

ONLINE SAFETY BILL

Memorandum from the Department for Digital, Culture, Media and Sport and the Home Office to the Delegated Powers and Regulatory Reform Committee

A. INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee. The Bill was reintroduced in the House of Commons on 11 May 2022 and introduced in the House of Lords on 18 January 2023. This revised memorandum reflects changes to the Bill made in the House of Commons.
2. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains, in each case, why the power has been taken and explains the nature of, and the reason for, the procedure selected.

B. PURPOSE AND EFFECT OF THE BILL

3. The internet has, in many ways, transformed our lives for the better and recent shifts in behaviour mean that we use the internet now more than ever. Internet use in the United Kingdom (UK) across all adult age groups increased from 83% in 2013 to 92% in 2020.¹ As the role of the internet has changed, the case for robust regulatory action has continued to grow. 62% of UK internet users say they have experienced at least one instance of potentially harmful behaviour or content online in the last four weeks.² Whilst providers of services are regulated in various ways, there is nothing in place to regulate how they treat user-generated content online.
4. This Bill will impose duties on providers of regulated services to help keep their users, in particular children, safe online, whilst protecting free expression. It gives OFCOM duties to oversee the regulatory framework and the enforcement and information-gathering powers required to tackle non-compliance.
5. This new regulatory framework will apply to:
 - Providers of internet services which allow users to upload or share user-generated content or otherwise to interact online ('user-to-user services');
 - Providers of services which allow users to search all or some parts of the internet ('search services'); and
 - Providers of internet services on which provider pornographic content (pornographic content that is published by a provider and is not user generated) is published or displayed.
6. These obligations apply to providers of regulated internet services, including those based outside the United Kingdom where they have a "UK link", in relation to the design and operation of their service in the United Kingdom, or as it affects their UK

¹ [Internet users](#)' Office for National Statistics, April 2021. "Internet use" here refers to respondents who have used the internet in the last three months"

² [Online Nation 2022 report](#), Ofcom 2022

users.

7. The Bill creates a new false communications offence and a new threatening communications offence and amends the existing communications offences in the Malicious Communications Act 1988 and Section 127 of the Communications Act 2003 to reflect this. It also creates a new “cyberflashing” offence and specific offences of sending or showing flashing images electronically to people with epilepsy intending to cause them harm. There are no delegated powers associated with these offences.
8. Certain types of services associated with a low risk of harm or subject to existing legal and statutory safeguarding duties are exempted. These include internal business services (such as intranets), services provided by persons providing education or childcare, and services provided by public bodies.
9. Certain types of content are also exempt from regulation on regulated services. This includes emails; SMS/MMS messages; one-to-one live aural communications; services where the functionalities available to users are limited to posting comments and reviews on content produced by the provider of the service (such as user reviews of products); and content from recognised news publishers.
10. The overarching principles of the new regulatory regime are set out in primary legislation. As new services, functions and harms emerge and evolve and platforms and users develop new ways to interact online, it is important that the regime can adapt to these changes and the associated challenges. The harms enabled and facilitated by technologies will continue to change at pace and the framework will not be able to function effectively if it proves unable to adapt to new forms of harm.
11. Therefore, a number of delegated powers have been included to allow the government to make regulations in areas where there is likely to be change, such as giving the government the ability to designate priority content which is harmful to children. Given the frequency at which the industry changes, delegated powers are required to adjust the regulatory framework more often than parliamentary time allows for primary legislation in this area. These powers are crucial to ensure that the regulatory regime matches the pace of change in this space.
12. The Bill also requires OFCOM to produce codes of practice setting out recommended measures which providers may follow in order to comply with their relevant duties under Part 3 of the Bill.
13. Independent regulators play a central role in delivering regulation that protects and benefits people, businesses and the environment and that supports economic growth. Regulators must command public confidence in their independence, impartiality, capability and effectiveness. This is a complex and technical area in which OFCOM’s extensive experience as a communications regulator makes them best placed to develop many of the practical features and processes needed to regulate effectively and independently.
14. It is crucial that Parliament has appropriate oversight of the regulatory regime. Where there are powers that could materially change the regulatory framework, these are

subject to the draft affirmative procedure. Parliament will also have the ability to pray against OFCOM's codes of practice.

15. The new regulatory framework will be a central part of the United Kingdom's digital landscape and will help ensure that the business environment is pro-competition, pro-innovation, and underpinned by agile and proportionate regulation. A thriving digital economy and society relies on getting the rules right. The powers outlined in this document are intended to ensure that the regime will be able to continue to evolve to be able to protect users from harm, whilst adapting to the changing digital landscape.

C. DELEGATED POWERS

16. This memorandum sets out analysis of powers relating to 44 clauses and 6 Schedules. The measures referenced in this document include powers to make delegated legislation (such as new regulation-making powers), a power to issue directions, powers to issue a framework document and powers to issue statutory guidance and codes of practice. This is to give a full picture of the regime as a whole, because these elements are a central feature of the regulatory framework. In addition, the Bill includes standard regulation-making powers to make consequential amendments, transitional or saving provisions.
17. 22 of the delegated powers are able to amend primary legislation (so-called "Henry VIII powers"). Without these powers, the regulatory framework could quickly become ineffective. For example, the delegated power under clause 192(4) allows additions to be made to the list of descriptions of services exempted from regulation. These are set out in Schedule 1, which can be updated as new technologies or patterns of user behaviour develop in a way which reduces the risks of harm associated with them. As the regulatory landscape changes, these measures will allow clearly identified parts of the regulatory framework to be updated in response to new developments.
18. Where the government has assessed that Henry VIII powers are necessary for the continued functioning of the regulatory framework, it has ensured that the power is set out clearly on the face of the Bill and chosen procedures which retain maximum parliamentary oversight of any exercising of that power. As such, all regulations made under Henry VIII powers are subject to the draft affirmative resolution procedure. This will ensure that Parliament will be able to effectively scrutinise any decision to amend primary legislation.
19. In deciding whether matters should be addressed in delegated legislation, the government has carefully considered the need:
 - To provide the ability to respond to changing circumstances, since requirements will need to be adjusted more frequently than Parliament can be expected to legislate for by primary legislation; and
 - To allow detailed administrative arrangements to be set up and kept up to date within underpinning structures and principles that are set out in primary legislation.

20. In deciding what procedure is appropriate for the exercise of the powers to make delegated legislation in the Bill, the government has carefully considered:
- Whether the provisions amend primary legislation. Where this the case, the draft affirmative procedure will be used in all cases to ensure Parliament can provide effective scrutiny;
 - The nature of the matter to be addressed; and
 - The scope of the delegated power - including whether use of the powers would result in a material change to the regulatory framework.

PART 3: PROVIDERS OF REGULATED USER-TO-USER SERVICES AND REGULATED SEARCH SERVICES: DUTIES OF CARE

CHAPTER 2: PROVIDERS OF USER-TO-USER SERVICES: DUTIES OF CARE

Clause 19(7): Record-keeping and review duties

Power conferred on: OFCOM

Power exercised by: Decision

Parliamentary procedure: None

Context and purpose

21. Clause 19 requires providers of user-to-user services to keep records of and review compliance with their safety duties, duties to protect users' rights, content reporting and complaints procedures duties. Category 1 Services must also keep records for their user empowerment duties, and duties to protect journalistic content and content of democratic importance.
22. Record-keeping duties require providers to keep a written record in an easily understandable form of:
 - Every risk assessment carried out under clauses 8 and 10 (subsection (2));
 - Any measures set out in a code of practice taken or used to comply with a relevant duty (subsection (3)); and
 - Certain information when complying with its duties other than by taking or using measures in the codes of practice that apply. This includes information about which relevant measures in codes were not taken and which alternative measures used instead, whether these measures cover every area listed in the illegal content and children's safety duties, how those measures amount to compliance with the safety duties and duties to have particular regard to the importance of protecting users' freedom of expression and privacy rights (subsections (4) and (5)).
23. The review duties are to review compliance with the duties listed above regularly, and as soon as reasonably practicable, after making any significant change to any aspect of the design or operation of the service (subsection (6)). The review duties also apply in relation to the duties in clauses 14 (news publisher content) and duties in clauses 64 and 65 (terms of service) (see subsection (9)).
24. The record-keeping and review duties set out above are intended to ensure effective enforcement and are central to ensuring that regulated services operate transparently and in compliance with the regulatory framework.
25. However, the range of regulated user-to-user service providers is extensive and such comprehensive duties may be disproportionate in specific cases, particularly for smaller, lower-risk services. Subsection (7) therefore enables OFCOM, where they consider it to be appropriate, to exempt categories of service providers from any or all of the record keeping or review duties. It is anticipated that this power could be used

for small, low-risk services to ensure these companies do not face an unnecessary regulatory burden. Under subsection (8) OFCOM must publish details of any such exemption. OFCOM may also revoke the exemption and the details of the revocation and reasons for the revocation must be published.

Justification for the power

26. Enabling OFCOM to exempt categories of service providers from some or all of the record-keeping and review duties will ensure that, where there is a low risk of harm, providers are not subject to unnecessary administrative burdens.
27. Delegating this power to OFCOM will allow exemptions to be provided when the framework is operational. OFCOM will be able to draw on the evidence they have gathered and their experience as the regulator of these user-to-user services to assess whether record keeping and review obligations are proportionate for particular categories of services to comply with.
28. This power is limited and its scope is clearly set out in primary legislation. It only allows the record-making and review activities to be reduced where it is considered appropriate by OFCOM and does not affect the scope of the regulatory framework. This power will not allow service providers to be relieved of the substantive duties or affect the measures service providers must take to comply with the wider requirements of the regulatory framework.

Justification for the procedure

29. OFCOM must publish the details of any exemption granted under subsection (7). If OFCOM decide to revoke the exemption, under subsection (8) the details of the revocation and reasons for the revocation must be also published. This will ensure that its exercise of this power is transparent.
30. These provisions do not affect a service provider's duties to carry out risk assessments and to comply with their safety duties. The provision enables OFCOM to reduce a regulatory burden where it would be disproportionate and does not affect the scope of the regulatory framework. Therefore, no parliamentary procedure is considered necessary.

CHAPTER 3: PROVIDERS OF SEARCH SERVICES: DUTIES OF CARE

Clause 29(7): Record-keeping and review duties

Power conferred on: OFCOM

Power exercised by: Decision

Parliamentary procedure: None

Context and purpose

31. Clause 29 requires providers of regulated search services to keep records of, and review their compliance with, their safety duties, duties to protect users' rights, content reporting and complaints procedures duties.
32. Record-keeping duties require providers to keep a written record in an easily understandable form of:
 - Every risk assessment carried out under clauses 22 and 24 (subsection (2));
 - Any measures set out in a code of practice taken or used to comply with a relevant duty (subsection (3)); and
 - Certain information when complying with its duties other than by taking or using measures in the codes of practice that apply. This includes information about which codes measures not taken and which alternative measures used instead, whether these measures cover every area listed in the illegal content and children's safety duties, how those measures mean compliance with the safety duties and duties to have particular regard to the importance of protecting users' freedom of expression and privacy rights (subsections (4) and (5)).
33. The review duties are to review compliance with the duties listed above regularly, and as soon as reasonably practicable after making any significant change to any aspect of the design or operation of the service (subsection (6)).
34. The record-keeping and review duties set out above are intended to ensure effective enforcement and are central to ensuring that regulated services operate transparently and in compliance with the regulatory framework.
35. However, these duties are extensive and such comprehensive duties may prove to be excessive in specific cases, for example for smaller niche search services. Under subsection (7), where OFCOM consider it to be appropriate, they will be able to exempt categories of search service providers from any or all of the record keeping review duties. It is anticipated that this power could be used for small, low-risk services to ensure these companies do not face an unnecessary regulatory burden. Under subsection (8) OFCOM must publish details of any such exemption. OFCOM may also revoke the exemption and the details of the revocation and reasons for the revocation must be published.

Justification for the power

36. Enabling OFCOM to exempt categories of service providers from some or all the record-keeping and review duties will ensure that, where there is a low risk of harm, service providers are not subject to unnecessary administrative burdens.
37. Delegating this power to OFCOM will allow exemptions to be provided when the framework is operational. OFCOM will be able to draw on the evidence they have gathered and their experience as the regulator of these search services to assess if record keeping and review obligations are proportionate for particular categories of services to comply with.
38. This power is limited and its scope is clearly set out in primary legislation. It only allows the record-taking and review duties to be removed where it is considered appropriate by OFCOM and does not affect the scope of the regulatory framework. This power will not allow service providers to be relieved of the substantive duties or affect the measures service providers must take to comply with the wider requirements of the regulatory framework.

Justification for the procedure

39. OFCOM must publish the details of any exemption granted under subsection (7). If OFCOM decide to revoke the exemption, under subsection (8) the details of the revocation and reasons for the revocation must be also published. This will ensure that OFCOM's exercise of this power is transparent.
40. These provisions do not affect companies' duties to carry out risk assessments and and comply with their safety duties. The provision enables OFCOM to reduce a regulatory burden where it would be disproportionate and does not affect the scope of the regulatory framework. Therefore, no parliamentary procedure is considered necessary.

CHAPTER 6: CODES OF PRACTICE AND GUIDANCE

41. This memorandum first considers the duty on OFCOM to prepare codes of practice under clause 36(3) and (4), and specific codes under clause 36(1) and (2) for terrorism and Child Sexual Exploitation and Abuse (CSEA) respectively, for the purposes of complying with relevant duties in the Bill. The memorandum then deals with powers related to the codes of practice. These have been grouped here for clarity as the consultation process and background for creation of the powers are the same across the codes of practice. Specific justification for the codes of practice under clause 36(1) and (2) for terrorism and CSEA respectively is also set out below.

Clause 36(1) (terrorism); Clause 36(2) (child sexual exploitation and abuse)

Clause 36(3) and (4): Codes of practice about duties

Power conferred on: OFCOM and Secretary of State

Power exercised by: Codes of practice

Parliamentary procedure: Negative

Context and purpose

42. Clause 36(1)-(4) places a duty on OFCOM to prepare one or more codes of practice describing recommended measures for providers of regulated user-to-user and search services to enable compliance with their relevant duties under Part 3 of the Bill. OFCOM will consult with relevant parties during the drafting of the codes of practice before sending the final draft to the Secretary of State to be laid before Parliament (clause 38). Ministers will have the power to direct the regulator to make modifications to the draft for reasons of public policy (or national security and public safety in relation to the terrorism and CSEA codes) (clause 39). The memorandum deals with the powers of direction separately below.
43. Under clause 36(1), OFCOM must prepare a code of practice containing guidance to assist providers of regulated services in complying with their duties under clauses 9 or 24 as relating to use of a service in connection with terrorism offences and terrorism content. The power in clause 36(2) replicates that provided by clause 36(1) but for the purpose of compliance with duties under 9 or 23 as relating to CSEA. Clause 36(3) requires OFCOM to prepare one or more codes of practice for providers describing recommended measures for the other relevant duties and clause 36(4) requires OFCOM to prepare a code of practice that sets out recommended measures for providers of Category 1 and Category 2A Services in respect of their duties in relation to fraudulent advertising.
44. Under clause 39(1) ministers will have the power to make directions to the regulator regarding the codes of practice on CSEA and terrorism in relation to reasons of national security or public safety as well as for reasons of public policy.
45. Clause 44(1) to (6) provides that a provider of regulated services will be treated as complying with its relevant duties under the Bill if it acts in accordance with the relevant code(s) of practice. A provider of a regulated service can comply with a

relevant duty by taking alternative measures to those set out in the relevant code(s) of practice if these nevertheless operate effectively to comply with the relevant duties.

46. Where a code is in force, OFCOM may prepare amendments to the code or a replacement code (see clause 36(5)). Before preparing a code or amendments of the codes, OFCOM must consult the persons listed in subsections (6) and (7). The consultation will be extensive, to ensure there is significant evidence and technical input so that the codes are effective and proportionate.
47. Schedule 4 to the Bill sets out a number of requirements for the codes of practice. OFCOM must ensure that the measures set out in the codes of practice are compatible with certain principles and online safety objectives. There are also safeguards in place where OFCOM recommends the use of proactive technology, to ensure this is used proportionately. Further, the measures in the codes must be designed, where appropriate, to incorporate safeguards for the protection of freedom of expression and the right to privacy.
48. OFCOM will consult with relevant parties during the drafting of the codes before sending the final draft to the Secretary of State (clause 38). The Secretary of State will have the power to direct the regulator to make modifications for reasons of public policy, national security or public safety (clause 39). Under clause 39(2), the Secretary of State will be able to require the regulator to review the codes of practice on terrorism and on CSEA. This mechanism is intended to ensure that the codes can respond to changing circumstances, evolving threats and technology. The completed codes will be laid before Parliament.

Justification for the powers

49. The codes of practice will focus on the systems and processes that in-scope providers need to put in place to uphold their regulatory responsibilities, set out in primary legislation. In many cases the regulator will be defining these systems and processes for the first time in the codes of practice, rather than drawing on established definitions and precedents from other regulatory regimes. Clause 36 does not specify how the codes should be organised, either by subject-matter – aside from CSEA, terrorism, and fraudulent advertising - or number. This allows OFCOM to decide how best to structure its codes of practice to help providers to fulfil their duties in a proportionate way without imposing requirements that are too rigid and unworkable. It will also enable OFCOM to revise codes of practice or produce new ones when needed to respond to changes in the regulated sector.
50. The power to draft each code has been delegated, so that OFCOM are able to develop their codes of practice taking into account the emergence of new technologies, changing online behaviour and evolving harms. OFCOM will also be able to revise or issue new codes of practice as necessary to take account of these changes.
51. As noted throughout this document, the online environment can change quickly – with changing patterns of user behaviour, platform use, functionality of platforms and evolving threats. In this context, the ways in which terrorism content and CSEA content is accessed, used and distributed online can change rapidly, making it essential that the framework is agile and responsive. Whilst we anticipate that the

regulator-issued codes of practice will be infrequently updated, new technologies, trends and offender behaviours may necessitate changes.

52. For example, CSEA content often migrates across services, making agility essential in adapting to changing patterns of criminal behaviour. Amendments to the codes of practice will ensure that the framework is futureproofed and can remain up to date. Preventing the spread of terrorism and online CSEA content is central to the online safety framework. Many forms of terrorist content and CSEA content involve online technology and the framework aims to ensure that when this illegal content is identified it is removed, and that service providers take action to reduce the likelihood that their services are used for the commission or facilitation of these offences.
53. We have balanced the need for flexibility for OFCOM to act as swiftly and effectively as possible with the need for some constraint for the exercise of this power. These constraints are set out in the primary legislation in Schedule 4, such as the principles that OFCOM must consider and compatibility with the online safety objectives when preparing the codes of practice. These include catering for the variety of service providers to be regulated and to have regard to the principles that the contents must be sufficiently clear and understandable, and measures proportionate to OFCOM's risk assessment of the harm presented by different kinds of user-to-user or search services and particular sizes of such services.
54. Schedule 4 also contains requirements in relation to content which may be included in the codes of practice, and this reflects what is already required in duties set out in primary legislation. The purpose of the codes of practice are to assist with the compliance of duties already in primary legislation - they will not be stipulating any new duties, just providing recommendations about what measures would satisfy the compliance requirement. Service providers are not bound by these recommendations and may take alternative measures.
55. OFCOM will also be required to incorporate safeguards in relation to freedom of expression, privacy and when using certain types of technology. These are matters which are already enshrined within the primary legislation and Schedule 4 ensures they carry into OFCOM's role in relation to the drafting of the codes of practice.

Justification for the procedure

56. By virtue of clause 38, the codes of practice made under clause 36 (unless subject to a direction under clause 39(1)(a)) are subject to the negative procedure. There is an extensive consultation process prior to the issuing and enforcement of the codes, and therefore we consider that the negative procedure provides an appropriate level of parliamentary scrutiny for regulations made under this power. In addition, the purpose of the codes of practice is to set out how service providers can comply with the duties set out in primary legislation. They do not impose new duties on service providers.
57. Parliamentary scrutiny is provided for, as the Bill requires that the codes of practice be laid before both Houses, and that both Houses have the opportunity to vote against the codes — in which case, OFCOM must prepare a new version of the code in question.
58. OFCOM must comply with the provisions set out in Schedule 4 in preparing the codes

of practice. These constrain the contents of the codes by requiring OFCOM to consider certain principles, online safety objectives and limit the measures which may be included. This will enable the measures recommended in the codes to reflect developing harms and changing technologies. In particular, for proactive technology, certain measures may only be recommended if OFCOM are satisfied that the use of technology by a service of that particular kind would be proportionate. Parliament has the opportunity to debate and vote on the provisions, including those in Schedule 4 during the passage of the Bill.

Clause 39(1): Secretary of State's powers of direction

Power conferred on: Secretary of State

Power exercised by: Secretary of State direction power

Parliamentary procedure: None for the Secretary of State's exercise of the power, but codes modified as a result of a direction are subject to the draft affirmative or negative procedure, depending on the reason for the direction.

