

Online Safety Bill

MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

The amendments have been marshalled in accordance with the Instruction of 1st February 2023, as follows –

Clauses 1 to 3	Schedule 11
Schedules 1 and 2	Clauses 86 to 97
Clauses 4 to 31	Schedule 12
Schedule 3	Clauses 98 to 130
Clauses 32 to 37	Schedule 13
Schedule 4	Clauses 131 to 169
Clauses 38 to 53	Schedule 14
Schedules 5 to 7	Clauses 170 to 174
Clauses 54 to 68	Schedule 15
Schedule 8	Clauses 175 to 185
Clauses 69 to 71	Schedule 16
Schedule 9	Clauses 186 to 187
Clauses 72 to 80	Schedule 17
Schedule 10	Clauses 188 to 212
Clauses 81 to 85	Title.

[Amendments marked ★ are new or have been altered]

**Amendment
No.**

After Clause 1

LORD STEVENSON OF BALMACARA
LORD CLEMENT-JONES
BARONESS KIDRON
LORD GILBERT OF PANTEG

1 Insert the following new Clause –

“Purposes of Act

- (1) This Act has the following purposes –
- (a) to secure that regulated internet services comply with UK law and do not endanger public health or national security,
 - (b) to provide a higher level of protection for children than for adults in respect of regulated internet services,

After Clause 1 - continued

- (c) to identify and mitigate the risk of reasonably foreseeable harm arising from the operation and design of regulated internet services,
 - (d) to recognise and respond to the disproportionate level of harms experienced in relation to regulated internet services by people on the basis of one or more protected characteristic,
 - (e) to apply the overarching principle that regulated internet services should be safe by design,
 - (f) to safeguard freedom of expression within the law and privacy in relation to regulated internet services, and
 - (g) to secure that regulated internet services operate with transparency and accountability in respect of online safety.
- (2) The Secretary of State and OFCOM must have regard to the need to fulfil these purposes in exercising functions under this Act.”

Member’s explanatory statement

This new Clause would implement a recommendation of the Joint Committee which carried out pre-legislative scrutiny of the Bill, setting out a range of purposes for the legislation and making clear that both the Secretary of State and OFCOM must have regard to those purposes when exercising their statutory functions.

Clause 3

BARONESS KIDRON
BARONESS HARDING OF WINSCOMBE

2 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.

BARONESS KIDRON
LORD CLEMENT-JONES

3 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.

BARONESS FOX OF BUCKLEY

4 Page 3, line 17, leave out paragraphs (a) and (b) and insert “the service has at least one million monthly United Kingdom users.”

Member's explanatory statement

This amendment replaces the two tests currently set out in subsection (5) of clause 3, relating to a service's links with the United Kingdom, with a requirement that the service have at least a million monthly United Kingdom users.

BARONESS KIDRON

- 5 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.

BARONESS FOX OF BUCKLEY

- 6 Page 3, line 22, leave out paragraphs (a) and (b) and insert "a notice given by OFCOM to the provider of the service under this subsection has effect."

Member's explanatory statement

This amendment provides that a service also has links with the United Kingdom if a notice given by OFCOM to the provider has effect; for further provision about notices of this type, see the new clause inserted after Clause 4 in the name of Baroness Fox of Buckley.

- 7 Page 3, line 34, at end insert –

"(7A) The Secretary of State must make regulations making provision about how the number of a service's monthly United Kingdom users is to be determined for the purposes of subsection (5)."

Member's explanatory statement

This amendment requires the Secretary of State to make provision in regulations about how the number of a service's United Kingdom users is to be determined for the purposes of the test inserted by amendment.

- 8 Page 3, line 38, at end insert –

"(9) For further provision about notices under subsection (6), see section (Further provision about notices under section 3(6))."

Member's explanatory statement

This amendment is consequential on the amendment to Clause 3, page 3, line 22, in the name of Baroness Fox of Buckley.

Schedule 1

LORD MOYLAN

- 9 Page 182, line 2, at end insert –

"Services provided for public benefit

10A A user-to-user service or a search service is exempt if it is provided for the purpose of indexing, manipulation, discussion and making available of content in the public interest, including but not limited to historical, academic, artistic, educational, encyclopaedic, journalistic, and statistical content.

Schedule 1 - continued*Services provided by SMEs*

- 10B A user-to-user service or a search service is exempt if the provider is a small business or a micro business, as those terms are defined in section 33 of the Small Business, Enterprise and Employment Act 2015, read with any regulations under that section.”

Member’s explanatory statement

This amendment exempts SMEs, and organisations working to benefit the public, from regulations contained in the Bill. This is without prejudice to their existing, qualified liability if they distribute unlawful content - such as under the Defamation Act 2013, the Defamation and Malicious Publication (Scotland) Act 2021, or counter-terrorist legislation - which remains unchanged.

Clause 4

LORD MOYLAN

- 10 Page 4, line 8, at end insert –

“(2A) This Act does not apply in relation to moderation actions taken, or not taken, by users of a Part 3 service.”

Member’s explanatory statement

The drafting of some Bill provisions, such as Clauses 17(4)(c) or 65(1), leaves room for debate as to whether community moderation gives rise to liability and obligations for the provider. This amendment, along with the other amendment to Clause 4 in the name of Lord Moylan, clarifies that moderation carried out by the public, for example on Wikipedia, is not fettered by this Bill.

- 11 Page 4, line 9, at end insert –

““moderation action” means –

- (a) in respect of content, the taking down of, restriction of access to, or taking of other actions (for example, adding warning labels) in respect of, such content; or
- (b) in respect of another person, the giving of a warning to such a person, or suspension or banning of that person, or in any way restricting such a person’s ability to use a service.”

Member’s explanatory statement

The drafting of some Bill provisions, such as Clauses 17(4)(c) or 65(1), leaves room for debate as to whether community moderation gives rise to liability and obligations for the provider. This amendment, along with the other amendment to Clause 4 in the name of Lord Moylan, clarifies that moderation carried out by the public, for example on Wikipedia, is not fettered by this Bill.

After Clause 4

BARONESS FOX OF BUCKLEY

12 Insert the following new Clause—

“Further provision about notices under section 3(6)

- (1) If OFCOM are satisfied that the conditions in subsection (2) are met, they must give notice under section 3(6) to the provider of a user-to-user service or a search service.
- (2) The conditions are that—
 - (a) the service is capable of being used in the United Kingdom by individuals, and
 - (b) there are reasonable grounds to believe that there is a material risk of significant harm to individuals in the United Kingdom presented by—
 - (i) in the case of a user-to-user service, user-generated content present on the service or (if the service includes a search engine) search content of the service;
 - (ii) in the case of a search service, search content of the service.
- (3) Where OFCOM propose to give notice under section 3(6) to a provider, they must before giving the notice—
 - (a) give the provider notice (a “warning notice”) of the proposal, setting out the grounds on which they propose to give the notice under section 3(6), and
 - (b) allow the provider a period specified in the warning notice to make representations about the proposal.
- (4) The period specified in the warning notice must be a period of no less than thirty days beginning with the date of the notice.
- (5) Where a warning notice has been given to a provider in respect of a proposed notice under section 3(6), OFCOM may give notice under section 3(6) to the provider only—
 - (a) where the provider has made representations within the period specified in the warning notice, after considering those representations;
 - (b) where no representations have been made by the provider within that period, after the expiry of that period.
- (6) Where OFCOM give notice under section 3(6) to a provider, they must notify the provider of the grounds on which they are giving the notice.
- (7) Notice given under section 3(6) must specify the period for which (subject to a notice of termination being given under subsection (11)) it has effect.
- (8) That period may not exceed the period of 2 years beginning with the date of the notice.
- (9) Notice under section 3(6) ceases to have effect—
 - (a) with the expiry of the period specified in the notice under subsection (7), or
 - (b) if notice of termination is given by OFCOM to the provider under subsection (11), immediately following the date of that notice.

After Clause 4 - continued

- (10) The provider of a service in respect of which a notice under section 3(6) has effect may at any time apply to OFCOM, on the ground that the service no longer meets the conditions set out in subsection (2), for termination of the notice.
- (11) If OFCOM are satisfied, on the basis of evidence submitted by the provider with such a request, that the service no longer meets the conditions set out in subsection (2), OFCOM must give the provider notice of termination of the notice given under section 3(6).”

Member’s explanatory statement

This amendment inserts a new clause setting out the conditions that must be met for OFCOM to give a notice to a provider under clause 3(6) (for which see the amendment to Clause 3, page 3, line 22, in the name of Baroness Fox of Buckley), and describing the procedure for giving such a notice, including provision for a warning notice to be given, and for representations to be made by the provider to OFCOM.

Clause 6

LORD MOYLAN

- 13 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.

LORD CLEMENT-JONES
LORD HUNT OF KINGS HEATH

- 14 Page 5, line 38, at end insert –

“(6A) Providers of regulated user-to-user services are required to comply with duties under subsections (2) to (6) for each such service which they provide to the extent that is proportionate and technically feasible without making fundamental changes to the nature of the service (for example, by removing or weakening end-to-end encryption on an end-to-end encrypted 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.

LORD MOYLAN

- 15 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);

Clause 6 - continued

- (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 8

LORD STEVENSON OF BALMACARA

- 16 Page 7, line 16, after “governance,” insert “terms of service,”

Member’s explanatory statement

This amendment makes clear that “design and operation of a service” includes its terms of service.

Clause 9

LORD MOYLAN

- 17 Page 7, line 30, leave out “prevent individuals from” and insert “protect individuals from harms arising due to them”

Member’s explanatory statement

This amendment, along with the other amendment to Clause 9 in the name of Lord Moylan, adds a requirement to protect individuals from harm, rather than monitoring, prior restraint and/or denial of access. Further obligations to mitigate and manage harm, including to remove unlawful content that is signalled to the service provider, are unchanged by this amendment.

- 18 Page 7, line 40, leave out paragraphs (a) and (b) and insert “take down illegal content, swiftly after the provider is specifically alerted to the presence of that content and its illegality, or becomes aware of it in any other way”.

Member’s explanatory statement

This amendment, along with the other amendment to Clause 9 in the name of Lord Moylan, adds a requirement to protect individuals from harm, rather than monitoring, prior restraint and/or denial of access. Further obligations to mitigate and manage harm, including to remove unlawful content that is signalled to the service provider, are unchanged by this amendment.

Clause 10

BARONESS HARDING OF WINSCOMBE
BARONESS STOWELL OF BEESTON
LORD KNIGHT OF WEYMOUTH
LORD CLEMENT-JONES

- 19 Page 8, line 37, after “services” insert “and application stores”

Member's explanatory statement

This amendment subjects application stores to risk assessments equal to user-to-user services due to their role in distributing online content through apps to children and as a primary facilitator of user-to-user experiences for children.

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

20 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.

LORD STEVENSON OF BALMACARA

21 Page 9, line 44, after “governance,” insert “terms of service,”

Member's explanatory statement

This amendment makes clear that design and operation of a service includes its terms of service.

Clause 11

BARONESS HARDING OF WINSCOMBE
 BARONESS STOWELL OF BEESTON
 LORD KNIGHT OF WEYMOUTH
 LORD CLEMENT-JONES

- 22 Page 10, line 5, after “services” insert “and application stores”

Member’s explanatory statement

This amendment mandates application stores to use proportionate and proactive measures, such as age assurance, to prevent children of any age from encountering primary priority content that is harmful to children, due to their role in distributing online content through apps to children and as a primary facilitator of user-to-user experiences for children.

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

- 23 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.

- 24 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

- 25 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 MOYLAN

- 26 Page 10, line 14, leave out subsection (3)

Member's explanatory statement

This amendment removes requirements for age-verification of all users (adult and minors alike) before they access regulated search engines and user-to-user services. Other obligations to mitigate and manage harm are unchanged. For some platforms, the latter may include age verification, but it would not be a universal expectation for all services subject to the Act.

LORD STEVENSON OF BALMACARA

27★ Page 10, line 21, at end insert –

“(c) prevent children from encountering, by means of the service, paid-for advertising content which has been optimised for them using any personal data other than their age, gender or location.”

Member's explanatory statement

This amendment is to probe what steps, if any, regulated user-to-user services are expected to take to prevent children from encountering targeted advertising. Targeted advertising requires the large-scale collection, profiling and sharing of users' data.

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

28 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.

BARONESS RITCHIE OF DOWNPATRICK

29★ Page 11, line 25, at end insert –

“, except for pornographic content where age verification must always be applied, notwithstanding section 3(3)(a) of the Communications Act 2003.”

Member's explanatory statement

This amendment would require a user-to-user service to apply age verification for pornographic content regardless of their size or capacity.

LORD CLEMENT-JONES

30 Page 11, line 25, at end insert –

“(c) the benefits of the service to children's rights and well-being.”

Member's explanatory statement

This amendment would include reference to children's rights and well-being in determining what is proportional in relation to the safety duties protecting children.

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

31 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.

32 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.

After Clause 11

LORD STEVENSON OF BALMACARA

33 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.

Clause 12

BARONESS MORGAN OF COTES
BARONESS PARMINTER
THE LORD BISHOP OF GLOUCESTER
LORD GRIFFITHS OF BURRY PORT

- 34 Page 12, line 9, leave out “if they wish to increase their control over” and insert “to control”

Member's explanatory statement

This amendment, and another in the name of Baroness Morgan, would require Category 1 providers to ensure that the default options are the safest for users in regard to suicide, self-harm, eating disorders and the abuse and hate content already determined to be harmful as part of the Government's “triple shield” approach.

BARONESS MORGAN OF COTES
BARONESS PARMINTER
THE LORD BISHOP OF GLOUCESTER

- 35 Page 12, line 17, at end insert –
“(3A) A duty to ensure that all features included in a service in compliance with the duty set out in subsection (2) apply their safest settings by default.”

Member's explanatory statement

This amendment, and another in the name of Baroness Morgan, would require Category 1 providers to ensure that the default options are the safest for users in regard to suicide, self-harm, eating disorders and the abuse and hate content already determined to be harmful as part of the Government's “triple shield” approach.

LORD CLEMENT-JONES

- 36 Page 12, line 19, leave out “made available to” and insert “in operation for”

Member's explanatory statement

This amendment, along with Lord Clement-Jones' amendment to Clause 12, page 12, line 23, would require the user empowerment tools in this section to be in operation by default, rather than the default being that users must actively apply them themselves.

- 37 Page 12, line 23, leave out “take advantage of” and insert “disapply”

Member's explanatory statement

This amendment, along with Lord Clement-Jones' amendment to Clause 12, page 12, line 19, would require the user empowerment tools in this section to be in operation by default, rather than the default being that users must actively apply them themselves.

