

Online Safety Bill

AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

Clause 3

BARONESS KIDRON

Page 3, line 14, at end insert—

“(d) an internet service, other than a regulated user-to-user service or search service, that meets the child user condition and enables or promotes harmful activity and content as set out in Schedule (*Online harms to children*).”

Member’s explanatory statement

This amendment would mean any service that meets the 'child user condition' and enables or promotes harmful activity and content to children, as per a new Schedule, would be in scope of the regulation of the bill.

Page 3, line 15, at end insert “or an internet service within subsection (4)(d)”

Member’s explanatory statement

This amendment is consequential to the amendment to Clause 3 which adds a new category of regulated services that are likely to be accessed by children and are harmful to children.

Page 3, line 20, after second “service” insert “or an internet service within subsection (4)(d)”

Member’s explanatory statement

This amendment is consequential to the amendment to Clause 3 which adds a new category of regulated services that are likely to be accessed by children and are harmful to children.

Clause 10

BARONESS KIDRON
LORD STEVENSON OF BALMACARA
THE LORD BISHOP OF OXFORD
LORD BETHELL

Page 9, line 11, leave out paragraphs (a) to (h) and insert—

- “(a) the level of risk that children who are users of the service encounter the harms as outlined in Schedule (*Online harms to children*) by means of the service;
- (b) any of the level of risks to children encountered singularly or in combination, having regard to—
 - (i) the design of functionalities, algorithms and other features that present or increase risk of harm, such as low-privacy profile settings by default;
 - (ii) the business model, revenue model, governance, terms of service and other systems and processes or mitigation measures that may reduce or increase the risk of harm;
 - (iii) risks which can build up over time;
 - (iv) the ways in which level of risks can change when experienced in combination with others;
 - (v) the level of risk of harm to children in different age groups;
 - (vi) the level of risk of harm to children with certain characteristics or who are members of certain groups; and
 - (vii) the different ways in which the service is used including but not limited to via virtual and augmented reality technologies, and the impact of such use on the level of risk of harm that might be suffered by children;
- (c) whether the service has shown regard to the rights of children as set out in the United Nations Convention on the Rights of the Child (see general comment 25 on children’s rights in relation to the digital environment).”

Member’s explanatory statement

This amendment would require providers to look at and assess risks on their platform in the round and in line with the 4 Cs of online risks to children (content, contact, conduct and contractual/commercial risks). Although these risks will not be presented on every service, this amendment requires providers to reflect on these risks, so they are not forgotten and can be built into future development of the service.

Clause 11

LORD RUSSELL OF LIVERPOOL
BARONESS HARDING OF WINSCOMBE
LORD KNIGHT OF WEYMOUTH

Page 10, line 9, at beginning insert “eliminate,”

Member’s explanatory statement

This amendment would require user to user services to eliminate identified risks to children from their platforms in addition to mitigating and managing them.

Page 10, line 13, leave out “presented by content that is harmful to children”

Member’s explanatory statement

The amendment requires providers of user-to-user services to mitigate the impact of harm to children in general not just harm presented by content.

LORD RUSSELL OF LIVERPOOL
LORD ALTON OF LIVERPOOL
BARONESS HARDING OF WINSCOMBE

Page 10, line 13, at end insert –

“(c) uphold children’s rights per the United Kingdom’s obligations as a signatory of the United Nations Convention on the Rights of the Child (UNCRC), with reference to General Comment No. 25 (2021) from the Committee on the Rights of the Child on children’s rights in relation to the digital environment.”

Member’s explanatory statement

This amendment would mean regulated services would have to have regard for the UN Convention on the Rights of the Child to ensure children are treated according to their evolving capacities, in their best interests, in consideration of their wellbeing and are not locked out of spaces that they have a right to participate in and to access.

LORD RUSSELL OF LIVERPOOL
BARONESS HARDING OF WINSCOMBE
LORD KNIGHT OF WEYMOUTH

Page 11, line 25, leave out paragraph (b)

Member’s explanatory statement

This amendment will ensure that the size of a service provider is not given disproportionate consideration when determining what is appropriate for the purposes of compliance with safety duties.

