

# Online Safety Bill

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AMENDMENTS  
TO BE MOVED  
IN COMMITTEE OF THE WHOLE HOUSE

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**Schedule 4**

LORD CLEMENT-JONES  
LORD HUNT OF KINGS HEATH

Page 198, line 27, at end insert –

“14A Where any measures described in a code of practice would require a provider to make fundamental changes to the nature of a service which they provide (for example, by removing or weakening end-to-end encryption on an end-to-end encrypted service), such measures are not to be considered as recommended in relation to that service.”

***Member’s explanatory statement***

*This amendment is part of a series of amendments by Lord Clement-Jones intended to ensure risk assessments are not used as a tool to undermine users’ privacy and security.*

**Clause 91**

BARONESS KIDRON  
BARONESS MORGAN OF COTES  
LORD CLEMENT-JONES  
LORD STEVENSON OF BALMACARA

Page 82, line 14, at end insert –

“(o) the purpose of obtaining information relevant to the death of a child (as defined in section (Duties of OFCOM in certain cases where a child has died) (3)).”

***Member’s explanatory statement***

*This amendment is consequential on Baroness Kidron’s amendment after Clause 117 which would add a new Clause imposing express duties on OFCOM in certain cases where a child has died.*

**Clause 92**

BARONESS KIDRON  
 BARONESS MORGAN OF COTES  
 LORD CLEMENT-JONES  
 LORD STEVENSON OF BALMACARA

Page 83, line 10, at end insert –

“information relevant to the death of a child” has the same meaning as in section (*Duties of OFCOM in certain cases where a child has died*)(3);”

***Member’s explanatory statement***

*This amendment is consequential on Baroness Kidron’s amendment after Clause 117 which would add a new Clause imposing express duties on OFCOM in certain cases where a child has died.*

**Clause 112**

LORD CLEMENT-JONES  
 LORD HUNT OF KINGS HEATH

Page 96, line 39, at end insert –

“(ia) in the case of a notice relating to a private messaging service, the level of risk of the use of the specified technology having an adverse impact on the privacy of users of that private messaging service;”

***Member’s explanatory statement***

*This amendment is part of a series of amendments by Lord Clement-Jones that are intended to introduce safeguards around the issuance of Technology Notices by ensuring privacy is considered before a notice is given, and strengthening the review and appeals process.*

Page 96, line 40, leave out paragraph (j) and insert –

“(j) whether what is sought to be achieved could reasonably be achieved by less intrusive measures than the specified technology.”

***Member’s explanatory statement***

*This amendment is part of a series of amendments by Lord Clement-Jones that are intended to introduce safeguards around the issuance of Technology Notices by ensuring privacy is considered before a notice is given, and strengthening the review and appeals process.*

**Clause 114**

LORD CLEMENT-JONES  
 LORD HUNT OF KINGS HEATH

Page 99, line 15, at end insert –

“(c) any representations made by the provider.”

***Member’s explanatory statement***

*This amendment is part of a series of amendments by Lord Clement-Jones that are intended to introduce safeguards around the issuance of Technology Notices by ensuring privacy is considered before a notice is given, and strengthening the review and appeals process.*

**Clause 115**

LORD CLEMENT-JONES  
LORD HUNT OF KINGS HEATH

Page 99, line 30, at end insert “and persons who appear to OFCOM to represent providers of Part 3 services.”

***Member’s explanatory statement***

*This amendment is part of a series of amendments by Lord Clement-Jones that are intended to introduce safeguards around the issuance of Technology Notices by ensuring privacy is considered before a notice is given, and strengthening the review and appeals process.*

Page 99, line 31, after “under” insert “regular”

***Member’s explanatory statement***

*This amendment is part of a series of amendments by Lord Clement-Jones that are intended to introduce safeguards around the issuance of Technology Notices by ensuring privacy is considered before a notice is given, and strengthening the review and appeals process.*

**After Clause 115**

LORD CLEMENT-JONES  
LORD HUNT OF KINGS HEATH

Insert the following new Clause—

**“OFCOM’s duties in relation to privacy under this Chapter**

- (1) Subsection (2) applies where OFCOM is deciding whether to exercise any powers under this Chapter.
- (2) OFCOM must have regard to—
  - (a) whether what is sought to be achieved by the relevant exercise of powers under this Chapter could reasonably be achieved by other less intrusive means,
  - (b) the public interest in the integrity and security of telecommunication services, and
  - (c) any other aspects of the public interest in the protection of privacy.
- (3) The duties under subsection (2)—
  - (a) apply so far as they are relevant in the particular context, and
  - (b) are subject to the need to have regard to other considerations that are also relevant in that context.
- (4) The other considerations may, in particular, include—
  - (a) the requirements of the Human Rights Act 1998, and
  - (b) other requirements of public law.”

***Member’s explanatory statement***

*This new Clause is part of a series of amendments by Lord Clement-Jones that are intended to introduce safeguards around the issuance of Technology Notices by ensuring privacy is considered before a notice is given, and strengthening the review and appeals process.*