LORD MOYLAN

38 Page 12, line 24, leave out subsection (6)

Member's explanatory statement

This amendment, along with the other amendment to Clause 12 in the name of Lord Moylan, removes requirements on sites to display, on demand, only the parts of a conversation (or in the case of collaboratively-edited content, only the parts of a paragraph, sentence or article) that were written by "verified" users, and to prevent other users from amending (e.g. improving), or otherwise interacting with, such contributions.

39 Page 12, line 26, leave out subsection (7)

Member's explanatory statement

This amendment, along with the other amendment to Clause 12 in the name of Lord Moylan, removes requirements on sites to display, on demand, only the parts of a conversation (or in the case of collaboratively-edited content, only the parts of a paragraph, sentence or article) that were written by "verified" users, and to prevent other users from amending (e.g. improving), or otherwise interacting with, such contributions.

LORD STEVENSON OF BALMACARA

40 Page 12, line 27, after "to" insert "effectively"

Member's explanatory statement

This amendment would bring this subsection into line with subsection (3) by requiring that the systems or processes available to users for the purposes described in subsections (7)(a) and (7)(b) should be effective.

41 Page 12, line 31, at end insert ", and to enable them to see whether another user is verified or non-verified."

Member's explanatory statement

This amendment would require Category 1 services to make visible to users whether another user is verified or non-verified.

42 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.

BARONESS FOX OF BUCKLEY

43 Page 13, line 16, at end insert —

“(12A) For the purposes of this section, discussion or criticism of matters relating to a characteristic included in subsection (11) or (12) is not to be taken of itself as content within those subsections.”

Member's explanatory statement

This amendment aims to ensure that legitimate discussion or criticism around characteristics in sections 12(11) and 12(12) are not automatically treated as 'abusive' or 'inciting hatred', borrowing language from Section 29JA of the Public Order Act 1986.

THE LORD BISHOP OF OXFORD
LORD CLEMENT-JONES

44 Page 13, line 32, at end insert –

- “(16) Services to which these duties apply must make a suitable and sufficient assessment of the extent to which they have carried out the duties in this section including in each assessment material changes from the previous assessment such as new or removed user empowerment features.
- (17) An assessment under subsection (16) must be carried out and sent to OFCOM every six months after the commencement of this Chapter.”

Member's explanatory statement

This amendment strengthens the Triple Shield by requiring service providers to assess how well the user empowerment duty is working and to report to OFCOM.

LORD STEVENSON OF BALMACARA

45 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

BARONESS STOWELL OF BEESTON
BARONESS BULL
BARONESS FEATHERSTONE

46 Insert the following new Clause –

“Adult risk assessment duties

- (1) This section sets out the duties about risk assessments in respect of adult users which apply in relation to Category 1 services.
- (2) A duty to carry out a suitable and sufficient adults' risk assessment.
- (3) A duty to take appropriate steps to keep an adults' risk assessment up to date, including when OFCOM make any significant change to a risk profile that relates to services of the kind in question.
- (4) Before making any significant change to any aspect of a service's design or operation, a duty to carry out a further suitable and sufficient adults' risk assessment relating to the impacts of that proposed change.

After Clause 12 - continued

- (5) An “adults’ risk assessment” of a service of a particular kind means an assessment of the following matters, taking into account the risk profile that relates to services of that kind –
- (a) the user base;
 - (b) the level of risk of adults who are users of the service encountering, by means of the service, each kind of content specified in section 12(10) to (12), taking into account (in particular) algorithms used by the service, and how easily, quickly and widely content may be disseminated by means of the service;
 - (c) the level of risk of functionalities of the service, including user empowerment tools, which facilitate the presence, identification, dissemination, and likelihood of users encountering or being alerted to, content specified in section 12(10) to (12);
 - (d) the extent to which user empowerment tools might result in interference with users’ right to freedom of expression within the law (see section 18);
 - (e) how the design and operation of the service (including the business model, governance, use of proactive technology, measures to promote users’ media literacy and safe use of the service, and other systems and processes) may reduce or increase the risks identified.”

Member’s explanatory statement

This and other amendments in the name of Baroness Stowell relate to risk assessments for adults in relation to platforms’ new duties to provide user empowerment tools. They would require platforms to provide public risk assessments in their terms of service and be transparent about the effect of user empowerment tools on users’ freedom of expression.

47

Insert the following new Clause –

“Safety duties protecting adults

- (1) This section sets out the duties to protect adults’ online safety which apply in relation to Category 1 services.
- (2) A duty to summarise in a publicly available statement the findings of the most recent adults’ risk assessment of a service (including the extent to which there is any interference with the right to freedom of expression within the law).
- (3) A duty to include provisions in the terms of service specifying, in relation to the kind of content and treatment under user empowerment tools specified in section 12, which of those kinds of treatment is to be applied, and the extent to which there is any interference with the right to freedom of expression within the law.
- (4) A duty to explain in the terms of service the provider’s response to the risks relating to content specified in section 12(10) to (12) (as identified in the most recent adults’ risk assessment of the service), by reference to –
 - (a) any provisions of the terms of service included in compliance with the duty set out in subsection (3), and
 - (b) any other provisions of the terms of service designed to mitigate or manage those risks.

After Clause 12 - continued

- (5) If provisions are included in the terms of service in compliance with the duty set out in subsection (3), a duty to ensure that those provisions –
- (a) are clear and accessible, and
 - (b) are applied consistently in relation to content which the provider reasonably considers is content specified under section 12.”

Member’s explanatory statement

See the explanatory statement for Baroness Stowell’s new Clause after Clause 12 on ‘Adult risk assessment duties’.

LORD STEVENSON OF BALMACARA

48

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

BARONESS FOX OF BUCKLEY

49 Page 14, line 4, at end insert –

“(4A) A duty to include provisions in the terms of service specifying by what methods content present on the service is to be identified as content of democratic importance.”

Member’s explanatory statement

This amendment requires providers to include information in their terms of service about how they will identify content of democratic importance, as clause 15 already does in the context of journalistic content.

50 Page 14, line 6, after “(4)” insert “and (4A)”

Member’s explanatory statement

This amendment is consequential on the amendment to Clause 13, page 14, line 4, in the name of Baroness Fox of Buckley.

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

VISCOUNT COLVILLE OF CULROSS

LORD MCNALLY

51 Page 17, line 22, at end insert –

“(d) regulated companies have reasonable grounds to believe that the content will be in the public interest.”

Member's explanatory statement

This amendment adds to the definition of "journalistic content" for the purposes of Part 3, making clear that regulated user-to-user companies must have grounds to believe such content is in the public interest.

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.

After Clause 15

BARONESS MERRON

52 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 16

BARONESS MORGAN OF COTES
LORD CLEMENT-JONES

53 Page 18, line 10, at end insert –

“(3A) Content that constitutes a fraudulent advertisement within the meaning of section 33.”

Member’s explanatory statement

This amendment, and others in the name of Baroness Morgan, would extend the current provisions on transparency reporting, user reporting and user complaints to fraudulent advertisements.

Clause 17

BARONESS MORGAN OF COTES
LORD CLEMENT-JONES

54 Page 19, line 7, at end insert –

“(aa) complaints by users and affected persons about content present on a service which they consider to be content that constitutes a fraudulent advertisement within the meaning of section 33;”

Member’s explanatory statement

This amendment, and others in the name of Baroness Morgan, would extend the current provisions on transparency reporting, user reporting and user complaints to fraudulent advertisements.

55 Page 19, line 12, at end insert –

“(iv) section 33 (*Duties about fraudulent advertising: Category 1 services*);”

Member’s explanatory statement

This amendment, and others in the name of Baroness Morgan, would extend the current provisions on transparency reporting, user reporting and user complaints to fraudulent advertisements.

After Clause 17

LORD STEVENSON OF BALMACARA
LORD CLEMENT-JONES

56 Insert the following new Clause –

“OFCOM reviews of complaints systems

- (1) Within the period of one year beginning on the day on which this Act is passed, and annually thereafter, OFCOM must review the workings of the complaints systems set up by regulated companies under section 17 (duties about complaints procedures), as to –
 - (a) their effectiveness;
 - (b) their cost and efficiency; and
 - (c) such other matters as seem appropriate.

After Clause 17 - continued

- (2) In undertaking the reviews under subsection (1), OFCOM may take evidence from such bodies and individuals as it considers appropriate.
- (3) If OFCOM determines from the nature of the complaints being addressed, and the volumes of such complaints, that systems established under section 17 are not functioning as intended, it may establish an online safety ombudsman with the features outlined in subsections (4) to (8), with the costs of this service being met from the levy on regulated companies.
- (4) The purpose of the online safety ombudsman is to provide an impartial out-of-court procedure for the resolution of any dispute between—
 - (a) a user of a regulated user-to-user service, or a nominated representative for that user, and
 - (b) the regulated service provider,in cases where complaints made under processes which are compliant with section 17 have not, in the view of the user (or their representative), been adequately addressed.
- (5) The ombudsman must allow for a user (or their representative) who is a party to such a dispute to refer their case to the ombudsman if they are of the view that any feature or conduct of one or more provider of a regulated user-to-user service, which is relevant to that dispute, presents (or has presented) a material risk of—
 - (a) significant or potential harm;
 - (b) contravening a user's rights, as set out in the Human Rights Act 1998, including freedom of expression; or
 - (c) failure to uphold terms of service.
- (6) The ombudsman may make special provision for children, including (but not limited to) prioritisation of—
 - (a) relevant provisions under the United Nations Convention on the Rights of the Child; or
 - (b) a child's physical, emotional or psychological state.
- (7) The ombudsman must have regard to the desirability of any dispute resolution service provided by the ombudsman being—
 - (a) free;
 - (b) easy to use, including (where relevant) taking into account the needs of vulnerable users and children;
 - (c) effective and timely;
 - (d) fair and flexible, taking into account different forms of technology and the unique needs of different types of user; and
 - (e) transparent.
- (8) The Secretary of State must ensure that use of any dispute resolution service provided by the ombudsman does not affect the ability of a user (or their representative) to bring a claim in civil proceedings.”

Member's explanatory statement

This new Clause would require Ofcom to conduct regular reviews of the effectiveness of complaints procedures under Clause 17. If Ofcom were of the view that such procedures were not functioning effectively, they would be able to establish an online safety ombudsman with the features outlined in subsections (4) to (8) of the Clause.

Clause 18

LORD KAMALL
BARONESS FEATHERSTONE

57 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.

BARONESS FRASER OF CRAIGMADDIE

58★ Page 20, line 32, at end insert “as defined under the Human Rights Act 1998 and its application to the United Kingdom.”

LORD MOYLAN
LORD STRATHCARRON

59 Page 20, line 37, at end insert –

“(3A) When deciding on, and implementing, safety measures and policies relating to the treatment of content that is misinformation or disinformation, a duty to have regard to the principles that –

- (a) the treatment should be proportionate to the risk of harm presented by the content, and
- (b) where possible, preference should be given to treatment other than taking down or restricting users’ access to that content.”

Member's explanatory statement

This amendment would amend the duties in Clause 18 (duties about freedom of expression and privacy) so as to require platforms to have regard to the need to address harmful misinformation and disinformation on their platforms proportionately through treatment other than content restriction or take down wherever possible.

LORD STEVENSON OF BALMACARA

60 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.

BARONESS FOX OF BUCKLEY

61 Page 20, line 38, at end insert –

“(3A) A duty to –

- (a) operate a service using proportionate systems, processes and policies designed to ensure that as great a weight is given to users’ right to freedom of expression within the law as to safety when making decisions about –
 - (i) how to treat content (especially decisions about whether to take it down or restrict users’ access to it), and
 - (ii) whether to take action against a user generating, uploading or sharing content,
- (b) ensure that the systems, processes and policies mentioned in subsection (a) apply in the same way to a wide diversity of political, social, religious and philosophical opinion.”

Member's explanatory statement

This amendment would apply a more robust free speech duty to Category 1 services (large social media platforms). It borrows language from Clause 13 of the Bill (‘Duties to protect content of democratic importance’).

LORD KAMALL
BARONESS FEATHERSTONE

62 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.

LORD HOPE OF CRAIGHEAD

63 Page 21, line 20, at end insert –

“references to freedom of expression are to the freedom to impart ideas, opinions or information (referred to in Article 10(1) of the Convention as it has effect for the purposes of the Human Rights Act 1998) by means of speech, writing or images (including in electronic form);”

Member's explanatory statement

This amendment seeks to provide a definition of the phrase "freedom of expression" for the purposes of this clause: see the definition that was inserted by a Government amendment into Clause 1 of the Higher Education (Freedom of Speech) Bill, in inserted section A1 of the Higher Education and Research Act 2017.

BARONESS STOWELL OF BEESTON

BARONESS BULL

BARONESS FEATHERSTONE

64 Page 21, line 26, at end insert –

“(ca) sections (*Adult risk assessment duties*) and (*Safety duties protecting adults*),”

Member's explanatory statement

See the explanatory statement for Baroness Stowell's new Clause after Clause 12 on 'Adult risk assessment duties'.

LORD STEVENSON OF BALMACARA

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 19

LORD RUSSELL OF LIVERPOOL

BARONESS HARDING OF WINSCOMBE

LORD KNIGHT OF WEYMOUTH

BARONESS KIDRON

65 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 20

LORD MOYLAN

66 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

67 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.

68 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).

69 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).

LORD STEVENSON OF BALMACARA

70 Page 25, line 22, leave out “a publicly available statement” and insert “terms of service”

Member’s explanatory statement

This amendment, and others in the name of Lord Stevenson of Balmacara, replace references to publicly available statements of platforms’ policies or technologies with references to their “terms of service”.

71 Page 25, line 26, leave out “a publicly available statement” and insert “terms of service”

Member's explanatory statement

This amendment, and others in the name of Lord Stevenson of Balmacara, replace references to publicly available statements of platforms' policies or technologies with references to their "terms of service".

- 72 Page 25, line 30, leave out "publicly available statement" and insert "terms of service"

Member's explanatory statement

This amendment, and others in the name of Lord Stevenson of Balmacara, replace references to publicly available statements of platforms' policies or technologies with references to their "terms of service".

After Clause 23

LORD MOYLAN

- 73 Insert the following new Clause –

"Illegal content duty for Category 2A services

Safety duty about illegal content: Category 2A services

- (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.

After Clause 23 - continued

- (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 24

BARONESS KIDRON

74★

Page 26, line 17, leave out paragraphs (a) to (e) and insert—

- “(a) the level of risk that children who are users of the service encounter the harms set out in Schedule (*Online harms to children*) by means of the service;
- (b) the level of risk presented to children by such harms 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, or machine generated harms;
 - (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;
 - (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, it is important that providers reflect on these risks, so they are not forgotten and can be built into future development of the service.

LORD STEVENSON OF BALMACARA

75

Page 26, line 38, after “governance,” insert “terms of service,”

Member's explanatory statement

This amendment makes clear that design and operation of a service includes its terms of service.

Clause 25

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

76 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.

