

Online Safety Bill

AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

Clause 18

LORD KAMALL
BARONESS FEATHERSTONE

Page 20, line 29, at end insert –

“(1A) A duty to have regard to the importance of –

- (a) protecting users’ right to freedom of expression within the law, including but not limited to the rights of users with protected characteristics under the Equality Act 2010;
- (b) protecting users from unwarranted infringements of privacy, when deciding on, and implementing, safety policies and procedures;
- (c) protecting users’ right to freedom of religion;
- (d) protecting users’ right to liberty and security;
- (e) protecting users’ right to freedom of thought and conscience;
- (f) protecting users’ right to freedom of assembly and association;
- (g) protecting users’ right to life;
- (h) protecting users’ right to freedom of press;
- (i) protecting users’ right to freedom of petition;
- (j) protecting users’ right to freedom from unreasonable searches and seizures.”

Member’s explanatory statement

This amendment clarifies that platforms’ obligations to protect free speech should:

- (a) be enhanced for users with protected characteristics under the Equality Act 2010, and*
- (b) entail express limitations on the infringement of users’ rights online.*

Page 21, line 14, at end insert –

- “(c) report to OFCOM how risks to freedom of expression will be mitigated, including by adapting content moderation or recommender systems, decision-making processes, the features or functioning of services, or their terms and conditions, and on how automated systems and algorithms will prevent bias against protected characteristics in the Equality Act 2010.”

Member's explanatory statement

This amendment ensures that service providers will be required to report to Ofcom how they will mitigate the negative impacts on or the erosions of freedom of expression, and to carry out regular risk assessments to check on curtailment of freedom of expression on their platform.

Clause 167

BARONESS FEATHERSTONE

Leave out Clause 167 and insert the following new Clause—

“Sending etc photograph or film of genitals

In the Sexual Offences Act 2003, after section 66 insert—

“66A Sending etc photograph or film of genitals

- (1) A person (A) who intentionally sends or gives a photograph or film of any person's genitals to another person (B) commits an offence if—
 - (a) B does not consent to the sending or giving of the photograph or film, and
 - (b) A does not reasonably believe that B consents.
- (2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.
- (3) References to sending or giving such a photograph or film to another person include, in particular—
 - (a) sending it to another person by any means, electronically or otherwise,
 - (b) showing it to another person, and
 - (c) placing it for a particular person to find.
- (4) “Photograph” includes the negative as well as the positive version.
- (5) “Film” means a moving image.
- (6) References to a photograph or film also include—
 - (a) an image, whether made by computer graphics or in any other way, which appears to be a photograph or film,
 - (b) a copy of a photograph, film or image within paragraph (a), and
 - (c) data stored by any means which is capable of conversion into a photograph, film or image within paragraph (a).
- (7) It is a defence for a person charged with an offence under this section to prove that they—
 - (a) reasonably believed that the sharing was necessary for the purposes of preventing, detecting, investigating or prosecuting crime;
 - (b) reasonably believed that the sharing was necessary for the purposes of legal or regulatory proceedings,
 - (c) reasonably believed that the sharing was necessary for the administration of justice,
 - (d) reasonably believed that the sharing was necessary for a genuine medical, scientific or educational purpose, and
 - (e) reasonably believed that the sharing was in the public interest.
- (8) A person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine to the general limit in a magistrates' court or both.”

Member's explanatory statement

This revised Clause would amend the offence of cyberflashing currently in the bill to put the onus on the sender to obtain consent of the person receiving the image rather than relying on the intent of the person sending it.

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16 March 2023
