ASA has introduced guidelines and created toolkits for influencers to ensure they are being transparent with their followers. The types of breaches that are likely to occur would involve “misleading advertising”, which falls under the [Consumer Protection from Unfair Trading Regulations 2008](#). The ASA can refer non-broadcast advertisers who continue to break the rules on misleading advertising to Trading Standards who can consider legal sanctions to bring them into line. In effect, Trading Standards acts as the ASA’s legal backstop power.

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### ASA Online Platforms and Network Standards project

The ASA “Online Platforms and Network Standards” (OPNS) may go some way to addressing the problems of lack of transparency and accountability in online advertising, by holding intermediaries and platforms responsible for their part in ensuring the CAP Code for advertisers is effectively overseen. However, the OPNS is still under development.

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### ASA pilot to enhance online transparency

The ASA has also begun [a one-year pilot](#) from June 2022, to enhance online transparency.<sup>39</sup> The initiative is the result of collaboration between the ASA and the [Internet Advertising Bureau \(IAB UK\)](#) (the industry body for digital advertising).<sup>40</sup> The pilot involves testing a [set of intermediary and platform principles](#),<sup>41</sup> including bringing the CAP Code to the attention of advertisers, ensuring advertising policies and contract terms comply with the CAP Code, and taking steps to enforce ASA rulings if advertisers do not cooperate. The ASA intends to publish a final report on information collected during this pilot, including recommendations on best practice and areas for improvement. In this report it will also consider whether there are any gaps in the ASA’s ability to enforce the CAP Code online and, if so, how to effectively address them.

According to the DCMS, understanding the way in which advertising space is purchased and disseminated online, and the different services that can be

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<sup>37</sup> Ibid

<sup>38</sup> Ibid

<sup>39</sup> [ASA pilot to enhance online transparency](#), Advertising Standards Authority (ASA) press release [online], 24 March 2022, (accessed 12 December 2022)

<sup>40</sup> Members of the IAB UK include: Adform, Amazon Ads, Google, Index Exchange, Meta, TikTok, Twitter and Yahoo

<sup>41</sup> [Intermediary and platform principles](#), Advertising Standards Authority (ASA) [online guidance], 23 March 2022, (access 12 December 2022)

used within the “online advertising ecosystem” to reach audiences, is key to considering appropriate regulatory solutions:

Those regulatory solutions will need to successfully reflect the main market dynamics, such as the size, role, reach and resources available to the different players, the technologies they use and the activities in operation across all routes to market. We also recognise that such solutions will need to be proportionate for market participants of all sizes and flexible enough to respond to market changes.<sup>42</sup>

## 3.2 The Digital Regulation Cooperation Forum

The [Digital Regulation Cooperation Forum](#) is a forum for regulators across the digital sector.<sup>43</sup> Currently, members of the Forum consist of the CMA, the Information Commissioner’s Office (ICO), Ofcom and the Financial Conduct Authority (FCA). During 2021/2022, the Forum focused on three core priority areas:

- Developing strategic projects on industry and technological developments, including digital advertising technologies, algorithmic processing, and end-to-end encryption.
- Identifying opportunities for joined-up regulatory approaches across priority areas (e.g., data protection and competition including the ‘Age-Appropriate Design Code’, ‘Video-Sharing Platform (VSP)’ regulations and Online Harms).
- Building the skills and capabilities of the Forum members.

The current Forum intends to work closely with the [Advertising Standards Authority](#) (ASA), [Prudential Regulation Authority](#) (PRA), [Payment Systems Regulator](#) (PSR), the [Intellectual Property Office](#) (IPO), the [Gambling Commission](#) and other agencies as appropriate. The Government has said that it regards the Forum as “an important step forward in our ability to deliver a more coherent and innovation-friendly approach to digital regulation.”<sup>44</sup>

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<sup>42</sup> Department for Digital, Culture, Media & Sport, [Online Advertising Programme Consultation](#), 9 March 2022