**After Clause 117**

BARONESS KIDRON  
BARONESS MORGAN OF COTES  
LORD CLEMENT-JONES  
LORD STEVENSON OF BALMACARA

Insert the following new Clause—

**“Responsibilities for named senior managers in relation to inquests**

- (1) This section applies where a senior coroner has issued a notice under paragraph 1 of Schedule 5 to the Coroners and Justice Act 2009 (power to require evidence to be given or produced) in an investigation or inquest into the death of a child to a provider of a regulated service (being an entity) requiring information relevant to the death of a child.
- (2) OFCOM may make rules, applicable in the circumstances in subsection (1), requiring—
  - (a) the provider to name an individual who the provider considers to be a senior manager of the entity and who may reasonably be expected to be in a position to ensure compliance with the notice on behalf of the provider and to provide evidence to the coroner as a witness;
  - (b) the provider to inform the named individual about the consequences for that individual of the entity failing to comply with the requirements of the notice as set out in paragraphs 6 and 7 of Schedule 6 to the Coroners and Justice Act 2009 (offences relating to witnesses and evidence);
  - (c) the named individual to ensure the information is preserved and provided to the coroner in accessible form.
- (3) A person commits an offence if the person fails without reasonable excuse to preserve documents or to provide documents or information to the coroner in accordance with the notice issued by the coroner in accordance with this section.
- (4) A named individual commits an offence if—
  - (a) the entity commits an offence under subsection (3), and
  - (b) the individual has failed to take all reasonable steps to prevent that offence being committed.
- (5) A person guilty of an offence under subsection (3) or (4) is liable on summary conviction to a fine not exceeding £18 million or 10% of the person’s qualifying worldwide revenue, or to imprisonment for a term not exceeding 51 weeks, or to both.
- (6) In this section “senior manager” has the same meaning as in section 93(4).”

***Member’s explanatory statement***

*If Ofcom has issued a notice to a service provider they must name a senior manager responsible for providing material on behalf of the service and to inform that individual of the consequences for not complying. This amendment also sets out where a named individual may have committed an offence in failure to comply with information notices from coroners. Currently there is a maximum fine of £1000 for failure to comply with a coroner’s section 5 notice.*

Insert the following new Clause –

**“Duties of OFCOM in certain cases where a child has died**

- (1) In any case where a child has died and there is reason to suspect that a person within section 91(4) (“P”) holds information relevant to the death of the child, OFCOM must –
  - (a) upon request from a coroner or an interested person in relation to the child, provide to interested persons the contact details of a person or group of persons to act as a point of contact and communication with P, and
  - (b) obtain from P, and provide to the coroner or interested person within paragraph (a), information relevant to the death in accessible form, redacted where necessary to do so as required by law, in particular in order to protect the rights of others.
- (2) A request for information made by OFCOM under subsection (1) constitutes an information notice under section 91.
- (3) OFCOM must co-operate with the coroner in any investigation or inquest where the coroner considers that a person within section 91(4) may have caused or contributed to the death of a child or may hold information relevant to such a death including in the obtaining of documents from that person and their provision to the coroner in accessible form, redacted in accordance with any directions from the coroner.
- (4) In subsections (1) and (3), information relevant to the death includes –
  - (a) content the child viewed or otherwise engaged with,
  - (b) the means by which that content came to be engaged with by the child (including through search or recommendation algorithms), and
  - (c) the ways in which the child engaged with the content (including, where applicable, viewing, sharing, storing, enlarging and pausing).
- (5) In respect of the duties relating to the death of a child OFCOM must write annually to the chief coroner reporting on activities that they have undertaken and regarding any emerging trends or harms.
- (6) In this section “interested person” means –
  - (a) a spouse, civil partner, partner, parent, child, brother, sister, grandparent, grandchild, child of a brother or sister, stepfather, stepmother, half-brother or half-sister;
  - (b) a personal representative of the deceased.”

***Member’s explanatory statement***

*This amendment puts Ofcom’s powers at the disposal of a coroner where there is reason to suspect that a regulated company has information relevant to the death of a child. It also tasks service providers with providing a point of contact. Service providers must provide relevant information in an accessible format to Ofcom. Nothing in this amendment contradicts, lessens or impacts on a coroner’s existing powers nor compels a coroner to take any specific action.*

**Clause 149**

LORD CLEMENT-JONES  
LORD HUNT OF KINGS HEATH

Page 131, line 2, leave out “Upper Tribunal” and insert “High Court”

***Member’s explanatory statement***

*This amendment is part of a series of amendments by Lord Clement-Jones that are intended to introduce safeguards around the issuance of Technology Notices by ensuring privacy is considered before a notice is given, and strengthening the review and appeals process.*

Page 131, line 9, leave out subsection (2) and insert –

“(2) There is no requirement for a provider to comply with the notice under section 110(1) until the High Court has determined the appeal.”

***Member’s explanatory statement***

*This amendment is part of a series of amendments by Lord Clement-Jones that are intended to introduce safeguards around the issuance of Technology Notices by ensuring privacy is considered before a notice is given, and strengthening the review and appeals process.*

Page 131, line 11, leave out “Upper Tribunal” and insert “High Court”

***Member’s explanatory statement***

*This amendment is part of a series of amendments by Lord Clement-Jones that are intended to introduce safeguards around the issuance of Technology Notices by ensuring privacy is considered before a notice is given, and strengthening the review and appeals process.*

Page 131, line 17, leave out “Upper Tribunal” and insert “High Court”

***Member’s explanatory statement***

*This amendment is part of a series of amendments by Lord Clement-Jones that are intended to introduce safeguards around the issuance of Technology Notices by ensuring privacy is considered before a notice is given, and strengthening the review and appeals process.*

Page 131, line 20, leave out “Upper Tribunal” and insert “High Court”

***Member’s explanatory statement***

*This amendment is part of a series of amendments by Lord Clement-Jones that are intended to introduce safeguards around the issuance of Technology Notices by ensuring privacy is considered before a notice is given, and strengthening the review and appeals process.*

Page 131, line 21, leave out “Tribunal” and insert “High Court”

***Member’s explanatory statement***

*This amendment is part of a series of amendments by Lord Clement-Jones that are intended to introduce safeguards around the issuance of Technology Notices by ensuring privacy is considered before a notice is given, and strengthening the review and appeals process.*

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*6 March 2023*

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