

# Online Safety Bill

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AMENDMENTS  
TO BE MOVED  
IN COMMITTEE OF THE WHOLE HOUSE

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**Clause 6**

LORD MOYLAN

Page 5, line 33, after “services” insert “that are not Category 2A services”

***Member’s explanatory statement***

*This amendment is consequential on other amendments in the name of Lord Moylan to remove Clause 23(3) and the subsequent new Clause after 23, the effect of which is that the duties imposed on search services vary depending on whether or not they are Category 2A services: this needs to be reflected in the provision about combined services (regulated user-to-user services that include public search services) in Clause 6.*

Page 5, line 38, at end insert –

- “(6A) All providers of combined services that are Category 2A services must comply with the following duties in relation to the search engine of each such service which they provide –
- (a) if the service is not likely to be accessed by children, the duties set out in Chapter 3 referred to in section 20(2) and (2A);
  - (b) if the service is likely to be accessed by children, the duties set out in Chapter 3 referred to in section 20(2), (2A) and (3).”

***Member’s explanatory statement***

*This amendment is consequential on the new Clause in the name of Lord Moylan after Clause 23 which sets out a duty with which search services that are Category 2A services (only) must comply. The effect of this amendment is that the provider of a combined service that is a Category 2A service must comply with the duty imposed by that new Clause, in relation to the search engine element of the combined service.*

**Clause 12**

LORD STEVENSON OF BALMACARA

Page 13, line 5, leave out from “any” to the end of line 12 and insert “protected characteristics in section 4 of the Equality Act 2010.”

**Member's explanatory statement**

*This amendment replaces the limited number of characteristics listed in Clause 12(11) with a reference to all the protected characteristics under the Equality Act 2010.*

Page 13, line 32, at end insert –

“(16) Within the period of six months beginning with the day on which this section comes into force, the Secretary of State must lay before both Houses of Parliament a statement confirming whether any duties under this section should also be applied in relation to child users.”

**Member's explanatory statement**

*This amendment would require the Secretary of State to consider whether any user empowerment measures for adults (e.g. the ability to filter out non-verified users) should also be made available to child users.*

**After Clause 12**

LORD STEVENSON OF BALMACARA

Insert the following new Clause –

**“Duties to protect freedom of expression online**

- (1) This section sets out the duties to protect freedom of expression which apply in relation to Category 1 services.
- (2) A duty to take all reasonable steps to ensure that freedom of expression is not infringed by measures taken to comply with other duties under this Act.
- (3) A duty to include, within or alongside a assessment conducted under section 8 of this Act (Illegal content risk assessment duties), an assessment of risks to freedom of expression.
- (4) A duty to take appropriate steps to update the freedom of expression risk assessment under subsection (3), including when OFCOM make any significant change to a risk profile that relates to services of the kind in question.
- (5) A duty, when undertaking a freedom of expression risk assessment, to –
  - (a) have regard to the right to freedom of expression for children, as set out in Article 13 of the UN Convention on the Rights of the Child, and
  - (b) report to OFCOM on how risks to freedom of expression will be mitigated, including (but not limited to) by adapting content moderation or recommender systems, decision-making processes, the features or functioning of services, or their terms of service.
- (6) A duty to protect content in the public interest, including (but not limited to) journalistic content.
- (7) Any other duties specified by the Secretary of State in regulations.
- (8) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”

**Member's explanatory statement**

*This new Clause, and the deletion of Clauses 13, 14, 15 and 18, is to probe why the Government has not opted to implement a single comprehensive duty on Category 1 services to protect the right to freedom of expression.*

**Clause 13**

LORD STEVENSON OF BALMACARA

*Lord Stevenson of Balmacara gives notice of his intention to oppose the Question that Clause 13 stand part of the Bill.*

**Member's explanatory statement**

*This Clause stand-part objection, coupled with the new Clause after Clause 12 in the name of Lord Stevenson of Balmacara, is to probe why the Government has not opted to implement a single comprehensive duty on Category 1 services to protect the right to freedom of expression.*