<sup>43</sup> Competition and Markets Authority, Information Commissioner’s Office, Ofcom, Financial Conduct Authority, [Embedding coherence and cooperation in the fabric of digital regulators](#), 4 May 2021

<sup>44</sup> Competition and Markets Authority, Information Commissioner’s Office, Ofcom, Financial Conduct Authority, [Embedding coherence and cooperation in the fabric of digital regulators](#), 4 May 2021

## 3.3 Use of data initiatives by tech companies

Recently, the advertising industry has introduced its own initiatives to address issues in online advertising and deliver protections. Specifically, big tech companies have taken steps to limit the targeting of users and to reduce the data available to third parties. For example:

- Cookies have been removed by default from Safari and Firefox and are being phased out in Chrome.
- Google aims to implement replacement technologies in the place of cookies. Its new “[Privacy Sandbox](#)” – which will allow websites to show targeted adverts but will reduce the amount of information users share - is testing approaches.
- Apple’s new [privacy measures](#) include turning off the “identifier for advertisers” (IDFA) used for tracking by default. Instead, Apple users will have to grant apps explicit permission to use it.
- In November 2021, the [Meta group announced](#) that it would be removing some of its targeting services (such as political affiliation, religion and sexual orientation).<sup>45</sup>

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<sup>45</sup> [Removing Certain Ad Targeting Options and Expanding Our Ad Controls](#), Meta press release [online], 9 November 2021, (accessed 12 December 2022)

## 4 Perceived harms: online paid-for advertising

### 4.1 CMA market study (July 2020)

On 1 July 2020, the CMA published the final report of its market study into [Online platforms and digital advertising](#).<sup>46</sup> The CMA made the following observations:

- Google and Facebook/meta are the largest online platforms funded by digital advertising. Their business models rely on attracting consumers' attention and gathering data about them, which they use to sell targeted advertising.
- Both platforms have opened-up access to sophisticated and targeted advertising for millions of small businesses around the world.
- Over a third of UK internet users' total time online is spent on sites owned by Google and Facebook. Both companies are also able to gather substantially more data about consumers than their rivals.

Both Google and Facebook now hold powerful positions in the UK digital advertising markets. The CMA estimates that search advertising<sup>47</sup> revenues totalled around £7.3 billion in 2019, of which more than 90% was earned by Google.<sup>48</sup> Total spend on display advertising was worth £5.5 billion, of which the CMA estimates more than half went to Facebook. Overall, the CMA estimate that around 80% of all expenditure on search and display advertising in the UK in 2019 went to Google or Facebook.

The CMA concluded that competition is not working well in these digital markets, leading to substantial harm for consumers and society: “weak competition in search and social media leads to reduced innovation and choice and to consumers giving up more data than they would like”.<sup>49</sup> It recommended that the Government establish a new pro-competition regulatory regime for digital markets (see below to **section 5.4** of this paper).

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<sup>46</sup> Competition and Markets Authority, [Online platforms and digital advertising market study](#), 3 July 2019

<sup>47</sup> **Search advertising** is where advertisers pay online companies to link their company website to a specific search word or phrase so that it appears in relevant search engine results

<sup>48</sup> Competition and Markets Authority, [Online platforms and digital advertising – Market study final report](#), 1 July 2020

<sup>49</sup> Ibid

The CMA is not alone in giving attention to market power issues in digital advertising. The competition authorities of France have also published a report on the digital advertising market (Autorité de la Concurrence 2018). The Australian Government, after a [2019 Digital platform inquiry](#), directed the Competition and Consumer Commission (ACCC) to develop a mandatory code of conduct to address bargaining power imbalances between Australian news media businesses and Google and Facebook. A draft mandatory code was published for public consultation on 31 July 2020 and the [Treasury Laws Amendment \(News Media and Digital Platforms Mandatory Bargaining Code\) Act 2021](#) (No. 21 2021) came into force on 3 March 2021. On 20 October 2020, the US Department of Justice filed a lawsuit against Google for unlawfully maintaining monopoly in search and search advertising (US DoJ 2020). On 16 December 2020, [ten US states filed a lawsuit](#) against Google’s monopolisation of online display advertising.<sup>50</sup>

## 4.2 Joint Committee’s findings

Paid-for adverts were not included in the draft [Online Safety Bill](#); it only covered user-generated content on user-to-user services and search services. It was the Government’s view that including paid-for adverts would extend the scope of the Bill in a way that would not be appropriate.<sup>51</sup> Instead, paid-for advertising and scams were to be considered as part of the DCMS’s [Online Advertising Programme](#) (see below).