Page 11, line 31, leave out “from content that is harmful to children”

Member’s explanatory statement

The amendment requires providers of user-to-user services to mitigate the impact of harm to children, not just harm presented by content.

Page 11, line 35, leave out subsection (14)

Member’s explanatory statement

This amendment would remove language which says duties only apply to content and not the fact of its dissemination.

Clause 19

LORD RUSSELL OF LIVERPOOL
BARONESS HARDING OF WINSCOMBE
LORD KNIGHT OF WEYMOUTH

Page 21, line 41, leave out “recommended” and insert “required”

Member's explanatory statement

This amendment would mean that the regulated services would be required to comply with the codes of practice set by OFCOM rather than with "alternative measures".

Clause 25

LORD RUSSELL OF LIVERPOOL
BARONESS HARDING OF WINSCOMBE
LORD KNIGHT OF WEYMOUTH

Page 27, line 7, at beginning insert "eliminate,"

Member's explanatory statement

This amendment would require user to user services to eliminate identified risks to children from their platforms in addition to mitigating and managing them.

Page 27, leave out line 11

Member's explanatory statement

The amendment requires providers of search services to mitigate the impact of harm to children not just harm presented by content.

LORD RUSSELL OF LIVERPOOL
LORD ALTON OF LIVERPOOL
BARONESS HARDING OF WINSCOMBE

Page 27, line 11, at end insert –

“(c) uphold children’s rights per the United Kingdom’s obligations as a signatory of the United Nations Convention on the Rights of the Child (UNCRC), with reference to General Comment No. 25 (2021) from the Committee on the Rights of the Child on children’s rights in relation to the digital environment.”

Member's explanatory statement

This amendment would mean regulated services would have to have regard for the UN Convention on the Rights of the Child to ensure children are treated according to their evolving capacities, in their best interests, in consideration of their wellbeing and are not locked out of spaces that they have a right to participate in and to access.

LORD RUSSELL OF LIVERPOOL
BARONESS HARDING OF WINSCOMBE
LORD KNIGHT OF WEYMOUTH

Page 28, line 6, leave out paragraph (b)

Member's explanatory statement

This amendment will ensure that the size of a service provider is not given disproportionate consideration when determining what is appropriate for the purposes of compliance with safety duties.

Page 28, line 12, leave out “from content that is harmful to children”

Member's explanatory statement

The amendment requires providers of search services to mitigate the impact of harm to children, not just harm presented by content.

Page 28, line 15, leave out subsection (12)

Member's explanatory statement

This amendment would remove language which says duties only apply to content and not the fact of its dissemination.

Clause 29

LORD RUSSELL OF LIVERPOOL
BARONESS HARDING OF WINSCOMBE
LORD KNIGHT OF WEYMOUTH

Page 31, line 9, leave out "recommended" and insert "required"

Member's explanatory statement

This amendment would mean that the regulated services would be required to comply with the codes of practice set by OFCOM rather than with "alternative measures".

Page 31, line 14, leave out subsections (4) and (5)

Member's explanatory statement

This amendment would mean that the regulated services would be required to comply with the codes of practice set by OFCOM rather than with "alternative measures".

Clause 30

BARONESS KIDRON

Page 32, line 17, leave out subsection (3) and insert –

- “(3) The “child user condition” is met in relation to a service, or a part of a service, if it is likely to be accessed by children, meaning –
- (a) the service is designed or intended for use by children;
 - (b) children form a substantive and identifiable user group;
 - (c) the possibility of a child accessing the service is more probable than not, taking into consideration –
 - (i) the nature and content of the service and whether that has particular appeal for children;
 - (ii) the way in which the service is accessed and any measures in place to prevent children gaining access;
 - (iii) market research, current evidence on user behaviour, the user base of similar or existing services and service types and testing of access restriction measures.”

Member's explanatory statement

This amendment aligns the “child user condition” with that of the ‘likely to be accessed by children’ threshold set out in the ICO’s Age Appropriate Design Code.

After Schedule 3

BARONESS KIDRON
LORD STEVENSON OF BALMACARA
THE LORD BISHOP OF OXFORD
LORD BETHELL

Insert the following new Schedule—

“SCHEDULE

ONLINE HARMS TO CHILDREN

- 1 (1) Paragraphs 3 to 6 list categories that risk posing physical or psychological harm to children beyond the threshold of offences in Schedule 5, 6 or 7, or are not age appropriate in the light of OFCOM codes of practice under section 36.
- (2) The harms in this Schedule are a non-exhaustive list of categories and other categories may be relevant for the purposes of this Act.