77 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

78 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 STEVENSON OF BALMACARA

79 Page 27, line 32, leave out “a publicly available statement” and insert “terms of service”

Member's explanatory statement

This amendment, and others in the name of Lord Stevenson of Balmacara, replace references to publicly available statements of platforms’ policies or technologies with references to their “terms of service”.

80 Page 27, line 41, leave out “a publicly available statement” and insert “terms of service”

Member's explanatory statement

This amendment, and others in the name of Lord Stevenson of Balmacara, replace references to publicly available statements of platforms' policies or technologies with references to their "terms of service".

- 81 Page 27, line 45, leave out "publicly available statement" and insert "terms of service"

Member's explanatory statement

This amendment, and others in the name of Lord Stevenson of Balmacara, replace references to publicly available statements of platforms' policies or technologies with references to their "terms of service".

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

- 82 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.

BARONESS RITCHIE OF DOWNPATRICK

- 83★ Page 28, line 6, at end insert—

“, except for pornographic content where age verification must always be applied, notwithstanding section 3(3)(a) of the Communications Act 2003.”

Member's explanatory statement

This amendment would require a search service to apply age verification for pornographic content regardless of their size or capacity.

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

- 84 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.

- 85 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 26

BARONESS MORGAN OF COTES
LORD CLEMENT-JONES

86 Page 28, line 39, at end insert –

“(3A) Content that constitutes a fraudulent advertisement within the meaning of section 34.”

Member’s explanatory statement

This amendment, and others in the name of Baroness Morgan, would extend the current provisions on transparency reporting, user reporting and user complaints to fraudulent advertisements.

Clause 27

BARONESS MORGAN OF COTES
LORD CLEMENT-JONES

87 Page 30, line 3, at end insert –

“(e) complaints by users and affected persons about content present on a service which they consider to be content that constitutes a fraudulent advertisement within the meaning of section 34.”

Member’s explanatory statement

This amendment, and others in the name of Baroness Morgan, would extend the current provisions on transparency reporting, user reporting and user complaints to fraudulent advertisements.

Clause 28

LORD STEVENSON OF BALMACARA

88 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 29

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

89 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".

90 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".

After Clause 29

LORD KNIGHT OF WEYMOUTH

91 Insert the following new Clause—

“Duty to promote users’ media literacy and safe use of the service

- (1) This section sets out the duties to promote media literacy and the safe use of the service which apply in relation to Category 1 services and Category 2A services.
- (2) A duty to put in place measures designed to provide users with an awareness and understanding of—
 - (a) the nature and characteristics of the content that may be encountered on the service,
 - (b) the potential impact that such content may have on persons that encounter it,
 - (c) the design and operation of the service, including how content is selected or recommended to users of the service,
 - (d) the functionality of the service (including how that functionality may reduce or increase the impact referred to in paragraph (b)), and
 - (e) how a user of the service may —
 - (i) establish the reliability and accuracy of content encountered on the service,
 - (ii) locate accurate and impartial information from authoritative sources (on the service or elsewhere),
 - (iii) protect their personal information, and
 - (iv) control what content they receive and share.
- (3) A duty to ensure that the measures mentioned in subsection (2) are promoted to both new and existing users of the service.
- (4) A duty to regularly evaluate the effectiveness of such measures.”

Member's explanatory statement

This amendment would insert a new duty on Category 1 and Category 2A services requiring them to put in place measures to promote the media literacy of users so that they can use the service safely.

Clause 30

BARONESS KIDRON
LORD CLEMENT-JONES
BARONESS HARDING OF WINSCOMBE

92 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

93 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

After Schedule 3 - continued

- 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;
 - (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 33

LORD LUCAS

94 Page 34, line 11, at end insert –

“(d) provide a specified authority with specified information in a specified form related to the fraudulent advertisement and to the person who sought to place it on the service.”

Member’s explanatory statement

This amendment is to make possible a flow of information to the UK authorities to enable them to analyse the flow of fraudulent advertisements and to help take action against those promoting them.

Clause 34

LORD LUCAS

95 Page 35, line 11, at end insert –

“(d) provide a specified authority with specified information in a specified form related to the fraudulent advertisement and to the person who sought to place it on the service.”

Member’s explanatory statement

This amendment is to make possible a flow of information to the UK authorities to enable them to analyse the flow of fraudulent advertisements and to help take action against those promoting them.

After Clause 35

BARONESS FINLAY OF LLANDAFF
LORD KNIGHT OF WEYMOUTH
BARONESS MORGAN OF COTES
BARONESS TYLER OF ENFIELD

96 Insert the following new Clause –

“Suicide or self-harm content duties

- (1) This section sets out the duties about harmful suicide or self-harm content which apply to all regulated user-to-user services and providers of search services.
- (2) This section applies in respect of all service users.
- (3) A duty to include provisions in the terms of service specifying the treatment to be applied in relation to harmful suicide or self-harm content.
- (4) The possible kinds of treatment of content referred to in subsection (3) are –
 - (a) taking down the content;
 - (b) restricting users’ access to the content;
 - (c) limiting the recommendation or promotion of the content.
- (5) A duty to explain in the terms of service the provider’s response to the risks relating to harmful suicide or self-harm content by reference to –

After Clause 35 - continued

- (a) any provisions of the terms of service included in compliance with the duty set out in subsection (3), and
 - (b) any other provisions of the terms of service designed to mitigate or manage those risks.
- (6) If provisions are included in the terms of service in compliance with the duty set out in subsection (3), a duty to ensure that those provisions –
- (a) are clear and accessible, and
 - (b) are applied consistently in relation to content which meets the definition in section 207.”

Member’s explanatory statement

This creates a duty for providers of regulated user-to-user services and search services to manage harmful suicide or self-harm content, applicable to both children and adults.

Clause 36

BARONESS MORGAN OF COTES
 BARONESS KIDRON
 THE LORD BISHOP OF GLOUCESTER
 LORD KNIGHT OF WEYMOUTH

- 97 Page 36, line 42, at end insert “including a code of practice describing measures for the purpose of compliance with the relevant duties so far as relating to violence against women and girls.”

Member’s explanatory statement

This amendment would impose an express obligation on OFCOM to issue a code of practice on violence against women and girls rather than leaving it to OFCOM’s discretion. This would ensure that Part 3 providers recognise the many manifestations of online violence, including illegal content, that disproportionately affect women and girls.

LORD KNIGHT OF WEYMOUTH

- 98 Page 36, line 42, at end insert –
- “(3A) OFCOM must prepare and issue a code of practice for providers of Part 3 services describing measures recommended for the purpose of compliance with duties set out in section (*Duty to promote users’ media literacy and safe use of the service*).”

Member’s explanatory statement

*This amendment would require Ofcom to produce a code of practice to help platforms comply with the new requirement to promote media literacy to be inserted by the separate amendment to insert a new *Duty to promote users’ media literacy and safe use of the service*.*

BARONESS MERRON
 LORD CLEMENT-JONES

- 99 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.

LORD STEVENSON OF BALMACARA

100 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.

LORD MOYLAN

101 Page 38, line 10, at end insert –

“(h) section 18 (*freedom of expression and privacy*).”

After Clause 37

LORD MOYLAN

BARONESS FOX OF BUCKLEY

102 Insert the following new Clause –

“Codes of practice: duty to have special regard to freedom of expression

- (1) In exercising the functions listed in subsection (2), OFCOM must have special regard to the importance of protecting the rights of users of a service and (in relation to search services and combined services) interested persons to freedom of expression within the law.
- (2) The functions are –
 - (a) preparing a code of practice under section 36;
 - (b) preparing amendments to a code of practice under section 36 or 43;
 - (c) preparing a modified draft of a code of practice under section 39(6).”

Member's explanatory statement

This amendment inserts a new Clause requiring OFCOM to have special regard to rights to freedom of expression within the law in preparing a code of practice or amendments to a code, and in making modifications to a draft code by virtue of a direction given by the Secretary of State under Clause 39.

Schedule 4

BARONESS RITCHIE OF DOWNPATRICK

103★ Page 194, line 35, at end insert –

“, except for pornographic content where age verification must always be applied, notwithstanding section 3(3)(a) of the Communications Act 2003;”

Member's explanatory statement

This amendment would require Ofcom's code of practice to apply age verification for pornographic content regardless of size or capacity.

LORD STEVENSON OF BALMACARA

- 104 Page 195, line 17, leave out “than for” and insert “, women and girls, and vulnerable adults (including but not limited to those with disabilities), than for other”

Member’s explanatory statement

This amendment alters one of the online safety objectives outlined in Schedule 4, making clear that women and girls and vulnerable adults should also be afforded a higher standard of protection than other adult users.

LORD CLEMENT-JONES

- 105 Page 195, line 18, after “ages” insert “, including the benefits of the service to their rights and well-being,”

Member’s explanatory statement

This amendment would include reference to children’s rights and well-being in the online safety objectives.

BARONESS BUSCOMBE

LORD GARNIER

- 106 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.

LORD MOYLAN

- 107 Page 196, line 41, at end insert –
 “(6) Codes of practice that describe measures recommended for the purpose of compliance with the duties in section 18 (duties about freedom of expression and privacy) must include a description of proportionate measures for the treatment of misinformation and disinformation that are alternatives to taking down, or restricting users’ access to, content.”

Member’s explanatory statement

This amendment would supplement the provisions on the content of Ofcom’s codes of practice in Schedule 4 to the Bill so that the Code of Practice on the duties about freedom of expression and privacy covered proportionate measures for tackling harmful misinformation and disinformation, other than taking down or restricting access to the content.

LORD CLEMENT-JONES
LORD HUNT OF KINGS HEATH
LORD STRATHCARRON

108 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 38

LORD MOYLAN
BARONESS FOX OF BUCKLEY

109 Page 38, line 23, leave out “the draft to the Secretary of State” and insert “to the Secretary of State –

- (a) the draft, and
- (b) a statement setting out how in preparing the draft OFCOM have complied with the duty set out in section (*Codes of practice: duty to have special regard to freedom of expression*)”.

Member’s explanatory statement

This amendment requires OFCOM, on submitting a draft code to the Secretary of State, also to submit a statement setting out how OFCOM have complied with the duty imposed by the new Clause inserted by the amendment after Clause 37 in the name of Lord Moylan; the effect of subsection (7) of Clause 38 is that this new duty will also apply in relation to a draft of amendments to a code prepared under Clause 36.

LORD STEVENSON OF BALMACARA
LORD CLEMENT-JONES

110 Page 38, line 24, leave out subsections (2) to (8) and insert –

- “(2) Upon receiving the draft code of practice from OFCOM, the Secretary of State must –
 - (a) make a statement confirming they have received the draft code of practice, and
 - (b) lay the draft code of practice before Parliament.
- (3) Unless the Secretary of State intends to give a direction to OFCOM under section 39(1) in relation to the draft, regulations giving effect to the code of practice may not be laid before Parliament unless the Secretary of State has –
 - (a) consulted each devolved authority on the content of the draft code of practice;
 - (b) produced an impact assessment including, but not limited to, an assessment of the impact of the proposed regulations on –
 - (i) human rights and equalities,
 - (ii) freedom of expression, and

Clause 38 - continued

- (iii) employment and labour; and
 - (c) produced an assessment of the impact of the proposed regulations on children and vulnerable adults.
- (4) The Secretary of State may not make regulations under this section until any select committee charged by the relevant House of Parliament with scrutinising regulations made under this section has –
- (a) completed its consideration of the draft code of practice and the impact assessments referred to in subsection (3)(b) and (c), and
 - (b) reported on its deliberation to the relevant House; and
- the report of the committee has been debated in that House, or the period of six weeks beginning on the day on which the committee reported has elapsed.
- (5) The Secretary of State may not lay regulations under this section until they are satisfied that –
- (a) issues raised by a devolved authority have been resolved, or
 - (b) if they have not been resolved, the Secretary of State has informed Parliament of the steps they intend to take in response to the issues raised.”

Member’s explanatory statement

This amendment, which replaces most of the current Clause 38, would require the Secretary of State to publish draft codes of conduct from OFCOM for consideration by relevant committees of both Houses of Parliament.

111 Page 38, line 24, leave out from beginning to second “the” in line 25

Member’s explanatory statement

This amendment removes the reference to the Secretary of State giving a direction to OFCOM under section 39(1).

LORD MOYLAN
BARONESS FOX OF BUCKLEY

112 Page 38, line 26, after “draft” insert “and statement submitted under subsection (1)(b)”

Member’s explanatory statement

This amendment requires the Secretary of State, on laying a draft code before Parliament, also to lay the statement submitted by virtue of the new duty imposed by the amendment to page 38 line 23 in the name of Lord Moylan; the effect of subsection (7) of Clause 38 is that this requirement will also apply in the context of a draft of amendments to a code laid before Parliament.

Clause 39

BARONESS STOWELL OF BEESTON
 VISCOUNT COLVILLE OF CULROSS
 LORD CLEMENT-JONES
 LORD STEVENSON OF BALMACARA

- 113** Page 39, line 6, leave out “direct OFCOM to modify” and insert “write to OFCOM with observations on”

Member’s explanatory statement

This amendment, and others in the name of Baroness Stowell, would remove the Secretary of State’s ability to direct Ofcom on a draft code of practice. The Secretary of State may instead write to Ofcom with non-binding observations to which Ofcom must have regard.

BARONESS STOWELL OF BEESTON
 LORD STEVENSON OF BALMACARA
 LORD CLEMENT-JONES
 VISCOUNT COLVILLE OF CULROSS

- 114** Page 39, line 9, leave out paragraph (a).

Member’s explanatory statement

See explanatory statement to Baroness Stowell’s amendment at page 39, line 6.

BARONESS STOWELL OF BEESTON
 VISCOUNT COLVILLE OF CULROSS
 LORD CLEMENT-JONES
 LORD STEVENSON OF BALMACARA

- 115** Page 39, line 37, leave out paragraph (a) and insert –
 “(a) have regard to the letter,”

Member’s explanatory statement

See explanatory statement to Baroness Stowell’s amendment at page 39, line 6.

LORD MOYLAN
 BARONESS FOX OF BUCKLEY

- 116** Page 39, line 44, after “direction” insert “(including how in revising the draft OFCOM have complied with the duty set out in section (Codes of practice: duty to have special regard to freedom of expression))”

Member’s explanatory statement

This amendment requires the document submitted by OFCOM to the Secretary of State under Clause 39(6)(c) to specify how, in revising the draft of a code of practice in accordance with a direction given under Clause 39, OFCOM have complied with the duty imposed by the new Clause after Clause 37 in the name of Lord Moylan.