Context and purpose

59. Clause 39(1) allows the Secretary of State to direct OFCOM to make specified modifications to a draft code of practice that has been submitted to the Secretary of State for approval under clause 38(1). The Secretary of State can exercise this power where they believe that the modifications are required for reasons of public policy, or in the case of a code relating to terrorism or CSEA, for reasons of national security or public safety.
60. Where the Secretary of State gives a direction to OFCOM, OFCOM must comply with the direction, and submit to the Secretary of State the draft code modified in accordance with the direction. The Secretary of State may give OFCOM one or more further directions, requiring OFCOM to make specified modifications to the draft.
61. By virtue of subsection (3), the Secretary of State may use this power of direction following a review of a draft code by OFCOM under clause 42, whether or not OFCOM have decided that changes to the relevant code are required. The Secretary of State may only use the power of direction in these circumstances if they believe that modifications are required for reasons of national security or public safety.
62. When the Secretary of State is satisfied that no further modifications to the draft code are required, under subsection (9) the Secretary of State must lay the modified draft before Parliament, together with a document containing details about directions given under this clause and how the draft has been revised in response to them. In the case of a direction under subsection (3), OFCOM's review statement must also be laid before Parliament. However, as referenced in subsection (10), the Secretary of State (with OFCOM's agreement) may restrict full disclosure of the contents of the statement, but only where disclosure would be against the interests of national security, public safety, or relations with the government of a country outside the United Kingdom.

Justification for the power

63. It is important that there are suitable, transparent checks and balances to ensure that the implementation of the regime by the independent regulator, OFCOM, delivers the policy intent of the democratically-elected government. The power also enables the Secretary of State to take steps to ensure that there are sufficient provisions in a code or practice to address CSEA and terrorism content online. This recognises the key responsibilities of the Home Secretary in relation to national security and public safety, and the information they receive, including from security services and law enforcement agencies. Delegating this power is essential because it allows the

Secretary of State to ensure that the codes may be modified to respond to public policy, national security, or public safety concerns.

64. A direction given under this clause must set out the Secretary of State's reasons for requiring the modifications (except where the Secretary of State considers it to be against the interest of national security, public safety, or relations with the government of a country outside the United Kingdom). As noted above, when the Secretary of State is satisfied that no further modifications are necessary, they must lay the modified code before Parliament alongside a document containing details about directions given under this clause, and how the code has been revised in response to them. This provides Parliament with full oversight over how the power has been used by the Secretary of State.

Justification for the procedure

65. This is a power of direction for the Secretary of State. In order to ensure Parliament has an appropriate level of scrutiny over the content of codes of practice, any code prepared by OFCOM that they are required to modify as a result of a direction made under this power is subject to the applicable parliamentary procedure set out in clause 38.
66. CSEA or terrorism codes of practice that are modified as a result of a direction for reasons of national security or public safety are subject to negative procedure, as is the case for codes which have not been subject to a direction by the Secretary of State. Codes that are modified as a result of a direction for reasons of public policy are subject to the draft affirmative procedure, to reflect the broader nature of this power and therefore the importance of parliamentary oversight over any direction made.
67. The codes will be laid before Parliament, along with a document setting out reasons for any revisions (subject to clause 39(5)(b)) and how OFCOM has accordingly revised the code of practice. Should Parliament resolve not to approve the code, OFCOM must prepare a new one under clause 36.

Clause 42(2): Review of codes of practice

Power conferred on: Secretary of State

Power exercised by: Decision - Secretary of State requiring a review

Parliamentary procedure: None

Context and purpose

68. This power enables the Secretary of State to require OFCOM to review codes produced under clause 36(1) or (2), relating to terrorism and CSEA, respectively. They may only do this for reasons of national security or public safety.
69. OFCOM must review the relevant code as soon as possible. If OFCOM believe changes are required, they should submit a revised code to the Secretary of State under subsection (3)(a). If they believe that no changes are required, they should submit a statement to the Secretary of State under subsection (3)(b) explaining why.
70. In the latter case, OFCOM must publish the statement after 45 days where the Secretary of State has not decided to use their power of direction under clause 39(3). The Secretary of State may make representations to OFCOM about removing or obscuring information in the statement for reasons of national security, public safety, or relations with another country.

Justification for the power

71. This power enables the Secretary of State (in practice the Home Secretary) to require OFCOM to review a terrorism or CSEA code for reasons of national security or public safety. The Home Secretary has key responsibilities in relation to national security and public safety, and receives advice on such matters, including from security services and law enforcement agencies. There may be times when it is appropriate for the Home Secretary to ask OFCOM, as the independent regulator, to review a code of practice for reasons of national security or public safety. The power is limited, in that OFCOM can review the code and decide that no change is needed.

Justification for the procedure

72. The power is limited to codes of practice relating to terrorism and CSEA. Its use requires OFCOM to review a code in specific circumstances, but it is open to OFCOM deciding that no changes are required. In addition, the circumstances in which it is used may relate to fast-moving events that require a quick review. Therefore, no parliamentary procedure is considered appropriate.
73. Should the Secretary of State use their power of direction under clause 39 to require modifications of a code following a review under clause 41, Parliament retains scrutiny over the use of that power (see clause 39). If OFCOM amends a code following a review without the Secretary of State using their power of direction, the usual parliamentary scrutiny process in clause 38 also still applies.

Clause 43(4): Minor amendments of codes of practice

Power conferred on: Secretary of State

Power exercised by: Decision — Secretary of State consent

Parliamentary procedure: None

Context and purpose

74. Where OFCOM have prepared amendments to a code of practice, and believe that the amendments are sufficiently minor as to make consultation under clause 36 and parliamentary procedure under clause 38 (negative procedure) unnecessary, the Secretary of State may agree to those amendments being made if they consider it appropriate.
75. It is only with the Secretary of State's consent that OFCOM may make and issue the amendments without the consultation under clause 36 or the parliamentary procedure under clause 38 applying.

Justification for the power

76. There will be times when OFCOM will need to revise codes to keep them up to date or make other minor changes, for example to update references to legislation or names of organisations.
77. In these circumstances, where OFCOM and the Secretary of State agree that the changes are minor and non-contentious, it would introduce unnecessary delay and inefficiency to insist on consultation and parliamentary procedure. It would be an unnecessary use of parliamentary resources to scrutinise a code that has had only minor amendments since its previous parliamentary scrutiny.

Justification for the procedure

78. This power cannot be used to make substantive amendments to the code; it is reserved for minor amendments only. Given the nature of the power, it would be disproportionate, and introduce unnecessary delay, to impose parliamentary scrutiny on its use.

Clause 47(1) and (2): OFCOM's guidance about certain duties in Part 3

Power conferred on: OFCOM

Power exercised by: Guidance

Parliamentary procedure: None

Context and purpose

79. OFCOM are under a duty to produce guidance in relation to a Category 1 service providers' news publisher content duties, and in relation to any Part 3 service providers' record-keeping duties and assessment about children's access to their service. They also have the power to revise the guidance.
80. Clause 14 imposes duties on Category 1 service providers to notify news publishers, and offer them an appeal, before taking action in relation to their content or their account.
81. Clauses 19 and 29 impose statutory record-keeping and review obligations on providers of Part 3 services - i.e. regulated user-to-user and search services, respectively. A Part 3 service provider must keep written records of every risk assessment it has undertaken pursuant to the risk assessment duties and of any measures it has taken or has in place to comply with safety duties and other specified duties.
82. Additional information is required to be recorded where alternative measures (to the measures in the codes of practice) have been taken or are in use. Specifically, the service provider must keep a record of which measures in the codes it has not taken and explain any alternative measures it has taken or used. It must indicate how those alternative measures demonstrate it is complying with its duties, and how it has complied with its duties to have particular regard to the importance of protecting users' freedom of expression and privacy rights. These clauses also require service providers to regularly review compliance with relevant duties following a significant change to their services' design.
83. Clause 31 imposes a duty on a Part 3 service provider to carry out an assessment as to whether it is possible for children to access a service, or any part of its service, based on the test in clause 30 for determining whether it is possible for children to access the service and whether certain conditions are met (relating to the number and proportion of children who are users of the service, or if the service is of a kind likely to attract a significant number of users who are children).
84. In addition, under clause 32(5), OFCOM can also conclude that a Part 3 service should be treated as likely to be accessed by children following an investigation into a failure to comply with the duty at clause 31.
85. Schedule 3 stipulates when children's access assessments must be carried out by Part 3 service providers.

Justification for the power

86. OFCOM's power to publish guidance will allow them to set out in detail how Category 1 service providers can comply with their duties to protect news publisher content, and how Part 3 service providers should keep records and review compliance with their duties, and should carry out children's access assessments. The guidance is not binding, and is intended to assist service providers in complying with their duties to protect news publisher content, and in producing records and assessments that are appropriate and in compliance with the duties in the Bill.
87. The underpinning details of the duties are contained in the legislation, such as how the appeal process with regard to news publisher content should function, the details to be contained in records, and the applicable test for determining whether a service is "likely to be accessed by children".
88. Failure to carry out the first children's access assessment would result in the provider's service being treated as likely to be accessed by children until an assessment is carried out.
89. The guidance will cover matters such as the moderation actions that cannot be taken before a service provider notifies a news publisher and offers an appeal, what must be included in such a notification, and what constitutes a reasonable time period for a publisher to make representations to a service provider in different circumstances, the form in which records should be kept and how long they should be held, processes and timescales for reviewing compliance for different types of service and different systems and processes relevant to child access to a service. It would not be appropriate to set out this type of administrative and technical detail in legislation. The power to revise this document provides the ability to modify the details quickly if changes are required to protect news publishers, or to keep children safe online.

Justification for the procedure

90. Since these provisions are concerned with operational and administrative matters in the context of sufficiently detailed legislative duties imposed on regulated providers under clauses, 14, 19, 29 and 31, the provision to be made is administrative rather than legislative in character, and no parliamentary procedure is considered necessary.

Clause 48(1) and (2): OFCOM's guidance: content that is harmful to children and user empowerment

Power conferred on: OFCOM

Power exercised by: Guidance

Parliamentary procedure: None

Context and purpose

91. All providers of Part 3 services that are likely to be accessed by children have specific risk assessment and safety duties in relation to “primary priority” and “priority” content that is harmful to children. Clause 12(2) requires Category 1 service providers to provide their adult users with features to increase their control over certain kinds of content set out in clause 12(9), (10), (11) and (12).
92. Clause 48(1) requires Ofcom to produce guidance for providers of Part 3 services giving examples of content that Ofcom considers to be “primary priority” and “priority” content that is harmful to children. Clause 48(2) requires OFCOM to produce and publish guidance for Category 1 service providers which contains examples of content that Ofcom considers the duty in clause 12(2) to apply to.
93. Before preparing guidance (or any revised or replacement guidance) under this clause, OFCOM must consult such persons as they consider appropriate.

Justification for the power

94. It will be beneficial for companies to have clear examples of the kinds of content that the regulator will expect them to apply measures to or design systems and processes to address. This will help service providers to comply with their user empowerment and child safety obligations and safeguard against them over- or under-applying the relevant measures.
95. The guidance will not contain mandatory requirements which service providers must comply with. It will instead give providers reference examples of content which, in OFCOM's view, they should (or should not) be targeting when designing their systems to comply with their duties.
96. Requiring OFCOM to consult before producing the guidance ensures that the views of subject matter experts will be appropriately taken into account. OFCOM will be able to revise the guidance to modify the details in light of changes in the technology landscape and user behaviour. This will be helpful given the rapidly evolving nature of the online space.

Justification for the procedure

97. The guidance is administrative rather than legislative in character. It does not impose any mandatory requirements on services. Given the non-binding nature of the guidance, no parliamentary procedure is considered necessary.

Clause 54(2) and (3): “Content that is harmful to children” etc

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Draft affirmative or (in urgent cases only) made affirmative resolution procedure

Context and purpose

98. Clause 54 defines the meaning of “content that is harmful to children” and, in 54(2), confers a power on the Secretary of State to make regulations designating content of certain descriptions as “primary priority” content that is harmful to children. Clause 54(3) confers an equivalent power to make regulations designating “priority” content that is harmful to children.
99. All providers of Part 3 services (i.e. regulated user-to-user or search services) likely to be accessed by children are required by the Bill to assess the risk of children encountering harmful content, including primary priority and priority content, by means of their services. Under clause 11(3), user-to-user services must use proportionate systems and processes, informed by the findings of their risk assessments, designed to prevent children of all ages from encountering primary priority content and to protect children in at-risk age groups from encountering other harmful content including priority content. Under clause 25(3), search services must use proportionate systems and processes designed to minimise the risk of children of all ages encountering primary priority content, and to minimise the risk of children in at-risk age groups encountering other harmful content, including priority content.
100. The Secretary of State may only designate content under this power if they consider that there is a material risk of significant harm to an appreciable number of children in the United Kingdom arising from content of that description. To designate primary priority content that is harmful to children, the Secretary of State must also consider it appropriate for the “children of all ages” duties in clauses 11 and 25 to apply to that content. Under clause 55(4), the Secretary of State must consult OFCOM before making regulations under these powers.

Justification for the powers

101. Setting out descriptions of priority harmful content for the first time in regulations will ensure that these are based on the most recent evidence possible, including by first consulting OFCOM to seek their expert views. It will also mean that views expressed during the passage of the Bill about what priority categories should be and how they should be defined can be taken into account.
102. These powers are delegated to reflect the need to ensure that the regime is future-proofed. Parliament will have the opportunity to debate and determine appropriate high-level definitions of harmful content, while delegating the detailed application of those definitions to the Secretary of State. That ensures that changes in technology and levels of risk can be quickly and effectively dealt with by the regulatory regime. Designating priority harmful content in secondary legislation will

allow the government to respond rapidly to the changing nature of online services and the risks to children online, ensuring that new, currently unforeseen harms can be dealt with as quickly as they emerge.

103. The interaction between these delegated powers and the obligations placed on OFCOM by clause 56 will ensure that the regulatory framework benefits fully from OFCOM's expertise and research capacity on an ongoing basis. Under clause 56 OFCOM will regularly review both the incidence on Part 3 services of harmful content and the severity of harm it causes, and will publish reports on their findings, including advice and recommendations on whether and how any regulations designating primary priority or priority harmful content should be changed. Delegating these powers to the Secretary of State thus allows the regulatory framework to respond quickly to OFCOM's recommendations and the changes in the online environment that they reflect.

Justification for the procedure

104. Regulations to designate content of certain descriptions as "primary priority content that is harmful to children" and "priority content that is harmful to children" will be made under the draft affirmative procedure, reflecting the importance of these categories to the new regulatory framework and the duties on regulated services. It is considered appropriate that Parliament should be able to debate and approve any regulations made under this power.
105. To ensure that the regulatory framework remains flexible and can keep pace with any emerging and significant risks to children online, the Secretary of State can, in urgent cases, use the made affirmative resolution procedure, as set out in clause 197(3) to (7). This procedure can only be used if the Secretary of State includes with the regulations a declaration that urgency makes it necessary. It is important that the regime can adapt quickly and this approach balances the need for flexibility in urgent cases with the need to ensure parliamentary oversight. In all other cases, the draft affirmative procedure will be used.

PART 4: OTHER DUTIES OF PROVIDERS OF REGULATED USER-TO-USER SERVICES AND REGULATED SEARCH SERVICES

CHAPTER 1: USER IDENTITY VERIFICATION

Clause 58(1): OFCOM's guidance about user identity verification

Power conferred on: OFCOM

Power exercised by: Guidance

Parliamentary procedure: None

Context and purpose

106. Clause 58 requires OFCOM to publish guidance for providers of Category 1 services to assist them in complying with the duty to offer all adult users the option to verify their identity which is set out in clause 57(1). In preparing the guidance, OFCOM must have particular regard to the aim of ensuring that verification measures are accessible to vulnerable adult users.
107. OFCOM are required to consult with particular persons prior to preparing, revising or replacing the guidance. These include the Information Commissioner, persons with relevant technical expertise, persons who appear to OFCOM to represent the interests of vulnerable adult users of Category 1 services, and any other persons OFCOM consider appropriate.

Justification for the power

108. OFCOM's power to publish guidance will allow them to set out in detail how companies can meet the duty set out in clause 57(1).
109. This guidance is not legislative and it will not contain mandatory requirements which services must comply with. The main duty is set out comprehensively in primary legislation, and the purpose of the guidance is to help service providers to provide mechanisms for effective user identity verification. The power to revise the guidance provides the ability to modify the details quickly if changes are required, in the light of emerging technologies and changes in user behaviour. This will be essential given the fast-paced and innovative nature of the regulated sector.

Justification for the procedure

110. Since the guidance will be concerned with operational and administrative matters in the context of how regulated service providers can comply with their duty under clause 57(1), the provision to be made is administrative rather than legislative in character. It does not provide any mandatory requirements for services to comply with. Given the non-binding and detailed technical nature of the guidance, no parliamentary procedure is considered necessary.

CHAPTER 2: REPORTING CHILD SEXUAL EXPLOITATION AND ABUSE CONTENT

Clause 60(1): Regulations about reports to the NCA

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Negative

Context and purpose

111. Regulated services will be required to have in place systems and processes that enable reports of detected and unreported CSEA content to be made to the National Crime Agency (NCA) and that these reports meet specified requirements set out in regulations.
112. The requirement to report is a standalone requirement as services will be required to report all CSEA content that they identify irrespective of the size of service, amount of CSEA content on the service, the content, or outcome of their risk assessment. The reporting requirement will apply differently to services depending on where they are based and their existing reporting processes.
113. Regulations will set out what information should be included in reports, the format of reports and how reports should be made to the NCA. The information that can or should be reported will vary depending on the nature of the service and the offence that has occurred. However, services will be required to report all and any available information relating to instances of CSEA, including any that help identify a perpetrator or victim.
114. In practice, services will need to include information relating to the identity of any individual who is suspected of committing a CSEA offence; information relating to the geographic location of the involved individual or website, which may include the Internet Protocol address or verified address; evidence of the CSEA offence itself, such as indecent images or sexual communications between an adult and a child; and any information relating to a child who is the victim of a CSEA offence.

Justification for the power

115. This approach will ensure that the NCA receives high-quality reports containing all the relevant information it needs to safeguard children, pursue offenders, and prevent re-victimisation.
116. The Secretary of State will have the power to make regulations, setting out what information should be included in reports, the format of reports and how reports should be made to the NCA. The Secretary of State must do so in consultation with the NCA, OFCOM and any other appropriate person. The NCA will provide the operational and technical expertise and OFCOM will be consulted on the appropriateness and feasibility of regulations for the purpose of enforcement.

117. Setting out the reporting standards through secondary legislation will enable the regime to respond to technological change and innovation as well as trends and user behaviour related to CSEA. The information that a service can and should report will vary depending on the nature of their service(s) and is likely to change over time, therefore it is important that the legislation can be updated to ensure it is future-proofed.

Justification for the procedure

118. The negative procedure is considered to provide an appropriate level of parliamentary scrutiny for regulations made under this power which will simply update what should be included in reports and how they are made. The regulations will not impose additional duties on service providers, but will provide guidance and clarification on how to comply with the requirement to report.
119. The Secretary of State must make regulations through a robust consultation process. Consultation will be undertaken with those organisations who have the expertise and knowledge to advise on the most appropriate way in which industry should report as well as those organisations who will be impacted by these reports such as local police forces, devolved administrations, children's services and industry. This should ensure that the regulations will be well informed, effective and fit for purpose.
120. As mandatory reporting already exists for many of the largest technology companies, the content of the regulations is unlikely to be controversial.
121. Using the negative procedure will also allow the government to respond quickly to the emergence of significant new technological changes or designs. Although this is likely to be infrequent and the changes minor, it is vital that the process to make these changes is not unduly delayed by parliamentary procedure so as to reduce significant delays in law enforcements' efforts to safeguard those children in immediate risk of harm.

CHAPTER 3: TERMS OF SERVICE: TRANSPARENCY, ACCOUNTABILITY AND FREEDOM OF EXPRESSION

Clause 66(1): OFCOM's guidance about duties set out in sections 64 and 65

Power conferred on: OFCOM

Power exercised by: Guidance

Parliamentary procedure: None

Context and purpose

122. OFCOM are under a duty to produce guidance in relation to Category 1 service providers' transparency, accountability and freedom of expression duties.
123. Clause 64 imposes a duty on Category 1 service providers to have systems and processes to ensure they only remove or restrict access to content, or ban or suspend users, where allowed by their terms of service, or where they otherwise have a legal obligation to do so.
124. Clause 65(3) to (7) imposes duties on Category 1 service providers to ensure the terms of service relevant to moderation decisions are clear, easy to understand and consistently applied. In addition, where service providers say they will remove or restrict legal content or suspend or ban users, they must have systems and processes in place to ensure they follow through on their promises. They must also have effective reporting and redress mechanisms in place enabling users to raise concerns about companies' enforcement of their relevant terms of service.

Justification for the power

125. OFCOM's power to publish guidance will allow them to set out in detail how Category 1 service providers could comply with their transparency, accountability and freedom of expression duties. The guidance is not binding and is intended to assist service providers to comply with these duties under the Bill.
126. The underpinning details of the duties are contained in the legislation in clauses 64 and 65, such as the details about which types of content moderation must be covered in the terms of service, which types of content and terms of service are excluded from the duties, and the circumstances in which user reporting and redress mechanisms must be offered.
127. The guidance will cover matters such as how to make the relevant terms of service clear and easy for users to understand, and how to operate an effective reporting and redress mechanism. It would not be appropriate to set out this type of administrative and technical detail in legislation.