Duty on the Secretary of State and OFCOM

- 2 (1) When exercising functions under this Act, the Secretary of State and OFCOM must have due regard to the categories of harm in this Schedule.
- (2) The Secretary of State and OFCOM must also have regard to the possible cumulative impact when a child experiences any combination of the harms set out in paragraphs 3 to 6.

Content harms

- 3 Content harms include, but are not limited to—
 - (a) sexual material which is not age appropriate;
 - (b) pornographic content, as defined in section 70(2);
 - (c) violent material which is not age appropriate;
 - (d) content promoting dangerous behaviours such as suicide, self-harm or eating disorders.

Contact harms

- 4 Contact harms include, but are not limited to—
 - (a) one or more adults unknown to a child seeking to communicate with that child through features such as direct messaging or encouraging them broadcasting to large numbers of unknown users;
 - (b) encouraging participation in dangerous behaviours such as self-harm or high-risk challenges;
 - (c) posting links to, or otherwise engaging in activity which encourages child users to seek, dangerous or illegal activity or content which does not meet the threshold of offences in Schedule 5, 6 or 7;
 - (d) the use of location sharing, livestreaming or video-sharing for unwanted or predatory contact.

Conduct harms

- 5 Conduct harms include, but are not limited to—
 - (a) bullying or denigration based on one or more protected characteristics under the Equality Act 2010;

After Schedule 3 - continued

- (b) the non-consensual sharing of intimate material, image-based abuse or doctored images;
- (c) stalking and unwanted surveillance;
- (d) direct and indirect threats of violence, intimidation and harassment (including through virtual and augmented reality technologies).

Commercial harms

- 6 Commercial harms include, but are not limited to—
- (a) the frequency and volume of recommendations;
 - (b) promoting or advertising harmful behaviour and materials;
 - (c) unfair terms of use;
 - (d) nudges and encouragement to extend use;
 - (e) bias in automated decision-making.”

Member’s explanatory statement

In the Bill harm is defined as “physical or psychological harm” but without any further explanation. This amendment would specifically set out harms in the form of the widely understood and used 4 Cs of online risk to children.

Clause 44

LORD RUSSELL OF LIVERPOOL
BARONESS HARDING OF WINSCOMBE
LORD KNIGHT OF WEYMOUTH

Page 42, line 36, leave out “recommended” and insert “required”

Member’s explanatory statement

This amendment would mean that the regulated services would be required to comply with the codes of practice set by Ofcom rather than with “alternative measures”.

Clause 48

BARONESS KIDRON
LORD STEVENSON OF BALMACARA
THE LORD BISHOP OF OXFORD
LORD BETHELL

Page 46, line 22, at end insert—

- “(c) content within the categories of harms set out in Schedule (*Online Harms to Children*).
- (1A) Guidance under subsection (1) must be renewed as appropriate to reflect new and emerging risks, and not less frequently than every 12 months.
- (1B) Before producing initial guidance on categories of risk to children under subsection (1), OFCOM must consult with—
 - (a) children and young people, and
 - (b) persons who appear to OFCOM to represent the interests of children, and particularly those with an understanding of child development, digital services or specific areas of harm.”

Member's explanatory statement

This amendment would require Ofcom to produce guidance with reference to the new Schedule on Online Harms to Children, renew this guidance no less than every 12 months, and consult with the relevant groups ahead of publishing new guidance.

Clause 49

BARONESS KIDRON

Page 47, line 22, at end insert –

- “(c) machine-generated content is to be regarded as user-generated content of a service if –
- (i) the creation or use of the machine-generated content involves interacting with user-generated content,
 - (ii) it takes the form or identity of a user, or
 - (iii) it provides content that constitutes illegal, primary priority content or priority content, or would constitute it if created in another format.”

Member's explanatory statement

This amendment would add machine-generated content to regulated content in the bill and gives meaning to how it could be regarded as 'user-generated content' of the service, and allows virtual and augmented reality material to be treated on an equal basis as on other formats.