**Clause 14**

LORD STEVENSON OF BALMACARA

*Lord Stevenson of Balmacara gives notice of his intention to oppose the Question that Clause 14 stand part of the Bill.*

**Member's explanatory statement**

*This Clause stand-part objection, coupled with the new Clause after Clause 12 in the name of Lord Stevenson of Balmacara, is to probe why the Government has not opted to implement a single comprehensive duty on Category 1 services to protect the right to freedom of expression.*

**Clause 15**

LORD STEVENSON OF BALMACARA

*Lord Stevenson of Balmacara gives notice of his intention to oppose the Question that Clause 15 stand part of the Bill.*

**Member's explanatory statement**

*This Clause stand-part objection, coupled with the new Clause after Clause 12 in the name of Lord Stevenson of Balmacara, is to probe why the Government has not opted to implement a single comprehensive duty on Category 1 services to protect the right to freedom of expression.*

**Clause 18**

LORD STEVENSON OF BALMACARA

Page 20, line 37, at end insert –

“(3A) For the purposes of subsection (3), Article 8 of the European Convention on Human Rights (Right to respect for private and family life) is to be treated as a statutory provision.”

**Member's explanatory statement**

*This amendment is to probe whether the reference in Clause 18(3) to “statutory provisions or rule of law concerning privacy” includes Article 8 of the European Convention on Human Rights.*

*Lord Stevenson of Balmacara gives notice of his intention to oppose the Question that Clause 18 stand part of the Bill.*

***Member’s explanatory statement***

*This Clause stand-part objection, coupled with the new Clause after Clause 12 in the name of Lord Stevenson of Balmacara, is to probe why the Government has not opted to implement a single comprehensive duty on Category 1 services to protect the right to freedom of expression.*

**Clause 20**

LORD MOYLAN

Page 23, line 15, at end insert –

“(2A) All providers of Category 2A services must, in addition, comply with the duty about illegal content set out in section (*Safety duties about illegal content: Category 2A services*).”

***Member’s explanatory statement***

*This amendment is consequential on the new Clause in the name of Lord Moylan after Clause 23 which sets out a duty with which search services that are Category 2A services (only) must comply.*

**Clause 23**

LORD MOYLAN

Page 25, line 3, leave out subsection (3)

***Member’s explanatory statement***

*This amendment removes the duty imposed on all search services to use systems and processes designed to minimise the risk of individuals encountering illegal content. A separate new clause has been proposed which imposes that duty (only) on search services that are Category 2A services.*

Page 25, line 9, leave out “duties set out in subsections (2) and (3) apply” and insert “duty set out in subsection (2) applies”

***Member’s explanatory statement***

*This amendment is consequential on the amendment to remove Clause 23(3).*

Page 25, line 11, leave out “require” and insert “requires”

***Member’s explanatory statement***

*This amendment is consequential on the amendment to remove Clause 23(3).*

**After Clause 23**

LORD MOYLAN

Insert the following new Clause –

*“Illegal content duty for Category 2A services*

**Safety duty about illegal content: Category 2A services**

**After Clause 23 - continued**

- (1) This section sets out a duty about illegal content that applies in relation to Category 2A services.
- (2) A duty to operate a service using proportionate systems and processes designed to minimise the risk of individuals encountering search content of the following kinds –
  - (a) priority illegal content;
  - (b) other illegal content that the provider knows about (having been alerted to it by another person or become aware of it in any other way).
- (3) The duty set out in subsection (2) applies across all areas of a service, including the way it is designed, operated, and used, as well as search content of the service, and (among other things) requires the provider of a service to take or use measures in the following areas, if it is proportionate to do so –
  - (a) regulatory compliance and risk management arrangements,
  - (b) design of functionalities, algorithms and other features relating to the search engine,
  - (c) functionalities allowing users to control the content they encounter in search results,
  - (d) content prioritisation,
  - (e) user support measures, and
  - (f) staff policies and practices.
- (4) In determining what is proportionate for the purposes of this section, the following factors, in particular, are relevant –
  - (a) all the findings of the most recent illegal content risk assessment (including as to levels of risk and as to nature, and severity, of potential harm to individuals), and
  - (b) the size and capacity of the provider of a service.
- (5) In this section, “illegal content risk assessment” has the meaning given by section 22.
- (6) See also, in relation to the duty set out in this section, section 28 (duty about freedom of expression and privacy).”