Justification for the procedure

128. Since these provisions are concerned with operational and administrative matters related to compliance with the detailed legislative duties imposed on regulated providers under clauses 64 and 65(3) to (7), the provision to be made is

administrative rather than legislative in character, and no parliamentary procedure is considered necessary.

CHAPTER 4: TRANSPARENCY REPORTING

Clause 68(12): Transparency reports about certain Part 3 services

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Draft affirmative

Context and purpose

129. Once a year, OFCOM must require certain categories of service providers to submit transparency reports (clause 68(1)). These reports will be required from Category 1, 2A and 2B services. These reports will ensure that users, civil society and the government are well informed about the steps platforms are taking to tackle online harms.
130. The reports must be produced following a notice from OFCOM which will set out requirements regarding the type of information, the format in which it must be presented, when it must be submitted and how and when it must be published. OFCOM may only request information of a type relevant to each category of service. The types of information for each service category is set out in Parts 1 and 2 of Schedule 8 (see clause 68(11)).
131. In deciding what information to require, OFCOM must also take account of the factors listed in Paragraph 33 of Schedule 8, including for example the service provider's capacity, what type of service it is, its functionalities, its number of users and the proportion of users who are children.
132. This is a power for the Secretary of State to change the frequency of the transparency reporting process. To ensure that reporting requirements are responsive to the risk of harm to users, and proportionate for businesses, it is essential that the frequency with which OFCOM must require reports can be amended. Clause 68(12) therefore enables the Secretary of State to change the frequency with which OFCOM must give a notice to relevant services.
133. The power to amend the frequency of transparency reporting is a Henry VIII power, in that it allows secondary legislation to be used to amend provisions in the Bill. This power is limited to the frequency of transparency reporting only.

Justification for the power

134. The initial requirements on providers to produce annual reports will be imposed in primary legislation. The power to amend the frequency of transparency reports will ensure that this provision does not become outdated. This will ensure that the transparency reporting framework can keep pace with changes in the technological and regulatory landscape. Where information is needed on a more - or less - frequent basis than is currently foreseeable, this power will allow the Secretary of State to respond to those changes.

135. A power to amend the required frequency of transparency reports through secondary legislation will allow the Government to be responsive if more or less frequent reports are necessary.
136. This power will ensure the transparency-reporting process is responsive to technological change, changes in people's use of regulated services, and trends related to online harms. Given the fast moving landscape, it is important that the regime can be updated frequently so that it remains effective to address new and emerging harms to users. The Government considers that at present, annual reports are appropriate, but it is possible that having had experience of administering the framework, it is considered that more frequent reports are needed to furnish OFCOM and users with the information required to reduce harm. Technological advances may mean that it also becomes easier for service providers to compile such reports (and so requiring more frequent reports is considered proportionate).

Justification for the procedure

137. As this is a Henry VIII power, the draft affirmative procedure is considered appropriate. This provides a suitable degree of parliamentary oversight while ensuring that the frequency of the reports can readily be kept up to date.

Clause 69(1): OFCOM'S guidance about transparency reports

Power conferred on: OFCOM

Power exercised by: Guidance

Parliamentary procedure: None

Context and purpose

138. A provider of a relevant service must provide an annual transparency report under clause 68. The information to be included within those reports will be set out in notices provided by OFCOM.
139. This clause holds that OFCOM must prepare and publish guidance on how OFCOM will determine which information they require, how information provided will be used to produce OFCOM's transparency reports (clause 145) and any matter OFCOM considers to be relevant to providers producing and publishing a transparency report.
140. The guidance must detail the principles OFCOM will apply, including how OFCOM will take into account factors listed at Paragraph 33 of Schedule 8. This includes the provider's capacity to produce information, its kind of service, its functionalities, and its number of users before deciding what information to require. It must also consider the steps that OFCOM will take to engage with relevant providers before requiring the information in a notice under clause 68.
141. Before preparing guidance (or any revised or replacement guidance) under this clause, OFCOM must consult any person they consider appropriate including persons listed in clause 69(2) such as regulated providers, trade associations and other regulators etc.

Justification for the power

142. The guidance will assist services with complying with their obligations which are set out in Schedule 8. It does not place any mandatory requirements on service providers but instead supplements the requirements set out in the Bill by explaining how OFCOM will implement them.
143. Delegating this power helps ensure OFCOM take into account the views of industry and other stakeholders in order to determine what information to require from providers in transparency reports. The guidance will increase transparency and clarity for providers who have to prepare a transparency report, especially in respect as to how the information provided will be used in OFCOM's transparency reports.

Justification for the procedure

144. Since the guidance is technical in nature, relating to operational and administrative matters concerning how OFCOM will interpret their duties in relation to transparency reports, the provision is administrative rather than legislative in character.
145. The guidance does not impose any mandatory requirements on services. Given the non-binding and detailed technical nature of the guidance, no parliamentary

procedure is considered necessary.

PART 5: DUTIES OF PROVIDERS OF REGULATED SERVICES: CERTAIN PORNOGRAPHIC CONTENT

Clause 73(1): OFCOM's guidance about duties set out in section 72

Power conferred on: OFCOM

Power exercised by: Guidance

Parliamentary procedure: None

Context and purpose

146. Clause 73 requires OFCOM to produce guidance for relevant providers of services which publish or display regulated provider pornographic content (as set out in clause 71(2)), to assist them in complying with the duties under clause 72.
147. OFCOM must include within the guidance examples of measures that would be considered as appropriate to comply with the duty on children's access to regulated provider pornographic content at clause 72(2); examples of ways in which a provider may have regard to the importance of protecting users' privacy as mentioned in clause 72(3)(b); the principles that OFCOM will apply when determining whether a provider has complied with the duties in clause 72; and examples of when OFCOM is not likely to consider that a provider has complied with the duties in clause 72.
148. OFCOM are required to consult with particular persons prior to preparing, revising or replacing the guidance for providers, including the Secretary of State, relevant providers in scope of clause 71, those who represent adult users of internet services in scope of clause 71, those who represent the interests of children and emerging technologies in online child safety matters, the Information Commissioner and any other persons OFCOM considers appropriate.
149. Where OFCOM consider any proposed changes to the guidance to be of a minor nature, there is no requirement on OFCOM to consult, providing the Secretary of State is notified of the proposed changes and agrees that the amendments are minor and consultation is unnecessary. OFCOM must keep the guidance under review, and publish it as well as any revised or replacement guidance.

Justification for the power

150. The guidance will assist services with complying with their obligations which are set in primary legislation. It does not place any mandatory requirements on service providers. For example, the guidance will contain examples of how services can use age verification to prevent children from accessing regulated provider pornographic content on the service.
151. Services will not be required to follow those examples and may comply with their statutory duties in other ways. OFCOM's guidance will go into a level of detail of how companies can meet the duties set out in clause 72 to which it would be inappropriate to set out in primary legislation. The additional transparency provided by this guidance will benefit services.

152. The power to revise this document provides the ability to modify the details quickly if changes are required, in light of emerging technologies and changes in user behaviour. This will be essential given the fast-paced and innovative nature of the regulated sector.

Justification for the procedure

153. These provisions are concerned with non-legislative technical matters in the context of how regulated service providers can comply with their duties under clause 72. The guidance does not impose any mandatory requirements on services.

154. Given the non-binding and detailed technical nature of the guidance, no parliamentary procedure is considered necessary. OFCOM will be required to consult with those listed in subsection (3) before publishing the guidance, which will provide an additional degree of scrutiny over the content of the guidance.

PART 6: DUTIES OF PROVIDERS OF ALL REGULATED SERVICES: FEES

Clause 74(3) and (6): Duty to notify OFCOM

Power conferred on: OFCOM

Power exercised by: Regulations (3) and published decision subject to Secretary of State's approval (6)

Parliamentary procedure: Negative (3) and None (6)

Context and purpose

155. OFCOM will have a power to charge an annual fee to the providers of regulated services who are not exempt (clause 75), where the providers meet the relevant financial threshold (which is to be set by the Secretary of State in consultation with OFCOM, clause 77).
156. Under clause 74(1), a provider of a regulated service must notify OFCOM in relation to a charging year which is:
- The first fee-paying year in relation to that provider, or
 - Any charging year after the first fee-paying year where—
 - The previous charging year was not a fee-paying year in relation to the provider, and the charging year in question is a fee-paying year in relation to the provider, or
 - The previous charging year was a fee-paying year in relation to the provider, and the charging year in question is not a fee-paying year in relation to the provider.
157. A “fee-paying year”, in relation to a provider, means a charging year where the provider is not exempt (see subsection (2)) and the provider’s qualifying worldwide revenue, for the qualifying period, is equal to or greater than the threshold figure. The threshold figure in question is that which is published in accordance with clause 77.
158. A notification under subsection (1) for the initial charging year must be made within 4 months of the date when the first threshold figure under clause 77 is published. For subsequent charging years, the notification must be made within 6 months before the beginning of the charging year to which the notification relates. A notification under subsection (1) must include details of all regulated services provided by the provider. Where it is a notification under subsection (1)(a) or (b)(i), it must also include details of the provider’s qualifying worldwide revenue for the qualifying period that relates to that charging year, and any supporting evidence, documents or other information specified by the Secretary of State in regulations (subsection (3)(b)).
159. However, these notification duties may prove to be excessive in specific cases. Therefore, under subsection (6), where OFCOM consider that an exemption from the requirements to notify and pay a fee for such providers is appropriate, and the Secretary of State approves the exemption, OFCOM may provide that particular providers of regulated services are exempt for the purposes of this clause and clause 75.

160. Subsection (7) allows OFCOM to revoke such an exemption where they consider that it is no longer appropriate and the Secretary of State approves the revocation.
161. OFCOM must publish details of any exemption or revocation of an exemption approved under subsection (6) or (7) at least 6 months before the beginning of the first charging year (apart from the initial charging year) for which the exemption or revocation is to have effect.

Justification for the powers

162. For the power set out in subsection (3), after consulting with industry, OFCOM will be in the best position to determine the appropriate evidence required to support a notification. Setting out the evidence required in regulations will allow for the list to be amended in the future. It will also ensure that industry's views are considered when determining which evidence needs to be provided, so as not to impose an onerous burden on them.
163. Providing OFCOM with the power to make exemptions at subsection (6) from the notification and fee requirement will allow OFCOM to remain responsive to the services which they regulate and avoid imposing an undue regulatory burden.
164. Delegating this power will allow exemptions to be provided when the framework is operational, and OFCOM can use their full resources and expertise to assess what obligations are proportionate for particular services.
165. The power to provide exemptions from the notification and fee requirements is a limited and specific power which can only be exercised with the approval of the Secretary of State.

Justification for the procedure

166. The power under clause 74(3) will be subject to the negative procedure. Clause 74(11) requires the Secretary of State to consult OFCOM before making regulations, and the drafting of the regulations will be informed by OFCOM's own industry consultation on OFCOM's Statement of Principles under clause 79. The content will be largely technical in nature, and designed to provide OFCOM with the supporting evidence they require, based on the charging principles they apply. The negative procedure therefore provides an appropriate level of parliamentary scrutiny.
167. The power under clause 74(6) is concerned with an operational matter in the context of how the regulator intends to use its powers. Therefore, no parliamentary procedure is considered necessary.
168. However, OFCOM must receive the approval of the Secretary of State to exercise this power. This will ensure that the Secretary of State has oversight of any exemptions. OFCOM must also publish details of any exemption or revocation approved under subsections (6) or (7), which will ensure transparency.

Clause 76(1): OFCOM's statement about "qualifying worldwide revenue" etc

Power conferred on: OFCOM

Power exercised by: Published statement

Parliamentary procedure: None

Context and purpose

169. As noted above, OFCOM will have a power to charge an annual fee to the providers of regulated services which are not exempt (clause 75), where the providers meet the relevant financial threshold (to be set by the Secretary of State (clause 77)).
170. There will be a requirement for all providers of regulated services who meet the financial threshold (subsection (1)(a) or (b)(i)) to notify OFCOM of details of the regulated services they provide, the provider's qualifying worldwide revenue, and any supporting evidence, documents or other information specified by OFCOM in OFCOM's Statement of Principles (clause 79). A notification under subsection (1) must be provided to OFCOM by the time OFCOM specify in a statement of principles.
171. OFCOM have the power to determine the amount of the annual fee with reference to the provider's qualifying worldwide revenue (for the period) and other relevant factors (clause 76), but must do so in accordance with OFCOM's published Statement of Principles.
172. Furthermore, OFCOM will have a suite of enforcement powers available to use against persons who do not comply with their duties and requirements under the Bill. One of those powers will be for OFCOM to impose financial penalties on those who have failed, or are continuing to fail, to comply with their obligations.
173. Where a penalty is imposed on a regulated provider, the maximum amount of the penalty that can be imposed is whichever is the greater of £18 million or 10% of "qualifying worldwide revenue". The penalty must also be of an amount that OFCOM consider to be appropriate and proportionate to the failure (or failures) in respect of which it is imposed.
174. OFCOM will define "qualifying worldwide revenue" and "qualifying period" in consultation with the Secretary of State, the Treasury and any other persons who OFCOM determine are likely to be affected by the statement (clause 76(4)). The statement will be required to be published and laid before Parliament by the Secretary of State.

Justification for the power

175. The definitions of "qualifying worldwide revenue" and "qualifying period" underpin the funding regime of the regulator. "Qualifying worldwide revenue" is also a key factor in determining the applicable penalties, which is central to OFCOM's enforcement regime. Defining it in a statement rather than in primary legislation will allow OFCOM as the regulator to draw on their own financial and regulatory expertise, and consult extensively with affected companies, in order to determine the definitions.

176. Defining these terms in a statement will also allow their meaning to be varied in the future. This will be required to ensure that the terms “qualifying worldwide revenue” and “qualifying period” remain relevant and enable easy reporting by industry.

Justification for the procedure

177. These definitions are technical underpinnings of the fee regime, and OFCOM are required to consult the Secretary of State, HM Treasury, and other persons they believe will be impacted when determining them. They are definitional only, with the substantive structure of the fee regime set by the Secretary of State’s threshold figure under clause 77 and OFCOM’s Statement of Principles under clause 79. However, to ensure transparency for industry, parliamentarians and other interested parties, the definitions will be published and laid before Parliament by the Secretary of State.

Clause 77(2): Threshold figure

Power conferred on: Secretary of State

Power exercised by: Decision

Parliamentary procedure: None

Context and purpose

178. OFCOM will be funded via fees from providers of regulated services whose qualifying worldwide revenue is equal to or greater than a specified threshold as determined by clause 77. Providers with “qualifying worldwide revenue” equal to or greater than the threshold will have an obligation to notify OFCOM, and pay an annual fee (see clauses 74 and 75) unless the provider is exempt under clause 74(6).
179. OFCOM will consult persons they consider appropriate in order to inform the threshold figure for the purposes of clauses 74 and 75. The Secretary of State will then determine the figure for the threshold after having taken advice from OFCOM following the conclusion of the consultation. The Secretary of State must publish a statement specifying the threshold figure, and lay a copy of the statement before Parliament.

Justification for the power

180. The Secretary of State deciding on the level of the threshold will help ensure that the threshold figure is set at a level which leads to affordable and proportionate fees, whilst ensuring OFCOM’s annual costs are covered. The Secretary of State will be able to benefit from OFCOM’s expertise and the insight gained through OFCOM’s consultation with industry in order to determine the relevant threshold figure. Further, the Secretary of State will be able to act promptly in keeping the threshold figure under review to ensure that the online safety framework is able to meet the costs of its operations.
181. As the threshold is one of the key aspects of the funding regime, the Secretary of State’s decision in respect to the threshold figure will be published in a statement to be laid before Parliament to allow for parliamentary oversight and transparency. This process will be followed each time the threshold is revised.

Justification for the procedure

182. The threshold is a key aspect of the fee regime that determines the firms responsible for funding the set-up and operation of the regulatory framework, and will have a significant distributive impact on which firms meet these costs. The Secretary of State is therefore responsible for determining — based on OFCOM’s advice — the appropriate figure.
183. It would not be appropriate to set out the threshold in primary legislation, as it needs to be flexible in order to adapt to fluctuations in costs or changes to the QWR definition determined by OFCOM after Royal Assent. For example the threshold figure may be set too high, impacting the distribution of fees.

184. Ahead of the Secretary of State's decision, OFCOM must consult on the threshold figure and provide advice to the Secretary of State based on that consultation. The Secretary of State must also publish the figure and lay it before Parliament in order to ensure the fee regime as a whole is transparent, and also keep the figure under review to ensure it is responsive to market developments.
185. Additionally, in order to provide industry with sufficient notice ahead of changes to fee payments, any statement specifying a new threshold figure must be published at least nine months ahead of the charging year in which that statement would take effect. This does not apply for the first charging year, as it could delay the date from which OFCOM could begin raising funds from industry.

Clause 78(1): Secretary of State's guidance about fees

Power conferred on: Secretary of State

Power exercised by: Guidance

Parliamentary procedure: None

Context and purpose

186. OFCOM will be funded via fees from providers of in-scope services who are not exempt and whose qualifying worldwide revenue is equal to or greater than the threshold figure determined by the Secretary of State (see clause 77). The Secretary of State must issue guidance to OFCOM about the principles that OFCOM will follow when determining the fees payable by a provider of a regulated service (see clause 75).
187. The Secretary of State must consult OFCOM before issuing, revising or replacing the guidance. The Secretary of State's guidance may not be revised or replaced more frequently than once every three years, unless by agreement between the Secretary of State and OFCOM or where it needs to be corrected as a result of an amendment, repeal or modification to a provision of the Bill dealing with fees. OFCOM must have regard to the guidance when exercising their functions relating to fees under this Chapter of the Bill.

Justification for the power

188. Through the Secretary of State stipulating in guidance the principles to be taken into consideration, industry and government can be assured that fees charged by OFCOM will be justifiable and proportionate. Furthermore, the guidance will help ensure that OFCOM set the fees at a level which allows them to cover the necessary annual costs of the regulatory regime.
189. Guidance will allow the Secretary of State to provide clarity to the regulator by setting out the principles they expect OFCOM to follow in determining fees and to be included in OFCOM's own Statement of Principles. The guidance will assist OFCOM in developing a fee regime. It does not place any mandatory requirements on OFCOM, aside from to have regard to the contents, and they will not be required to comply with the guidance. The additional transparency provided by this guidance will benefit services.
190. This guidance is not included in primary legislation, on the basis that flexibility is required to assist OFCOM in developing and maintaining a future proofed fee regime for a fast moving and multifaceted sector.

Justification for the procedure

191. The exercise of this power is restricted in its frequency, and requires engagement with OFCOM before guidance is issued, revised, or replaced.
192. The Secretary of State must lay the initial guidance (and any revised or replacement guidance) before Parliament and publish the guidance (and any revised or

replacement guidance) issued under this clause.

Clause 79(1): OFCOM's fees statements

Power conferred on: OFCOM

Power exercised by: Statement of Principles

Parliamentary procedure: None

Context and purpose

193. OFCOM will be funded via fees from providers of in-scope services (which are not exempt) whose “qualifying worldwide revenue” is equal to or greater than a specified threshold (as determined by clause 77).
194. OFCOM will be required to publish a Statement of Principles (“the Statement”) which OFCOM will adhere to when setting out the fees payable by a regulated service provider (clause 75(4)). The Secretary of State will publish guidance on the principles which must be taken into account by OFCOM when drafting the Statement. OFCOM must consult such persons they consider appropriate prior to making or revising the Statement.
195. The Statement must include details of the computation model used to calculate fees payable by the service providers, the factors OFCOM consider appropriate within the computational model, and the threshold figure published in accordance with clause 77. The principles within the Statement must outline how the fees charged by OFCOM will meet, but not exceed, the costs of carrying out online safety functions for that charging year. It will also be required to set out principles underpinning the result that the fees to be charged to providers are proportionate and justifiable, and that there is transparency in relation to the costs incurred in the exercise of functions and fees charged.
196. Unless there is a Statement in force that OFCOM propose to apply to determine fees, OFCOM will not be able to require providers to pay a fee.

Justification for the power

197. Under the Communications Act 2003, OFCOM is required to set licence fees in the broadcasting sector and administrative charges in the electronic communications sector in accordance with charging principles that they have published. There are similar provisions in the Postal Services Act 2011 in relation to the setting of charges for the postal services sector. In line with its legislative duties, OFCOM currently publish a Statement of Principles which outlines that charges and fees must be set so as to meet, but not to exceed, OFCOM's annual costs of regulating the relevant sector.
198. The duty to publish the Statement is crucial to ensure consistency with OFCOM's other regimes. It is appropriate for the regulator to publish the Statement to allow for transparency in the online safety funding regime and clarity for providers and stakeholders. It is expected that OFCOM will consult with providers of regulated services in preparation of the Statement.

