

Online Safety Bill

AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

After Clause 11

LORD STEVENSON OF BALMACARA

Insert the following new Clause—

“Offence of failing to comply with a relevant duty

- (1) The provider of a service to whom a relevant duty applies commits an offence if the provider fails to comply with the duty.
- (2) In the application of sections 178(2) and 179(5) to an offence under this section (where the offence has been committed with the consent or connivance of an officer of the entity or is attributable to any neglect on the part of an officer of the entity) the references in those provisions to an officer of an entity include references to any person who, at the time of the commission of the offence—
 - (a) was (within the meaning of section 93) a senior manager of the entity in relation to the activities of the entity in the course of which the offence was committed; or
 - (b) was a person purporting to act in such a capacity.
- (3) A person who commits an offence under this section is liable on conviction on indictment to—
 - (a) imprisonment for a term not exceeding two years,
 - (b) a fine, or
 - (c) both.
- (4) The Secretary of State may by regulations amend the sanctions in subsection (3), and such regulations may—
 - (a) specify the maximum fine under subsection (3)(b), and
 - (b) implement a scale to apply in cases where there have been repeated breaches of a relevant duty.
- (5) In this section, “relevant duty” means a duty provided for by section 11 of this Act.
- (6) Regulations under subsection (4) are subject to the affirmative procedure.”

Member's explanatory statement

This new Clause would make it an offence for the provider of a user-to-service not to comply with the safety duties protecting children set out in Clause 11. Where the offence was committed with the consent or connivance of a provider's senior manager or other officer, or was attributable to their neglect, that person, as well as the entity, would be guilty of the offence.

After Clause 15

BARONESS MERRON

After Clause 15, insert the following new Clause –

“Health disinformation and misinformation

- (1) This section sets out the duties about harmful health disinformation and misinformation which apply in relation to Category 1 services.

The duties

- (2) A duty to carry out and keep up to date a risk assessment of the risks presented by harmful health disinformation and misinformation that is present on the service.
- (3) A duty to develop and maintain a policy setting out the service's approach to the treatment of harmful health disinformation and misinformation on the service.
- (4) A duty to explain in the policy how the service's approach to the treatment of harmful disinformation and misinformation is designed to mitigate or manage any risks identified in the latest risk assessment.
- (5) A duty to summarise the policy in the terms of service, and to include provisions in the terms of service about how that content is to be treated on the service.
- (6) A duty to ensure that the policy, and any related terms of service, are –
- (a) clear and accessible, and
 - (b) applied consistently.
- (7) In this section, “harmful health disinformation and misinformation” means content which contains information which –
- (a) is false or misleading in a material respect; and
 - (b) presents a material risk of significant harm to the health of an appreciable number of persons in the United Kingdom.”

Member's explanatory statement

This new Clause would introduce a variety of duties on Category 1 platforms, in relation to their treatment of content which represents harmful health misinformation and disinformation.

Clause 36

BARONESS MERRON

Page 37, line 33, at end insert –

“(ia) the advisory committee on disinformation and misinformation, and”

Member's explanatory statement

This amendment would require Ofcom to consult the advisory committee on disinformation and misinformation when preparing draft codes of practice (or amendments to such codes) under Clause 36.

After Clause 86

LORD STEVENSON OF BALMACARA

Insert the following new Clause—

“Provisional re-categorisation of a Part 3 service

- (1) This section applies in relation to OFCOM's duty to maintain the register of categories of certain Part 3 services under section 86.
- (2) If OFCOM—
 - (a) consider that a Part 3 service not included in a particular part of the register is likely to meet the threshold conditions relevant to that part, and
 - (b) reasonably consider that urgent application of duties relevant to that part is necessary to avoid or mitigate significant harm,

OFCOM may require the service to comply immediately with such duties on a provisional basis pending full re-assessment of the service.”

Member's explanatory statement

This new Clause makes clear that Ofcom may provisionally re-categorise a regulated service, if they are of the view that the service meets the threshold for the new category. This would, for instance, allow a small online forum to become subject to more stringent regulation if Ofcom believed this would mitigate serious harm to users of that forum.