Clause 54

LORD RUSSELL OF LIVERPOOL
BARONESS HARDING OF WINSCOMBE
LORD KNIGHT OF WEYMOUTH

Page 52, line 43, leave out sub-paragraph (i)

Member's explanatory statement

This amendment would remove exemptions for content where its risk to children flows from its potential financial impact.

After Clause 58

BARONESS KIDRON
LORD STEVENSON OF BALMACARA
THE LORD BISHOP OF OXFORD
LORD BETHELL

Insert the following new Clause –

“OFCOM guidance about age assurance

- (1) Within the period of 6 months beginning with the day on which this Act is passed, OFCOM must produce, and bring into effect, guidance for regulated services to assist them in complying with –
 - (a) the requirements set out in Schedule (*Effective age assurance*), and
 - (b) the principles for designing, procuring and operating any system of age assurance or age verification set out in subsection (3).

After Clause 58 - continued

- (2) This section applies to all age assurance systems used by regulated services, whether operated by the provider of an online or digital service or product, the provider's agent, or any other party, and irrespective of the size, nature or approach of the system.
- (3) The principles must ensure that any age assurance system—
 - (a) protects the privacy of users in accordance with applicable laws, including data protection laws and obligations under treaties (see paragraph (m));
 - (b) provides a level of assurance that is proportionate to risk, having regard for the specific risks arising from the product or service being accessed, and ensuring that the higher the risk to the child, the higher the level of assurance, up to a level where the service is satisfied of a user's age beyond reasonable doubt;
 - (c) in relation to Part 5 services or material that meets the definition of pornography in subsection 70(2), sets the standard for any regulated service as "beyond reasonable doubt";
 - (d) offers functionality appropriate to the capacity and age of a child who might use the service;
 - (e) is secure and does not expose users or their data to unauthorised disclosure or security breaches;
 - (f) does not use data gathered for the purposes of the age assurance system for any other purpose;
 - (g) provides appropriate mechanisms and remedies for users to challenge or change decisions;
 - (h) is accessible and inclusive to users with protected characteristics;
 - (i) does not unduly restrict access of children to services to which they should reasonably have access, for example, news, health and education services while protecting children from harmful and prohibited material;
 - (j) provides sufficient and meaningful information for a user to understand its operation, in a format and language that they can be reasonably expected to understand, including if they are a child;
 - (k) is effective in assuring the actual age or age range of a user as required or in accordance with any age restriction;
 - (l) does not rely solely on users to provide accurate information;
 - (m) is compatible with—
 - (i) data protection legislation within the meaning of the Data Protection Act 2018 (see section 3 of that Act), in particular the principle that the minimum amount of data necessary is collected,
 - (ii) the requirements of the Age Appropriate Design Code issued under section 123 of the Data Protection Act 2018 (age-appropriate design code),
 - (iii) the Human Rights Act 1998,
 - (iv) the Equality Act 2010, and

After Clause 58 - continued

- (v) the United Nations Convention on the Rights of the Child (see general comment 25 on children’s rights in relation to the digital environment).
- (4) When producing guidance under this section, OFCOM must have regard to the interoperability of solutions, with the aim of minimising the number of times age must be assured when accessing any individual platform or service.
- (5) Before producing the guidance (including revised or replacement guidance), OFCOM must consult—
 - (a) the Information Commissioner;
 - (b) persons whom OFCOM consider to have technological expertise relevant to the requirement set out in Schedule (*Effective age assurance*) paragraph 1, and particularly those with understanding of child development, digital services or specific areas of harm.
- (6) OFCOM must publish the guidance (and any revised or replacement guidance).
- (7) OFCOM may refer to and approve technical standards on age assurance in its guidance.”

Member’s explanatory statement

This amendment instructs Ofcom to produce statutory guidance that ensures age assurance systems are subject to a level of privacy, security, efficacy and proportionality set out by the regulator. It stipulates that beyond reasonable doubt is the highest bar, which is the bar that must be used in the case of pornographic material.