***Member’s explanatory statement***

*This amendment inserting a new Clause, together with the amendment to leave out Clause 23(3), means that the duty specified in subsection (2) of the new Clause applies only to search engines that are Category 2A services (as defined in Clause 86(10)(b)) rather than to all search services.*

**Clause 28**

LORD STEVENSON OF BALMACARA

Page 30, line 37, at end insert –

- “(3A) For the purposes of subsection (3), Article 8 of the European Convention on Human Rights (Right to respect for private and family life) is to be treated as a statutory provision.”

***Member's explanatory statement***

*This amendment is to probe whether the reference in Clause 28(3) to "statutory provisions or rule of law concerning privacy" includes Article 8 of the European Convention on Human Rights.*

**Clause 36**

LORD STEVENSON OF BALMACARA

Page 38, line 6, at end insert –

“(ca) section (*Duties to protect freedom of expression online*),”

***Member's explanatory statement***

*This amendment adds a new Clause in the name of Lord Stevenson of Balmacara to the list of provisions which require the creation of an OFCOM code of practice.*

**Schedule 4**

BARONESS BUSCOMBE  
LORD GARNIER

Page 195, line 24, at end insert –

“(x) (in the case of a Category 1 service) users are protected from harm arising from offences under section 160 (false communications) or section 162 (threatening communications) committed by unverified or anonymous users.”

***Member's explanatory statement***

*This amendment would set the protection of individuals from communications offences committed by anonymous users as an additional objective for OFCOM Codes of Practice for regulated user-to-user services.*

**Schedule 7**

BARONESS BUSCOMBE  
LORD GARNIER

Page 205, line 36, at end insert –

“*Communications offences*

32A An offence under any of the following provisions of the Online Safety Act 2023 –

- (a) section 160 (false communications);
- (b) section 162 (threatening communications).”

***Member's explanatory statement***

*This amendment would include the communications offences introduced in the Bill, and communications giving rise to them, within the definitions of "Relevant offences" and "Priority illegal content" for the purposes of Sections 53 (4) and (7), and otherwise.*

**After Clause 69**

LORD BETHELL

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, as determined by Ofcom.
- (2) Where the provider is an entity and the offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of –
  - (a) a senior manager or director of the entity, or
  - (b) a person purporting to act in such a capacity,the senior manager, director or person is guilty of the offence (as well as the entity) and liable to be proceeded against and punished accordingly.
- (3) A person who commits an offence under this section is liable on conviction on indictment to imprisonment for a term not exceeding two years or a fine (or both).
- (4) In this section –

a “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate;

“relevant duty” means a duty provided for by –

  - (a) section 9 of this Act (as far as it relates to Child Sexual Exploitation and Abuse (CSEA) content),
  - (b) section 11 of this Act,
  - (c) section 23 of this Act (as far as it relates to Child Sexual Exploitation and Abuse (CSEA) content),
  - (d) section 25 of this Act,
  - (e) section 31 of this Act, or
  - (f) section 72 of this Act;

“senior manager” has the meaning given in section 93(4) of this Act.”

**Clause 110**

LORD MOYLAN

Page 95, line 5, at end insert –

- “(5A) A notice under subsection (1) may not impose a requirement relating to a service if the effect of that requirement would be to require the provider of the service to weaken or remove end-to-end encryption applied in relation to the service or part of the service.”

***Member’s explanatory statement***

*This amendment would protect end-to-end encryption.*

## LORD STEVENSON OF BALMACARA

Page 95, line 13, at end insert –

- “(7A) A notice under subsection (1) shall lapse at the end of the period of six months beginning with –
- (a) in the first instance, the day on which the notice is given, or
  - (b) if the notice has been renewed, the day on which the renewal took place.
- (7B) OFCOM may extend a notice given under subsection (1) if –
- (a) they have carried out a review of the steps taken by the regulated service since the original notice was given, and
  - (b) on the basis of that review, they believe the renewal of the notice is necessary and proportionate.”