### Joint Committee’s recommendation

During the pre-legislative scrutiny of the draft Online Safety Bill, the House of Lords and House of Commons Joint Committee heard evidence that this exclusion would create a gateway for various harms to spread online.<sup>52</sup> For example, the [Financial Conduct Authority](#) (FCA) told the Joint Committee that: “the problem [of online fraud] is most manifest in the paid-for space, so it does not make sense for the Bill not to deal with the very heart of the problem, which is the paid-for advertising space”.<sup>53</sup> The consumer group [Which?](#) explained that “paid-for advertising on online platforms is a primary method used by criminals to target consumers and engage them in a [financial] scam, as it gives them instant access to large numbers of target audiences”.<sup>54</sup> Other witnesses suggested that if paid-for advertising remained excluded from scope, criminals might switch to paying for fraudulent content to be disseminated.<sup>55</sup> According to the [ASA](#), research indicated that

<sup>50</sup> European Commission (Expert Group for the Observatory on the Online Platform Economy), [Market power and transparency in open display advertising – a case study](#), 2021

<sup>51</sup> House of Commons, [Joint Committee on the Draft Online Safety Bill](#), Report HC 609 of session 2021-22, 10 December 2021

<sup>52</sup> Ibid

<sup>53</sup> Ibid, [Q 121](#)

<sup>54</sup> Ibid, Written evidence from Which? ([QSB0115](#))

<sup>55</sup> Ibid, this concern is raised in written evidence from: Reset ([QSB0138](#)) and Dame Margaret Hodge MP ([QSB0201](#)), and oral evidence by the FCA ([Q 120](#)), Which? ([Q 112](#)), Martin Lewis ([Q 112](#)), and Ofcom ([Q 263](#)).

increasing concerns about scams were influencing the public's trust in online ads.<sup>56</sup>

In its [report](#), published in December 2021, the Joint Committee recommended significant changes to the draft Online Safety Bill, including bringing paid-for advertising within scope of the Bill to tackle scams and fraud.<sup>57</sup> In making this recommendation, the Joint Committee said:

The exclusion of paid-for advertising from the scope of the Online Safety Bill would obstruct the Government's stated aim of tackling online fraud and activity that creates a risk of harm more generally. Excluding paid-for advertising will leave service providers with little incentive to remove harmful adverts, and risks encouraging further proliferation of such content.<sup>58</sup>

The Joint Committee also suggested that [Ofcom](#) should be responsible for acting against service providers who consistently allowed paid-for advertisements that created a risk of harm to be placed on their platforms:

We recommend that the Bill make clear Ofcom's role will be to enforce the safety duties of providers covered by the online safety regulation, not regulate the day-to-day content of adverts or the actions of advertisers. That is the role of the Advertising Standards Authority. The Bill should set out this division of regulatory responsibility.<sup>59</sup>

The Government published its [response to the Joint Committee's report on 17 March 2022](#).<sup>60</sup> It said it would bring paid-for advertising within scope of the Bill by "introducing a new standalone duty to require the highest risk and highest reach platforms (including large search services) to minimise the likelihood of fraudulent adverts being published on their service and protect their users".<sup>61</sup> In tandem with the publication of its response, the Government introduced the [Online Safety Bill](#) (see section 5.2 below).