Clause 65

LORD PICKLES

Page 60, line 44, at end insert—

“Category 2A services

- (9A) The duties set out in subsections (9B) to (9D) apply in relation to a Category 2A service, and references in subsections (9B) to (9D) to “provider” and “service” are to be read accordingly.
- (9B) A provider must operate a service using proportionate systems and processes designed to ensure that, if the publicly available statement makes clear that the provider will alter its algorithms, indexes or hide content in relation to breaches of the statement which harm users, the provider does as it states.
- (9C) A provider must ensure that—
 - (a) a publicly available statement which makes provision about the provider acting in such a way as is outlined in subsection (9B) is—
 - (i) clear and accessible, and
 - (ii) written in sufficient detail to enable users to be reasonably certain whether the provider would be justified in taking the specified action in a particular case, and
 - (b) the publicly available statement is applied consistently.

Clause 65 - continued

- (9D) A provider must operate a service using systems and processes that allow users and affected persons to easily report content which they consider to be relevant content.”

Before Schedule 8

BARONESS KIDRON
LORD STEVENSON OF BALMACARA
THE LORD BISHOP OF OXFORD
LORD BETHELL

Insert the following new Schedule –

“SCHEDULE**EFFECTIVE AGE ASSURANCE**

- 1 A provider of a regulated service must have a level of confidence in the age or age range of their users if –
 - (a) knowledge of the age or age range of the user is required by this Act,
 - (b) knowledge of the age or age range of the user is required by the provider’s terms of service, or
 - (c) the service is likely to be accessed by, and create harm to, children.
- 2 With the exception of services referred to in paragraphs 3 and 4, age assurance processes may be of any kind provided that –
 - (a) it is proportionate to the risk of harm to children, taking into account risks to –
 - (i) life,
 - (ii) physical or psychological harm,
 - (iii) economic exploitation, or
 - (iv) any other areas described in sections 10 and 24 (children’s risk assessment duties) or Schedule (*Online harms to children*); and
 - (b) it meets minimum standards of privacy, efficacy and security as established by OFCOM in guidance on age assurance (see section (*OFCOM guidance about age assurance*)).
- 3 Part 5 services must be age verified, where “age verification” means confirming beyond reasonable doubt that the user is not a child in a manner approved by OFCOM, and independently audited in a manner approved by OFCOM.
- 4 Regulated Part 3 services which –
 - (a) are likely to be accessed by a child, and
 - (b) host, share or otherwise engage with primary priority content that meets the definition of pornography (see section 70(2)),
 must be age verified, where “age verification” means confirming beyond reasonable doubt that the user is not a child in a manner approved by OFCOM, and independently audited in a manner approved by OFCOM.

Before Schedule 8 - continued

- 5 If a person is the provider of more than one age-restricted service, the duties set out in this section apply in relation to each such service.
- 6 The duty set out in paragraph 1 applies in relation to all users, not just those who begin to use a service after that duty begins to apply.
- 7 For the meaning of “age assurance”, see section 207.
- 8 The Secretary of State must make regulations under section 211 to bring this Schedule into force within the period of 12 months beginning with the day on which this Act is passed.”

Member’s explanatory statement

This amendment requires any regulated service that is required to know the age of the user to have a level of confidence in the age or age range of their users that is proportionate to risk, in accordance with OFCOM’s risk profiles and guidance about age assurance.

Clause 70

BARONESS KIDRON
LORD STEVENSON OF BALMACARA
THE LORD BISHOP OF OXFORD
LORD BETHELL

Page 64, line 16, at end insert –

“(1A) “Age verification” is to be construed in accordance with paragraph 3 of Schedule (*Effective age assurance*) subject to the guidance of OFCOM under section (*OFCOM guidance about age assurance*).”

Member’s explanatory statement

This amendment ties the age verification requirement directly to the Age Assurance schedule that stipulates that age assurance for Part 5 services must be independently audited in a manner approved by Ofcom and meet the bar “beyond reasonable doubt”.

Clause 72

BARONESS KIDRON
LORD STEVENSON OF BALMACARA
THE LORD BISHOP OF OXFORD
LORD BETHELL

Page 65, line 41, at end insert –

- “(2A) A duty to operate a service which –
- (a) verifies the identity and age of all persons depicted in the pornographic content to ensure that all persons depicted are aged 18 or over;
 - (b) provides evidence of the identity under paragraph (a) on request from OFCOM;
 - (c) obtains and keeps on record written consent from all persons depicted in the pornographic content;
 - (d) reviews all pornographic content before it is published;
 - (e) offers the ability for any person depicted in the pornographic content to appeal to remove the content in question;

Clause 72 - continued

(f) removes any content in accordance with a request under paragraph (e).”