Clause 110

LORD CLEMENT-JONES

Page 94, line 5, leave out “or privately”

Member's explanatory statement

This amendment seeks to probe the implications for privacy and end-to-end encryption of the duty to take down or prevent content communicated privately.

Page 94, line 9, leave out “or privately”

Member's explanatory statement

This amendment seeks to probe the implications for privacy and end-to-end encryption of the duty to take down or prevent content communicated privately.

After Clause 135

LORD KNIGHT OF WEYMOUTH

Insert the following new Clause –

“Liability for companies or subsidiaries associated with regulated services

- (1) A relevant regulated entity (“C”) is liable for penalties under Part 7 of this Act where a person or company (“A”) associated with C, or a subsidiary (“B”) considered by a user to be a component of C, does not comply with duties established under this Act.
- (2) Subsection (1) applies whether or not C or B has made A aware of the duties under this Act.
- (3) But it is a defence for C or B to prove that C had in place adequate procedures designed to prevent persons associated with C from undertaking such conduct.
- (4) In this section a “relevant regulated entity” means a regulated service as defined in section 3(4).
- (5) For the purposes of this section, A is associated with C if A is a person who performs services for or on behalf of C, notwithstanding –
 - (a) the capacity in which A performs services for or on behalf of C;
 - (b) whether or not A is an employee, agent or subsidiary of C.
- (6) For the purposes of this section, A is associated with B if B is a user or group of users accessed through a platform’s brand name, related app or website, or other identifying entry point.
- (7) Whether or not –
 - (a) A is a person who performs services for or on behalf of C, or
 - (b) B is a subsidiary of C,
 is to be determined by reference to all the relevant circumstances, and not merely by reference to the nature of the relationship between A, B and C.
- (8) If A is an employee of C, it is to be presumed (unless the contrary is shown) that A is a person who performs services for or on behalf of C.”

After Clause 139

LORD STEVENSON OF BALMACARA

Insert the following new Clause –

“Advisory committee on content relating to suicide, self-injury or eating disorders

- (1) OFCOM must establish and maintain a committee to provide the advice specified in this section.
- (2) The committee is to consist of –
 - (a) a chair appointed by OFCOM, and
 - (b) such number of other members appointed by OFCOM as OFCOM considers appropriate.

After Clause 139 - continued

- (3) In appointing persons to be members of the committee, OFCOM must have regard to the desirability of ensuring that the members of the committee include—
 - (a) persons representing the interests of United Kingdom users of regulated services,
 - (b) persons representing providers of regulated services, and
 - (c) persons with expertise in the prevention and handling of content relating to—
 - (i) suicide and self-injury, or
 - (ii) an eating disorder or behaviours associated with an eating disorder.
- (4) The function of the committee is to provide advice to OFCOM (including other committees established by OFCOM) about—
 - (a) how providers of regulated services should deal with content relating to suicide, self-injury or eating disorders on such services, and
 - (b) OFCOM's exercise of the power conferred by section 68 to require information about a matter listed in Part 1 or 2 of Schedule 8, so far as it relates to content relating to suicide, self-injury or eating disorders.
- (5) The committee must publish a report within the period of 18 months after being established, and after that must publish periodic reports.”

Member's explanatory statement

This new Clause is to probe whether Ofcom should establish an advisory committee similar to that established in relation to disinformation and misinformation, for the purpose of advising Ofcom how providers of regulated services should deal with content relating to suicide, self-injury or eating disorders.

After Clause 145

LORD STEVENSON OF BALMACARA

Insert the following new Clause—

“Reviews of OFCOM's transparency reporting

- (1) OFCOM must produce a report assessing the extent to which—
 - (a) transparency reports produced by providers of Part 3 services under section 68, and
 - (b) transparency reports produced by OFCOM under section 145,are of sufficient quality to enable service users and researchers to make informed judgements relating to a provider's adherence to duties under this Act.
- (2) OFCOM must publish a report within the period of three years beginning with the day on which this section comes into force, and every five years thereafter.
- (3) OFCOM must send a copy of each report to the Secretary of State, and the Secretary of State must lay it before Parliament.