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<sup>56</sup> Ibid, [Q 118](#)

<sup>57</sup> Ibid

<sup>58</sup> Ibid, [para. 268-271](#)

<sup>59</sup> Ibid

<sup>60</sup> Department for Digital, Culture, Media & Sport, [Joint Committee report on the draft Online Safety Bill: Government response](#), Cm 640, 17 March 2022

<sup>61</sup> Ibid

## 5 Recent developments

Several initiatives and proposed regulatory interventions are being considered by the Government that would impact on online advertising. These include a Plan for Digital Regulation, an Online Safety Bill to tackle harmful content online, an Online Advertising Programme, reforms to promote competition in digital markets, and the delivery of a new data protection regime. The aim is “to ensure regulators working across the digital landscape deliver a coherent, innovation-friendly digital regulation approach”.<sup>62</sup>

### 5.1 Plan for Digital Regulation

The Government’s [Plan for Digital Regulation](#) was published in July 2021.<sup>63</sup> In this Plan the Government set out its vision to “drive prosperity through a coherent, pro-innovation approach to the regulation of digital technologies, while minimising harms to the economy, security and society”.<sup>64</sup> The Government has made a specific commitment to keep the UK safe online, meaning that people can trust that they are protected from online harms beyond their control, that consumers are treated fairly and can choose the services they access.<sup>65</sup>

Through its Plan for Digital Regulation, the Government announced a ‘call for views’, inviting stakeholders to share their thoughts on how to set the right rules for governing digital technologies. On 13 June 2022, the Government published a [summary of the key themes from its stakeholder engagement](#),<sup>66</sup> but said the conversation would continue in 2022 and beyond. It made a commitment to publish an update on its progress delivering on the Plan as part of its forthcoming [Digital Strategy](#).<sup>67</sup>

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<sup>62</sup> Department for Digital, Culture, Media & Sport, [Online Advertising Programme Consultation](#), 9 March 2022

<sup>63</sup> Department for Digital, Culture, Media & Sport, [Policy paper: Digital Regulation: Driving growth and unlocking innovation](#), 6 July 2021, (last updated 13 June 2022)

<sup>64</sup> Ibid

<sup>65</sup> Ibid

<sup>66</sup> Department for Digital, Culture, Media & Sport, [Policy Plan for Digital Regulation: summary of responses to the ‘call for views’](#), 13 June 2022

<sup>67</sup> Department for Digital, Culture, Media & Sport, [Policy paper: UK Digital Strategy](#), 4 October 2022

## 5.2 Online Safety Bill – advertising

The [Online Safety Bill](#) was presented to Parliament on 17 March 2022. The primary aim of the Bill is to protect children and to tackle illegal and harmful content online. There are stand-alone provisions in the Bill dealing with fraudulent adverts in ‘user-to-user’ services<sup>68</sup> and search services.<sup>69</sup> The Bill is currently progressing through Parliament

The Bill extends to advertising content which takes the form of organic, ‘user-generated content’ (i.e., promotional content posted by a company on its social media page, or influencer content promoting products and services), as such content appears to users and is treated by services in the same way as any other user-generated content. Traditional forms of influencer marketing will therefore be in scope of the Bill.

In brief, a **new duty** has been added to the Bill requiring large social media platforms and search engines to prevent paid-for fraudulent adverts appearing on their services (whether they are controlled by the platform itself or an advertising intermediary).<sup>70</sup> Specifically, large social media platforms (defined in the Bill as **Category 1 services**) would be required to put in place proportionate systems and processes to:

- prevent individuals from encountering fraudulent advertising,
- minimise the amount of time that fraudulent advertising is present, and
- swiftly remove fraudulent advertising once they are made aware of it through any means. (i.e., takedown requirements).<sup>71</sup>

**Category 2A services** (regulated search services or combined services) must use proportionate systems and processes to minimise (rather than prevent) the risk of individuals encountering fraudulent adverts in or via search results.<sup>72</sup>

The Bill considers what is meant by references to “encountering” fraudulent advertisements in or via search results using a search engine.<sup>73</sup> This includes interacting with a paid-for advertisement in search results (e.g., by clicking on the fraudulent ad in a search result and then being redirected to a web page). “Encountering” does not include any subsequent interactions with a website (e.g. leaving the original fraudulent advertisement web page).