Member’s explanatory statement

This amendment requires service providers to ensure that they have confirmed the age of individuals depicted in pornographic content, confirm their consent and allow that consent to be revoked. This is already being done in the US and by some companies with adult content.

BARONESS BENJAMIN

Page 65, line 41, at end insert –

“(2A) A duty to operate a regulated service which does not contain any prohibited material, where “prohibited material” has the same meaning as in section 368E(3)(a) and section 368E(3)(b) of the Communications Act 2003 (harmful material).”

Member’s explanatory statement

This amendment requires service providers to not include any pornographic content that would be classified as more extreme than R18 and would be prohibited offline.

Clause 82

LORD RUSSELL OF LIVERPOOL

LORD ALTON OF LIVERPOOL

BARONESS HARDING OF WINSCOMBE

Page 72, line 14, at end insert “with reference to the United Nations Convention on the Rights of the Child (UNCRC)”

Member’s explanatory statement

This amendment would add a reference to the United Nations Convention on the Rights of the Child into the general duties of OFCOM under section 3 of the Communications Act 2003. It would mean that protections for children in the bill must have regard to the convention.

Schedule 11

BARONESS KIDRON

Page 217, line 3, at end insert –

“(3A) The Secretary of State must make regulations specifying conditions for services that meet the child user condition and enable or promote harmful content and activity as set out in Schedule (*Online harms to children*), and combined services, relating to each of the following –

- (a) number of users,
- (b) functionalities of the service, or
- (c) any other characteristics, including the level of risk of harm of the service, or factors relating to the service, that the Secretary of State considers relevant.”

Member's explanatory statement

This amendment is consequential to the amendment to Clause 3 which adds a new category of services which are likely to be accessed by children and enable or promote harmful activity and content to children, and would specify the threshold conditions in the same manner as for user to user and search services.

Clause 89

LORD RUSSELL OF LIVERPOOL
LORD ALTON OF LIVERPOOL
BARONESS HARDING OF WINSCOMBE

Page 79, line 13, at end insert –

“(c) must ensure all risk assessments of the risks to children have regard to the rights of children, as set out in the United Nations Convention on the Rights of the Child (UNCRC).”

Member's explanatory statement

This amendment would place a duty on OFCOM to have regard for the United Nations Convention on the Rights of the Child in its risk assessments.

Clause 204

LORD RUSSELL OF LIVERPOOL
BARONESS HARDING OF WINSCOMBE
LORD KNIGHT OF WEYMOUTH

Page 168, line 2, leave out “user-to-user” and insert “regulated”

Member's explanatory statement

This amendment would include all regulated services within the interpretation of features which denote “functionality” in this section.

Page 168, line 36, leave out “search” and insert “regulated”

Member's explanatory statement

This amendment would include all regulated services within the interpretation of features which denote “functionality” in this section.

Clause 207

BARONESS KIDRON
LORD STEVENSON OF BALMACARA
THE LORD BISHOP OF OXFORD
LORD BETHELL

Page 170, line 13, leave out from “means” to end of line 14 and insert “any system of checking age or age range (including age estimation and age verification);

“age estimation” includes reference to an age range or an age expressed in years;

“age verification” means the exact age of a person in years, months, and days or an established date of birth;”

Member's explanatory statement

This amendment defines the meaning of age assurance in the Bill to recognise it includes any test of age including but not limited to verification. Age verification means the exact age of a person in years, months, and days or a date of birth. Age estimation may refer to an age range or an age expressed in years. This is a definition of terms only; the intention is that Ofcom will produce guidance of what level of assurance is required in different settings.

Page 170, line 14, at end insert—

““age restriction” means minimum or maximum ages for use of a service, as required in law or in a service’s own terms of use;”

Member's explanatory statement

This amendment defines the meaning of age restriction in the Bill.

Online Safety Bill

AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

30 March 2023