***Member’s explanatory statement***

*This amendment would ensure notices given under Clause 110(1) are subject to six-monthly reviews, with the notice automatically lapsing unless the Ofcom review demonstrates its continuation is necessary and proportionate.*

**After Clause 117**

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

*This is a revised version of the amendment first printed on sheet HL Bill 87(Rev)(m)*

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 provider and 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 with rules made by OFCOM under subsection (2)(c).



**After Clause 117 - continued**

- (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.*

*This is a revised version of the amendment first printed on sheet HL Bill 87(Rev)(m)*

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 OFCOM have reason to suspect that a person within section 91(4) (“P”) holds information relevant to the death of the child, OFCOM must, upon request from a coroner or an interested person in relation to the child, require from P, and provide to the coroner or interested person –
  - (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, and
  - (b) the contact details of a person or group of persons to act as a point of contact and communication with P.
- (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).

**After Clause 117 - continued**

- (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 coroners existing powers nor compels a coroner to take any specific action.*

**Clause 160**

LORD MOYLAN

Page 138, line 12, leave out “psychological or”

***Member’s explanatory statement***

*This amendment confines the “harm” that is relevant for the purposes of an offence under Clause 160 to non-trivial physical (not psychological) harm.*

BARONESS BUSCOMBE

LORD GARNIER

Page 138, line 12, after “psychological” insert “, financial”

***Member’s explanatory statement***

*This amendment, along with the other amendment to Clause 160 in the name of Baroness Buscombe, would widen the scope of the offence to include financial harm and harm to the subject of the false message arising from its communication to third parties.*

Page 138, line 13, after “audience” insert “or to the person or organisation to whom or which the information in it relates”

***Member’s explanatory statement***

*This amendment, along with the other amendment to Clause 160 in the name of Baroness Buscombe, would widen the scope of the offence to include financial harm and harm to the subject of the false message arising from its communication to third parties.*

LORD MOYLAN

*Lord Moylan gives notice of his intention to oppose the Question that Clause 160 stand part of the Bill.*

**Clause 161**

LORD MOYLAN

*Lord Moylan gives notice of his intention to oppose the Question that Clause 161 stand part of the Bill.*

**Clause 163**BARONESS BUSCOMBE  
LORD GARNIER

Page 140, line 11, after “causes” insert “or does an act capable of encouraging or assisting”

***Member’s explanatory statement***

*This amendment would bring within the scope of the communications offences the instigation of such offences by others.*

**Clause 170**

LORD MOYLAN

Page 145, leave out lines 13 and 14

***Member’s explanatory statement***

*This amendment removes the default requirement to treat content as being of a particular kind referred to in subsection (4) if there are reasonable grounds to infer that it is content of that kind.*

Page 145, line 16, after “if,” insert “and only if,”

***Member’s explanatory statement***

*This amendment makes it clear that the approach set out in this subsection is the only one that can be applied for the purposes of making a judgement about content and an offence.*

Page 145, line 16, leave out from “provider” to the end of line 21 and insert “is satisfied that the content is manifestly illegal.”

***Member’s explanatory statement***

*This amendment requires a provider to be satisfied beyond reasonable doubt of the manifest illegality of content for the purposes of Clause 170.*

Page 145, line 22, leave out from “tool,” to “person” in line 24 and insert “where for the purpose of determining whether the content is manifestly illegal the conduct or mental state of a person is to be taken into account, that person is the”

***Member’s explanatory statement***

*This amendment is consequential on an earlier amendment requiring a provider to be satisfied beyond reasonable doubt of the manifest illegality of content for the purposes of Clause 170.*

**Clause 205**

LORD MOYLAN

Page 168, line 46, leave out “or psychological”

***Member’s explanatory statement***

*This amendment revises the definition of “harm” that applies (apart from in relation to Part 10) for the purposes of the Bill to exclude psychological harm.*

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*11 April 2023*

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