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<sup>68</sup> **User-to-user** means an internet service that allows content generated directly on the service, or uploaded to or shared on the service, by a user, to be encountered by another user, or other users

<sup>69</sup> A **search service** is a service that is or includes a search engine

<sup>70</sup> Ibid

<sup>71</sup> Clause 34(1)

<sup>72</sup> Clause 35

<sup>73</sup> Clause 35(4)

As to what is ‘proportionate’, the nature, and severity of the potential harm posed by the advert is relevant, as is the degree of control a provider has in relation to the placement of advertisements on the service. This reference to ‘control’ recognises that large social media platforms and search engines may rely on third party intermediaries to display paid advertisements on their services and would, therefore, have less control over measures to prevent the posting of fraudulent adverts.<sup>74</sup>

Importantly, social media platforms and search engines must also provide clear and accessible information in their terms of service (or in a publicly available statement in the case of search engines) about any proactive technology they use to comply with their obligations, including when it is used, and how it works.<sup>75</sup>

For the purposes of the Bill, adverts are paid for if the provider of the service receives consideration (monetary or non-monetary) for them, and their placement is determined by systems or processes agreed between the contracting parties involved in the advertisement. The intention is to capture “boosted” social media posts which influencers pay to have promoted more widely.<sup>76</sup>

The Bill contains a list of offences that will constitute fraud offences in relation to online advertising.<sup>77</sup> The relevant inchoate offences also apply to the definition of fraud offences (i.e., attempting or conspiring to commit an offence).

The detail of what platforms and search engines will need to do to fulfil their new duty will be set out in Ofcom Codes of Practice. The Government has said that this could include making firms scan for scam adverts before they are uploaded to their systems, using identity verification, and checking financial promotions are made only for FCA-authorized firms.<sup>78</sup> Ofcom will oversee whether companies have adequate measures in place to fulfil the duty, but will not assess individual pieces of content, in keeping with the approach taken in the rest of the Bill. Ofcom will have the power to hold companies to account by blocking their services in the UK or issuing heavy fines of up to £18 million or ten per cent of annual turnover.<sup>79</sup>

According to the DCMS, if enacted, this new legal duty will mean companies operating social media platforms and search engines must “clamp down on ads with unlicensed financial promotions, fraudsters impersonating legitimate businesses and ads for fake companies”.<sup>80</sup>

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<sup>74</sup> Clauses 34(5) and 35(6)

<sup>75</sup> Clauses 34(2) and 35(2)

<sup>76</sup> Department for Digital, Culture, Media & Sport press release, [Major law changes to protect people from scam adverts online](#), 8 March 2022

<sup>77</sup> Clause 36

<sup>78</sup> Department for Digital, Culture, Media & Sport press release, [Major law changes to protect people from scam adverts online](#), 8 March 2022

<sup>79</sup> Ibid

<sup>80</sup> Ibid

## 5.3

## Online Advertising Programme consultation

The Online Safety Bill is intended to work in conjunction with the Government's [Online Advertising Programme](#) as well as other measures it is developing to address competition and data protection issues online. The DCMS describes the objective of the Online Advertising Programme as being to:

[...] to develop a coherent, comprehensive advertising regulatory framework for all actors across the advertising supply chain. This focus will complement the Government's wider reforms on competition, data protection and user-generated content, ensuring that the online advertising market which is at the heart of the digital economy can continue to thrive.<sup>81</sup>

The remit of the Online Advertising Programme is as follows:

- To examine the full spectrum of consumer and industry harms associated with all forms of paid-for advertising online (including harmful, fraudulent and misleading adverts).
- To ensure that the regulatory framework for online advertising builds trust and tackles the underlying drivers of harm in online advertising (including a lack of transparency and accountability).
- To consider the role and responsibilities of all actors involved in the supply chain of online advertising (i.e., those who sell advertising space).
- Develop coherent and proportionate regulation that takes the complexity of the online advertising ecosystem into account and enables effective regulation for current and new, emerging harms.
- Ensure regulators are given the appropriate powers and tools to effectively address issues in the online advertising ecosystem 'holistically' and to act on specific issues without the need for isolated intervention from the Government.
- Complement related regulatory action already underway, including the CMA's Digital Markets Unit (DMU) which will oversee the new pro-competition regime, the FCA's work in relation to financial promotions, the ICO's work on data protection and privacy, and the Gambling Act review (see below).
- Build on existing industry initiatives designed to address issues in online advertising, where they are delivering effective protections.<sup>82</sup>

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<sup>81</sup> Ibid

<sup>82</sup> Department for Digital, Culture, Media & Sport, [Online Advertising Programme Consultation](#), 9 March 2022

In 2019, the DCMS announced that it would consider how online advertising is regulated in the UK. In 2020, it ran a [call for evidence](#)<sup>83</sup> focusing on online content and placement standards.

A public consultation, [Online Advertising Programme](#), was published on 9 March 2022, to review the regulatory framework for paid-for online advertising.<sup>84</sup> In this document the Government said it wanted to give regulators greater powers to help regulate and minimise harms:

It will consider how we can build on the existing self-regulatory framework, by strengthening the mechanisms currently in place and those being developed, to equip our regulators to meet the challenges of the online sphere, whilst maintaining the government's pro-innovation and proportionate approach to digital regulation. We want to ensure that regulators have good sight of what is happening across the vast, complex, often opaque and automated supply chain, where highly personalised adverts are being delivered at speed and scale.<sup>85</sup>

Currently, advertisers are primarily responsible for the content, media placement and audience targeting of their adverts. In the consultation document, the Government said it wanted to share responsibility for transparency and accountability across the supply chain – with platforms, publishers and intermediaries playing a greater role in the regulation of online advertising.<sup>86</sup> Proposals included obligations to keep records, verify advertisers' identities, monitor adverts, pre-vet some adverts and enhance consumer complaint mechanisms.

The consultation document outlined three options for the level of regulatory oversight that could be applied across the supply chain:

- **Self-regulatory approach.** This would be centred around the ASA's existing regulatory role in enforcing the [CAP Code](#) (including existing backstops by legislation and related statutory enforcement bodies) and the proposed ASA 'Online Platforms and Network Standards' (OPNS), which is being developed. The aim being to increase accountability and transparency across the supply chain.
- **A statutory backstop approach.** The ASA would continue as the frontline regulator but would be supported by a newly appointed statutory regulator, to provide stronger powers of enforcement where needed.
- **Full statutory approach.** This would involve appointing a new statutory regulator to introduce measures designed to increase transparency and

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<sup>83</sup> Department for Digital, Culture, Media & Sport, [Online advertising – call for evidence](#), 27 January 2020

<sup>84</sup> Department for Digital, Culture, Media & Sport, [Online Advertising Programme Consultation](#), 9 March 2022

<sup>85</sup> Department for Digital, Culture, Media & Sport, [Online Advertising Programme Consultation](#), 9 March 2022

<sup>86</sup> Ibid

accountability and issue Codes of Practice. This regulator would be responsible for regulation and enforcement, with a range of powers.

Explaining the overriding aim of the consultation, the Government said:

The OAP ..... [is] seeking to provide a holistic review of the whole ecosystem for inline advertising, examining the role of actors across the supply chain and creating a transparent and accountable market. We will continually examine the interdependencies and overlaps between this review and other regulatory initiatives across government and industry to ensure consistency and coherence in our approach, in line with the Government's [Plan for Digital Regulation](#)<sup>87</sup> published in July 2021.<sup>88</sup>

Some issues were outside the scope of the consultation. This included privacy issues,<sup>89</sup> data policy, political advertising, competition issues,<sup>90</sup> and user generated content.

The consultation closed on **8 June 2022**. The DCMS is currently analysing the responses received.