Justification for the procedure

199. The Statement of Principles determines the substantive structure of the fee regime used to raise funds from industry. OFCOM must consult such persons they consider appropriate ahead of making or revising the statement. OFCOM must also publish the Statement and any revisions. This approach and duty to publish is consistent with OFCOM's other regimes — such as those set out under the Communications Act 2003 and Postal Services Act 2011, which likewise attach no parliamentary procedure to the statement of charging principles — and will ensure the principles are transparent to industry, parliamentarians, and other interested parties.
200. The Statement will include technical details and definitions for the funding regime determined by OFCOM after consultation, having regard to guidance issued by the Secretary of State and laid before Parliament under clause 78. The threshold figure, specifically, will have been decided by the Secretary of State (having taken advice from OFCOM) and laid before Parliament under clause 77.
201. As the document setting out the independent regulator's fee regime in full, it is appropriate that this statement is published by OFCOM themselves, rather than subject to parliamentary procedure.

Clause 86(2): Register of categories of certain Part 3 services

Power conferred on: OFCOM

Power exercised by: Decision

Parliamentary procedure: None

Context and purpose

202. In order to embed proportionality into the regulatory system, the Bill creates three categories of regulated services which will have additional duties imposed upon them: Category 1 Services; Category 2A Services and Category 2B Services. Schedule 11 requires the Secretary of State to make regulations to specify the threshold conditions that a regulated service must meet to fall into one of these categories.
203. As soon as reasonably practicable after these regulations have been made, clause 86 requires OFCOM to establish and maintain a register of these categories of services, based on their assessment of which regulated services they consider to meet the applicable threshold conditions. For the purposes of the duties in this Bill, a service is a Category 1, 2A, or 2B Service if it is included in the relevant part of the register.
204. If regulations made under Schedule 11 are amended or replaced by the Secretary of State, OFCOM must reassess regulated services to determine whether they do or do not meet the threshold conditions for the relevant category. There is also a continuing duty at any other time for OFCOM to assess regulated services and to add them to the register if they meet the relevant threshold conditions.
205. Service providers included in the register may at any time ask to be removed from any part of the register, and if OFCOM are satisfied on an evidential basis that there has been a change in circumstances, they must assess the service and make a decision on removal from the register. A regulated service must be removed if following OFCOM's assessment, OFCOM consider the service in question no longer meets the threshold conditions. OFCOM's decision to include or remove a service from the register may be appealed by providers of the affected service (by virtue of clause 87(11) and clause 148 regarding appeals).
206. The register must be published and re-published each time a change is made to it. OFCOM must take reasonably practicable steps to obtain and generate information or evidence for the purposes of assessing whether a service does or does not meet the relevant threshold conditions.

Justification for the power

207. This power is central to administering the regulatory regime and identifying the differentiated categories of services who will be subject to additional duties following their designation in the register. This approach ensures clarity for companies about whether they will be subject to additional duties, as the register provides an exhaustive list of services that they assess as meeting the threshold conditions that have already been established by the Secretary of State in regulations (the detailed power and justification for the power in Schedule 11 is described below in this memorandum).

208. The power to establish the register of categories of services and to make assessments is delegated to OFCOM as they have the necessary expertise in this regard, and will rely on their information gathering powers to determine which companies meet thresholds set by the government in secondary legislation. OFCOM are best placed to conduct research into regulated services and assess the number of users, functionalities and other relevant characteristics and factors, and they will have the relevant expertise about the markets, industry and regulated services to ensure appropriate decisions are made. They will also need to engage with service providers to obtain evidence to inform their decisions about designation or removal of services from the register.

Justification of the procedure

209. The exercise of this power is restricted as OFCOM will be making decisions about services against threshold conditions set out in secondary legislation made by the Secretary of State which will already have been subject to parliamentary scrutiny. Once OFCOM make an assessment and decide to designate a service, that will be recorded via the entries in a published register (which must be maintained and updated). Further, providers of services included in the register may ask to be removed. Providers have a right of appeal to the Upper Tribunal if they wish to appeal OFCOM's decision to include them in, or refusal to remove them from, the register.

210. It is therefore considered that adequate safeguards and scrutiny are in place for OFCOM's decision making power.

PART 7: OFCOM'S POWERS AND DUTIES IN RELATION TO REGULATED SERVICES

CHAPTER 3: RISK ASSESSMENTS OF REGULATED USER-TO-USER SERVICES AND REGULATED SEARCH SERVICES

Clause 89(5)-(9): OFCOM's register of risks, and risk profiles, of Part 3 services

Power conferred on: OFCOM

Power exercised by: Published Document

Parliamentary procedure: None

Context and purpose

211. Under clause 89 OFCOM must carry out risk assessments to identify, assess and understand the risks posed to individuals from content and activity on in-scope services. These must consider the risks of harm to individuals presented by illegal content and content that is harmful to children on regulated user-to-user and search services. OFCOM must also consider the risk of harm to individuals presented by user-to-user services being used for the commission or facilitation of priority offences.
212. OFCOM's risk assessments must, amongst other things, assess the levels of risk of harm presented by regulated services of different kinds, identify characteristics of different kinds of regulated services that are relevant to such risks of harm, and assess the impact of those kinds of characteristics on such risks. Under clause 89(5) - (9), OFCOM must develop risk profiles for different kinds of regulated services, grouping them together as they consider appropriate, taking account of the services' characteristics and risk levels OFCOM have identified in their risk assessments. The risk profiles must be published. OFCOM will be able to combine their assessments of risks presented by the three types of harm and may assess user-to-user and search services separately.
213. When conducting a risk assessment under clauses 8, 10, 22 and 24, services of a particular kind must assess the matters listed in those clauses, taking into account the risk profile that relates to services of that kind.

Justification for the power

214. The risk profiles are to be prepared in light of the findings of OFCOM's risk assessments. This will ensure that the risk profiles are created by reference to up to date evidence about services' characteristics, risk levels and other matters OFCOM identifies through their risk assessment.
215. Setting out the risk profiles in a published document, rather than in primary legislation, will allow the risk profiles to be amended as needed, including to reflect separate or combined risk assessments. This will be essential given the fast-paced and innovative nature of the regulated sector in which emerging technologies and changes in user behaviour give rise to a continually changing risk landscape.

Justification for the procedure

216. No parliamentary procedure is considered necessary because the substantive requirement for OFCOM to carry out a risk assessment is set out in primary legislation. The risk register and risk profiles will be based on the risk assessment. Publication of the register and the profiles will ensure appropriate transparency about the regulatory approach.

Clause 90(1)-(4): OFCOM's guidance about risk assessments

Power conferred on: OFCOM

Power exercised by: Guidance

Parliamentary procedure: None

Context and purpose

217. As soon as reasonably practicable after OFCOM have published the first risk profiles related to illegal content and priority offences and content that is harmful to children under clause 89, OFCOM must prepare risk assessment guidance for providers of regulated services. Illegal content risk assessment guidance is to assist service providers in complying with their duties to carry out illegal content risk assessments under clause 8 (for user-to-user services) and clause 22 (for search services). Childrens' risk assessment guidance has the same function for childrens' risk assessment duties under clause 10 (for user-to-user services) and clause 24 (for search services).
218. OFCOM are obliged to consult the Information Commissioner before preparing or revising any risk assessment guidance. OFCOM are also under a duty to review the guidance when they carry out further relevant risk assessments or revise relevant risk profiles, and must publish each set of risk assessment guidance.

Justification for the power

219. Clauses 8, 10, 22 and 24 impose obligations on providers of user-to-user and search services to carry out risk assessments. Each of those clauses sets out a list of matters that service providers must assess, as part of those risk assessments taking into account the relevant risk profiles. The guidance is to be prepared following OFCOM's risk assessments and development of risk profiles, and consultation with the Information Commissioner. The guidance will go into a level of detail about how companies can meet the duties set out in clauses 8, 10, 22 and 24 which it would be inappropriate to set out in primary legislation. The additional transparency provided by this guidance will benefit services.
220. OFCOM will also need to revise the guidance to keep pace with any changes to their overall register of risk and risk profiles (clause 89), in the light of emerging technologies and changes in user behaviour. This will be essential given the fast-paced and innovative nature of the regulated sector.

Justification for the procedure

221. This guidance is not legislative and will not contain mandatory requirements which services must comply with. The guidance instead assists services with complying with their obligations which are set out in primary legislation.
222. Given the non-binding nature of the guidance, no parliamentary procedure is considered necessary.

CHAPTER 4: INFORMATION

Clause 103(2): Co-operation and disclosure of information: overseas regulators

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Draft affirmative

Context and purpose

223. OFCOM will need to have access to a wide variety of information to help them understand the online harms landscape and assess how and to what extent companies are meeting their duties. Given the international nature of the internet, it will be vital that OFCOM are able to cooperate with overseas regulators, and in certain cases, share information with them. Enabling OFCOM to cooperate and share information with overseas regulators will help to ensure a coordinated approach to tackling online harms at a global level, which will have significant benefits for UK users.
224. This clause creates an express power for OFCOM to co-operate with an overseas regulator (defined as a person in a country outside the United Kingdom which exercises functions corresponding to OFCOM's online safety functions) including by disclosing online safety information (defined as any information which OFCOM hold in connection with OFCOM's online safety functions) in order to facilitate an overseas regulator exercising their online safety functions, or to cooperate with any related criminal investigations or proceedings.
225. This power allows the Secretary of State to make regulations specifying which overseas regulators OFCOM may share information with.

Justification for the power

226. Effective cooperation and information sharing between regulators will be crucial in tackling online harms, both in the United Kingdom and abroad. This mechanism for OFCOM to share information with overseas regulators will help OFCOM work with overseas regulators, for instance by facilitating cooperation on enforcement action.
227. Given the potential breadth of such a power, it is necessary to ensure that the Secretary of State can specify which overseas regulators OFCOM will be able to share information with, to provide clarity on when this power may be used by OFCOM. Given the fast-moving regulatory landscape, and the fact that a number of other countries are in the process of developing similar online safety regimes, it would not be prudent to place an exhaustive list of overseas regulators in primary legislation as this list would quickly become outdated. Furthermore, given the sensitivity of some of the data that these regulators will be privy to, it is appropriate that the Secretary of State has discretion here. This will ensure that considerations about national security help inform the decision over which regulators OFCOM can share information with. As such, the Bill provides the Secretary of State with the power to specify this in secondary legislation.

228. This power ensures that the list of overseas regulators with whom OFCOM can cooperate with and disclose information to is appropriate and up to date. The Secretary of State can ensure there are sufficient provisions to facilitate efficient cooperation with emerging overseas regulators which will accommodate change in the international online regulatory landscape.

Justification for the procedure

229. By virtue of clause 197(1)(b), regulations made under clause 103(2) are subject to the draft affirmative procedure.

230. The draft affirmative procedure is considered appropriate as it ensures that Parliament has oversight and the opportunity to debate the designation of overseas regulators for the purpose of online safety information sharing, which will determine with whom OFCOM will be able to share information under the new regime.

CHAPTER 5: REGULATED USER-TO-USER SERVICES AND REGULATED SEARCH SERVICES: NOTICES TO DEAL WITH TERRORISM CONTENT AND CSEA CONTENT

Clause 113(13): Notices under section 110(1): supplementary

Power conferred on: Secretary of State

Power exercised by: Decision

Parliamentary procedure: None

Context and purpose

231. As part of the regulator's enforcement regime, OFCOM will be able to issue a provider of a regulated service with a notice to deal with terrorism content or CSEA content (or both). This will ensure that the regulator has the power to require individual companies to use accredited technology to tackle terrorism and CSEA content, or to develop or source technology to tackle CSEA content.
232. Clause 113 sets out that accredited technology must meet minimum standards of accuracy. For the purposes of this clause, technology is "accredited" if it is assessed by OFCOM or a third party appointed by OFCOM as meeting the minimum standards of accuracy in the detection of terrorism content or CSEA content, as the case may be.
233. Clause 113(13) provides the Secretary of State with the power to approve and publish those minimum standards of accuracy, following advice from OFCOM. The standards will inform the accreditation process which will guide companies designing tools to tackle these harms and ensure that OFCOM may not require companies to use inaccurate technology.
234. In setting the minimum standards of accuracy, the Secretary of State will be able to consider a range of factors and draw on OFCOM's advice, alongside child safety, privacy, industry impact, and national security considerations.

Justification for the power

235. Protecting children and preventing terrorism is central to the online safety framework. As such, the framework will ensure that providers take steps to prevent users from encountering terrorism content and CSEA content, and that such content is identified and removed. However, the use of detection technologies may have an impact on user rights, and so it is essential that these tools are accurate. It is important that the standards against which those tools are assessed are clear, informed and reflective of the current technological landscape.
236. The power to set minimum standards of accuracy has been delegated, so that the framework can be updated regularly to account for new technologies and changing online behaviour including the ways in which terrorism content and CSEA is accessed, used and distributed. The Secretary of State will be able to revise the standards as necessary to take account of these changes, following advice from OFCOM. The Secretary of State will also be able to consult other technical experts as

necessary, for example to take account of concerns around freedom of expression, privacy and the impact on industry

237. Delegating this power also allows OFCOM to monitor the initial implementation of the regulatory framework. This will ensure that the regulator can better account for any changes in the commercial, technological or harm landscape in response to the introduction of the Act, before providing advice to the Secretary of State.

Justification for the procedure

238. The Secretary of State must take advice from OFCOM ahead of publishing the minimum standards of accuracy.

239. This power is limited, and will allow the Secretary of State to consider evidence supplied by OFCOM or third parties about the accuracy of the technologies available at the time the decision is made in balance with the implications for privacy and freedom of expression. As such, no parliamentary procedure is considered necessary.

Clause 115(1): OFCOM's guidance about functions under this Chapter

Power conferred on: OFCOM

Power exercised by: Guidance

Parliamentary procedure: None

Context and purpose

240. The Bill grants OFCOM a targeted power to address CSEA and terrorism content due to the seriousness of these types of priority illegal content.
241. Where necessary and proportionate, based on the matters listed in clause 112, OFCOM may issue a service provider with a warning notice. This must include information listed under clause 111(2).
242. After a warning notice has been issued, and once the period for representations from the service provider has passed, OFCOM may issue the provider with a notice either to use accredited technology or to make best endeavours to develop or source technology. If a service provider does not comply with a notice, OFCOM can revoke and issue a further notice under clause 114.
243. Clause 115 requires OFCOM to produce and publish guidance for providers of Part 3 services on how OFCOM would exercise their powers under this Chapter. The guidance should set out the process OFCOM intend to follow when using this power, including examples of circumstances in which they might require a company to use or develop technology, and outline the process they will adopt to implement the legislative safeguards. Setting out high-level information in statutory guidance will ensure that the regulator is transparent, and that information around how the power will work is accessible for providers in scope and users of the service.

Justification for the power

244. The purpose of this guidance is to inform regulated service providers how OFCOM propose to exercise their powers under Chapter 5 of Part 7 of the Bill. It is therefore appropriate for the regulator to be responsible for producing such guidance after consulting the Information Commissioner and other persons who OFCOM consider appropriate.
245. This guidance is non-legislative and is intended to assist regulated services by providing them with transparency about how OFCOM intend to use their powers relating to notices to deal with terrorism content and CSEA content. It does not impose any mandatory requirements on service providers.
246. Further, the power to revise the guidance provides OFCOM with the ability to modify the details if required in light of emerging technologies and changes in the activities of regulated services.

Justification for the procedure

247. The provision is administrative rather than legislative in character - it will assist

providers to know how OFCOM intend to exercise their powers under this Chapter.

248. It does not provide any mandatory requirements for services to comply with. Given the non-binding and detailed technical nature of the guidance, no parliamentary procedure is considered necessary.

CHAPTER 6: ENFORCEMENT POWERS

Clause 138(1): OFCOM's guidance about enforcement action

Power conferred on: OFCOM

Power exercised by: Guidance

Parliamentary procedure: None

Context and purpose

249. A range of enforcement powers will be conferred on OFCOM in order to enable them to tackle infringements in a proportionate and effective manner.
250. The enforcement provisions enable OFCOM to issue a provisional notice of contravention in respect of a failure to comply with a number of listed duties or requirements (see clause 119). In order to issue such a notice, OFCOM must consider that there are reasonable grounds for believing that the provider has failed or is failing to comply with a relevant duty or requirement. This notice can then be followed by a confirmation decision requiring the provider to take remedial action as well as imposing a penalty for continued failure to comply with the duties or requirements. OFCOM can impose a maximum penalty of the greater of £18 million or 10% of qualifying worldwide revenue. OFCOM also have the power to apply to the courts for business disruption measures, including blocking.
251. OFCOM will be required to produce and publish guidance, as they do in relation to other areas they regulate, explaining how they propose to exercise their enforcement powers. The purpose of this guidance is to give providers and the public more information about how OFCOM propose to use their enforcement powers. The guidance must, in particular, give information about the factors that OFCOM would consider it appropriate to take into account when taking, or considering taking, enforcement action against regulated providers' failure to comply with enforceable requirements. These enforceable requirements are listed in clause 119 and include, for example, the duties to carry out and report risk assessments, duties about illegal content or protecting adults and children, the user reporting and redress duties, and the record-keeping and review duties.
252. In relation to any enforcement action by OFCOM which relates to a failure by a provider of a regulated service to comply with the safety duties on illegal content and protecting children, the guidance must explain how OFCOM will take into account the impact, or possible impact, of such a failure on children.
253. Before producing such guidance, OFCOM must consult with the Secretary of State, the Information Commissioner and any other person OFCOM consider appropriate. OFCOM will have the power to amend or revise the guidance.

Justification for the power

254. Since this guidance will be informing regulated service providers how OFCOM propose to exercise their enforcement powers under the Bill, it is appropriate for the

regulator to be responsible for such guidance after consulting the Secretary of State, the Information Commissioner and other persons OFCOM consider appropriate.

255. This guidance is non-legislative and is intended to assist regulated services by providing them with transparency on how OFCOM intend to use their enforcement powers. It does not place any mandatory requirements on service providers. Furthermore, the power to revise the guidance provides OFCOM with the ability to modify it in light of emerging technologies and changes in the activities of regulated services.
256. It is commonplace for regulatory authorities, across all regulated sectors in the United Kingdom (e.g. the Financial Services Authority (FSA), Information Commissioner's Office (ICO)) to publish enforcement guidelines. This requirement on OFCOM to publish guidance on how they will enforce the new online safety regulatory regime mirrors existing provisions under Section 392 of the Communications Act 2003 that place a duty on OFCOM to prepare and publish guidance on how they will apply penalties in the other sectors they regulate.

Justification for the procedure

257. This provision is administrative rather than legislative in character - it will set out how the regulator intends to use its enforcement powers, and does not impose any mandatory requirements on services.
258. Given the non-binding nature of the guidance, no parliamentary procedure is considered necessary.

CHAPTER 7: COMMITTEES, RESEARCH AND REPORTS

Clause 144(6): OFCOM's reports about news publisher content and journalistic content

Power conferred on: Secretary of State

Power exercised by: Direction to OFCOM

Parliamentary procedure: None

Context and purpose

259. Clause 144 creates an obligation on OFCOM to publish a report assessing the impact of the new regulatory framework on news publisher content and journalistic content shared on Category 1 services.
260. OFCOM is required to produce this within two years of the Bill's new duties on Category 1 services (to protect news publisher content and journalistic content) coming into force. The news publisher content and journalistic content duties are set out in clauses 14 and 15 of the Bill. OFCOM must publish the report and send a copy of a report to the Secretary of State. The Secretary of State must lay that copy before Parliament.
261. The purpose of the initial report is to create an additional safeguard for news publishers and journalists. Many news publishers and journalists use the major social media platforms to publish their news content, and make this available to large audiences. Throughout the process of developing policy and drafting the online safety legislation, stakeholders expressed concern that the Bill could lead to an increase in the removal or moderation of news publisher content and journalistic content by social media platforms when complying with their duties. Therefore a number of protections for news publishers and journalism are included in the Bill. These include the clause 14 and 15 duties mentioned above. In addition, news publisher content is exempt from the safety duties in the Bill (see clauses 49 and 50).
262. Despite these safeguards, it is still possible that platforms' efforts to comply with the new regulation will have unforeseen consequences on this content. Requiring OFCOM to report on this matter will mean that the regulator is obliged to identify any such issues, and then publish the results of this investigation. This could then allow policy-makers to consider appropriate policy responses.
263. Subsection (6) creates a power for the Secretary of State to require OFCOM to produce a further report (or reports) into these matters (beyond the initial report). It sets out that the Secretary of State can require OFCOM to produce such additional reports where they believe that the regulatory framework is, or may be, having a detrimental effect on the availability and treatment of news publisher content or journalistic content on Category 1 services. The Secretary of State cannot oblige OFCOM to produce subsequent reports within three years of the initial report being published, or more frequently than once every three years.

Justification for the power

264. As noted above, clause 144 requires OFCOM to produce a report within two years of the safeguards for news publishers and journalism in clauses 14 and 15 going live. This provides an appropriate time frame for an initial assessment of whether the framework is affecting journalistic content and news publishers. However, further effects may present as the regulatory framework continues to operate over time. The inclusion of a power for the Secretary of State to require OFCOM to produce further reports means that the regulator can be required to assess such effects.