After Clause 145 - continued

- (4) OFCOM may, if it deems it appropriate, include within the report recommendations for improving the transparency arrangements under this Act, and the Secretary of State may make regulations giving effect to such recommendations.
- (5) Regulations under subsection (4) may not be made until the Secretary of State has –
 - (a) consulted each devolved authority on the content of the draft regulations;
 - (b) produced an impact assessment including, but not limited to, an assessment of the impact of the proposed regulations on human rights and equalities, freedom of expression and employment and labour; and
 - (c) produced an assessment of the impact of the proposed regulations on children and vulnerable adults.
- (6) The Secretary of State may not make or lay regulations until any select committee charged by the relevant House with scrutinising regulations made under this Act has –
 - (a) completed its consideration of the draft regulations, and the impact assessments referred to in subsection (5); and
 - (b) reported on its deliberations to the relevant House; and
 an opportunity has been provided for its report to be debated in the relevant House.”

Member’s explanatory statement

This new Clause is to probe how Ofcom will review the effectiveness of transparency requirements in the Bill. It would require Ofcom to undertake a review of the effectiveness of transparency reports within three years, and every five years thereafter, and give the Secretary of State powers to implement any recommendations made by the regulator.

Clause 146**LORD STEVENSON OF BALMACARA**

Page 128, line 35, leave out from “publish” to end of line 36 and insert “an interim report within the period of three months beginning with the day on which this section comes into force, and a final report within the period of two years beginning on the day on which the interim report is published.”

Member’s explanatory statement

This amendment seeks to accelerate the process relating to Ofcom’s report on researchers’ access to information. Instead of simply requiring a report within two years of Clause 146 being brought into force, this amendment would require an interim report within three months, with a final report to follow two years after that.

After Clause 184

LORD STEVENSON OF BALMACARA

Insert the following new Clause –

“Application to experiential environments

- (1) In this section “experiential environment” means an online service which is designed –
 - (a) to simulate real-world events, and
 - (b) to enable users to interact with each other.
- (2) Within the period of one year beginning with the day on which this Act is passed, and every five years thereafter, the Secretary of State must commission a review of –
 - (a) how the provisions of this Act apply in relation to experiential environments;
 - (b) whether definitions or other provisions of this Act require expansion or other modification to reflect technological developments in relation to experiential environments;
 - (c) how criminal and civil law relating to activity in the real world does, or should, apply to activity in experiential environments; and
 - (d) what additional protections and safeguards are required for users of experiential environment services.
- (3) A review under subsection (2) must be carried out by a group commissioned by the Secretary of State including persons appearing to the Secretary of State to –
 - (a) represent the interests of children and vulnerable persons;
 - (b) have expertise and experience in relation to the development of experiential technology;
 - (c) represent the interests of the providers of experiential services;
 - (d) have knowledge and experience in relation to different kinds of harm (including psychological harm) that are or may be associated with experiential environments; and
 - (e) have relevant legal knowledge and experience.
- (4) If a review under subsection (2) makes recommendations for provisions of this Act that should be expanded, adapted or modified in their application to experiential environments, the Secretary of State may make regulations giving effect to recommendations of a review.
- (5) Regulations may not be made until the Secretary of State has –
 - (a) consulted each devolved authority on the content of the draft regulations;
 - (b) produced an impact assessment including, but not limited to, an assessment of the impact of the proposed regulations on human rights and equalities, freedom of expression, and employment and labour; and
 - (c) produced an assessment of the impact of the proposed regulations on children and vulnerable adults.

After Clause 184 - continued

- (6) The Secretary of State may not make or lay regulations until any select committee charged by the relevant House of Parliament with scrutinising regulations made under this Act has –
- (a) completed its consideration of the draft regulations, and the impact assessments referred to in subsection (5); and
 - (b) reported on its deliberations to the relevant House; and
- an opportunity has been provided for their report to be debated in the relevant House.”

Member’s explanatory statement

This amendment would require the Secretary of State to commission periodic reviews of how the provisions of this Bill apply to online “experiential environments” (i.e. the metaverse). The Clause includes the ability for the Secretary of State to bring forward regulations to implement recommendations arising from the reviews.

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21 February 2023