BARONESS STOWELL OF BEESTON
 VISCOUNT COLVILLE OF CULROSS
 LORD STEVENSON OF BALMACARA
 LORD CLEMENT-JONES

- 117 Page 40, line 1, leave out “or more further directions requiring OFCOM to modify” and insert “further letter providing observations on”

Member’s explanatory statement

This and other amendments in the name of Baroness Stowell would remove the Secretary of State’s power to issue unlimited directions to Ofcom on a draft code of practice, replacing it with a maximum of two exchanges of letters.

- 118 Page 40, line 6, leave out “is satisfied that no further modifications to the draft are required” and insert “has received a draft from OFCOM (with or without modifications) following the Secretary of State’s letter”

Member’s explanatory statement

See explanatory statement to Baroness Stowell’s amendment at page 40, line 1.

LORD STEVENSON OF BALMACARA

- 119 Leave out Clause 39 and insert the following new Clause –

“Secretary of State’s observations on OFCOM codes of practice

- (1) The Secretary of State may write to OFCOM with observations on codes that OFCOM is preparing.
- (2) The Secretary of State must publish any letter under subsection (1) within one week of the letter being sent.
- (3) OFCOM must have due regard to the contents of letters from the Secretary of State but those contents do not amount to a direction.
- (4) When OFCOM submits a code of practice to the Secretary of State, OFCOM must publish a description of how it has had due regard to any letter under subsection (1).”

Member’s explanatory statement

This amendment would remove the Secretary of State’s ability to direct Ofcom, replacing it with an ability for the Secretary of State to write to Ofcom with non-binding observations regarding their codes of practice.

Clause 40

BARONESS STOWELL OF BEESTON
 VISCOUNT COLVILLE OF CULROSS
 LORD CLEMENT-JONES
 LORD STEVENSON OF BALMACARA

- 120 Page 40, line 31, leave out “negative” and insert “affirmative”

Member’s explanatory statement

See explanatory statement to Baroness Stowell’s amendment at page 40, line 1.

LORD STEVENSON OF BALMACARA

Lord Stevenson of Balmacara gives notice of his intention to oppose the Question that Clause 40 stand part of the Bill.

Member's explanatory statement

This amendment is consequential on a previous amendment to replace Clause 39. If that amendment were passed, Clause 40 would become redundant.

Clause 43

LORD MOYLAN
BARONESS FOX OF BUCKLEY

121 Page 42, line 25, at end insert –

“(4A) On issuing the amendments of the code of practice, OFCOM must also issue a statement setting out how, in preparing the amendments, OFCOM have complied with the duty set out in section (*Codes of practice: duty to have special regard to freedom of expression*).”

Member's explanatory statement

This amendment requires OFCOM, on issuing minor amendments of a code that have not required consultation, or to be laid before Parliament, to issue a statement setting out how OFCOM have complied with the duty imposed by the new Clause after Clause 37 in the name of Lord Moylan.

Clause 44

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

122 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

123 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

Clause 48 - continued

- (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

LORD MCNALLY
LORD LIPSEY

124 Page 47, line 6, at end insert—

- “(2A) Subsection (2)(e) does not apply in respect of a regulated user-to-user service which is operated by an organisation which—
- (a) is a relevant publisher (within the meaning of section 41 of the Crime and Courts Act 2013), and
 - (b) has an annual UK turnover in excess of £100 million.”

Member’s explanatory statement

This amendment seeks to ensure the comment sections of the largest newspaper websites are subject to the Online Safety Bill’s regulatory regime.

BARONESS KIDRON
LORD SARFRAZ

125 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 50

LORD LIPSEY
LORD MCNALLY

- 126** Page 48, line 29, leave out from “which” to end of line 30 on page 49 and insert “is a member of an approved regulator within the meaning of section 42 of the Crime and Courts Act 2013.”

Member’s explanatory statement

This amendment expands the definition of a recognised news publisher to incorporate any entity that is a member of an approved regulator, while excluding publishers which are not members of such a regulator (unless they are broadcasters and therefore regulated by Ofcom).

LORD STEVENSON OF BALMACARA
LORD CLEMENT-JONES

- 127** Page 48, line 40, after “complaints” insert “in a timely manner”

Member’s explanatory statement

This amendment changes the definition of “recognised news publisher” to only capture those organisations who have policies and procedures for handling and resolving complaints in a timely manner.

Clause 53

THE LORD BISHOP OF DERBY

- 128** Page 51, line 31, after first “content” insert “and content related to modern slavery and trafficking of children”

Member’s explanatory statement

These amendments in the name of the Lord Bishop of Derby will include content related to modern slavery and trafficking of children, including for the purposes of criminal exploitation, within the definition of “illegal content” for the purposes of the Online Safety Bill.

LORD STEVENSON OF BALMACARA

- 129** Page 51, line 32, at end insert “, and these offences include those relating to modern slavery and trafficking in respect of children.”

Member’s explanatory statement

This amendment makes clear that offences relating to modern slavery and trafficking in respect of children fit within the umbrella term of “CSEA content”. Other amendments in the name of Lord Stevenson of Balmacara insert specific offences into Schedule 6.

THE LORD BISHOP OF DERBY

- 130** Page 51, line 35, after “content” insert “and content related to modern slavery and trafficking of children”

Member’s explanatory statement

These amendments in the name of the Lord Bishop of Derby will include content related to modern slavery and trafficking of children, including for the purposes of criminal exploitation, within the definition of “illegal content” for the purposes of the Online Safety Bill.

Schedule 6

LORD STEVENSON OF BALMACARA

131 Page 201, line 9, at end insert –

- “8A An offence under any of the following provisions of the Modern Slavery Act 2015, so far as the offence relates to children –
- (a) section 1 (slavery, servitude and forced or compulsory labour);
 - (b) section 2 (human trafficking);
 - (c) section 4 (committing offence with intent to commit offence under section 2).”

Member’s explanatory statement

This amendment expands the list of child sexual exploitation and abuse offences to include various offences under the Modern Slavery Act 2015, where such offences involve children.

THE LORD BISHOP OF DERBY

132 Page 201, line 16, at end insert –

“Offences of modern slavery and trafficking related to children

- 9A An offence under any of the following provisions of the Modern Slavery Act 2015 –
- (a) section 1 (slavery, servitude and forced or compulsory labour);
 - (b) section 2 (human trafficking);
 - (c) section 4 (committing offence with intent to commit an offence under section 2).”

Member’s explanatory statement

These amendments in the name of the Lord Bishop of Derby will include content related to modern slavery and trafficking of children, including for the purposes of criminal exploitation, within the definition of “illegal content” for the purposes of the Online Safety Bill.

LORD STEVENSON OF BALMACARA

133 Page 201, line 42, at end insert –

- “12A An offence under any of the following provisions of the Human Trafficking and Exploitation (Scotland) Act 2015, so far as the offence relates to children –
- (a) section 1 (offence of human trafficking);
 - (b) section 3 (exploitation for purposes of offence of human trafficking);
 - (c) section 4 (slavery, servitude and forced or compulsory labour).”

Member’s explanatory statement

This amendment expands the list of child sexual exploitation and abuse offences to include various offences under the Human Trafficking and Exploitation (Scotland) Act 2015, where such offences involve children.

Schedule 7

LORD STEVENSON OF BALMACARA THE LORD BISHOP OF ST ALBANS

134 Page 202, line 9, at end insert –

“Animal cruelty

- A1 An offence under section 4 of the Animal Welfare Act 2006 (unnecessary suffering).
- A2 An offence under section 19 of the Animal Health and Welfare (Scotland) Act 2006 (unnecessary suffering).
- A3 An offence under section 1 of the Wild Mammals (Protection) Act 1996 (offences).”

Member’s explanatory statement

This amendment adds a number of animal welfare offences to the list of priority offences outlined in Schedule 7.

LORD MOYLAN

135 Page 202, line 22, leave out paragraph (c)

Member’s explanatory statement

This would remove offences under section 5 of the Public Order Act 1986 from the category of priority illegal content as set out in Schedule 7.

BARONESS FRASER OF CRAIGMADDIE

136★ Page 203, line 14, at end insert –

- “10A An aggravation to an offence or an offence under the Hate Crime and Public Order (Scotland) Act 2021.”

Member’s explanatory statement

This is a probing amendment to understand why the Government have not included the Hate Crime and Public Order (Scotland) Act 2021 in Schedule 7.

BARONESS BUSCOMBE LORD GARNIER

137 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.

Clause 54

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

138 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.

Clause 57

LORD MOYLAN

139 Page 54, line 25, leave out “must” and insert “may”

Member's explanatory statement

This amendment, along with the other amendment to Clause 57 in the name of Lord Moylan, is consequential to the amendments proposed to Clause 12 in the name of Lord Moylan. Together they remove compulsory identity verification, with the intention of reducing the amount of personal data transacted.

140 Page 54, line 29, after “provided” insert “or other personal data to be processed”

Member's explanatory statement

This amendment, along with the other amendment to Clause 57 in the name of Lord Moylan, is consequential to the amendments proposed to Clause 12 in the name of Lord Moylan. Together they remove compulsory identity verification, with the intention of reducing the amount of personal data transacted.

Clause 58

LORD STEVENSON OF BALMACARA
 LORD CLEMENT-JONES

141 Page 55, line 10, leave out subsections (2) and (3) and insert –

- “(2) In producing the guidance (including revised or replacement guidance), OFCOM must have regard to –
- (a) ensuring providers offer forms of identity verification which are likely to be accessible to vulnerable adult users and users with protected characteristics under the Equality Act 2010,
 - (b) promoting competition, user choice, and interoperability in the provision of identity verification,
 - (c) protection of rights, including rights to privacy, freedom of expression, safety, access to information, and the rights of children, and
 - (d) alignment with other relevant guidance and regulation, including with regards to age assurance and age verification.
- (3) In producing the guidance (including revised or replacement guidance), OFCOM must set minimum standards for the forms of identity verification which Category 1 services must offer, addressing –

Clause 58 - continued

- (a) effectiveness,
 - (b) privacy and security,
 - (c) accessibility,
 - (d) timeframes for disclosure to law enforcement in case of criminal investigations,
 - (e) transparency for the purposes of research and independent auditing, and
 - (f) user appeal and redress mechanisms.
- (3A) Before producing the guidance (including revised or replacement guidance), OFCOM must consult—
- (a) the Information Commissioner,
 - (b) the Digital Markets Unit,
 - (c) persons whom OFCOM consider to have technological expertise relevant to the duty set out in section 57(1),
 - (d) persons who appear to OFCOM to represent the interests of users, including (but not limited to) vulnerable adult users of Category 1 services, and
 - (e) such other persons as OFCOM consider appropriate.”

Member’s explanatory statement

This amendment would require Ofcom to set a framework of principles and minimum standards for the user verification duty.

After Clause 58

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

142

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).
- (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));

After Clause 58 - continued

- (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
 - (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;

After Clause 58 - continued

- (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 59

THE LORD BISHOP OF DERBY

- 143** Page 55, line 29, after “content” insert “and content related to modern slavery and trafficking of children”

Member’s explanatory statement

These amendments in the name of the Lord Bishop of Derby will extend Part 4 Chapter 2 provision in relation to detecting and reporting child sexual exploitation and abuse content to content related to modern slavery and trafficking of children, including for the purposes of child criminal exploitation.

- 144** Page 55, line 33, after “content” insert “and content related to modern slavery and trafficking of children”

Member’s explanatory statement

These amendments in the name of the Lord Bishop of Derby will extend Part 4 Chapter 2 provision in relation to detecting and reporting child sexual exploitation and abuse content to content related to modern slavery and trafficking of children, including for the purposes of child criminal exploitation.

- 145** Page 55, line 38, after “content” insert “and content related to modern slavery and trafficking of children”

Member’s explanatory statement

These amendments in the name of the Lord Bishop of Derby will extend Part 4 Chapter 2 provision in relation to detecting and reporting child sexual exploitation and abuse content to content related to modern slavery and trafficking of children, including for the purposes of child criminal exploitation.

- 146** Page 55, line 42, after “content” insert “and content related to modern slavery and trafficking of children”

Member's explanatory statement

These amendments in the name of the Lord Bishop of Derby will extend Part 4 Chapter 2 provision in relation to detecting and reporting child sexual exploitation and abuse content to content related to modern slavery and trafficking of children, including for the purposes of child criminal exploitation.

- 147 Page 56, line 2, after “content” insert “and content related to modern slavery and trafficking of children”

Member's explanatory statement

These amendments in the name of the Lord Bishop of Derby will extend Part 4 Chapter 2 provision in relation to detecting and reporting child sexual exploitation and abuse content to content related to modern slavery and trafficking of children, including for the purposes of child criminal exploitation.

- 148 Page 56, line 15, after “content” insert “and content related to modern slavery and trafficking of children”

Member's explanatory statement

These amendments in the name of the Lord Bishop of Derby will extend Part 4 Chapter 2 provision in relation to detecting and reporting child sexual exploitation and abuse content to content related to modern slavery and trafficking of children, including for the purposes of child criminal exploitation.

Clause 63**THE LORD BISHOP OF DERBY**

- 149 Page 57, line 30, after “content” insert “and content related to modern slavery and trafficking of children”

Member's explanatory statement

These amendments in the name of the Lord Bishop of Derby will extend Part 4 Chapter 2 provision in relation to detecting and reporting child sexual exploitation and abuse content to content related to modern slavery and trafficking of children, including for the purposes of child criminal exploitation.

- 150 Page 57, line 33, after “content” insert “and content related to modern slavery and trafficking of children”

Member's explanatory statement

These amendments in the name of the Lord Bishop of Derby will extend Part 4 Chapter 2 provision in relation to detecting and reporting child sexual exploitation and abuse content to content related to modern slavery and trafficking of children, including for the purposes of child criminal exploitation.

- 151 Page 57, line 42, after “content” insert “and content related to modern slavery and trafficking of children”

Member's explanatory statement

These amendments in the name of the Lord Bishop of Derby will extend Part 4 Chapter 2 provision in relation to detecting and reporting child sexual exploitation and abuse content to content related to modern slavery and trafficking of children, including for the purposes of child criminal exploitation.

- 152 Page 58, line 4, after first “content” insert “and content related to modern slavery and trafficking of children”

Member's explanatory statement

These amendments in the name of the Lord Bishop of Derby will extend Part 4 Chapter 2 provision in relation to detecting and reporting child sexual exploitation and abuse content to content related to modern slavery and trafficking of children, including for the purposes of child criminal exploitation.

- 153 Page 58, line 7, after “content” insert “and content related to modern slavery and trafficking of children”

Member's explanatory statement

These amendments in the name of the Lord Bishop of Derby will extend Part 4 Chapter 2 provision in relation to detecting and reporting child sexual exploitation and abuse content to content related to modern slavery and trafficking of children, including for the purposes of child criminal exploitation.

Before Clause 64

LORD STEVENSON OF BALMACARA

- 154★ Insert the following new Clause –

“Requirement on regulated services to maintain appropriate terms of service

- (1) A provider of a regulated Part 3 service must provide adequate and appropriate terms of service in respect of its service.
- (2) A provider of a Part 3 service must include in its terms of service provisions covering the matters listed in section 12.”