Justification for the procedure

265. This is a discretionary power for the Secretary of State to require OFCOM to produce a report. No parliamentary procedure is considered necessary for the Secretary of State to exercise this power, because OFCOM's report will not subsequently oblige providers or Government to take particular actions.

Clause 146(1): OFCOM's report about researchers' access to information

Power conferred on: OFCOM

Power exercised by: Guidance

Parliamentary procedure: None

Context and purpose

266. Ongoing research and analysis into online safety matters is essential in preventing future harm to users and protecting freedom of expression. Within two years of clause 146 coming into force, OFCOM must publish a report on the manner and extent to which independent researchers are currently able to obtain information from providers of regulated services to inform their research into online safety matters; the legal and other issues which currently constrain the sharing of information for such purposes; and the extent to which greater access to information for such purposes might be achieved. The Secretary of State must lay OFCOM's report before Parliament.
267. "Independent research" is research conducted on behalf of a person other than a provider of a regulated service. In preparing the report and any subsequent guidance, subsection (3) provides that OFCOM must consult the Information Commissioner, the Centre for Data Ethics and Innovation, United Kingdom Research and Innovation, persons who appear to OFCOM to have relevant expertise, persons representing providers of regulated services as well as other persons OFCOM consider appropriate.
268. Following the publication of that report, subsection (7) enables OFCOM to produce guidance about matters dealt with in the report for providers of regulated services and persons carrying out independent research into online safety matters. This guidance will provide practical advice for providers of regulated services and persons carrying out independent research based on the findings of OFCOM's report. Whilst the report will give an insight into the extent of current access independent researchers have to platforms' data and explore legal and other issues which constrain data sharing, the guidance will set out practical advice on best practice to facilitate safe data sharing between platforms and independent researchers.
269. If OFCOM decides to prepare the guidance, OFCOM must consult the persons mentioned in subsection (3). OFCOM must also publish the guidance (and any revised guidance) and include in each transparency report under clause 145 an assessment of the effectiveness of the guidance. The requirement that OFCOM include an assessment of the effectiveness of its guidance in its transparency report will help ensure that the efficacy of guidance issued under this power is subject to public scrutiny.

Justification for the power

270. It is appropriate for these matters to be set out in guidance as OFCOM will be best placed to set out the information that is most useful to providers and researchers, to encourage the safe and responsible sharing of information. OFCOM will have conducted research on this issue, prior to issuing any guidance, which will ensure the

guidance is well informed and up to date. The guidance that OFCOM may produce would not be binding on service providers and researchers. It is important that OFCOM have the power to issue such guidance as the work of independent researchers is essential in preventing harm to users. Guidance from OFCOM will assist researchers in carrying out that work more effectively.

Justification for the procedure

271. This is a discretionary power to produce guidance. The guidance that OFCOM may produce would not be binding on service providers and researchers, therefore no parliamentary procedure is considered necessary. Its publication will ensure that the guidance is available to the public and Parliament.

PART 8: APPEALS AND SUPER-COMPLAINTS

CHAPTER 2: SUPER-COMPLAINTS

Clause 150(3): Power to make super-complaints

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Draft affirmative

Context and purpose

272. The super-complaints mechanism will allow eligible organisations that meet certain criteria to bring systemic issues to OFCOM's attention in specific circumstances. In line with the rest of the regulatory framework, super-complaints will need to focus on the systems and processes that companies have in place, rather than any specific content issues. This will help ensure that OFCOM are made aware of issues users are facing which they may not be aware of otherwise.

273. The Secretary of State will make regulations setting the eligibility criteria for entities making super-complaints. It is important that only organisations meeting the criteria set are able to make super-complaints. This will ensure that only organisations with the requisite resources and expertise to submit a complaint will be eligible, and will avoid OFCOM being overwhelmed by super-complaints. Limiting the number of eligible super-complainants via regulations is particularly important given the broad scope of the Bill, and because (unlike other regulatory regimes) super-complainants will not need to be designated by the Secretary of State.

274. Designating specific organisations as eligible to make super-complaints is not considered appropriate for primary legislation, as given the broad scope of the regime and the fast moving nature of the sector, there is likely to be a wide range of organisations with an interest in submitting super-complaints. Setting out eligibility criteria provides a more robust and future-proofed way of enabling a wide-range of organisations to access the super-complaints mechanism.

275. One of the criteria which must be specified in the regulations is that the entity is a body representing the interests of users of regulated services, a particular group of such users or members of the public. Before making these regulations, the Secretary of State must consult OFCOM and any other persons they consider appropriate.

Justification for the power

276. This power allows the Secretary of State to determine what the criteria should be for organisations that are able to make a super-complaint. It is appropriate for these criteria to be set by secondary legislation, rather than in primary legislation, as it is likely that the criteria may need to be changed over time, and more frequently than parliamentary time may allow to be done through primary legislation. This may be because the number of super-complaints which OFCOM receive is not manageable and disrupts their functions in other areas, or because other entities emerge in future

that the Secretary of State thinks should be eligible to make super-complaints.

277. It is particularly important to ensure that the criteria can be amended over time to respond to changes in the online landscape while ensuring that the number of eligible super-complainants under the Act remains proportionate and feasible for the regulator to respond to. Delegating this power will also give the Secretary of State the time needed to consult with OFCOM and other stakeholders before making regulations.
278. This approach is based on similar principles in other regulatory regimes with a super-complaints function, for example the Police Reform Act 2002. Section 29B(3) of the Police Reform Act gives the Secretary of State the power to make regulations setting out the criteria that a body must meet in order to become a designated body and be eligible to submit a super-complaint to the regulator. Although the online safety regime will not designate bodies, the requirement to specify the criteria in legislation is similar.
279. Setting the criteria in regulations also enables the Secretary of State to consult where appropriate, taking into account how the regulatory landscape changes over time. This is a novel regime regulating a sector which changes rapidly, and so it is important to build adaptability into this element of the Bill which will be key in ensuring that issues can be brought to OFCOM's attention.
280. There are clear limitations on the Secretary of State's powers to make regulations under this power, and the Secretary of State must consult OFCOM and such other persons as the Secretary of State considers appropriate.

Justification for the procedure

281. The criteria specified in regulations made by the Secretary of State will determine which entities can make a super-complaint and will therefore have a significant effect on the scope of the super-complaints scheme as well as the burdens placed on OFCOM. The draft affirmative procedure is considered appropriate as it ensures that Parliament has oversight and the opportunity to debate those criteria.

Clause 151(1): Procedure for super-complaints

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Negative

Context and purpose

282. The procedure for making super-complaints is an important aspect of the super-complaints function. It is therefore essential that it is effective, proportionate, and can operate without imposing an undue burden on the regulator.
283. Clause 151 states that the Secretary of State must make regulations containing provisions about procedural matters relating to super-complaints under clause 150. Such regulations may, in particular, include provisions about how an organisation can notify OFCOM of its intention to make a complaint, the form and manner of such a complaint, how OFCOM must respond to such a complaint and the time limits for such a response.

Justification for the power

284. It is important that the procedure for super-complaints can be updated in secondary legislation to ensure that the process can be revised and updated in the light of OFCOM and super-complainants' practical experiences of the process over time. As this is a novel regime, it is important that there is flexibility to ensure that the procedure for submitting a super-complaint is efficient and effective.
285. As the procedure for making a super-complaint is administrative, it is considered an appropriate matter for secondary legislation. Further, the regulations will need to fill in a level of administrative detail which is more appropriately dealt with in secondary legislation than in primary legislation.
286. There is precedent for this in other regulatory regimes with a super-complaints function, for example the Police Reform Act 2002. Section 29C of the Police Reform Act 2002 gives the Secretary of State the power to make regulations about the procedure for dealing with a super-complaint.
287. There are also limitations on the Secretary of State's powers to make regulations under this power as the Secretary of State must consult OFCOM and such other persons as the Secretary of State considers appropriate.

Justification for the procedure

288. The negative procedure provides an appropriate level of parliamentary scrutiny for regulations made under this power. We consider this procedure gives Parliament appropriate oversight given that this power concerns the making of provisions relating to procedural matters. The requirement for the Secretary of State to consult with OFCOM and such other persons as the Secretary of State considers appropriate will ensure the procedural matters being proposed are fit for purpose.

289. Regulations of a similar nature (e.g. The Police Super-complaints (Criteria for the Making and Revocation of Designations) Regulations 2018 (SI 2018/748)) were subject to the negative procedure.

Clause 152(1): OFCOM's guidance about super-complaints

Power conferred on: OFCOM

Power exercised by: Guidance

Parliamentary procedure: None

Context and purpose

290. OFCOM will issue guidance about super-complaints, which must include guidance about eligibility criteria and procedural matters relating to super-complaints. OFCOM must publish the guidance (and any revised or replacement guidance).
291. Unlike other regulatory regimes, that only allow a limited number of designated bodies to bring a complaint to the regulator, the online safety regime will allow any organisation that meets the relevant eligibility criteria to bring a complaint to OFCOM. Clear and effective guidance is therefore important since it is likely to reduce the number of complaints submitted that either do not meet the relevant criteria or have not followed the proper procedure for submitting a complaint. Statutory guidance will also provide greater clarity and transparency regarding the super-complaints process for organisations wishing to bring a complaint to OFCOM.

Justification for the power

292. Guidance is an essential part of the super-complaints process. This power is based on similar principles in the Financial Services and Markets Act 2000. Section 139A of that Act gives the Financial Conduct Authority the power to make guidance, and Section 234G stipulates that it must include guidance about aspects of the super-complaints process.
293. As OFCOM will be required to implement the regulations set out by the Secretary of State, OFCOM will be best placed to issue guidance on these matters. We expect this guidance to include further details on the quality or type of evidence of harm required from a super-complaint, or further detail on how a super-complaint should be structured.
294. Delegating this power to OFCOM will ensure that the guidance is responsive to procedural changes and that it remains an instructive resource for organisations that wish to make super-complaints. It is important to ensure that guidance can be updated and adapted if the criteria for organisations who are able to make a super-complaint or the provisions relating to procedural matters set out by the Secretary of State change.

Justification for the procedure

295. The provision is administrative rather than legislative in character - it will set out guidance about the eligibility criteria and procedural matters relating to super-complaints. Therefore, no parliamentary procedure is considered necessary.

PART 9: SECRETARY OF STATE'S FUNCTIONS IN RELATION TO REGULATED SERVICES

Clause 153(1): Statement of strategic priorities

Power conferred on: Secretary of State

Power exercised by: Statement of strategic priorities

Parliamentary procedure: Negative

Context and purpose

296. This power will allow the Secretary of State to make a statement that sets out the government's strategic priorities relating to online safety matters. The statement may, among other things, set out particular outcomes identified with a view to achieving the strategic priorities. For example, the Secretary of State could set priorities in relation to specific harms or users, or to reduce regulatory burdens on companies.
297. Clause 153 requires that the Secretary of State must consult OFCOM, and such other persons as considered appropriate on a draft of the statement. Following any amendments the Secretary of State makes following the consultation process, the draft statement must be laid before Parliament.
298. OFCOM's duties in relation to the statement of strategic priorities are set out in clause 83. OFCOM must have regard to the statement when carrying out their online safety functions. Within 40 days of the statement being designated, OFCOM must publish an explanation of what they propose to do in consequence of the statement. After 12 months (and every subsequent 12 months), OFCOM must also publish a review of what they have done during the period in question as a result of the statement.

Justification for the power

299. Delegating this power, rather than including the relevant detail in primary legislation, is necessary because of the potential for future changes in technology impacting the experience of individuals and society online, including the nature of online harms. This power therefore allows the government to respond to developments and set its strategic priorities for addressing online harms. It is not appropriate to set out such strategic priorities in primary legislation - as reflected in subsection (8) the statement may need to be amended quickly following the election of a new government, or significant changes in HMG policy.
300. There are clear limits to how often this power can be used. Under subsections (7) and (8), no amendment to the statement can be made within the period of 5 years of that statement being made unless:
- A parliamentary general election has taken place; or
 - There has been a significant change in the policy of the government affecting online safety matters; or
 - The Secretary of State considers that the statement, or any part of it, conflicts with any of OFCOM's general duties (as set out in Section 3 of the Communications Act 2003).

Justification for the procedure

301. The negative procedure provides an appropriate level of parliamentary scrutiny for regulations made under this power. This provision ensures that significant changes in government policy can be quickly rectified within the regulatory framework, while ensuring parliamentary oversight of such changes.

302. This is not the first time this approach has been taken. The negative procedure is used under Section 98 of the Digital Economy Act 2017, which amended the Communications Act 2003 to provide the Secretary of State with a power to make statements setting strategic priorities relating to telecommunications, the management of the radio spectrum, and postal services. The Secretary of State must publish the Statement, ensuring further transparency.

Clause 155(1): Directions about advisory committees

Power conferred on: Secretary of State

Power exercised by: Direction

Parliamentary procedure: None

Context and purpose

303. OFCOM have powers under paragraph 14 of the Schedule to the Office of Communications Act 2002 to set up committees to provide advice to them on matters relating to their functions. Following consultation with OFCOM, the Secretary of State may give a direction requiring OFCOM to establish such an advisory committee to provide advice to OFCOM about online safety matters of a kind specified in the direction. The Secretary of State may deem it appropriate in certain circumstances for OFCOM to establish an advisory committee to advise OFCOM about an issue.
304. For example, this power could be used in a scenario where there is growing concern around the impact of an emerging threat to online safety. Following consultation with OFCOM, the government could direct OFCOM to establish an advisory committee to facilitate multi-stakeholder dialogue and build a greater understanding of the issue.
305. OFCOM already have advisory committees in relation to their existing functions. Such committees are multi-stakeholder groups of individuals and representatives from relevant organisations who are brought together to discuss a particular topic or issue. In this context, OFCOM would determine the terms and (unless the direction specifies otherwise) the membership of the advisory committee. The government expects the role of the Committee could include developing understanding of a particular topic or issue, providing non-binding recommendations about how OFCOM could use their powers to ensure service providers could address the issue and building multi-stakeholder consensus. The Secretary of State may vary or revoke a direction given under this clause.

Justification for the power

306. This power will provide the Secretary of State with the ability to direct OFCOM to establish an advisory committee, where necessary and following consultation with OFCOM, to ensure that OFCOM are addressing emerging threats to online safety. This power would not prevent OFCOM from establishing other advisory committees should OFCOM wish to do so. It is expected that OFCOM would establish advisory committees as they see fit and would engage with the Secretary of State regularly, and as such, the government expects that this power of direction would be used infrequently.
307. This power is necessary as emerging threats may be identified on the basis of information only the government, and not OFCOM, would be able to access, such as information from the United Kingdom Intelligence Community in national security scenarios.
308. This power will help to future-proof the regime and ensure that the Secretary of State

is empowered to deal with future challenges by creating an avenue to understand and help tackle emerging issues. This power could be used to analyse new, unforeseen harms that arise from new technological developments without creating additional requirements on companies. This power could be used to help build evidence and understanding to inform policy development.

309. There are clear limitations on this power. The Secretary of State is required to consult with OFCOM before using the direction making power. While the power allows the Secretary of State to direct OFCOM to undertake a specific and limited task, it does not infringe on OFCOM's decision making powers or interfere with their regulatory responsibilities. The recommendations provided by the advisory committee would not be binding, and it would be at OFCOM's discretion to act on advice. This power would not prevent OFCOM from establishing other advisory committees should they wish to do so.

Justification for the procedure

310. The scope of the power is limited to OFCOM setting up a committee to provide advice to OFCOM on matters relevant to their functions. An advisory committee established under this direction would have no power to set requirements on businesses, and OFCOM would be under no obligation to act on its advice.
311. The Secretary of State will need to consult OFCOM on the use of this direction making power. As such, no parliamentary procedure is considered necessary.

Clause 156(1): Directions in special circumstances

Power conferred on: Secretary of State

Power exercised by: Direction

Parliamentary procedure: None

Context and purpose

312. If the Secretary of State has reasonable grounds for believing that circumstances exist that present a threat to the health or safety of the public, or to national security, the Secretary of State will be able to give a direction to OFCOM to deal with that threat by imposing requirements in respect of OFCOM's media literacy activity or requiring OFCOM to give a public notice statement to service providers. The power in this clause ensures that the Secretary of State can ensure that OFCOM respond appropriately to serious threats.
313. Under subsection (2), the Secretary of State may give OFCOM a direction to give priority for a specified period to specified objectives designed to address the threat presented to the health or safety of the public, or to national security, in exercising their media literacy functions with regard to regulated services (under Section 11 of the Communications Act 2003). In such a scenario, OFCOM would be required to give priority for a specified period to the threat outlined in the direction. This power will provide the Secretary of State with the ability to ensure that OFCOM address such threats.
314. Under subsection (3), the Secretary of State may give OFCOM a direction requiring OFCOM to give a public statement notice to a specified provider of a regulated service, or providers of regulated services generally. This is a notice requiring a provider of a regulated service to make a publicly available statement, by a date specified in the notice, about steps the provider is taking in response to the threat presented to the health or safety of the public, or to national security. For example, in the event that there is concern about the impact of emerging threats online to national security, a provider of a regulated service would be required by OFCOM to make a publicly available statement about the steps it was taking in response to the threat.
315. The Secretary of State must publish the reasons for giving a direction in circumstances where there is a threat to the health or safety of the public under subsection (2) or (3), providing oversight and transparency. There is an exception to the requirement of publishing the reasons for giving a direction where it relates to a threat to national security. This power requires close engagement with OFCOM.
316. The Secretary of State may vary or revoke a direction given under both subsections. If the Secretary of State varies or revokes a direction, OFCOM may, in consequence, vary or revoke a public statement notice that they have given by virtue of the direction.

Justification for the power

317. It is important that the Secretary of State is able to direct OFCOM in the serious

scenarios outlined in 156(1). In these types of scenarios the government would be able to rapidly access the insight and expertise of public health bodies, intelligence agencies and law enforcement, which would otherwise not be quickly and easily accessible to the regulator. This mechanism gives a clear and important route for the Secretary of State to ensure that OFCOM adequately address such threats.

318. An example could include the propagation of disinformation by a foreign power which poses a risk to national security. In such a scenario, the government may have access to sensitive information such as intelligence that the regulator and other bodies would not. This power would enable the Secretary of State to ensure that OFCOM take steps to reduce the negative impacts of such disinformation.
319. There are clear limits to the use of this power. Both directions provided under this clause are limited powers which do not affect the fundamental principles of the regulatory framework. The Secretary of State can direct OFCOM to give priority only for a specified period to specified objectives regarding OFCOM's duty to promote media literacy. In the context of this clause, "specified" means specified in the direction.

Justification for the procedure

320. It is vital that the response to a threat to public health, public safety or national security is not unduly delayed by parliamentary procedure. The power delegated is also non-legislative in nature. As such, no parliamentary procedure is considered necessary.
321. This power does not alter the regulatory framework, or place significant duties or expectations on either companies or the regulator. There is precedent in Section 132 of the Communications Act 2003 for the conditions specified for the use of this power, where the Secretary of State has reasonable grounds for believing that circumstances exist that present a threat to the health or safety of the public, or to national security.

Clause 157(1): Secretary of State guidance

Power conferred on: Secretary of State

Power exercised by: Guidance

Parliamentary procedure: None

Context and purpose

322. This clause will enable the Secretary of State to give guidance to OFCOM about OFCOM's exercise of their functions under the Bill, their functions and general powers under Section 1(3) of the Communications Act 2003 in relation to research in connection with online safety matters, and their functions relating to media literacy under Section 11 of that Act.
323. Before issuing, revising or replacing the guidance, the Secretary of State must consult OFCOM. The guidance must be issued as one document and will not contain guidance on fees made under clause 78. The Secretary of State will be able to revise or replace the guidance but no more than once every three years, unless agreed between the Secretary of State and OFCOM or if the guidance needs to be corrected because of an amendment to a provision of this Bill or Section 11 of the Communications Act. OFCOM must have regard to the guidance when carrying out relevant functions.

Justification for the power

324. This power allows the Secretary of State to provide guidance to OFCOM on carrying out their statutory functions under the Online Safety Bill.
325. Guidance is necessary to allow the Secretary of State to provide clarity to the regulator and others by setting out how they expect OFCOM to carry out their statutory functions in order to apply the legislation. The legislation will set a clear regulatory framework and this guidance will not create any additional requirements. However, should it be needed, it will allow for further information to be provided on specific areas to guide OFCOM in exercising their functions in this new area of regulation. A similar power exists under Section 4(5)(a) and Section 4(5B) of the Railways Act 1993.

Justification for the procedure

326. The exercise of this power is restricted in its frequency and impact, and requires close engagement with OFCOM.
327. The Secretary of State must lay the guidance (including revised or replacement guidance) before Parliament and must publish the guidance (and any revised or replacement guidance). As this guidance is not legislative in character, no parliamentary procedure is considered necessary.