## 5.4 New pro-competition regime for digital markets

The [Online Advertising Programme](#) is intended to complement the Government's work to establish a new pro-competition regime for digital markets. This follows recommendations set out in the Competition and Markets Authority's (CMA) 2020 [Online platforms and digital advertising market study](#).<sup>91</sup> The aim being to promote greater competition and innovation in these digital markets and protect consumers and businesses from unfair practices.<sup>92</sup>

In April 2021, a new [Digital Markets Unit](#) (DMU) was established within the CMA, on a non-statutory basis, to oversee a new pro-competition regulatory regime for the most powerful digital firms. Powers for the DMU and for a new regulatory regime require new legislation.

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<sup>87</sup> Department for Digital, Culture, Media & Sport, [Digital Regulation: Driving growth and unlocking innovation](#), 6 July 2021 (updated 13 June 2022)

<sup>88</sup> Department for Digital, Culture, Media & Sport, [Online Advertising Programme Consultation](#), 9 March 2022

<sup>89</sup> Since 2019, the Information Commissioner's Office has been looking separately at the use of ad tech in targeting adverts to consumers through programmatic advertising

<sup>90</sup> Dealt with by the new pro-competition regime for digital markets

<sup>91</sup> Competition and Markets Authority, [Online platforms and digital advertising market study](#), 3 July 2019

<sup>92</sup> Competition and Markets Authority press release, [Digital Markets Unit](#), 7 April 2022

In July 2021, the Government published a consultation on [A new pro-competition regime for digital markets](#) (PDF).<sup>93</sup> It included proposals which drew on recommendations made in [Unlocking digital competition](#) (the 2019 Furman Report)<sup>94</sup> and the [Digital Markets Taskforce](#) in 2020. The consultation closed on 1 October 2021 and the Government published its [response](#) in May 2022.

The timetable for introducing a new [Digital Markets, Competition Bill](#) has been accelerated. Initially announced in the Queen’s Speech on 10 May 2022, the Government only committed to publishing a draft Bill. However, in the [Autumn Statement 2022](#), the Chancellor of the Exchequer, Jeremy Hunt, confirmed that the Bill would be introduced in the current Parliamentary session.

Although the Autumn Statement does not include any further details of the proposals which will be included in the Bill, the expectation is that the Government’s [Digital Strategy](#) will be implemented by the Bill. This strategy includes bespoke codes of conduct for certain digital companies and a merger control regime for designated firms. It is also anticipated that the Bill will include the following key reforms to the UK’s competition and consumer protection regimes:

- The provision of new statutory powers to the [Digital Markets Unit](#) (DMU) to deal with anti-competitive practices in digital markets.
- Wide-ranging changes to the [Competition Act 1998](#) and the CMA’s market study/investigation powers, including significant penalties for non-compliance with market investigation orders.
- Strengthening of consumer law enforcement by enabling the CMA to directly enforce consumer law through the imposition of fines (rather than through the courts).

## 5.5 Data protection reform

On 10 September 2021, the Government published a public consultation on [Data: A New Direction](#) in which it set out its plans for a new pro-growth, innovation friendly data protection regime. The reforms are part of the Government’s [National Data Strategy](#) to shape a new UK data protection regime that will maintain high standards of data protection.<sup>95</sup>

<sup>93</sup> Department for Digital, Culture, Media and Sport (DCMS) and Department for Business, Energy & Industrial Strategy (BEIS), [A new pro-competition regime for digital markets](#), CP 489, July 2021

<sup>94</sup> [Unlocking digital competition](#) (PDF), Report of the Digital Competition Expert Panel, March 2019 (accessed 25 November 2022)

<sup>95</sup> Department for Digital, Culture, Media & Sport press release, [“National Data Strategy Forum launched to help UK become “the world’s number one data destination”](#), 18 May 2021

The proposed reforms would build on key elements of the current [UK General Data Protection Regulation](#) (UK GDPR) (such as principles around data processing, people's data rights and mechanisms for supervision and enforcement) but aim to reduce the burdens on organisations and businesses and ensure better data sharing between public bodies.