Member's explanatory statement

This new Clause would introduce a statutory requirement around platforms' terms of service, ensuring they are adequate and appropriate in the context of the services offered.

Clause 65

LORD MOYLAN
LORD STRATHCARRON

- 155 Page 59, line 33, leave out subsections (2) to (12)

Member's explanatory statement

This amendment probes whether and why the Bill makes the free speech policies of foreign-run platforms enforceable under statute in the UK.

BARONESS FOX OF BUCKLEY

- 156 Page 60, line 13, at end insert “and with particular regard to the importance of free expression of content of democratic importance.”

Member’s explanatory statement

This amendment ensures providers have regard to free expression when making decisions about content of democratic importance.

LORD PICKLES
 BARONESS DEECH
 LORD AUSTIN OF DUDLEY
 LORD WEIR OF BALLYHOLME

- 157 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.
- (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.”

After Clause 65

THE LORD BISHOP OF OXFORD
 LORD CLEMENT-JONES

- 158 Insert the following new Clause –

“Provider assessment of duties under sections 64 and 65

- (1) Providers of Category 1 services must carry out a suitable and sufficient assessment of the extent to which they have carried out the duties under sections 64 and 65 ensuring that assessment reflects any material changes to terms of service.
- (2) An assessment under subsection (1) must be sent to OFCOM every six months after the commencement of this Chapter.”

Member's explanatory statement

This amendment strengthens the Triple Shield by requiring companies to assess how their terms of service duties are being delivered and report to OFCOM.

Clause 66

LORD STEVENSON OF BALMACARA
LORD CLEMENT-JONES

159 Page 61, line 10, leave out “Category 1” and insert “Part 3”

Member's explanatory statement

This amendment broadens the requirement for Ofcom to produce guidance in relation to duties under Clauses 64 and 65(3) to (7), from Category 1 providers to any provider covered by Part 3 of the Bill.

LORD STEVENSON OF BALMACARA

160 Page 61, line 11, after “sections” insert “(Requirement on regulated services to maintain appropriate terms of service),”

Member's explanatory statement

This amendment makes clear that Ofcom guidance under Clause 66 must outline how a platform's terms of service would be considered “adequate and appropriate”, as required under a new Clause in the name of Lord Stevenson of Balmacara.

Before Schedule 8

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

161 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

Before Schedule 8 - continued

- (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.
- 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.

Schedule 8

BARONESS MORGAN OF COTES
LORD CLEMENT-JONES

162 Page 206, line 12, after first “content” insert “, fraudulent advertisements”

Member’s explanatory statement

This amendment, and others in the name of Baroness Morgan, would extend the current provisions on transparency reporting, user reporting and user complaints to fraudulent advertisements.

163 Page 206, line 14, after first “content” insert “, fraudulent advertisements”

164 Page 206, line 16, after “content” insert “, fraudulent advertisements”

Schedule 8 - continued

LORD STEVENSON OF BALMACARA

165 Page 206, line 19, after first “The” insert “scope and”

Member’s explanatory statement

This amendment would broaden the transparency requirements around user-to-user services’ terms of service, ensuring information can be sought on the scope of these terms and not just their application.

BARONESS MORGAN OF COTES

LORD CLEMENT-JONES

166 Page 206, line 21, after first “content” insert “, fraudulent advertisements”

167 Page 206, line 23, after first “content” insert “, fraudulent advertisements”

168 Page 207, line 2, after first “content” insert “, fraudulent advertisements”

169 Page 207, line 10, after “content” insert “, fraudulent advertisements”

170 Page 207, line 13, after first “content” insert “, fraudulent advertisements”

BARONESS FEATHERSTONE

171 Page 207, line 14, at end insert –

“14A Measures taken or in use by a provider to –

- (a) identify the incidence of content that promotes or perpetuates violence against women, girls and vulnerable groups,
- (b) remove content mentioned in paragraph (a), and
- (c) remove users who are identified as creating or disseminating content mentioned in paragraph (a).”

Member’s explanatory statement

This amendment would include a specific reference to content promoting or perpetuating violence against women, girls and vulnerable groups in the transparency reporting requirements for providers.

BARONESS MORGAN OF COTES

LORD CLEMENT-JONES

172 Page 207, line 26, after first “content” insert “, fraudulent advertisements”

173 Page 207, line 29, after first “content” insert “, fraudulent advertisements”

LORD STEVENSON OF BALMACARA

174 Page 207, line 30, leave out paragraph 21 and insert –

“21 The scope and application of the terms of service.”

Member's explanatory statement

This amendment would broaden the transparency requirements around search engines' terms of service, ensuring information can be sought on the scope of these terms and not just their application.

BARONESS MORGAN OF COTES

LORD CLEMENT-JONES

- 175 Page 207, line 33, after first “content” insert “, fraudulent advertisements”
- 176 Page 207, line 38, after first “content” insert “, fraudulent advertisements”
- 177 Page 208, line 9, after first “content” insert “, fraudulent advertisements”
- 178 Page 208, line 17, after “content” insert “, fraudulent advertisements”
- 179 Page 208, line 20, after first “content” insert “, fraudulent advertisements”
- 180 Page 208, line 38, leave out “Chapter 2 or 3 of”
- 181 Page 209, line 23, at end insert –
 ““fraudulent advertisements” has the same meaning as in Part 3
 (see sections 33 and 34);”

After Clause 69

LORD BETHELL

- 182 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),

After Clause 69 - continued

- (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 70

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

183 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

184 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;
- (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
LORD FARMER

185 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 79

LORD KNIGHT OF WEYMOUTH
BARONESS MORRIS OF YARDLEY

186 Page 70, line 33, at end insert –

“(d) that the fees required under section 75 are sufficient to include funding by OFCOM of work by third parties to provide adequate media literacy resources pursuant to OFCOM's duties under section 11 of the Communications Act 2003 (duty to promote media literacy) so far as relating to regulated services.”

Member's explanatory statement

This amendment seeks to probe whether there are sufficient funds available to Ofcom to fulfil its online media literacy duties, and whether it is an appropriate use of the fees in Part 6 of the Bill.

Clause 82

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

187 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.

After Clause 82

LORD KNIGHT OF WEYMOUTH
LORD STOREY
BARONESS MORRIS OF YARDLEY

188 Insert the following new Clause—

“Duties of OFCOM under section 11 of the Communications Act 2003

- (1) Section 11 of the Communications Act 2003 (duty to promote media literacy) is amended in accordance with subsections (2) to (4).
- (2) In subsection (1), after paragraph (e) insert—
 - “(f) to bring about, or to encourage others to bring about, the development of a better public awareness of the business models, systems and processes by which regulated user-to-user services and regulated search services (see section 3 of the Online Safety Act 2023) provide online services, the potential harms encountered by users of these services, the user empowerment tools available to users of such services, and the complaints procedures available to users of such services.”
- (3) In subsection (2), after paragraph (b) insert—
 - “(c) made available on any other online environment operated by providers of regulated user-to-user services (see section 3 of the Online Safety Act 2023).”
- (4) After subsection (2) insert—
 - “(3) OFCOM must, within the period of two years beginning with the day on which the Online Safety Act 2023 is passed, and every three years thereafter, submit to the Secretary of State—
 - (a) an opinion regarding the level of media literacy among the general public in relation to regulated services as defined in section 3 of the Online Safety Act 2023, and
 - (b) an assessment of the extent to which OFCOM has fulfilled the duties under subsection (1), insofar as they apply to activity regulated under the Online Safety Act 2023.
 - (4) Upon receipt of any assessment under subsection (3), the Secretary of State must, as soon as practicable, lay the assessment before both Houses of Parliament.””

Member’s explanatory statement

This amendment would update Ofcom’s media literacy duties under the Communications Act 2003, including introducing a requirement for Ofcom to lay an assessment of its online media literacy work before Parliament (via the Secretary of State) every three years.

After Clause 84

LORD KNIGHT OF WEYMOUTH
LORD STOREY
BARONESS MORRIS OF YARDLEY

189 Insert the following new Clause—

“Duties in respect of other public bodies

- (1) This section applies for the purposes of this Act.
- (2) Public bodies, including (but not limited to) the Office for Standards in Education, Children's Services and Skills, have a duty to co-operate with OFCOM in the pursuance of its duties so far as they relate to activity regulated by OFCOM under this Act, whether or not those duties are established by this Act.”

Member’s explanatory statement

This amendment seeks to probe how to ensure other public bodies assist Ofcom in its relevant regulatory functions, including education bodies such as Ofsted helping to raise the quality of media literacy in schools and colleges.

LORD CLEMENT-JONES

190 Insert the following new Clause—

“General duties in relation to privacy

- (1) Subsection (2) applies where OFCOM is deciding whether to exercise any powers under this Act.
- (2) OFCOM must have regard to—
 - (a) whether what is sought to be achieved by the relevant exercise of powers under this Act 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 requires that OFCOM has a duty in relation to privacy when exercising powers granted to it under the provisions of the Online Safety Bill.

LORD MOYLAN
BARONESS FOX OF BUCKLEY

191 Insert the following new Clause –

“OFCOM guidance: duty to have special regard to freedom of expression

- (1) In producing, revising, or replacing any guidance under this Act, OFCOM must have special regard to the importance of protecting the rights of users of a service, and (in relation to search services and combined services) interested persons, to freedom of expression within the law.
- (2) On publishing any guidance under this Act, including revised or replacement guidance, OFCOM must publish a statement accompanying such guidance setting out how it has complied with the duty set out in subsection (1).”

Member’s explanatory statement

This amendment inserts a new Clause requiring OFCOM to have special regard to freedom of expression in producing, revising or replacing any guidance under the Bill; and to publish a statement, with any guidance, setting out how it has complied with this duty.

Schedule 11

BARONESS MORGAN OF COTES
BARONESS PARMINTER
LORD MANN
BARONESS DEECH

192 Page 216, line 30, after “service” insert “, including significant risk of harm,”

Member’s explanatory statement

There are some platforms which, whilst attracting small user numbers, are hubs for extreme hateful content and should be regulated as larger user-to-user services.

BARONESS KIDRON

193 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.

After Clause 86

LORD STEVENSON OF BALMACARA

194 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 89

THE LORD BISHOP OF OXFORD
LORD CLEMENT-JONES
VISCOUNT COLVILLE OF CULROSS

195 Page 79, line 4, at end insert—

- “(d) the risk of future harm to individuals in the United Kingdom from the operation of Part 3 services;
 - (e) the risk of future harm to individuals in the United Kingdom from the regulatory regime being insufficiently future-proofed.
- (1A) Risk assessments under paragraph (1)(e) must identify areas where the regulatory regime is not future-proofed and the risks arising from these areas.”

Member’s explanatory statement

This amendment would require OFCOM to carry out a broad risk assessment (for the purpose of future-proofing only) to fully inform the Secretary of State’s periodic review of the regime. The risk assessment is not linked to enforcement action and will not impact freedom of expression.

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

196 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.

LORD STEVENSON OF BALMACARA

197 Page 79, line 41, after “governance,” insert “terms of service,”

Member's explanatory statement

This amendment makes clear that “design and operation of a service” includes its terms of service.

Clause 91

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

198 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

199 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 94

LORD CLEMENT-JONES

200 Page 84, line 29, at end insert “or a regulator or self-regulatory body”

Member's explanatory statement

This amendment expands the definition of “skilled person” to include a regulator or self-regulatory body.

After Clause 103

LORD CLEMENT-JONES

201 Insert the following new Clause—

“Co-operation and disclosure of information: UK regulators

- (1) OFCOM may co-operate with a regulator established by statute or a recognised self-regulatory body in the United Kingdom, including by disclosing online safety information to that regulator, for the purposes of—
 - (a) tackling harm arising from illegal content, primary priority content harmful to children, priority content harmful to children, or priority content that is harmful to adults, or
 - (b) criminal investigations or proceedings relating to a matter to which the regulator’s functions relate.
- (2) Where information is disclosed to a person in reliance of subsection (1), the person may not—
 - (a) use the information for a purpose other than the purpose for which it was disclosed, or
 - (b) further disclose the information, except with OFCOM’s consent (which may be general or specific) or in accordance with an order of a court or tribunal.
- (3) A disclosure of information under subsection (1) does not breach—
 - (a) any obligation of confidence owed by the person making the disclosure, or
 - (b) any other restriction on the disclosure of information.”

Member’s explanatory statement

This new Clause seeks to enable cooperation between relevant domestic regulators, similar to the power in Clause 103 in relation to overseas regulators.

Clause 110

LORD STEVENSON OF BALMACARA
BARONESS STOWELL OF BEESTON

202 Page 93, line 34, after “so,” insert “and, in relation to encrypted messaging services, if relevant requirements under the Regulation of Investigatory Powers Act 2000 have been satisfied,”

Member’s explanatory statement

This amendment is to probe whether Ofcom will have to satisfy any of the requirements under the Regulation of Investigatory Powers Act 2000 before giving a notice to a regulated service which offers private messaging with end-to-end encryption.

LORD CLEMENT-JONES
BARONESS BENNETT OF MANOR CASTLE
LORD STRATHCARRON
LORD MOYLAN

203 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.

204 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.

LORD MOYLAN

205 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

206 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 110

LORD CLEMENT-JONES
LORD HUNT OF KINGS HEATH
LORD STRATHCARRON

207 Insert the following new Clause –

“Approval of notices under section 110(1) by a judge

- (1) OFCOM may not issue a notice under section 110(1) unless it has been approved by a judge.

After Clause 110 - continued

- (2) In deciding whether to approve a decision to give a notice under section 110(1) the judge must review OFCOM's decision as to the following matters –
 - (a) whether the notice is necessary, and
 - (b) whether the notice is proportionate to what is sought to be achieved.
- (3) In doing so the judge must –
 - (a) apply the same principles as would be applied by a court on an application for judicial review, and
 - (b) consider the matters referred to in subsection (2) with a sufficient degree of care to ensure that the judge complies with the duties imposed by section (*General duties in relation to privacy*).
- (4) In this section “judge” means –
 - (a) in relation to England and Wales, a judge entitled to exercise the jurisdiction of the Crown Court;
 - (b) in relation to Scotland, a judge of the High Court of Justiciary or the sheriff;
 - (c) in relation to Northern Ireland, a Crown Court judge.”

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 issue of Technology Notices by ensuring privacy is considered before a notice is given, and strengthening the review and appeals process.