Clause 171(1): OFCOM's guidance about illegal content judgements

Power conferred on: OFCOM

Power exercised by: Guidance

Parliamentary procedure: None

Context and purpose

328. Clause 171 requires OFCOM to publish guidance for service providers about how to make judgements about whether content is illegal.
329. Under the Bill, services in-scope of the Part 3 duties need to risk assess for, and take proactive measures to tackle content and activity relating to priority offences, as listed in Schedules 5, 6 and 7. They must also put in place systems and processes to swiftly remove all illegal content (content amounting either to priority offences or other offences where there is an individual victim) once alerted to it.
330. The Bill directs companies about how they should determine whether or not content is illegal content and therefore subject to their new duties. Clause 170 sets out that companies must put in place systems that enable them to consider all reasonably available contextual information when making decisions about whether or not content is illegal content or a fraudulent advertisement (among other things). Clause 170 further adds that providers must treat content as being illegal content or a fraudulent advertisement where they have reasonable grounds to infer that all the elements of an in-scope offence, including any necessary mental elements (e.g. intent) are present, and do not have reasonable grounds to infer that a defence is available. This reduces ambiguity about how these elements should be treated, reducing the risk that companies either under- or over-remove content.
331. Clause 171 requires OFCOM to produce guidance for providers of Part 3 services about matters set out in clause 170, insofar as relating to illegal content judgements. Clause 171 also requires that OFCOM must consult such persons as they consider appropriate when creating this guidance, and that OFCOM must publish the guidance (and any revised or replacement guidance).

Justification for the power

332. The effectiveness of companies' safety measures to address illegal content and fraudulent advertising will depend on them making reasonable judgments about whether or not content is illegal. It is therefore essential to the effective functioning of the framework that there is clarity about how providers should approach these judgments. This will help safeguard against companies over-removing innocuous content, if they wrongly assume mental elements are present; or under-removing content, if they only act where all elements of an offence are established beyond reasonable doubt.
333. While the Bill provides clear direction to companies on this issue, this power further requires OFCOM to issue guidance to ensure companies discharge their duties correctly. This guidance will not contain mandatory requirements for services to

comply with; instead providing an important reference for services when designing their systems. For example, OFCOM's guidance could set out the kinds of contextual information that is likely to be relevant when drawing inferences, and how far providers should go in looking for that information.

Justification for the procedure

334. Since the guidance will be concerned with operational and administrative matters in the context of how regulated service providers can comply with their duties under Part 3 of the Bill, the provision to be made is administrative rather than legislative in character. It does not provide any mandatory requirements for services to comply with. Given the non-binding and detailed technical nature of the guidance, no parliamentary procedure is considered necessary.

PART 11: SUPPLEMENTARY AND GENERAL

Clause 187(2): Repeal of Part 4B of the Communications Act: transitional provision etc

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Draft affirmative

Context and purpose

335. Schedule 17 sets out the details of the transitional arrangements for Video Sharing Platforms including a provision that will allow OFCOM to continue to pursue ongoing enforcement action after the repeal of Part 4B of the Communications Act 2003 (further specifics of the transitional arrangements can be found separately in this document).
336. To ensure future workability, clause 187(2) gives the Secretary of State the power to make further transitional, transitory or savings provisions by way of regulations. The power permits the Secretary of State to amend or repeal Part 3 of Schedule 3 and Schedule 17 and in particular:
- to make provisions about the application of Schedule 17 if a service ceases to be a VSP before clause 186 comes into force,
 - the application of Part 3 of the Schedule 17, including further provision about calculation of a provider's "non-Part 4B qualifying worldwide revenue";
 - and further provision about the application of Schedule 10 in relation to a VSP during the transitional period.
337. This is a Henry VIII power in that it allows the Secretary of State to amend or repeal specified provisions of the Bill using secondary legislation.

Justification for the power

338. The Bill now includes detail about how the VSP regime in Part 4B of the Communications Act 2003 will be repealed and sets out transitional and saving provisions on the face of the Bill - instead of these matters being set out in regulations as was provided for the Bill at introduction This power enables these provisions to be amended or supplemented if necessary to ensure the transitional arrangements and saving provisions remain workable, for example in light of new information that is not currently available.
339. A Henry VIII power is required as this new information may, for instance, relate to the post-Royal Assent implementation of certain parts of the online safety legislation which may affect the appropriate way to repeal Part 4B. The transitional arrangements are technical in nature. The Henry VIII power is intended to future-proof the VSP repeal provisions and to enable Ministers to ensure that VSPs are transitioned from one regulatory regime to another in an effective and timely manner, rather than to introduce new policy at a later date.

Justification for the procedure

340. As this is a Henry VIII power, the draft affirmative procedure is considered appropriate. This provides a suitable degree of parliamentary oversight while ensuring that the legislation can be updated if necessary to ensure a timely and effective transfer from one regulatory regime to another.

Clause 191(1): Powers to amend section 35

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Draft affirmative

Context and purpose:

341. Clauses 33 and 34 introduce standalone duties on Category 1 and Category 2A providers to prevent fraudulent advertising on their services. Clause 33 defines “fraudulent advertising” as a paid-for advertisement that is not regulated user-generated content and which amounts to an offence specified in clause 34.
342. The fraudulent advertising duties require providers of relevant services to use proportionate systems and processes designed to:
- Prevent individuals from encountering content consisting of fraudulent advertisements by means of their services;
 - Minimise the length of time for which any such content is present; and
 - Where the provider is aware of the presence of such content, swiftly take down such content or swiftly ensure that individuals are no longer able to encounter it.
343. Clause 191(1) gives the Secretary of State a power to amend the list of offences in clause 34 (by draft affirmative procedure). This is a Henry VIII power in that it allows the Secretary of State to amend or repeal specified provisions of the Bill using secondary legislation.
344. Where this power is to be used to add an offence to the list of fraud offences, it is limited by subsection (2), which sets out the criteria the Secretary of State must consider before adding a new offence to the clause. Those criteria are:
- The prevalence on Category 1 services of content (other than regulated user-generated content) consisting of paid-for advertisements that amount to that offence, or the prevalence in or via search results of Category 2A services of paid-for advertisements that amount to that offence;
 - The risk of harm to individuals in the United Kingdom presented by such advertisements; and
 - The severity of that harm.

Justification for the power

345. The online safety framework needs to be able to adapt to new harms. A power to amend the list of fraud offences through secondary legislation will ensure the framework remains up to date. This is particularly important if new fraud offences are created in other legislation that the government also wishes to bring into scope for the fraudulent advertising duty. This power is limited by criteria set out in subsection (2), which the Secretary of State must consider before adding a new offence.

346. This power is considered necessary to allow the legislation to be updated to address changes in the criminal law and/or emerging types of fraudulent advertising online, to better protect individuals in the United Kingdom.

Justification for the procedure

347. This is a Henry VIII power and as such the draft affirmative procedure is considered appropriate. Removing, adding or amending fraud offences could increase regulatory burdens on businesses. It is therefore important that Parliament has the opportunity to debate such changes to the scope of the regulatory framework.

Clause 192(1) and (2): Powers to amend or repeal provisions relating to exempt content or services

Powers conferred on: Secretary of State

Powers exercised by: Regulations

Parliamentary procedure: Draft affirmative

Context and purpose

348. Clause 49 defines various terms which determine what types of content are in scope of regulation. It defines “user-generated content” (subsections (3) and (4)) and establishes “regulated user-generated content” as a subset of “user-generated content” for which user-to-user services have duties. Subsection (2) provides that “regulated user-generated content” is all “user-generated content” except for the following:
- Emails;
 - SMS/MMS messages;
 - One-to-one live aural communications;
 - Comments and reviews on provider content;
 - Identifying content that accompanies content within the above bullets; and
 - News publisher content.
349. This means that the duties imposed on providers of regulated user-to-user services in relation to regulated user-generated content will not apply in respect of these types of content.
350. Clause 192(1) enables the Secretary of State to amend the definition of one-to-one live aural communications. It also gives the Secretary of State the power to repeal the exemption of this content from the definition of regulated user-generated content.
351. Clause 192(2) enables the Secretary of State to amend the definition of comments and reviews on provider content. It also gives the Secretary of State the power to repeal the exemption of this content from the definition of regulated user-generated content. By reason of subsection (3) this power cannot be used so that comments and reviews on news publisher sites become regulated content.
352. For both of these provisions, when exercising a power to repeal an exemption the Secretary of State is also given the power to make consequential changes to other specified provisions in the Bill to ensure consistency.
353. The powers can only be exercised if the Secretary of State considers it appropriate to do so because of the risk of harm to individuals in the United Kingdom presented by the relevant type of content. For example, the Secretary of State may repeal an exemption if evidence emerges of an increased risk of harm from that type of content.
354. We consider it appropriate for the power to repeal exemptions to apply only to one-to-one live aural communications and to comments and reviews on provider content because of the potential for the risk of harm presented by these types of

content to increase. We do not consider it appropriate to include a power to repeal the exemptions of SMS/MMS and email as it is less likely that their risk profile would change significantly.

355. These are Henry VIII powers in that they allow the Secretary of State to amend or repeal specified provisions of the Bill using secondary legislation.

Justification for the powers

356. Comments and reviews on provider content and one-to-one live aural communications are exempt from regulation due to the low risk of harm which they currently pose to individuals in the United Kingdom. Exempting them from scope ensures that businesses will not be subject to disproportionate regulatory burdens.
357. However, for the regulatory framework to function effectively, it must remain responsive to the migration of harm. Some types of content which are currently low-risk, and which therefore merit a complete exemption from the framework today, have the potential to pose a higher risk of harm in the future. This is particularly important as harm can migrate quickly across different types of content. Should the level of risk from those exempt types of content rise to the point where an exemption is no longer merited, a mechanism is needed to ensure that they can be quickly brought into scope of the regulatory framework.
358. Accordingly, these powers can only be exercised if the Secretary of State considers that it is appropriate to do so because of the risk of harm to individuals in the United Kingdom presented by the type of content in question. Parliamentary oversight over this power is set out below.

Justification for the procedure

359. By virtue of clause 197(1)(f), regulations made under clause 192(1) or (2) are subject to the draft affirmative procedure.
360. These are Henry VIII powers and as such the draft affirmative procedure is considered appropriate. The exercise of these powers would place new regulatory burdens on businesses providing regulated services which include the previously exempt types of content, so it is important that Parliament has the opportunity to debate and approve any such change.

Clause 192(4): Powers to amend or repeal provisions relating to exempt content or services

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Draft affirmative

Context and purpose

361. Certain user-to-user services or search services are exempted if they pose a low risk of harm to users, or are otherwise regulated. These are set out in Part 1 of Schedule 1 to the Bill:

- Email-only services (paragraph 1 of Part 1 of Schedule 1);
- SMS/MMS-only services (paragraph 2 of Part 1 of Schedule 1);
- Services which offer only one-to-one live aural communications (such as a voice-only call over IP (internet protocol)) (paragraph 3 of Part 1 of Schedule 1);
- Services which only have limited user-to-user functionalities, specifically those which only allow users to communicate via posting of comments and reviews relating to content published by the provider of the service (or by a person acting on behalf of the service provider), such as user reviews of products (paragraph 4 of Part 1 of Schedule 1);
- Internal business services, either in relation to the entire user-to-user service or search service or just part of those services (such as an organisation's intranet) (paragraphs 7 and 8 of Part 1 of Schedule 1);
- Some services provided by certain public bodies (paragraph 9 of Part 1 of Schedule 1); and
- Services provided by persons providing education or childcare (paragraph 10 of Part 1 of Schedule 1).

362. Clause 192(4) allows the Secretary of State to make regulations which amend Schedule 1 to provide for further descriptions of user-to-user service or search service to be exempt. The services listed in Part 1 of Schedule 1, and any additions to that list, are exempt from the Bill entirely. This power may be used only if the Secretary of State considers that the risk of harm to individuals in the United Kingdom presented by a service of that description to be low.

363. Subsection (5) further allows regulations under subsection (4) to amend clauses 2, 4 and 49 and Schedule 2, in connection with the amendment of Part 1 of Schedule 1. This concerns the meaning of user-to-user services and search services (clause 2), and user-to-user services and search services that include regulated provider pornographic content (Schedule 2).

364. This is a Henry VIII power in that it allows other provisions of the Bill to be amended by secondary legislation.

Justification for the power

365. For the online safety framework to function effectively, it must remain responsive to

technological changes and be proportionate in its application. Where there is a low risk of harm, companies should not face a disproportionate regulatory burden.

366. The power conferred by subsection (4) allows the list of services exempted from regulation, set out in Part 1 of Schedule 1, to be added to as new technologies and patterns of user behaviour develop. The current list of exempt services is provided in Part 1 of Schedule 1 to give OFCOM and companies certainty about which services will initially fall outside of scope. This power allows the initial list of exempt services to be expanded where there is evidence that other types of user-to-user or search services present a low risk of harm.
367. The associated provision in subsection (5) allowing regulations made under subsection (4) to amend clause 49 is intended to ensure consistency of approach across the legislation following any amendment of Part 1 of Schedule 1. For example, it would permit the Secretary of State to amend the definition of “regulated user-generated content” in clause 49(2) to exempt another category of content at the same time as amending Part 1 of Schedule 1 to exempt services which only carry that type of content.

Justification for the procedure

368. By virtue of clause 197(1)(f), regulations made under clause 192(4) are subject to the draft affirmative procedure.
369. This is a Henry VIII power and as such the draft affirmative procedure is considered appropriate, as the addition of new exemptions will directly affect the scope of the regulatory framework. It is important that Parliament has the opportunity to debate such changes to the scope of the regulatory framework.

Clause 192(6): Powers to amend or repeal provisions relating to exempt content or services

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Draft affirmative

Context and purpose

370. Schedule 9 sets out the providers of internet services which are not subject to the duties on regulated provider pornographic content provided for in Part 5. Clause 192(6) gives the Secretary of State the power to amend Schedule 9 to include additional categories of services to be exempt from the duties of Part 5 by regulations.
371. Clause 192(6) is the equivalent power for Part 5 to the power in clause 192(4) to add additional categories of services to be exempt to Schedule 1.
372. This is a Henry VIII power in that it allows secondary legislation to be used to amend provisions in the Bill.

Justification for the power

373. For the online safety framework to function effectively, it must remain responsive to technological changes, and be proportionate in its application. Where there is a low risk of harm to children from regulated provider pornographic content, companies should not face a disproportionate regulatory burden. This power allows the initial list of exempt services to be expanded where there is evidence that other types of internet services present a low risk of harm.
374. The Secretary of State is only able to seek to amend the categories of exempt services in Schedule 9 when they consider the risk of harm to children in the UK presented by regulated provider pornographic content published or displayed on a category of service is low.
375. There may be instances in the future where it is appropriate and necessary to amend Schedule 9 in conjunction with amending Schedule 1 using the power under clause 192(4), for example when exempting only part of a service. Paragraph 8 of Schedule 1 and paragraph 2 of Schedule 9 for parts of an internal business service are an example of this kind of paired exemptions.

Justification for the procedure

376. By virtue of clause 197(1)(f), regulations made under clause 192(6) are subject to the draft affirmative procedure.
377. This is a Henry VIII power and as such the draft affirmative procedure is considered appropriate. The power to create new exemptions will directly affect the scope of the regulatory framework. It is important that Parliament has the opportunity to debate such changes to the scope of the regulatory framework and any impact on protections for children.

Clause 192(7): Powers to amend or repeal provisions relating to exempt content or services

Powers conferred on: Secretary of State

Powers exercised by: Regulations

Parliamentary procedure: Draft affirmative

Context and purpose

378. Clause 192(7), as read with subsection (8), allows certain specific exemptions in Schedule 1 to be amended or repealed by means of regulations made by the Secretary of State, which would then bring the relevant services into scope of regulation. Schedule 1 lists types of services which are exempt from regulation under the Bill, including services which only enable user-generated content which is excluded from the definition of “regulated user-generated content” in clause 49.
379. The exemptions which can be repealed are:
- Services which offer only one-to-one live aural communications (paragraph 3 of Part 1 of Schedule 1); and
 - Any exemption of a type of user-to-user services or search services added to Schedule 1 by regulations made under subsection (4) of clause 192.
380. The power to repeal an exemption can only be used if the Secretary of State considers that it is appropriate to do so because of the risk of harm to individuals in the United Kingdom presented by the type of exempt service. For example, there may be evidence of an increased risk of harm from such types of service. This is set out in subsection (8).
381. Subsection (11) allows regulations under subsection (7) to repeal a provision of Schedule 2, in connection with a provision being amended or repealed in Part 1 of Schedule 1. Schedule 1 exempts services from all duties in the Bill while Schedule 2 exempts them from only the user-to-user and search services duties. An exemption could be provided for in Schedule 1 if a service does not have regulated provider pornographic content and an equivalent exemption could be in Schedule 2 if the same kind of service does have regulated provider pornographic content. In such a scenario, subsection (11) allows for the ability to maintain consistency between Schedules 1 and 2 and to amend or repeal the exemption in both Schedules.
382. Subsection (12) provides that regulations under subsection (7)(b) may also amend or repeal a provision of clauses 2, 4 or 49 in connection with a change to Part 1 of Schedule 1. This gives the power to amend any relevant elements of the definitions provided by clauses 2, 4 and 49 if a service that was added to Part 1 of Schedule 1 is then removed from that exempt list due to the risk of harm increasing.
383. This is a Henry VIII power in that it allows provisions in the Bill to be amended by secondary legislation.

Justification for the powers

384. For the online safety framework to function effectively, it has to remain responsive to technological changes. Services which are currently low-risk, and which therefore merit a complete exemption from the framework today, may pose a higher risk of harm in the future. This is particularly important as harm can migrate quickly across different types of services. It is important that, should the level of risk from exempt services rise to the point where an exemption is no longer merited, those services can be brought into scope of the regulatory framework or amended.
385. Importantly, the power in clause 192(7) to amend or repeal the specified exemptions can only be exercised if the Secretary of State considers that that is appropriate because of the risk of harm to individuals in the United Kingdom presented by a service of the description in question (see subsection (8)).
386. Under subsection (4) of clause 192, the Secretary of State can also exempt other types of services from the scope of regulation, if the Secretary of State considers such services to pose a low risk of harm to individuals in the United Kingdom. The level of risk on such types of services may also increase over time. Such exemptions should therefore also be capable of being amended or repealed to reflect changing levels of risk of harm to individuals in the United Kingdom.
387. The government has worked to identify areas where future changes in user behaviour could necessitate the repeal or amendment of exemptions in Schedule 1. This limited power will only be exercisable to amend or repeal certain exemptions on this basis; specifically, this power will allow the Secretary of State to make regulations repealing or amending the exemptions which apply to one-to-one live aural communications, and to any new exemptions created by regulations made under subsection (4) of clause 192.

Justification for the procedure

388. By virtue of clause 197(1)(f), regulations made under clause 192(7) are subject to the draft affirmative procedure.
389. This is a Henry VIII power and as such the draft affirmative procedure is considered appropriate, as changes to the list of exemptions will directly affect the scope of the regulatory framework. Removing or amending exemptions could increase regulatory burdens on businesses, in particular businesses providing services who had previously benefited from an exemption. It is important that Parliament has the opportunity to debate such changes to the scope of the regulatory framework.

Clause 192(9): Powers to amend or repeal provisions relating to exempt content or services

Powers conferred on: Secretary of State

Powers exercised by: Regulations

Parliamentary procedure: Draft affirmative

Context and purpose

390. Clause 192(9), allows the Secretary of State to amend the exemption for services which only have limited user-to-user functionalities, specifically those which only allow users to communicate via posting or comments and reviews relating to content published by the provider of the service (or by a person acting on behalf of the service provider), such as user reviews of products (paragraph 4 of Part 1 of Schedule 1).
391. The power to amend this exemption can only be used if the Secretary of State considers that it is appropriate to do so because of the risk of harm to individuals in the United Kingdom presented by this type of exempted services.
392. Subsection (10) sets out that the Secretary of State cannot bring news publisher sites back into scope by amending the exemption for low-functionality services. This means that the Secretary of State cannot limit the list of functionalities that mean a provider is exempt from the legislation if it only has these functionalities on its service, if doing so means that news publishers (that are not in-scope as a result of their service only having these functionalities) are brought back into scope. This is an important protection for press freedom and news publisher business models.
393. This is a Henry VIII power in that it allows provisions in the Bill to be amended by secondary legislation.

Justification for the powers

394. For the online safety framework to function effectively, it has to remain responsive to technological changes which may affect the level of risk posed by a specific functionality or service. Services which are currently low-risk due to their functionality, and which therefore merit a complete exemption from the framework today, may pose a higher risk of harm in the future. This is particularly important as harm can migrate quickly across different types of services. It is important that, should the level of risk from exempt services rise to the point where an exemption is no longer merited, those services can be brought into scope of the regulatory framework.

Justification for the procedure

395. By virtue of clause 197(1)(f), regulations made under clause 192(7) are subject to the draft affirmative procedure.
396. This is a Henry VIII power and as such the draft affirmative procedure is considered appropriate, as changes to the list of exemptions will directly affect the scope of the regulatory framework. Removing or amending exemptions could increase regulatory burdens on businesses, in particular businesses providing services who had

previously benefited from an exemption. It is important that Parliament has the opportunity to debate such changes to the scope of the regulatory framework.

