4 Question 1:
- What system should be put in place to require the removal of harmful content from online platforms? For example, the direct involvement of the regulator in a notice and take down system where it would have a role in deciding whether individual pieces of content should or should not be removed on receipt of an appeal from a user who is dissatisfied with the response they have received to a complaint submitted to the service provider. [Sections 2, 4, & 8 of the explanatory note]

The first port of call should be the media platform itself. These should be compelled to: 1) develop algorithms and processes to recognise harmful content (however that is defined) and ensure that it is not posted; and, 2) respond to complaints from the public in relation to posted content and removed such content within a specified very short period - e.g. 24 hours. Additionally, the online platforms should be made legally responsible for the content that they publish, making it possible for civil actions to be taken against them if the platform publishes / distributes harmful content. The next step should be a regulator with, inter alia, the power to make binding decisions on whether a piece of content should be removed. Ideally, this would be an appeal based service, used when a platform has declined a request to remove a piece of content. If the regulator were to be the first point of contact in relation to harmful content, there is a high risk that it would simply be overrun with requests: it is therefore more efficient to leave the initial onus on the online platform itself. In order to be effective, there would need to be a short turnaround of such appeals, otherwise the risk of the harmful content being copied and spread onto other media / platforms is increased.

5 Question 2:
- If the regulator is to be involved in deciding whether individual pieces of content should or should not be removed, should a statutory test be put in place before an appeal can be escalated to the regulator? Please describe any statutory test which you consider would be appropriate. [Sections 2, 4 & 8 of the explanatory note]

Devising a watertight statutory test would, in practice, not be possible. Instead, the regulator should be given broad powers to implement a set of defined principles: e.g. no bullying content; no threatening content; no defamatory content, no false information masquerading as true, no promotion of criminal acts; no content giving medically indavisable or disproven information (promoting extreme dieting, for instance, or anti-vaccine propaganda, or chiropractic or homeopathy); no hate speech, etc. As technology and its use develops over time, the type of content is likely to change in ways that cannot be anticipated now, so a statement of principles would allow a regulator some flexibility in implementing their authority.

6 Question 3:
- Which online platforms, either individual services or categories of services should
be included within the scope of a regulatory or legislative scheme?

[Sections 2, 5 & 6 of the explanatory note]

1) Social media platforms such as Facebook; Twitter; Snapchat; Instagram, etc; 2) User generated video platforms such as YouTube; Vimeo, Dailymotion, etc; 3) Online streaming platforms such as Twitch, Ustream, Periscope, etc. 4) Online news outlets such as Huffington Post, The Journal, The Irish Independent, etc.

Question 4:
- How should harmful online content be defined in national legislation? Should the following categories be considered as harmful content? Online platforms are already required to remove content which it is a criminal offence under Irish and EU law to disseminate, such as material containing incitement to violence or hatred, content containing public provocation to commit a terrorist offence, offences concerning child sexual abuse material or concerning racism and xenophobia. Are there other clearly defined categories which should be considered?

For example:
- Serious Cyber bullying of a child (i.e. content which is seriously threatening, seriously intimidating, seriously harassing or seriously humiliating)
- Material which promotes self-harm or suicide
- Material designed to encourage prolonged nutritional deprivation that would have the effect of exposing a person to risk of death or endangering health

[Sections 2, 4 & 6 of the explanatory note]

I think the "serious" modifier should be removed when referring to cyber bullying, threatening, intimidating, harassing, humiliating, etc., as this gives a defence, and an argument about whether something is just, e.g. threatening, rather than seriously threatening. Other categories would include, as suggested, material encouraging nutritional deprivation . . etc; material potentially harmful to public health (anti-vaxx, homeopathy, chiropractic, unproven alternative therapies, "miracle cures", etc); material promoting an anti-science viewpoint (presenting scientifically disproven theories as truth: flat earth, anti-evolution, anti-climate change, etc),

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Question 5:
The revised Directive introduces a definition of Video Sharing Platform Services. Where should the limits of this definition be, i.e. what services should and shouldn’t be considered Video Sharing Platform Services? Please include your rationale and give examples.

[Section 3 of the explanatory note]

VSPSs should include all such services that customarily make user generated videos available to the general public, either by live streaming or recorded videos.

Question 6:
The revised Directive takes a principles based approach to harmful online content and requires Video Sharing Platform Services to take appropriate measures to protect minors from potentially harmful video content, the general public from
Given this, what kind of regulatory relationship should there be between a Video Sharing Platform Service established in Ireland and the Regulator?  