208

Insert the following new Clause –

“Review of notices under section 110(1) by OFCOM

- (1) A provider who is given a notice under section 110(1) may, within 28 days of receiving such a notice, refer the notice back to OFCOM.
- (2) There is no requirement for a provider who has referred a notice under subsection (1) to comply with the notice until OFCOM has reviewed the notice in accordance with subsection (3).
- (3) OFCOM must review any notice referred to it under subsection (1).
- (4) Before deciding the review, OFCOM must appoint and consult an independent technical reviewer and an independent legal reviewer.
- (5) The independent technical reviewer must consider –
 - (a) the technical feasibility of the notice referred, and
 - (b) the financial consequences for the provider who has made the reference.
- (6) The independent legal reviewer must consider whether the notice is necessary and proportionate.
- (7) The independent technical reviewer and the independent legal reviewer must –
 - (a) give the provider and OFCOM the opportunity to provide evidence, or make representations, to them before reaching their conclusions, and
 - (b) report their conclusions to –
 - (i) the provider, and
 - (ii) OFCOM.

After Clause 110 - continued

- (8) OFCOM may after considering the conclusions of the independent legal reviewer and the independent technical reviewer -
- (a) vary or revoke the notice under section 110(1), or
 - (b) give a notice under this section to the provider confirming its effect.
- (9) The independent legal reviewer must be –
- (a) a person who holds or has held a high judicial office (within the meaning of Part 3 of the Constitutional Reform Act 2005) or is or has been a member of the Judicial Committee of the Privy Council,
 - (b) a person who satisfies the judicial-appointment eligibility condition on a seven year basis,
 - (c) an advocate or solicitor in Scotland of at least seven years' standing, or
 - (d) a member of the Bar of Northern Ireland or solicitor of the Court of Judicature of Northern Ireland of at least seven years' standing.
- (10) The independent technical reviewer must be a person appearing to OFCOM to have the necessary skills and technical knowledge in particular in relation to –
- (a) the impact of changing technology on the exercise of powers under section 110, and
 - (b) the availability and development of techniques to use such powers while minimising interference with privacy.”

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 112

LORD CLEMENT-JONES
LORD HUNT OF KINGS HEATH
LORD STRATHCARRON

209 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.

210 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
LORD STRATHCARRON

- 211** 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
LORD STRATHCARRON

- 212** 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.

- 213** 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
LORD STRATHCARRON

- 214** 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 –

After Clause 115 - continued

- (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

215

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.

After Clause 117 - continued

- (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).
- (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.

216

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

After Clause 117 - continued

- (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.

After Clause 118

LORD BETHELL
LORD CURRY OF KIRKHARLE
BARONESS RITCHIE OF DOWNPATRICK
BARONESS BENJAMIN

217

Insert the following new Clause –

“Notice by OFCOM to payment-services providers and ancillary services

- (1) Where OFCOM have issued a provisional notice of contravention to a regulated service, which specifies the person has failed, or is failing, to comply with a duty or requirement in section 72 (duties about regulated provider pornographic content), it must give notice of that fact to any payment-services provider or ancillary service.
- (2) A notice under subsection (1) must –
 - (a) identify the regulated service in such manner as OFCOM considers appropriate,
 - (b) state whether the provisional notice of contravention relates to a duty under subsection (2) or (3) of section 72, or duties under both,
 - (c) give OFCOM’s reasons for their opinion that the regulated service has failed, or is failing, to comply with it, and
 - (d) provide such further particulars as OFCOM consider appropriate.
- (3) When OFCOM give notice under this section, OFCOM must inform the regulated service, by notice, that they have done so.
- (4) In this section –
 - “ancillary service” has the same meaning as in section 131(11);

After Clause 118 - continued

“payment-services provider” means a person who appears to OFCOM to provide services, in the course of a business, which enable funds to be transferred in connection with the payment by any person for access to pornographic content made available on the internet by the regulated service;

“pornographic content” has the meaning given by section 70(2);

“provisional notice of contravention” has the same meaning as in section 118(1).”

Member’s explanatory statement

This new Clause requires OFCOM to notify payment-service providers and ancillary services of a regulated service which is found to have breached duties relating to pornographic content.

Clause 119

LORD STEVENSON OF BALMACARA

218

Page 102, line 25, at end insert –

“Section (Requirement on regulated services to maintain appropriate terms of service)	Adequacy and appropriateness of terms of service”
---	---

Member’s explanatory statement

This amendment adds a new Clause in the name of Lord Stevenson of Balmacara to the table of requirements enforceable by Ofcom.

After Clause 135

LORD KNIGHT OF WEYMOUTH

LORD MANN

BARONESS DEECH

LORD AUSTIN OF DUDLEY

219

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.

After Clause 135 - continued

- (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.”

Member’s explanatory statement

This new Clause is to probe whether the Bill’s enforcement provisions will apply to companies or subsidiaries which would be considered by a user to be associated with a regulated entity. The amendment makes a regulated entity liable for activities taken throughout its supply chain, with the aim of preventing a platform from outsourcing responsibility or risk to a subsidiary or contractor.

After Clause 137

LORD MOYLAN
BARONESS FOX OF BUCKLEY

220 Insert the following new Clause—

“Freedom of expression

Freedom of expression and enforcement action

In exercising their functions under this Chapter, OFCOM must have special regard to the importance of protecting the rights of users of a service and (in relation to search services and combined services) interested persons to freedom of expression within the law.”

Member’s explanatory statement

This amendment requires OFCOM, in exercising functions under Chapter 6 of Part 7, to have special regard to the importance of protecting freedom of expression.

Clause 139

BARONESS MERRON

221 Page 124, line 20, leave out “chairman” and insert “chair”

Member's explanatory statement

This amendment removes an instance of gendered language, replacing "chairman" with "chair".

222 Page 124, line 30, at end insert –

“(3A) The chair of the committee must not be a person representing one or more providers of regulated services.

(3B) At the chair’s discretion, members of the committee who are not persons representing providers of regulated services may meet without persons representing the interests of providers of regulated services being present.”

Member's explanatory statement

This amendment is to probe what steps, if any, Ofcom is expected to take to avoid the advisory committee on disinformation and misinformation becoming dominated by representatives of regulated services.

LORD KNIGHT OF WEYMOUTH

LORD CLEMENT-JONES

223 Page 124, line 42, at end insert –

“(6) OFCOM must establish the committee within the period of 6 months beginning with the day on which this Act is passed.”

Member's explanatory statement

This amendment would require Ofcom to establish the advisory committee on disinformation and misinformation within 6 months of the Bill being passed.

LORD KNIGHT OF WEYMOUTH

224 Page 124, line 42, at end insert –

“(6) The first report published under subsection (5) must include an assessment of whether an OFCOM code of practice on tackling disinformation and misinformation on regulated services would be effective and in the public interest.”

Member's explanatory statement

This amendment would require the advisory committee on disinformation and misinformation to consider, as part of its first report, whether a dedicated Ofcom code of practice on this area would be effective and in the public interest.

BARONESS FOX OF BUCKLEY

Baroness Fox of Buckley gives notice of her intention to oppose the Question that Clause 139 stand part of the Bill.

Member's explanatory statement

This amendment would remove the advisory committee on misinformation and disinformation from the Bill.

After Clause 139

LORD KNIGHT OF WEYMOUTH

225 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.
- (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 142

LORD KNIGHT OF WEYMOUTH
BARONESS KIDRON
BARONESS NEWLOVE
BARONESS TYLER OF ENFIELD

226 Insert the following new Clause—

“Establishment of the Advocacy Body for Children

- (1) There is to be a body corporate (“the Advocacy Body for Children”) to represent the interests of child users of regulated services.
- (2) A “child user”—
 - (a) means any person aged 17 years or under who uses or is likely to use regulated internet services, and
 - (b) includes both any existing child user and any future child user.
- (3) The functions of the Advocacy Body for Children must include, in relation to regulated services—
 - (a) representing the interests of child users;
 - (b) the protection and promotion of those interests;
 - (c) monitoring implications of this Act’s implementation for those interests;
 - (d) consideration of children’s rights under the United Nations Convention on the Rights of the Child, including (but not limited to) their participation rights;
 - (e) any other matter connected with those interests.
- (4) The “interests of child users” means the interests of children in relation to the discharge by any regulated company of its duties under this Act, including—
 - (a) safety duties about illegal content, in particular CSEA content,
 - (b) safety duties protecting children,
 - (c) children’s access assessment duties, and
 - (d) other enforceable requirements relating to children.
- (5) The Advocacy Body for Children must—
 - (a) have due regard to the interests of child users that display one or more protected characteristics within the meaning of the Equality Act 2010,
 - (b) assess emerging threats to child users of regulated services and bring information regarding those threats to OFCOM, and
 - (c) publish an annual report related to the interests of child users.
- (6) The Advocacy Body for Children may undertake research on its own account.
- (7) The Advocacy Body for Children is to be defined as a statutory consultee for OFCOM’s regulatory decisions which impact upon the interests of children.
- (8) To establish the Advocacy Body for Children, OFCOM must—
 - (a) appoint an organisation or organisations known to represent all children in the United Kingdom to be designated with the functions under this section, or
 - (b) create an organisation to carry out the designated functions.
- (9) The governance functions of the Advocacy Body for Children must—

After Clause 142 - continued

- (a) with the exception of the approval of its budget, remain independent of OFCOM, and
 - (b) include representation of child users by young people under the age of 25 years.
- (10) The budget of the Advocacy Body for Children will be subject to annual approval by the board of OFCOM.
- (11) The Secretary of State must give directions to OFCOM as to how it should recover the costs relating to the expenses of the Advocacy Body for Children, or the Secretary of State in relation to the establishment of the Advocacy Body, through the provisions to require a provider of a regulated service to pay a fee (as set out in section 75)."

Member's explanatory statement

This new Clause would require Ofcom to establish a new advocacy body for child users of regulated internet services to represent, protect and promote their interests.

Clause 144

LORD MCNALLY
LORD LIPSEY

- 227 Page 127, line 3, at end insert “, and on the impact the recognised news publisher exemption and journalistic content duties have on –
- (a) the efficacy of the Act's regulatory framework, and
 - (b) the securing of public safety from online harms.”

Member's explanatory statement

This amendment seeks to extend the terms of Ofcom's reporting on the OSB regime's effect on news publisher content to also include an assessment of whether the news publisher exemption (and journalistic content duties) is adversely affecting the regime in any way, and its objective of protecting the public.

Clause 145

BARONESS FRASER OF CRAIGMADDIE

- 228 Page 127, line 41, at end insert –
- “(za) separate analyses of online experiences in respect of users in –
- (i) England,
 - (ii) Wales,
 - (iii) Scotland, and
 - (iv) Northern Ireland,”

After Clause 145

LORD STEVENSON OF BALMACARA

- 229 Insert the following new Clause –
- “Reviews of OFCOM's transparency reporting**
- (1) OFCOM must produce a report assessing the extent to which –

After Clause 145 - continued

- (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.
 - (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
LORD CLEMENT-JONES

230

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.

LORD BETHELL

231 Page 128, line 35, leave out "two years" and insert "six months"

After Clause 146

LORD ALLAN OF HALLAM

232 Insert the following new Clause—

"OFCOM's report about age assurance technologies

- (1) OFCOM must produce a report—
 - (a) describing the technical solutions that may be used to determine the age of users of a regulated service for the purposes of compliance with this Act,
 - (b) exploring the legal and other issues which arise from the use of each of these solutions,
 - (c) assessing the extent to which each solution is effective in restricting access to age-inappropriate content and services, and
 - (d) assessing the financial and other costs associated with each solution.
- (2) For the purposes of this section age assurance technologies includes—
 - (a) the collection of personal data from users as proof of age;
 - (b) the collection of financial data from users as proof of age;
 - (c) the use by services of third-party data sources as proof of user age;
 - (d) the use of biometric data to estimate the age of users;
 - (e) the use of behavioural data to estimate the age of users;
 - (f) such other technologies as may be developed as indicators of user age.
- (3) In preparing the report, OFCOM must consult—
 - (a) the Information Commissioner,
 - (b) the Centre for Data Ethics and Innovation,
 - (c) civil society organisations with relevant expertise,
 - (d) persons who appear to OFCOM to represent providers of age assurance services,
 - (e) persons who appear to OFCOM to represent providers of regulated services, and
 - (f) such other persons as OFCOM consider appropriate.
- (4) OFCOM must publish the report within the period of six months beginning with the day on which this section comes into force.
- (5) OFCOM must send a copy of the report to the Secretary of State, and the Secretary of State must lay it before Parliament.
- (6) OFCOM must produce an updated version of the report annually."

Member's explanatory statement

This amendment would require OFCOM to publish and regularly update a report evaluating technologies for age assurance with the aim of improving public and Parliamentary understanding of the different options available.

LORD BETHELL
LORD CLEMENT-JONES
LORD KNIGHT OF WEYMOUTH

233

Insert the following new Clause—

“Access to information by approved independent researchers

- (1) OFCOM may appoint an approved independent researcher to access information from providers of regulated services where OFCOM consider that it is necessary and proportionate to do so for the following research purposes—
 - (a) improving the understanding of the following risks and mitigations in relation to regulated services—
 - (i) risks of illegal content, as set out in section 8, and
 - (ii) risks to children, as set out in section 10;
 - (b) improving the functioning of the following duties, including safeguards to protect the rights of users—
 - (i) user empowerment duties,
 - (ii) duties to protect content of democratic importance,
 - (iii) duties to protect news publisher content,
 - (iv) duties to protect journalistic content,
 - (v) duties about content reporting, and
 - (vi) duties about freedom of expression and privacy.
- (2) Where OFCOM make such an appointment, they must notify the provider or providers about the appointment and the relevant matters to be explored in the research.
- (3) It is the duty of—
 - (a) the provider of the service (“P”),
 - (b) any person who works for (or used to work for) P, or is providing (or used to provide) services to P related to the relevant matters, and
 - (c) other providers of internet services,
 to give the approved independent researcher all such assistance as they may reasonably require to carry out their research.
- (4) For the purposes of this section a person is an independent researcher if the person—
 - (a) can demonstrate independence from commercial interests, and
 - (b) can demonstrate that appropriate legal, technical and organisational safeguards are in place to protect the confidentiality of the data and the rights of any individuals affected.
- (5) For the purposes of this section, research must—
 - (a) be carried out on behalf of an organisation pursuing scientific research such as educational institutions and non-profit organisations pursuant to a public interest mission,

After Clause 146 - continued

- (b) be disseminated publicly free of charge, without prejudice to the protection of the rights to privacy and data protection of any individual, and
 - (c) be clearly linked to the purposes in subsection (1).
- (6) References in this section to “approved” independent researcher are to an independent researcher meeting the requirements of subsection (4) and who—
- (a) has had an application to OFCOM following procedures laid out in the code of practice under section (*Code of practice on access to data by researchers*) approved, and
 - (b) appears to OFCOM to have the skills necessary to carry out the research about the relevant matters.”