The consultation closed on 19 November 2021. The Government published its [response](#) on 17 June 2022, outlining the measures it would be taking forward.<sup>96</sup> Given the importance of data in the targeting of online advertising, the DCMS has said that it will take data protection policy developments into account as it develops its [Online Advertising Programme](#).<sup>97</sup>

## 5.6 Health & Care Bill

The new [Health and Care Act 2022](#), which received Royal Assent on 28 April 2022, contains new UK-wide advertising restrictions.<sup>98</sup>

- **A 9 pm watershed for advertising of less healthy food or drink on television.** Broadcasters to be liable for any breaches. All on-demand programme services (ODPS) under the jurisdiction of the UK, and therefore regulated by Ofcom, to be included in the watershed.
- A restriction on paid-for advertising of less healthy food or drink online. (Other ODPS will be subject to this online restriction because they are not regulated by Ofcom)

Both advertising restrictions were to be implemented simultaneously from **1 January 2023**. However, in May 2022, the Government announced a delay to the implementation of these restrictions to **1 January 2024**. It said this was due to a delay to Royal Assent of the Act, and recognition that the advertising industry needed more time to prepare for the restrictions. A further delay was announced on 9 December 2022, in a [written statement](#) by Neil O'Brien, Parliamentary Under-Secretary of State for Health and Social Care.<sup>99</sup> The Minister said that the advertising restrictions would now be implemented on **1 October 2025**:

[...] feedback from industry and the regulators is now clear that there is insufficient time to prepare for implementation on the previously announced date of 1 January 2024.

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<sup>96</sup> Department for Digital, Culture, Media & Sport, [Data: a new direction – Government response to a consultation](#), 23 June 2022

<sup>97</sup> Department for Digital, Culture, Media & Sport, [Online Advertising Programme Consultation](#), 9 March 2022

<sup>98</sup> [Schedule 18](#)

<sup>99</sup> Parliament included a power in the Health and Care Act 2022 to delay implementation of the advertising restrictions if necessary. The Government has used this power to amend the date of implementation for the advertising restrictions by secondary legislation, which it laid on 9 December 2022.

This is because ahead of implementation there are a number of steps that need to be taken including: a Government consultation on draft regulations that are required to set out the details of the advertising restrictions, such as the definition of product categories in scope of the advertising restrictions and the definition of the exemptions for small and medium enterprises, audio only content and services connected to regulated radio; the subsequent making of such regulations; a consultation from the statutory regulator (Ofcom) on the designation of a frontline regulator; the possible designation of a frontline regulator by Ofcom; and publication of guidance to support business compliance with advertising restrictions, following consultation on such guidance from the frontline regulator.

Through discussions with key stakeholders it is clear that this process cannot be delivered by January 2024.

We have listened carefully to the concerns raised by advertisers, broadcasters and regulators about the importance of having sufficient time with these documents to fully prepare and restructure their advertising. We also recognise that businesses need time to reformulate their products. This is why we have decided to delay implementation of this policy until 1 October 2025.

[...]

To illustrate our commitment to this policy, we are also launching a consultation on the definitions included in secondary legislation, to provide detail to that included in the Health and Care Act. This consultation will run for 16 weeks, until 31 March 2023.

This consultation will not be inviting opinions on the policy or looking to deviate from anything announced in the consultation response in June 2021 - it will be to confirm the clarity of the definitions used and that the text in the secondary legislation is fit for purpose.<sup>100</sup>

## 5.7 Gambling Act Review

Gambling advertising was one of the many issues that the DCMS sought views on in its [Gambling Act Review](#). The Review ran from 8 December 2020 to 31 March 2021. The Government has not yet responded but, in a [Lords PQ response of 12 April 2022](#), said that a white paper would be published “in the coming weeks”. For further background, see the Library Paper, [Gambling advertising: how is it regulated?](#) (17 March 2022).

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<sup>100</sup> [HCW433](#)

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