[Section 3, 4, 5, 6 & 8 of the explanatory note]

The VSPSs should be informed by the regulator of the principles they are required to adhere to and put appropriate measures in place to ensure that they are followed. The regulator would deal with appeals in the event that the VSPS does not remove (harmful /illegal / etc) content when requested. The regulator’s view should be final (unless challenged in court). The regulator should have the power to impose meaningful fines for non-compliance. The VSPSs should be treated as publishers, and thus responsible for the content on their services. (Follow on from previous question about type of material that should be subject to regulation: Copyright material (music, film, literature, etc) should be specifically excluded from these sites.)

10 Question 7:  
- On what basis should the Irish regulator monitor and review the measures that a Video Sharing Platform Service has in place, and on what basis should the regulator seek improvements or an increase in the measures the services have in place?  

[Section 3, 4, 5, 6 & 8 of the explanatory note]

There should be both active and reactive monitoring. For the active monitoring, the regulator should have ongoing checks on the VSPSs to monitor the content for items that fall foul of the principles. On the reactive side, the regulator should make it easy for the public to lodge complaints about the VSPSs or specific hosted material. The responsibility for establishing filters, content vetting, etc. should remain with the VSPSs.

11 Question 8:  
- The revised Directive closely aligns the rules and requirements for television broadcasting services and on-demand audiovisual media services. Given this, what kind of regulatory relationship should there be between an on-demand audiovisual media service established in Ireland and the relevant Irish regulator? In addition, should the same content rules apply to both television broadcasting services and on-demand audiovisual media services?  

[Section 4 of the explanatory note]

No opinion on this

12 Question 9:  
- Should Ireland update its current content production fund (Sound & Vision fund currently administered by the BAI from licence fee receipts) to allow non-linear services to access this fund? Should Ireland seek to apply levies to services which are regulated in another EU Member State but target Ireland in order to fund or part-fund an updated content production fund?  

[Section 4 of the explanatory note]
No - the fund should remain as is. No - levies should not be applied.

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Question 10:
- The United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has previously raised concerns regarding the National Legislative Proposals under Strand 1. How can Ireland balance the fundamental rights of all users, e.g. the right to freedom of expression, including those affected by potentially harmful online content and those creating said content, in pursuing the further regulation of harmful online content?

[Section 2, 4, 5, 7, & 8 of the explanatory note]

I think a distinction can be drawn between freedom of expression and freedom to amplify expression. Content that can be shown to be harmful: hate speech; bullying; exploitation; threats to personal or public health, etc should not be amplified. In cases such as these, the regulator would have the unilateral authority to prevent amplification (dissemination via VSPSs). The onus should be on the person making the speech to demonstrate that it is not harmful.

Question 11:
- How can Ireland ensure that its implementation of the revised Directive under Strand 2 and any further regulation of harmful online content under Strand 1 fits into the relevant EU framework for the regulation of online services, including the limited liability regime for online services under the eCommerce Directive? [Section 2, 4, 5, 6, 7, & 8 of the explanatory note]

no opinion on this

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Question 12:
- Potential options for regulatory structures to progress the regulation of the four streams are identified in the explanatory note accompanying these questions. These options include:

- Restructuring the Broadcasting Authority of Ireland as a Media Commission responsible for the four strands

- Two regulatory bodies. Assigning the responsibility for editorial services, e.g. on-demand audiovisual media services, to a restructured BAI and creating another regulatory body with responsibility for non-editorial online services, e.g. Video Sharing Platform Services.

Is one of these options most appropriate, or is there another option which should be considered? [Section 5 of the explanatory note]

The second option - two regulatory bodies - is more appropriate as the aims of the two are quite different and the type of content distributed is different.

Question 13:
- How should the chosen regulatory structure or structures be funded given the various categories of services which are to be regulated?
[Section 5 of the explanatory note]

Funded directly by central government, with fines against non-compliant operators used to build a sinking fund for future funding

18 Question 15:
- What sanctions should be available to the relevant regulator to apply to a service that does not comply with its obligations? Such sanctions may include:
  - The power to publish the fact that a service is not in compliance,
  - The power to issue administrative fines,
  - To issue interim and final notices to services in relation to failures of compliance and the power to seek Court injunctions to enforce the notices of the regulator, and,
  - The power to apply criminal sanctions in the most serious cases.

Are there any other sanctions which should be considered? please provide your reasoning as to why the regulator should have recourse to a particular sanction.

[Sections 2, 4, 6, 7 & 8 of the explanatory note]

All of the above, with a focus on take-down notices, fines and criminal charges. In addition, the content providers should be classified as publishers in order to make them directly responsible for the content that they disseminate.