Clause 192(13): Powers to amend or repeal provisions relating to exempt content or services

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Draft affirmative

Context and purpose

397. Schedule 9 sets out the providers of internet services which are not subject to the duties on regulated provider pornographic content provided for in Part 5. Clause 192(6) gives the Secretary of State the power to amend Schedule 9 to include additional categories of services to be exempt from the duties of Part 5 by regulations.
398. Clause 192(13) gives the Secretary of State the power to amend or repeal any provision of Schedule 9 added in exercise of the power in subsection (6) by regulations. In effect, this gives the Secretary of State the power to amend or repeal a category of service which was made exempt from the Part 5 duties through the use of the power at clause 192(6). It does not give the Secretary of State the power to amend or repeal any categories of services which are exempt in Schedule 9 which were not included as a result of the power at clause 192(6).
399. Clause 192(13) is the equivalent power for Part 5 as clause 192(7)'s power to remove categories of exemptions from Schedule 1 which were added by the Secretary of State.
400. This is a Henry VIII power in that it allows secondary legislation to be used to amend provisions in the Bill.

Justification for the power

401. For the online safety framework to function effectively, it has to remain responsive to technological changes. A category of exempt service added to Schedule 9 through the power at 192(6), which presented a low risk of harm to children in the United Kingdom from regulated provider pornographic content, may pose a higher risk of harm in the future. It is important that, should the level of risk from an exempt service rise to the point where an exemption is no longer merited, those services can be brought back into the scope of the regulatory framework or amended.
402. Importantly, the power to amend or repeal exemptions at clause 192(13) can only be exercised if the Secretary of State considers that that is appropriate because of the risk of harm to children in the United Kingdom presented by regulated provider pornographic content published or displayed on a service of that description in question.
403. The scope of the power is also limited to amending or repealing exemptions added by the Secretary of State using the clause 192(6) power. The Secretary of State will not be able to amend or repeal the exemptions provided for by Parliament in the Bill.

Justification for the procedure

404. By virtue of clause 197(1)(f), regulations made under clause 192(13) are subject to the draft affirmative procedure.
405. This is a Henry VIII power and as such the draft affirmative procedure is considered appropriate, as the power to remove exemptions will directly affect the scope of the regulatory framework and the services which are required to prevent children from accessing regulated provider pornographic content. It is important that Parliament has the opportunity to debate such changes to the scope of the regulatory framework and any impact on protections for children or regulatory burdens on business.

Clause 193(1), (3), (5) and (7): Powers to amend Part 2 of Schedule 1

Power conferred on: The Secretary of State and relevant Minister or Department in Wales, Scotland and Northern Ireland

Power exercised by: Regulations

Parliamentary procedure: Draft affirmative

Context and purpose

406. Paragraph 10 of Part 1 of Schedule 1 details the exemption that applies to services provided by persons providing education or childcare. Part 2 of Schedule 1 contains a list of the descriptions of education and childcare to which the exemption applies.

407. These persons are exempt to the extent the service is provided for the purposes of that education or childcare, because they are already subject to safeguarding duties, which would require them to protect children online. The exemption is necessary to avoid these persons being subject to oversight by both OFCOM and the relevant oversight bodies for education across the United Kingdom.

408. Clause 192 provides four powers to amend the list in Part 2 of Schedule 1. This includes:

- A power for the Secretary of State to amend the list in Part 2 of Schedule 1 which relates to England (Clause 193(1));
- A power for Scottish Ministers to amend the list in Part 2 of Schedule 1 which relates to Scotland (Clause 193(3));
- A power for Welsh Ministers to amend the list in Part 2 of Schedule 1 which relates to Wales (Clause 193(5)); and
- A power for the relevant Department in Northern Ireland to amend the list in Part 2 of Schedule 1 which relates to Northern Ireland (Clause 193(7)).

409. Clause 193 also provides the criteria that must be met in order for an amendment to be made. This includes:

- If there has been an amendment or repeal of legislation (or provision of legislation) which affects the way a description of education or childcare providers has been framed in Part 2 of Schedule 1;
- The application of the enactments, statutory guidance or requirements that apply to a further description of education and childcare meaning that it would be appropriate for another description to be added to Part 2 of Schedule 1; and
- The risk of harm to individuals using the service warrants removal from the list.

410. These are Henry VIII powers in that they allow provisions in the Bill to be amended by secondary legislation.

Justification for the powers

411. These powers have been included as it will be necessary to update the schedule for a number of reasons:

- The legislation referenced in Part 2 of Schedule 1 may change, making it necessary to update the list.
 - New statutory safeguarding guidance relevant to online safeguarding may be produced or there may be a change to existing statutory guidance which means a particular description of education or childcare has adequate safeguarding duties and should be added to the list of exempt education or childcare providers; or
 - The risk of harm to individuals using services managed by providers falling within a category listed in Part 2 of Schedule 1 could become sufficiently high to warrant that category being removed from the exemption.
412. These powers do not provide Ministers or Departments with the power to make substantive changes to the legislation. It is considered necessary to allow the legislation to be updated to address changes in the education system as it is likely that this list will need to be amended more often than Parliament can be expected to legislate for by primary legislation. The scope of the power is limited, and can only be exercised when one or more of the three criteria set out in clause 193 has been met.
413. Education policy and legislation is devolved. As such, we do not consider it to be appropriate for this power to sit solely with the Secretary of State. The relevant Minister or Department in Wales, Scotland and Northern Ireland will have the necessary knowledge and expertise to make an assessment against the criteria listed in clause 193 for each of their respective nations, rather than the Secretary of State.

Justification for the procedure

414. These are Henry VIII powers and as such the draft affirmative procedure is considered appropriate. The draft affirmative procedure will offer a high level of parliamentary scrutiny and oversight while still ensuring that Ministers or Departments can keep the legislation up to date.
415. Removing, adding or amending Part 2 of Schedule 1 could increase regulatory burdens on a particular description of education or childcare. It is therefore important that Parliament and the respective devolved administrations have the opportunity to debate such changes to the scope of the regulatory framework.

Clause 194(1)(a): Powers to amend Schedules 5, 6, and 7

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Draft affirmative

Context and purpose

416. Under the safety duties about illegal content in clauses 9 and 23, providers of regulated services are subject to obligations in relation to priority illegal content and illegal content. The content reporting duties in clauses 16 and 26 also impose obligations on providers in relation to making users aware of how to flag and report such content and their policies for dealing with it.
417. Schedule 5 lists existing offences under United Kingdom terrorism legislation that are capable of being committed online, wholly or in part.
418. This is a Henry VIII power in that it allows secondary legislation to be used to amend provisions in the Bill.

Justification for the power

419. The online safety framework needs to be able to adapt to new terrorist offences. The United Kingdom terrorism legislation landscape is highly likely to change in future as new offences are introduced to deal with the constantly evolving terrorist threat.
420. In addition, changes in terrorist behaviour, or to the ways in which online services are used to facilitate terrorist behaviour, could cause existing offences that the Government does not currently consider as online terrorist offences to move into this space.
421. This power does not allow the Secretary of State to substantially change the legislation but ensures that the Bill remains able to tackle threats presented by terrorist activity online. The inclusion of the Schedule in primary legislation ensures that it will be subject to scrutiny and debate in Parliament.
422. Delegating this power to make regulations is essential in ensuring that the framework can respond and adapt to changes in terrorist behaviour and keep users safe. Without this power, the regulatory framework could quickly become ineffective.

Justification for the procedure

423. The online safety framework needs to be able to adapt to new harms. A power to amend the list of terrorist offences through secondary legislation will ensure the framework remains relevant. This is particularly important if new terrorist offences are created elsewhere in legislation that the Government wishes to bring into scope of the framework.
424. By virtue of clause 197(1)(h), regulations made under clause 194 are subject to the draft affirmative procedure.

425. This is a Henry VIII power and the draft affirmative procedure is considered appropriate, as the addition of new offences will directly affect the scope of the regulatory framework. This will offer a high level of parliamentary scrutiny and oversight while allowing for Ministers to keep the legislation up to date, in line with the terrorism threat.

Clause 194(1)(b): Powers to amend Schedules 5, 6, and 7

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Draft affirmative

Context and purpose

426. Under the safety duties about illegal content in clauses 9 and 23, providers of regulated services are subject to obligations in relation to priority illegal content and illegal content. The content reporting duties in clauses 16 and 26 also impose obligations on providers in relation to making users aware of how to flag and report such content and their policies for dealing with it. In addition, clause 59 sets out the requirement on relevant services to report CSEA content to the National Crime Agency (NCA).
427. To ensure that the framework is proportionate and to provide companies and the regulator with legal certainty, Schedule 6 defines which offences are CSEA content for the purposes of the legislation. Schedule 6 is split into Parts to reflect that the criminal law in this area is devolved. Part 1 covers CSEA legislation in England and Wales and Northern Ireland, and Part 2 does the same for Scotland.
428. Under clause 194(1)(b), the Secretary of State will be able to amend Part 1 of Schedule 6. This is a Henry VIII power in that it allows secondary legislation to be used to amend provisions in the Bill.
429. This power will ensure that the framework, and the duties it imposes on companies to keep children safe, remain up to date with technological change and legislative developments.

Justification for the power

430. The online safety framework needs to be able to adapt to new CSEA offences. CSEA is a continually growing and evolving threat with offenders finding new ways and using new technologies to exploit and abuse children online. The UK legislation landscape is highly likely to change in the future in response to this.
431. In addition, changes in offender behaviour, or to the ways in which online services are used to facilitate offender behaviour, could change the relevance and importance of existing offences.
432. This power does not allow the Secretary of State to substantially change the legislation but ensures that the Bill remains able to tackle threats presented by offender activity online.
433. The Secretary of State is the appropriate person to exercise the power to amend Part 1 of Schedule 6 because that part relates to criminal law in England and Wales. With regards to the power to amend Part 1 with respect to the offences in Northern Ireland, while the devolution settlement provides that the Northern Ireland Assembly can

make regulations dealing with internet services, such regulations require the consent of the Secretary of State. Therefore, the Secretary of State is assessed to be the appropriate person to exercise this power.

434. The inclusion of the Schedule in primary legislation ensures that it will be subject to scrutiny and debate in Parliament. While this power allows the use of secondary legislation to amend the list of offences in the Schedule, it only allows Part 1 of Schedule 6 to be updated to include new criminal offences or to remove existing ones related to child abuse and exploitation.

Justification for the procedure

435. The online safety framework needs to be able to adapt to new harms. A power to amend the list of CSEA offences through secondary legislation will ensure the framework remains relevant. This is particularly important if new offences are created elsewhere in legislation that the government wishes to bring into scope of the framework.
436. By virtue of clause 197(1)(h), regulations made under clause 194(1)(b) are subject to the draft affirmative procedure.
437. This is a Henry VIII power and a draft affirmative procedure is considered appropriate as the addition of new offences will directly affect the scope of the regulatory framework. This will offer a high level of parliamentary scrutiny and oversight whilst allowing for Ministers to keep the legislation up to date in line with the threat.

Clause 194(2): Powers to amend Schedules 5, 6, and 7

Power conferred on: Scottish Ministers

Power exercised by: Regulations

Parliamentary procedure: Draft affirmative

Context and purpose

438. Protecting children is central to the online safety regulatory framework. To ensure that the framework is proportionate and to provide companies and the regulator with legal certainty, Schedule 6 defines what offences are defined as CSEA content for the purposes of the legislation. Part 2 of Schedule 6 specifies which offences under Scottish law are defined as CSEA content for the purposes of the legislation. Under clause 194(2), Scottish Ministers will be able to amend Part 2 of Schedule 6. This is a Henry VIII power in that it allows secondary legislation to be used to amend provisions in the Bill.
439. This power will ensure that the regulatory framework, and the duties it imposes on companies to keep children safe, remains up to date with technological change and legislative developments.

Justification for the power

440. The online safety framework needs to be able to adapt to new CSEA offences. Part 2 of Schedule 6 lists existing CSEA offences in Scotland that are capable of being committed online, wholly or in part. Additional CSEA offences within Scotland are likely to be created to respond to new and evolving threats and in response to new technologies.
441. Delegating this power will enable the Act to include relevant new CSEA offences in Scotland and keep children safe by ensuring that the framework can respond and adapt to changes in CSEA-related activity online.
442. The Scottish Ministers are the appropriate persons to exercise this power because of their knowledge of Scottish criminal law. There are clear limitations on the power. The inclusion of the Schedule in primary legislation ensures that it will be subject to scrutiny and debate in the Scottish Parliament. While this power allows the use of secondary legislation to amend Part 2 of Schedule 6, it will only allow the framework to be updated to include new CSEA offences or to remove existing ones related to child abuse and exploitation in Scotland.

Justification for the procedure

443. By virtue of clause 197(9) regulations made under clause 194(2) are subject to the draft affirmative procedure.
444. This is a Henry VIII power and as such the draft affirmative procedure is considered appropriate. This will provide an appropriate level of parliamentary scrutiny for regulations made under this power.

Clause 194(3): Powers to amend Schedules 5, 6, and 7

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Draft affirmative

Context and purpose

445. The safety duties about illegal content set out in clause 9 impose duties on providers of user-to-user services in relation to priority offences (as set out in Schedules 5, 6 and 7). Corresponding safety duties about illegal content on regulated search services are set out in clause 23.

446. Clause 194(3) gives the Secretary of State a power to amend Schedule 7. This is a Henry VIII power in that it allows secondary legislation to be used to amend provisions in the Bill. Where this power is to be used to add an offence to the list of priority offences other than terrorism and CSEA offences, it is limited by subsections (4) and (5). These state that the Secretary of State can add an offence only if they consider it appropriate to do so because of:

- The prevalence on regulated user-to-user services of regulated content that amounts to that offence, or the prevalence on regulated search services and combined services of search content that amounts to that offence, or alternatively the prevalence of the use of regulated user-to-user services for the commission or facilitation of that offence;
- The risk of harm to individuals in the United Kingdom presented by regulated content or search content that amounts to that offence; and
- The severity of that harm.

447. Subsection (6) lists types of offence which may not be added to Schedule 7.

448. Under sub-sections (7) and (8), the Secretary of State must consult the Scottish Ministers when making amendments relating to Scotland-only offences in Schedule 7, and the Department of Justice in Northern Ireland when making amendments relating to Northern Ireland-only offences.

Justification for the power

449. Schedule 7 sets out a list of offences, which are not terrorism or CSEA offences, which are prevalent online and pose a risk of harm to UK users. The online safety framework needs to be able to adapt to encompass new offences which have an online element or existing ones which become more prevalent online. It is therefore important that the Secretary of State is able to update the Schedule to ensure that the Bill applies to such offences.

450. This power is necessary to allow the legislation to be updated to address changes in the criminal law and emerging types of illegal activity online, so as to protect individuals in the United Kingdom from the harm that such content and activity can cause.

451. This power is limited by criteria set out in clause 194(4) and (5) to ensure that use of the power to add offences to the Schedule is justified by the need to protect users of regulated services from harm. In addition, subsection (6) prevents an expansion in the scope of the regulatory framework, by prohibiting the addition of offences relating to intellectual property and consumer protection.

Justification for the procedure

452. This is a Henry VIII power and as such the draft affirmative procedure is considered appropriate. Amending the list of priority offences in Schedule 7 will alter the obligations of providers under the Bill in relation to the relevant content and activity on their services and could increase regulatory burdens on businesses. It is therefore important that Parliament has the opportunity to debate any such changes to the scope of the regulatory framework.

Clause 195(1): Power to make consequential provision

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Draft affirmative when amending primary legislation. Negative in all other cases.

Context and purpose

453. This clause provides the Secretary of State with a power to make provision that is consequential on this Bill or on regulations under this Bill.

454. Regulations made under this power may also amend or repeal provisions made by or under the Communications Act 2003. This is a Henry VIII power in that it allows secondary legislation to be used to amend the Communications Act 2003.

Justification for the power

455. This power can only be exercised in connection with a provision of this Bill or regulations under this Bill.

456. This Bill makes numerous and significant amendments to the Communications Act 2003, and it is possible that further consequential amendments to that Act may be needed to ensure the combined legal framework operates as intended.

457. It is not possible to establish in advance all consequential provisions that may be required; and as such this power is needed to provide legal certainty.

Justification for the procedure

458. Where this power is exercised to amend the Communications Act 2003, it will be subject to the draft affirmative procedure. This provides the appropriate parliamentary scrutiny.

459. The negative procedure is appropriate in all other cases.

PART 12: INTERPRETATION AND FINAL PROVISIONS

Clause 211(2): Commencement and transitional provision

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: None

Context and purpose

460. Clause 211 provides that a number of provisions, listed in subsection (1), will come into force when this Act is passed. The remaining provisions will come into force on a day set out by the Secretary of State through regulations and these can be different days for different provisions.

461. Subsection (4) further provides that the Secretary of State may by regulations make transitional, transitory, or saving provisions in connection with the coming into force of any provision of the Bill.

Justification for the power

462. It may be sensible for parts of the Bill to commence at different times, where the commencement is not already stated. This power enables that.

Justification for the procedure

463. As is usual with commencement powers, regulations made under this clause are not subject to any parliamentary procedure. The principle of the provisions to be commenced would already have been considered by Parliament during the passage of the Bill. Commencement by regulations enables the provisions to be brought into force at the appropriate time.

SCHEDULES

Paragraph 8(1) of Schedule 3: Timing of providers' assessments

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Negative

Context and purpose

464. Schedule 17 sets out how, but not the date, the Video Sharing Platform (VSP) regime will be repealed. It also introduces transitional arrangements, which include a temporary exemption for VSPs (who meet the VSP regime notification requirements immediately before the transitional arrangements come into force) from complying with certain duties in the online safety legislation.

465. During this transitional period, these exempted VSPs will continue to be regulated under the VSP regime. These VSPs will largely be exempt from complying with duties imposed by the Online Safety Bill during this period. However, these services will still be required to comply with some duties including those relating to any demands for information issued by OFCOM, and the new communications offences in Part 10 of the Bill.

466. VSPs subject to the transitional arrangements will become subject to the requirement to complete risk assessments and the children's access assessment while they are still regulated as VSPs and before they fully transition to being regulated under the online safety regime. The date on which VSPs subject to the transitional arrangements will become subject to the requirement to complete those assessments will be specified in regulations under paragraph 8(1) of Schedule 3.

467. The transitional arrangements to which VSPs are subject will come to an end on the date clause 186 of the Bill, which repeals Part 4B of the Communications Act 2003, comes into force. That provision will be brought into force via commencement regulations made under clause 211(2). Clause 211(4) ensures that Part 4B may not be repealed until at least 6 months after the chosen date in the Regulations under paragraph 8(1) of Schedule 3, to give providers time to do their assessments before they become subject to the safety duties.

Justification for the power

468. Insufficient information is currently available with which to sensibly determine the date on which VSPs subject to the transitional arrangements described above should become subject to the requirement to complete risk assessments and the children's access assessment. The repeal of the VSP regime is a complex arrangement and the appropriate time (taking into account the desirability of avoiding a gap in protection for users in so far as is possible) will depend on the dates by which other parts of the Bill, such as the safety duties, will be fully implemented. As such, timeline flexibility must be built in to allow for changes that may arise throughout the implementation process.

Justification for the procedure

469. The negative procedure is considered to provide an appropriate level of parliamentary scrutiny for regulations made under this power. Parliament will have already approved the substance of the repeal and transition process; these regulations will simply give a specific date.

Paragraph 14 of Schedule 3: Timing of providers' assessments

Power conferred on: OFCOM

Power exercised by: Agreement between OFCOM and individual relevant Part 3 service or published notice for groups of regulated providers

Parliamentary procedure: None

Context and purpose

470. Schedule 3 sets rules regarding the time periods within which Part 3 services need to complete illegal content risk assessments, children's access assessments, and (where relevant) children's risk assessments. An existing Part 3 service will need to complete an illegal content risk assessment and a children's access assessment within three months of the day that OFCOM publish the guidance for these assessments. The same three-month period also applies where a new service starts up, or where an existing online service becomes a Part 3 service (e.g. because it starts to target UK users) or a Part 3 service of a certain kind (e.g. a Category 1 service). A children's risk assessment must be completed within three months of a service being treated as likely to be accessed by children, unless at that point the children's risk assessment guidance has not been published. In which case, the assessment must be completed within three months of the publication of the guidance.

471. Paragraph 14 of Schedule 3 gives OFCOM the power to extend the three-month time period in which services have to complete their risk assessments and children's access assessment. OFCOM can reach an agreement with a service provider in respect of a particular service to do this. Alternatively, OFCOM can publish a notice which specifies an extension for a particular type or size of service

Justification for the power

472. This power enables OFCOM to grant a particular service provider more than three months to undertake these assessments, where there are good reasons for this. There may be circumstances where particular kinds of services reasonably need more time to complete their assessments and it would be unnecessarily burdensome for OFCOM to have to grant individual extensions in these circumstances. Examples of situations where individual extensions might be needed include where a company needs to collect data over a period longer than three months, or has a type of functionality that requires very detailed and complex analysis. Similarly, a group extension might be needed where a number of services share the same complex functionality. Without this power to extend, regulated service providers would technically be in breach of their assessment duties.