234

Insert the following new Clause—

“Code of practice on access to data by researchers

- (1) OFCOM must prepare and issue a code of practice for researchers and providers of regulated services describing measures and procedures for the purpose of enabling access to information by researchers, including—
 - (a) describing how, and to what extent, persons carrying out independent research into online safety matters and systemic risks from online platforms are currently able to obtain information from providers of regulated services to inform their research,
 - (b) exploring the legal and other issues which currently constrain the sharing of information for such purposes,
 - (c) assessing how access to information for such purposes might be achieved to the greatest extent possible while ensuring the protections of the rights of service users and protection of confidential information, and
 - (d) exploring the appropriate structure and processes for a public organisation to manage and provide oversight of access by researchers.
- (2) The code of practice under subsection (1) must include guidance on relevant issues, including—
 - (a) criteria for assessing and approving research applications,
 - (b) measures for removing undue barriers to proportionate access by independent researchers to data and information from regulated services,
 - (c) criteria for vetting different researchers,
 - (d) appropriate conditions, processes and interfaces for safe access to information by researchers, and
 - (e) safeguards required, including the protection of personal data, the protection of confidential information, and the security of the services.
- (3) In preparing a draft of a code of practice or amendments to a code of practice under this section, OFCOM must—
 - (a) consult persons as mentioned in subsection (4),
 - (b) follow the procedures for issuing codes of practice laid out in section 38,

After Clause 146 - continued

- (c) include in each transparency report under section 145 an assessment of the effectiveness of the code.
- (4) The persons that OFCOM must consult are –
 - (a) the Information Commissioner,
 - (b) the Centre for Data Ethics and Innovation,
 - (c) United Kingdom Research and Innovation,
 - (d) persons who appear to OFCOM to represent providers of regulated services,
 - (e) persons representing the interests of United Kingdom users of regulated services,
 - (f) persons whom OFCOM consider to have expertise in independent research into regulated services, and
 - (g) such other persons as OFCOM consider appropriate.
- (5) OFCOM must publish the code within the period of six months beginning with the day on which this section comes into force.
- (6) OFCOM must send a copy of the code to the Secretary of State, and the Secretary of State must lay it before Parliament.”

After Clause 147

LORD STOREY
LORD CLEMENT-JONES

235 Insert the following new Clause –

“OFCOM duty to promote media literacy

As part of their duty to promote media literacy under section 11 of the Communications Act 2003, OFCOM must take such steps as they consider appropriate to improve the media literacy of the public in relation to regulated services, including by encouraging educational initiatives in schools.”

BARONESS PRASHAR
LORD STOREY

236 Insert the following new Clause –

“CHAPTER 8**MEDIA LITERACY****OFCOM duty to promote media literacy**

- (1) OFCOM must take such steps as they consider appropriate to improve the media literacy of the public in relation to regulated services.
- (2) OFCOM’s performance of their duty in subsection (1) must include pursuit of the following objectives –
 - (a) to reach audiences who are less engaged with, and harder to reach through, traditional media literacy initiatives;
 - (b) to address gaps in the availability and accessibility of media literacy provisions in relation to regulated services targeted at vulnerable users;

After Clause 147 - continued

- (c) to build the resilience of the public to disinformation and misinformation by using media literacy in relation to regulated services as a tool to reduce the harm from that misinformation and disinformation;
 - (d) to promote greater availability and effectiveness of media literacy initiatives in relation to regulated services and other measures, including by –
 - (i) carrying out, commissioning or encouraging educational initiatives designed to improve the media literacy of the public in relation to regulated services;
 - (ii) seeking to ensure, through the exercise of OFCOM’s online safety functions, that providers of regulated services take appropriate measures to improve users’ media literacy;
 - (iii) seeking to improve the evaluation of the effectiveness of the initiatives and measures mentioned in paragraph (d)(i) and (ii) (including by increasing the availability and adequacy of data to make those evaluations);
 - (e) to promote better coordination within the media literacy sector in relation to regulated services.
- (3) OFCOM may prepare such guidance about the matters referred to in subsection (2) as they consider appropriate.
 - (4) Where OFCOM prepare guidance under subsection (3) they must –
 - (a) publish the guidance (and any revised or replacement guidance), and
 - (b) keep the guidance under review.
 - (5) OFCOM must co-operate with the Secretary of State in the exercise and performance of their duty under this section.”

237

Insert the following new Clause –

“Media Literacy Strategy

- (1) OFCOM must prepare a strategy which sets out how they intend to undertake their duty to promote media literacy in relation to regulated services under section (*OFCOM duty to promote media literacy*).
- (2) The strategy must –
 - (a) set out the steps OFCOM propose to take to achieve the pursuit of the objectives set out in section (*OFCOM duty to promote media literacy*);
 - (b) set out the organisations, or types of organisations, that OFCOM propose to work with in undertaking the duty;
 - (c) explain why OFCOM consider that the steps they propose to take will be effective;
 - (d) explain how OFCOM will assess the extent of the progress that is being made under the strategy.
- (3) In preparing the strategy OFCOM must have regard to the need to allocate adequate resources for implementing the strategy.
- (4) OFCOM must publish the strategy within the period of 6 months beginning with the day on which this section comes into force.

After Clause 147 - continued

- (5) Before publishing the strategy (or publishing a revised strategy), OFCOM must consult—
 - (a) persons with experience in or knowledge of the formulation, implementation and evaluation of policies and programmes intended to improve media literacy,
 - (b) the advisory committee on disinformation and misinformation, and
 - (c) any other person that OFCOM consider appropriate.
- (6) If OFCOM have not revised the strategy within the period of 3 years beginning with the day on which the strategy was last published, they must either—
 - (a) revise the strategy, or
 - (b) publish an explanation of why they have decided not to revise it.
- (7) If OFCOM decide to revise the strategy they must—
 - (a) consult in accordance with subsection (5), and
 - (b) publish the revised strategy.”

238 Insert the following new Clause—

“Media literacy strategy: progress report

- (1) OFCOM must report annually on the delivery of the strategy required under section (*Media Literacy Strategy*).
- (2) The report must include—
 - (a) a description of the steps taken in accordance with the strategy during the year to which the report relates, and
 - (b) an assessment of the extent to which those steps have had an effect on the media literacy of the public with regards to regulated services in that year.
- (3) The assessment referred to in subsection (2)(b) must be made in accordance with the approach set out by OFCOM in the strategy (see section (*Media Literacy Strategy*)(2)(d)).
- (4) OFCOM must—
 - (a) publish the progress report in such manner as they consider appropriate, and
 - (b) send a copy of the report to the Secretary of State who must lay a copy before both Houses of Parliament.”

THE LORD BISHOP OF OXFORD
LORD CLEMENT-JONES
VISCOUNT COLVILLE OF CULROSS

239 Insert the following new Clause—

“Future management of risk

- (1) OFCOM must produce a report on trends in risk of harm to individuals in the United Kingdom presented by regulated services, as well as approaches to minimising any such risk.

After Clause 147 - continued

- (2) The report may recommend amendments to the regime to keep it up to date by bringing new types of harm into scope, or to remove existing areas from scope where risks are no longer evident, where OFCOM consider it would be prudent to amend.
- (3) The report may make reference to any reports by OFCOM under section 56 (regulations under section 54: OFCOM review and report)."

Member's explanatory statement

This amendment would strengthen future-proofing of the regime by requiring OFCOM to produce a forward-looking report based on a risk assessment to inform the Secretary of State's review of the regime.

BARONESS FINLAY OF LLANDAFF
LORD KNIGHT OF WEYMOUTH
BARONESS TYLER OF ENFIELD

240

Insert the following new Clause –

“Duty to report about suicide and harm

- (1) OFCOM must produce a report to advise the Secretary of State regarding –
 - (a) the extent of content, content prioritisation and delivery methods on regulated user-to-user services and providers of search services which could be seen to –
 - (i) incite, encourage, provoke or assist serious self-harm,
 - (ii) incite, encourage, provoke or assist activities associated with encouraging the pursuit of a desire for someone else to kill themselves and associated activities, and
 - (iii) incite, encourage, provoke or assist serious harm against others;
 - (b) the extent to which new communications and internet technologies could be seen to –
 - (i) incite, encourage, provoke or assist serious self-harm in a way equivalent, even if through different means, to (a)(i),
 - (ii) incite, encourage, provoke or assist activities associated with suicidal ideation in a way equivalent, even if through different means, to (a)(ii), and
 - (iii) incite, encourage, provoke or assist serious harm against others in a way equivalent, even if through different means, to (a)(iii);
 - (c) the effectiveness of current regulation in addressing the content described in paragraphs (a) and (b);
 - (d) recommendations for changes in regulation regarding regulated user-to-user services and providers of search services and new communications and internet technologies in order to increase efficacy of prevention of serious self-harm, suicide and harm to others.
- (2) Content for the purpose of subsection (1) is a communication which is sent or posted by a person (A) to an individual or to a group of individuals (whether or not the individual or group of individuals is a specific person, group of persons, or class of persons known to or identified by (A)), and which –
 - (a) incites, encourages, provokes or assists an individual or group of individuals to cause themselves serious physical harm;

After Clause 147 - continued

- (b) incites, encourages, provokes or assists suicidal ideation, or assists activities associated with the suicidal ideation of associated activities, in an individual or group of individuals;
- (c) incites, encourages, provokes or assists an individual or group of individuals to commit serious harm against another person (or group of persons);

and is sent without reasonable excuse whether or not serious physical harm occurs in consequence.”

Member’s explanatory statement

Subsection (1)(a) would ensure OFCOM are aware of how social media platforms, as they currently exist, can encourage suicidal behaviour, self-harm behaviour and behaviour that harms others. Subsection (1)(b) ensures OFCOM can carry out the task set out in subsection (1)(a) when new technologies arise.

BARONESS FINLAY OF LLANDAFF

241 Insert the following new Clause—

“Duty to report on behaviours using new technologies

OFCOM must report to the Secretary of State regarding—

- (a) the extent to which new communications and internet technologies allow for behaviours which would be in breach of the law if the equivalent behaviours were committed in the physical world;
- (b) the effectiveness of current regulation in addressing the content described in paragraph (a);
- (c) recommendations for legislative revision in response to findings under paragraphs (a) and (b).”

Member’s explanatory statement

This amendment, and the consequential definition inserted into Clause 207, attempts to solve the problem arising whereby new communications and internet technologies are developed at an ever-quicker pace, allowing criminal codes to be updated.

Before Clause 148

LORD STEVENSON OF BALMACARA

242 Insert the following new Clause—

“General procedure

- (1) An appeal to the Upper Tribunal under section 148 or 149 must be commenced by sending a notice of appeal to the court.
- (2) The notice of appeal must set out the grounds of appeal in sufficient detail to indicate—
 - (a) under which provision of this Act the appeal is to be brought;
 - (b) to what extent (if any) the appellant contends that the decision against, or with respect to which, the appeal is brought was based on an error of fact or was wrong in law; and

Before Clause 148 - continued

- (c) to what extent (if any) the appellant is appealing against OFCOM's exercise of its discretion in making the disputed decision.
- (3) The Upper Tribunal may give an appellant leave to amend the grounds of appeal identified in the notice of appeal."

Member's explanatory statement

This amendment introduces additional procedural steps to be followed when the Upper Tribunal considers an appeal under Clauses 148 and 149.

Clause 148

LORD STEVENSON OF BALMACARA

243 Page 130, line 36, leave out subsections (5) to (7) and insert –

- “(5) The Upper Tribunal must decide the appeal on the merits by reference to the grounds of appeal set out in the notice of the appeal.
- (6) On an appeal under this section the Upper Tribunal may consider any evidence relating to the subject-matter of the appeal, whether or not it was available to OFCOM at the material time.
- (7) On an appeal under this section, the Upper Tribunal may confirm or set aside the decision which is the subject of the appeal, or any part of it, and may –
- (a) remit the matter to OFCOM for reconsideration with such directions (if any) as the Tribunal considers appropriate,
 - (b) direct OFCOM to amend the register under section 86 to add or remove services, or
 - (c) make any other decision which OFCOM could itself have made.
- (8) On determining an appeal under this section the Upper Tribunal must remit the decision to OFCOM for reconsideration with such directions (if any) as the Tribunal considers appropriate.”

Member's explanatory statement

This amendment makes a series of changes to the Upper Tribunal appeals process outlined in Clause 148.

Clause 149

LORD CLEMENT-JONES
LORD HUNT OF KINGS HEATH
LORD STRATHCARRON

244 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.

LORD STEVENSON OF BALMACARA

245 Page 131, line 8, leave out from beginning to end of line 22 and insert—

“may be brought by the provider of the service to which the notice or decision relates and any eligible entity (for the purpose of section 150) with a sufficient interest in the decision.

- (2) An appeal under subsection (1) by a person other than the person given the notice or decision in question may be brought only with the permission (or leave) of the Upper Tribunal.
- (3) On an appeal under this section the Upper Tribunal may consider any evidence relating to the subject-matter of the appeal, whether or not it was available to OFCOM at the material time.
- (4) The Upper Tribunal must decide the appeal on the merits by reference to the grounds of appeal set out in the notice of the appeal.
- (5) On an appeal under this section, the Upper Tribunal may confirm or set aside the decision which is the subject of the appeal, or any part of it, and may—
 - (a) remit the matter to OFCOM for reconsideration with such directions (if any) as the Tribunal considers appropriate,
 - (b) impose or revoke, or vary the amount of, a penalty,
 - (c) give such directions or take such other steps as OFCOM could itself have given or taken, or
 - (d) make any other decision which OFCOM could itself have made.
- (5A) On determining an appeal under this section the Upper Tribunal must remit the decision to OFCOM for reconsideration with such directions (if any) as the Tribunal considers appropriate.”

Member’s explanatory statement

This amendment makes a series of changes to the Upper Tribunal appeals process outlined in Clause 149.

LORD CLEMENT-JONES
LORD HUNT OF KINGS HEATH
LORD STRATHCARRON

246 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.

247 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.

248 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.

249 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.

250 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.

Clause 150

BARONESS FOX OF BUCKLEY

Baroness Fox of Buckley gives notice of her intention to oppose the Question that Clause 150 stand part of the Bill.

Member’s explanatory statement

This amendment, along with the amendments to oppose Clauses 151 and 152, remove super-complaints from the Bill.

Clause 151

BARONESS FOX OF BUCKLEY

Baroness Fox of Buckley gives notice of her intention to oppose the Question that Clause 151 stand part of the Bill.

Member’s explanatory statement

This amendment, along with the amendments to oppose Clauses 150 and 152, remove super-complaints from the Bill.

Clause 152

BARONESS FOX OF BUCKLEY

Baroness Fox of Buckley gives notice of her intention to oppose the Question that Clause 152 stand part of the Bill.

Member’s explanatory statement

This amendment, along with the amendments to oppose Clauses 150 and 151, remove super-complaints from the Bill.