Justification for the procedure

473. OFCOM must publish any notice granting an extension to groups of regulated providers. This provision does not alter regulated providers' duties to carry out assessments, and it is a narrow power applying particularly to the timing of these assessments.

474. As the regulator responsible for enforcing compliance with the duties to carry out these assessments and issuing guidance to assist regulated services to do so, OFCOM are best placed to decide on when an individual service should have longer due to extenuating circumstances, or when particular kinds of services might need more time to comply with the completion of these assessments. The provision enables OFCOM to act pragmatically when more time is needed.

Paragraph 7 of Schedule 4: Codes of practice under Section 36: Principles, objectives, content

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Draft affirmative

Context and purpose

475. Under paragraph 3 of Schedule 4, OFCOM must ensure that steps described in the codes of practice prepared under clause 36 are compatible with pursuit of the online safety objectives. Paragraph 4 sets out the online safety objectives for user-to-user services and paragraph 5 those for search services.
476. The objectives for both types of service include services having effective and proportionate systems for regulatory compliance and risk management, appropriate systems and processes for their user numbers and user base, and adequate systems and processes to support UK users. Services must provide a higher level of protection for children than for adults. They must also ensure that all users, including children, are made aware of and can understand the terms of service for user to user services and the statement of policies about use for search services. The objectives also specify that algorithms, functionalities, and features of services must be designed to protect UK users from harm.
477. Paragraph 7 provides that the Secretary of State can, by regulations, amend the online safety objectives. This is a Henry VIII power, in that it allows secondary legislation to be used to amend provisions in the Bill.
478. If regulations are made amending the online safety objectives, OFCOM must, as soon as reasonably practicable afterwards, consider whether a review of the codes of practice is required and, if so, carry out a review to assess whether any amendments are needed to the codes of practice to reflect the revised objectives (Paragraph 8).

Justification for the power

479. The ability to update the objectives that inform the codes of practice is important to ensure that OFCOM are able to keep pace as new policy priorities emerge in the area of online safety, especially once the regulatory framework is in operation and more is known about where regulation needs more focus (for example, attention needed in respect of categories of users) and in response to technological changes (for example, types of features of a service that would be important to mention, in particular under paragraph 4(b) of Schedule 4).
480. A change to the objectives would trigger a requirement for OFCOM to review every code of practice to ensure they are still in line with the objectives. Codes of practice are designed to provide service providers with guidance on how to comply with the duties set out in primary legislation and do not impose new duties on service providers. If, as a result of the amendments to the online safety objectives, OFCOM

consider that changes are required to the codes of practice, they must follow the legislative procedure as set out for amendments of codes of practice in clause 36.

Justification for the procedure

481. By virtue of clause 197(1)(j), regulations made under this provision are subject to the draft affirmative procedure.

482. As this is a Henry VIII power, the draft affirmative procedure is considered appropriate. Changes to the online safety objectives will affect the regulatory framework, principally through the possible need to review the codes of practice. It is therefore important that Parliament has the opportunity to debate any changes.

Paragraph 34 of Part 3 of Schedule 8: Transparency reports by providers of Category 1 Services, Category 2A Services and Category 2B Services

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Draft affirmative

Context and purpose

483. Under clause 68, certain categories of service providers must produce an annual report (a ‘transparency report’) containing information of a kind and in a format specified in a notice by OFCOM. OFCOM may only request information of a kind set out in Parts 1 and/ or 2 of Schedule 8 dependent upon which category (or categories) the service provider falls within. In determining the specific information the relevant service providers will need to report on, OFCOM will also need to consider a range of factors, set out under Paragraph 33 of Schedule 8.
484. Paragraph 34 of Schedule 8 allows the Secretary of State to add, vary, or remove the kinds of information listed under either Part 1 or Part 2 of Schedule 8 by regulations. It also allows the Secretary of State to correspondingly amend Paragraph 33 of Schedule 8 in order to update the factors OFCOM must consider in deciding which information to require in a notice to reflect the amended Part 1 or Part 2. This will ensure that the transparency reporting framework can respond to technological developments and changes in usage patterns. Such reporting by regulated bodies is a common feature of similar frameworks.
485. This is a Henry VIII power, in that it allows secondary legislation to be used to amend provisions in the Bill.

Justification for the power

486. This power will futureproof the transparency reporting framework. The power will ensure that OFCOM can require companies to report on the information that is most useful, which may develop and change over time.
487. Transparency is a foundational part of the online safety framework—it is vital that OFCOM and users are able to understand what providers are doing in relation to user safety, and the types of harm that occur online. As such, it is important that OFCOM are empowered to require providers to report on all relevant matters. There may be certain kinds of information that companies should be required to report on in the longer term, which would be difficult to foresee prior to the framework coming into force. This power will allow the Secretary to State to update the framework accordingly. The power will also ensure that the regime can respond to the emergence of new technologies and changing patterns in user behaviour. Considering the speed of technological change and how technology is expected to develop over time, it is vital for OFCOM as well as users to understand the risks of new technology. Therefore, a mechanism that allows Schedule 8 to be updated swiftly when required is important for the framework to remain effective.

Justification for the procedure

488. This is a Henry VIII power and, as such, the draft affirmative procedure is considered appropriate. This power will allow the updating and refining of the kinds of information OFCOM can require in notices relating to transparency reports. The draft affirmative procedure provides a suitable degree of parliamentary oversight, while ensuring that the specific content that OFCOM can require to be included in the reports can readily be kept up to date.

Paragraph 3(5) of Schedule 10: Recovery of OFCOM's initial costs

Power conferred on: Secretary of State

Power exercised by: Statement

Parliamentary procedure: None

Context and purpose

489. This Schedule requires OFCOM to seek to recover their 'initial costs'. These are costs they have incurred before clause 75 comes into force, when preparing to take on functions as the regulator of services under this Bill by charging 'additional fees' to service providers.
490. Paragraph 1 sets this out and makes it clear that the amount to be recovered is the amount of Wireless Telegraphy Act receipts retained by OFCOM to meet those costs.
491. The first phase of this process is set out in paragraph 2. OFCOM will charge additional fees over a number of years, beginning after the initial charging year. The aggregate of those fees will equal the total of OFCOM's initial costs. Paragraph 7 sets out that that period will be no less than three and no more than five years.
492. Once that phase has been completed, there will be a second phase, as set out in paragraph 3. In the first year of this second phase, OFCOM will charge fees to recover the outstanding amount, which is the amount of the additional fees yet to be recovered, which OFCOM consider are not likely to be paid or recovered, less any amount specified by the Secretary of State under paragraph 3(5). This process is repeated if necessary until all the money is either recovered, or OFCOM consider it is likely to be recovered, or the Secretary of State makes a determination under paragraph 4(2) that OFCOM does not need to take any further steps to recover these sums. Paragraph 5 enables OFCOM to refund part of a fee where a provider is only a regulated service for part of a year.
493. As set out above, the Secretary of State may, under paragraph 3(5), make a determination specifying an amount by which the outstanding amount set by OFCOM should be reduced. If they decide to make such a determination, they should do so as soon as reasonably practicable. If they decide to make such a determination, the outstanding amount, and therefore the aggregate of fees to be charged under this Schedule in the following year, will be reduced by that amount. The Secretary of State may decide to reduce the amount because they believe it would not be appropriate to charge fees in respect of part or all of it. If they make such a determination, the Secretary of State will then publish it in a manner they consider appropriate, under paragraph 3(8).

Justification for the power

494. It will only become clear after the first stage of the costs recovery process how much of the total sum to be recovered OFCOM have been unable to recover in each previous stage and why. This power allows the Secretary of State to reduce the

amount to be collected in the second stage of the costs recovery process if it appears to be appropriate to do so once that information is available. Giving the power to the Secretary of State allows the amount to be adjusted as information comes to light, which may be on more than one occasion. It is unlikely that Parliament would sensibly be able to consider the updated information and, if necessary, legislate via primary legislation in the same way.

Justification for the procedure

495. This procedure is a matter of the Secretary of State determining an amount by which fees to be charged to companies are to be reduced, and met instead by public money. Parliament does not scrutinise the specifics of every government decision about how public money should be spent. It would be disproportionate to do so. It would be similarly disproportionate to impose any specific parliamentary scrutiny on this procedure.

Paragraph 4(2) of Schedule 10: Recovery of OFCOM's initial costs

Power conferred on: Secretary of State

Power exercised by: Statement

Parliamentary procedure: None

Context and purpose

496. The second phase of the recovery of OFCOM's initial costs will, as set out in paragraph 4(1), end when either the recoverable amount is nil or OFCOM expect to recover all the recoverable amount. However, paragraph 4(2) gives the Secretary of State the power to decide to end the recovery process, even if neither of the conditions in paragraph 4(1) is satisfied. If they make such a determination, the Secretary of State will then publish in a manner they consider appropriate, under paragraph 4(4).

Justification for the power

497. This power enables the Secretary of State to end this second phase of the recovery of OFCOM's initial costs. It is required because new information, for example about the outstanding sums to be recovered or the likely costs of recovering them, which is not available now, is likely to become available later. For that reason, it is not possible to be specific about this in primary legislation now. This power allows the Secretary of State to act on that new information, should it prove desirable to do so.

498. The Secretary of State may decide to use this power, for example, because the outstanding amount is seen as de minimis (and the costs of OFCOM continuing to make attempts to recover it would therefore be disproportionate), or because of the time that has elapsed since the costs were incurred.

Justification for the procedure

499. This procedure is a matter of the Secretary of State determining to end a process by which OFCOM seek to recover fees to be charged to companies, with the sum instead to be met by public money. Parliament does not scrutinise the specifics of every government decision about how public money should be spent. It would be disproportionate to do so. It would be similarly disproportionate to impose any specific parliamentary scrutiny on this procedure.

Paragraph 7(1) of Schedule 10: Recovery of OFCOM's initial costs

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Draft affirmative

Context and purpose

500. Under paragraph 7 of the Schedule, the Secretary of State must make regulations providing details of the additional fees, including the initial costs, the charging years and the computation model. This paragraph specifies that the recovery of initial costs must take place over three to five consecutive years, and that the initial charging year of the fee regime cannot be one of those years.
501. Paragraph 7(8) gives the Secretary of State the power to amend the Schedule or provide for its application with modifications in particular cases. This is a Henry VIII power, in that it allows secondary legislation to be used to amend provisions in the Bill. Before making these regulations, the Secretary of State must consult OFCOM and providers in scope.

Justification for the power

502. The power is required to enable the Secretary of State to set out the details of the initial fee regime, which are not known at the time of the passage of the Bill. This detail includes the sum to be recovered, which is dependent on the preparatory costs incurred by OFCOM and the date Part 6 comes into force (since that date will dictate which costs fall to be recovered under this Schedule and which fall under Section 75(9)). Other details of the Part 6 fee regime are also unknown at this time, including the definition of qualifying worldwide revenue and the threshold. These details are likely to be relevant for the methodology which will be used to recover costs under this Schedule. Once these and other details are known, the Secretary of State will set out the details of the initial fee regime in these regulations.
503. Given that there is a significant amount of information that is not yet available to the Secretary of State, it is necessary for a Henry VIII power to be available, in case changes are required to ensure effective recovery of OFCOM's costs.

Justification for the procedure

504. Given that the regulation-making power is a Henry VIII power, the draft affirmative procedure is considered appropriate. This will ensure that Parliament is able to scrutinise any changes.

Paragraph 1(1)-(3) of Schedule 11: Categories of regulated user-to-user services and regulated search services: Regulations

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Negative

Context and purpose

505. In order to embed proportionality into the regulatory system, the Bill creates three categories of regulated services which will have additional duties imposed upon them: Category 1 Services, Category 2A Services, and Category 2B Services. Schedule 11 requires the Secretary of State to make regulations to specify the threshold conditions that a regulated service must meet to fall into one of these categories, and sets out the procedure for making and amending these regulations.
506. Category 1 Services have additional transparency, accountability and free speech duties, and also have additional duties relating to user empowerment, user identity verification, content of democratic importance, news publishers' content, journalistic content, and fraudulent advertising. Paragraph 1(1) of Schedule 11 requires the Secretary of State to specify, through regulations, the precise conditions relating to the number of users and functionalities, as well as any other relevant characteristics and factors, of the user-to-user part of a service that must be met in order for a regulated service to be designated as a "Category 1 service". The Secretary of State must take into account the likely impact of these criteria on how easily, widely, and rapidly user-generated content is disseminated by means of the service.
507. Providers of Category 2A (search engine) and 2B (user-to-user) services will be under an additional duty to prepare annual transparency reports for OFCOM. Paragraphs 1(2) and 1(3) require the Secretary of State to specify the precise conditions that a company must meet to be designated as Category 2A or 2B. These conditions must relate to the number of users, its functionalities and any other characteristics or factors the Secretary of State considers relevant.
508. Prior to the Secretary of State making regulations in respect of Category 1, 2A, or 2B services, OFCOM must carry out research into the factors set out above. OFCOM must then provide advice to the Secretary of State, based on its research. This advice must recommend the provisions to be made through the regulations (paragraph 2(5) of Schedule 11), and must be published. In respect of Category 2A and 2B threshold conditions, such advice may include advice that the regulations should include other characteristics or factors in addition to number of users (and functionalities for Category 2A), and what those other characteristics or factors should be. Although the Secretary of State does not have to follow this advice, this research period will ensure that the Secretary of State has evidence and justification to inform the making of regulations.
509. The Secretary of State must then make regulations. If the regulations include provisions which differ in any material respect from the provisions advised by

OFCOM, the Secretary of State must publish a statement explaining why they have departed from that advice (paragraph 2(8) of Schedule 11).

510. After the regulations are made, OFCOM will be required to assess services which they consider are likely to meet the Category 1, 2A or 2B threshold conditions set out in the regulations against those threshold conditions, and to establish a register of Category 1, 2A, and 2B services (see clause 86). Services become subject to Category 1, 2A, or 2B duties by virtue of being added to the relevant part of the register established under clause 86 and once the first codes of practice relating to these duties have been issued.
511. The regulations may be amended or replaced by further regulations, but no amendment or replacement regulations can be made until OFCOM have carried out further research and provided advice to the Secretary of State based on its research. Such research may be initiated by OFCOM, or by the Secretary of State (paragraph 3(4) of Schedule 11). After regulations are amended or replaced, OFCOM will have to assess services which they consider are likely to meet the new Category 1, 2A, or 2B threshold conditions against the new threshold conditions, and to make any necessary changes to the register (subsections (1), (2) and (3) of clause 87).

Justification for the power

512. This power is central to establishing the regulatory regime. The differentiated approach, which places additional duties on the highest-reach and most used services, with the greatest influence over public discourse, is essential to making the regime effective and proportionate, and to ensuring the most influential providers are held accountable.
513. Setting thresholds in primary legislation could quickly become outdated. This could, for example, result in high-reach services remaining free from Category 1 regulatory duties, which would negatively impact the effectiveness of the new regime. Conversely, it could result in low-reach services remaining subject to Category 1 regulatory duties unduly, which would create disproportionate regulatory burdens.
514. Setting the threshold conditions through secondary legislation will ensure the process is responsive to technological change, changes in people's use of regulated services, and trends related to online harms, as well as responsive to the service it regulates. As technologies and user patterns change, it is essential that the thresholds for the categories of services can be modified and added to.
515. Furthermore, the government considers it essential for the setting of threshold conditions to be informed by independent evidence and advice. We anticipate that OFCOM will need to exercise its information-gathering powers under the Bill to ensure it has sufficient evidence to advise the Secretary of State, as currently companies do not publish sufficient information about their user base and risk associated with their functionalities. That is why regulations can only be made after the Bill has passed, to enable OFCOM to provide the Secretary of State with robust research and advice.

516. Numerous safeguards have been built in to ensure this power is used fairly, transparently, and proportionately. Specifically:
- The power can only be exercised, both for the first making of regulations and future amendments or replacements, after OFCOM have provided research and advice to the Secretary of State (paragraph 2(11) and sub-paragraphs (1), (2), and (3) or paragraph 3 of Schedule 11).
 - This research and advice will be published, subject to confidentiality requirements (paragraphs 2(7), 3(7) and 4 of Schedule 11).
 - The Secretary of State will be required to publish a statement if they make, amend, or replace regulations that differ materially from OFCOM's advice, or if they decide not to amend or replace regulations in spite of advice from OFCOM to do so (paragraph 2(8), 3(8) and (9) of Schedule 11). Such a statement must be published no later than the time at which the regulations to which the statement relates are made, and in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons who may be affected by it (paragraph 2(9), and sub-paragraphs (10) and (11) of paragraph 3 of Schedule 11).
517. Given the fast-moving technological landscape in which the threshold conditions will be set, it is sensible to specify such conditions in secondary legislation. The Bill also includes various safeguards pertaining to the use of regulations to set threshold conditions, in order to provide transparency regarding the decision-making process, in particular where there is any departure from OFCOM's advice.

Justification for the procedure

518. By virtue of clause 197(8)(e), regulations made under paragraph 1 of Schedule 11 are subject to the negative procedure.
519. The negative procedure is considered appropriate because, as described above, there are significant safeguards built into the regulation-making process in Schedule 11 of the Bill to ensure that decisions on provision in these regulations are made transparently and on the basis of the appropriate evidence.
520. The method by which such decisions are to be reached is set out in some detail, requiring the Secretary of State to account for any deviation from the research-led process. In particular, in relation to Category 1, the designation with most significance for providers, there is no discretion in the kinds of conditions that may be set in regulations or the appropriate factors for OFCOM to consider in its research and advice. Furthermore, use of the negative procedure will ensure that the register of Category 1, 2A, and 2B services can be established promptly following provision of research and advice by OFCOM.

Paragraph 21 of Schedule 17: Video-sharing platform services: transitional provision etc

Power conferred on: OFCOM

Power exercised by: Published statement

Parliamentary procedure: None

Context and purpose

521. As set out above, OFCOM will define “qualifying worldwide revenue” and “qualifying period” in consultation with the Secretary of State, the Treasury, and any other persons who OFCOM determine are likely to be affected by the statement (clause 76(3)). The statement will be required to be published and laid before Parliament by the Secretary of State.
522. Further to the above, Part 3 of Schedule 17 sets out the application of Part 6 of the Online Safety Bill (containing the duties of providers of regulated services: fees) during the transitional period between Royal Assent and the repeal of the Video-Sharing Platform (VSP) regime (commencement of clause 186). VSPs will be subject to clause 74 (duty to notify OFCOM in relation to the charging of fees) during this transitional period.
523. Where a regulated user-to-user service has a dissociable Part 4B (VSP) part and another user-to-user part or a search engine (i.e. not an “exempt provider”, see Paragraph 24 of Schedule 17), the provider’s notification under clause 74 must indicate the amount that is wholly referable to the VSP part. To enable providers to make this distinction, OFCOM may produce a statement giving information about the circumstances in which amounts do, or do not, count as being wholly referable to a regulated VSP part of the service (Paragraph 21 of Schedule 17).
524. A VSP service that is an “exempt provider” is exempt from the clause 75 duty to pay fees in respect of a transitional charging year (Paragraph 18, 23 and 24 of Schedule 17).
525. If a regulated user-to-user service has a VSP part and has a part that is not an “exempt provider”, that service will be subject to the clause 75 duty to pay fees in respect to a transitional charging year. However, the fee will be computed in relation to the provider’s “non-Part 4B qualifying worldwide revenue”; that is, the amount that would be the provider’s qualifying worldwide revenue if all amounts wholly referable to a relevant VSP service were left out of account. OFCOM’s statement may set out the circumstances in which amounts do, or do not, count as being wholly referable to the relevant VSP service.

Justification for the power

526. During the transitional period, where a regulated user-to-user service has a VSP part and another user-to-user part or a search engine (i.e. it is not an “exempt provider”), the VSP part of their service will continue to be regulated by the VSP regime and exempt from certain duties and requirements of the online safety regime. Whereas,

the online safety regime will apply to the other non-“exempt” user-to-user or search engine part of the service.

527. This intricacy needs to be reflected in the fee regime. Therefore, these services, in their notification under clause 74, will indicate the amounts which are wholly referable to the relevant VSP service. Under Clause 75, the fee will be computed in relation to the provider’s “non-Part 4B qualifying worldwide revenue”. OFCOM’s statement is therefore required to set out the circumstances in which amounts do, or do not, count as being wholly referable to the relevant VSP service.
528. Setting out the circumstances in a statement will allow OFCOM to amend which amounts do, or do not, count as being wholly referable to the relevant VSP service in the future. This will ensure that the circumstances remain relevant and enable easy reporting by industry. Defining it in a statement rather than in primary legislation will also allow OFCOM as the regulator to draw on their own financial and regulatory expertise, in order to determine the circumstances.

Justification for the procedure

529. The statement sets out the circumstances in which amounts do, or do not, count as being wholly referable to a regulated VSP section of a service provider meaning it only applies to a limited number of services. Further, this is a transitional statement and is time-limited. Therefore, no procedure or additional consultation is required. This transitional statement will no longer apply when the VSP regime is repealed (via the commencement of clause 186) and the transitional charging year has ended.
530. OFCOM will have consulted on the “qualifying worldwide revenue”, and they may use this transitional statement to detail the amounts which are wholly referable to the relevant VSP service.