Clause 154

LORD STEVENSON OF BALMACARA

251 Page 134, line 5, at end insert –

- “(aa) each devolved authority,
- (ab) such select committee or committees of each House of Parliament as the Secretary of State considers appropriate, and”

Member’s explanatory statement

This amendment would require the Secretary of State to consult devolved authorities and relevant parliamentary select committees, as well as OFCOM, before designating a statement of strategic priorities under Clause 153.

BARONESS BENNETT OF MANOR CASTLE

252 Page 134, line 5, at end insert –

- “(aa) an advisory board consisting of people aged 25 and under,”

Member’s explanatory statement

This would require the Secretary of State to consult with young people when setting the government’s strategic priorities relating to online safety.

LORD STEVENSON OF BALMACARA

253 Page 134, line 7, at end insert –

- “(2A) A consultation under subsection (2) must also include consideration of –
 - (a) an assessment produced by the Secretary of State regarding the impact of the proposed statement on –
 - (i) human rights and equalities,
 - (ii) freedom of expression, and
 - (iii) employment and labour, and
 - (b) an assessment produced by the Secretary of State regarding the impact of the proposed statement on children and vulnerable adults.”

Member’s explanatory statement

This amendment would require the Secretary of State, when consulting interested parties on a draft statement of strategic priorities, to also seek opinions on impact assessments relating to human rights, freedom of expression, employment and labour, and children and vulnerable adults.

LORD MOYLAN
BARONESS FOX OF BUCKLEY

254 Page 134, line 14, leave out subsections (5) to (7) and insert –

- “(5) If the draft of the statement laid before Parliament under subsection (4) is approved by resolution of each House of Parliament, the Secretary of State may designate the statement in the form of the draft.”

Member’s explanatory statement

This amendment requires the draft statement of strategic priorities laid before Parliament to be approved by resolution of each House.

Clause 155

BARONESS MERRON

255 Page 134, line 32, leave out “chairman” and insert “chair”

Member’s explanatory statement

This amendment removes an instance of gendered language, replacing “chairman” with “chair”.

BARONESS BENNETT OF MANOR CASTLE

256 Page 134, line 32, at end insert –

“(aa) a minimum of two members aged 25 and under,”

Member’s explanatory statement

This would require OFCOM advisory committees established under clause 155 to include at least two young people.

Clause 157BARONESS STOWELL OF BEESTON
LORD STEVENSON OF BALMACARA
LORD CLEMENT-JONES
VISCOUNT COLVILLE OF CULROSS

257 Page 135, line 38, leave out paragraph (a)

Member’s explanatory statement

This amendment removes the Secretary of State’s power to give wide-ranging guidance to OFCOM about its functions under the bill.

LORD MOYLAN
BARONESS FOX OF BUCKLEY

258 Page 136, line 6, leave out subsection (3)

Member’s explanatory statement

This amendment is consequential on the new Clause inserted after Clause 157 in the name of Lord Moylan, which makes provision for consultation with OFCOM before guidance is issued under Clause 157.

259 Page 136, line 16, leave out subsection (6)

Member’s explanatory statement

This amendment is consequential on the new Clause inserted by the amendment after Clause 157 in the name of Lord Moylan, which makes provision about the parliamentary procedure applicable to guidance issued under Clause 157.

After Clause 157

LORD MOYLAN
BARONESS FOX OF BUCKLEY

260 Insert the following new Clause –

“Consultation and parliamentary procedure applicable to Secretary of State’s guidance

- (1) This section sets out the requirements that must be satisfied in relation to guidance to OFCOM before the Secretary of State may issue it under section 157, or may revise or replace guidance previously issued under section 157.
- (2) The Secretary of State must consult OFCOM on a draft of the proposed guidance or (as the case may be) the proposed revised or replacement guidance.
- (3) After consulting OFCOM under subsection (2), the Secretary of State must lay before Parliament a draft of the proposed guidance or (as the case may be) the proposed revised or replacement guidance.
- (4) The Secretary of State may not issue the guidance (or the revised or replacement guidance) unless the draft laid before Parliament under subsection (3) is approved by a resolution of each House of Parliament.
- (5) This section does not apply to guidance under section 78 (guidance to OFCOM about fees).”

Member’s explanatory statement

The effect of this amendment is to require guidance issued to OFCOM by the Secretary of State under Clause 157 (other than guidance under Clause 78) to be approved by resolution of each House of Parliament.

Clause 159

THE LORD BISHOP OF OXFORD
LORD CLEMENT-JONES
VISCOUNT COLVILLE OF CULROSS

261 Page 137, line 4, leave out “content on”

Member’s explanatory statement

This amendment would allow the Secretary of State to include in the review of the regime harm caused by all aspects caused by operation of services (such as service design) not just content of services.

BARONESS BENNETT OF MANOR CASTLE

262 Page 137, line 28, at end insert –

“(aa) an advisory board consisting of people aged 25 and under,”

Member’s explanatory statement

This would require the Secretary of State to consult with young people when reviewing the effectiveness and proportionality of this legislation.

THE LORD BISHOP OF OXFORD
LORD CLEMENT-JONES
VISCOUNT COLVILLE OF CULROSS

263 Page 137, line 32, at end insert –

“(6A) In carrying out the review, the Secretary of State must take into account any report published by OFCOM under section (*Future management of risk*).”

Member’s explanatory statement

This amendment, along with the amendment in the name of the Lord Bishop of Oxford at page 137, line 4, would ensure that the scope of a future review of the OSB regime by the SoS makes a broad assessment of the harms arising from regulated services, not just regulated content on them. It would also ensure consideration of risk management and whether the regime needs expanding or contracting.

After Clause 159

LORD MOYLAN
LORD STRATHCARRON
LORD CLEMENT-JONES

264 Insert the following new Clause –

“Transparency of government representations to regulated service providers

- (1) The Secretary of State must produce a report setting out any relevant representations His Majesty’s Government have made to providers of Part 3 services to tackle the presence of misinformation and disinformation on Part 3 services.
- (2) In this section “relevant representations” are representations that could reasonably be considered to be intended to persuade or encourage a provider of a Part 3 service to –
 - (a) modify the terms of service of a regulated service in an effort to address misinformation or disinformation,
 - (b) restrict or remove a particular user’s access to accounts used by them on a regulated service, or
 - (c) take down, reduce the visibility of, or restrict access to content that is present or may be encountered on a regulated service.
- (3) The first report must be laid before both Houses of Parliament within six months of this Act being passed.
- (4) Subsequent reports must be laid before both Houses of Parliament at intervals not exceeding six months.
- (5) The Secretary of State is not required by this section to include in the report information that the Secretary of State considers would be against the interests of national security.
- (6) If the Secretary of State relies upon subsection (5) they must as soon as reasonably practicable send a report containing that information to the Intelligence and Security Committee of Parliament.”

Member’s explanatory statement

This amendment addresses government influence on content moderation, for example by way of initiatives like the Government’s Counter Disinformation Unit.

Clause 160

LORD MOYLAN

265 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
THE EARL OF LEICESTER

266 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.

267 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

268 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 167

BARONESS MERRON
 BARONESS FEATHERSTONE
 BARONESS GOHIR

- 269 Page 143, leave out lines 30 to 34 and insert –
- “(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.
- (1A) 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.”

Member’s explanatory statement

This amendment is to probe why the Government has adopted the current approach to cyberflashing, which includes consideration of intent, rather than focusing on non-consent alone.

BARONESS FEATHERSTONE
 BARONESS MERRON
 BARONESS GOHIR

- 270 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).

Clause 167 - continued

- (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.

After Clause 167

BARONESS BERRIDGE
 BARONESS FEATHERSTONE
 BARONESS FINLAY OF LLANDAFF

271★

Insert the following new Clause –

“Reporting the sending etc of photograph or film of genitals

- (1) Providers of internet services must provide in relation to each service systems which users may use or apply to report an offence under section 66A of the Sexual Offences Act 2003 (as inserted by section 167).
- (2) On receipt of a report under subsection (1), the provider must assess whether an offence has been committed, and if so, report the offence to the Crown Prosecution Service.
- (3) OFCOM must monitor the number of offences reported under subsection (2) and report the total number annually.
- (4) If a provider of internet services fails to report an offence as required by subsection (2), the provisions in Part 7 Chapter 6 (enforcement powers) apply.”

Clause 170

LORD STEVENSON OF BALMACARA
LORD CLEMENT-JONES

272 Page 145, line 1, leave out subsections (3) and (4) and insert—

“(3) Relevant information for the purposes of subsection (2) includes, but is not limited to, information about any complaints concerning the content in question made to a provider by any person in accordance with any complaints procedures within the scope of this Act.

(4) Subsection (5) applies (as well as subsections (2) and (3)) in relation to judgements.”

Member’s explanatory statement

This amendment, and another in Lord Stevenson’s name to page 145, line 15, seek to give Ofcom more discretion to determine how platforms should identify illegal content.

LORD CLEMENT-JONES
VISCOUNT COLVILLE OF CULROSS

273★ Page 145, line 12, leave out “reasonable grounds to infer” and insert “sufficient evidence”

Member’s explanatory statement

This amendment, and similar amendments to Clause 170 in the name of Lord Clement-Jones, amend the test for provider’s judgments about content to be consistent with the threshold in criminal law for establishing the commission of an offence.

LORD MOYLAN

274 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.

LORD CLEMENT-JONES
VISCOUNT COLVILLE OF CULROSS

275★ Page 145, line 14, leave out “reasonable grounds for that inference exist” and insert “sufficient evidence exists”

Member’s explanatory statement

This amendment, and similar amendments to Clause 170 in the name of Lord Clement-Jones, amend the test for provider’s judgments about content to be consistent with the threshold in criminal law for establishing the commission of an offence.

LORD STEVENSON OF BALMACARA

276 Page 145, line 15, leave out subsections (6) to (8)

Clause 170 - continuedLORD CLEMENT-JONES
VISCOUNT COLVILLE OF CULROSS

- 277★ Page 145, line 15, leave out “Reasonable grounds for that inference exist” and insert “Sufficient evidence exists”

Member’s explanatory statement

This amendment, and similar amendments to Clause 170 in the name of Lord Clement-Jones, amend the test for provider’s judgments about content to be consistent with the threshold in criminal law for establishing the commission of an offence.

LORD MOYLAN

- 278 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.

- 279 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.

LORD CLEMENT-JONES
VISCOUNT COLVILLE OF CULROSS

- 280★ Page 145, line 17, leave out “reasonable grounds to infer” and insert “sufficient evidence”

Member’s explanatory statement

This amendment, and similar amendments to Clause 170 in the name of Lord Clement-Jones, amend the test for provider’s judgments about content to be consistent with the threshold in criminal law for establishing the commission of an offence.

- 281★ Page 145, line 20, leave out “reasonable grounds to infer” and insert “sufficient evidence”

Member’s explanatory statement

This amendment, and similar amendments to Clause 170 in the name of Lord Clement-Jones, amend the test for provider’s judgments about content to be consistent with the threshold in criminal law for establishing the commission of an offence.

- 282★ Page 145, line 21, at end insert –

“(c) makes decisions about illegality, including through guidance for content reviewers, in consultation with a solicitor or barrister practising in any of the jurisdictions of the United Kingdom.”

Member's explanatory statement

This amendment, and similar amendments to Clause 170 in the name of Lord Clement-Jones, amend the test for provider's judgments about content to be consistent with the threshold in criminal law for establishing the commission of an offence.

LORD MOYLAN

- 283 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 171

LORD STEVENSON OF BALMACARA

LORD CLEMENT-JONES

- 284 Page 145, line 44, leave out subsection (3) and insert –

“(3) In the course of producing the guidance (including revised or replacement guidance), OFCOM must –

- (a) at an early and formative stage in the production of proposed guidance, consult such persons as they consider appropriate, including –
 - (i) persons who appear to them to represent providers of Part 3 services, and
 - (ii) persons who appear to them to represent the interests of persons who have suffered harm as a result of illegal content or fraudulent advertisements;
- (b) publish any proposed final guidance in draft form for formal public consultation.”

Member's explanatory statement

This amendment would require Ofcom, when creating guidance about illegal content judgements, to consult providers of Part 3 services and persons who represent the interests of those who have suffered harm due to illegal content or fraudulent adverts.

After Clause 184

LORD STEVENSON OF BALMACARA

LORD CLEMENT-JONES

BARONESS STOWELL OF BEESTON

- 285 Insert the following new Clause –

“No obligation to undertake general monitoring

Nothing in this Act introduces an obligation on a regulated service to undertake general monitoring of content on its service.”

Member's explanatory statement

This amendment is to probe whether social media platforms and other regulated services will be required to undertake general monitoring of the activity of their users.

LORD STEVENSON OF BALMACARA
LORD CLEMENT-JONES

286 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.
- (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 –

After Clause 184 - continued

- (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.

Clause 197

BARONESS FOX OF BUCKLEY

287 Page 162, line 3, leave out paragraph (c)

Member’s explanatory statement

This amendment is consequential on leaving out clause 150.

288 Page 162, line 38, at end insert –
“(za) regulations under section 3(7A),”

Member’s explanatory statement

This amendment applies the negative resolution procedure to regulations made under the new Clause 3(7A) inserted by amendment.

289 Page 162, line 41, leave out paragraph (c)

Member’s explanatory statement

This amendment is consequential on leaving out clause 151.

After Clause 197

LORD STEVENSON OF BALMACARA

290 Insert the following new Clause –

“Regulations: consultation and impact assessments

- (1) This section applies if the Secretary of State seeks to exercise powers under –
 - (a) section 55 (regulations under section 54),
 - (b) section 191 (powers to amend section 35),
 - (c) section 192 (powers to amend or repeal provisions relating to exempt content or services),
 - (d) section 193 (powers to amend Part 2 of Schedule 1),
 - (e) section 194 (powers to amend Schedules 5, 6 and 7), or
 - (f) paragraph 1 of Schedule 11 (regulations specifying threshold conditions for categories of Part 3 services),

After Clause 197 - continued

or where the Secretary of State intends to direct OFCOM under section 39.

- (2) The Secretary of State may not exercise the powers under the provisions in subsection (1) unless any select committee charged by the relevant House of Parliament with scrutinising such regulations has –
- (a) completed its consideration of the draft regulations and accompanying impact assessment provided by the Secretary of State; and
 - (b) reported on their deliberation to the relevant House; and
- the report of the committee has been debated in that House, or the period of six weeks beginning on the day on which the committee reported has elapsed.”

Member’s explanatory statement

This amendment would require the Secretary of State to submit draft codes of conduct from OFCOM for consideration by relevant committees of both Houses of Parliament. This process would also apply to Secretary of State directions to OFCOM.

Clause 204

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

- 291** 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.

- 292** 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.

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

- 293** Page 168, line 40, at end insert –

- “(c) a feature that turns notifications on by default;
- (d) a feature which enables loot boxes;
- (e) a feature which enables infinite scrolling;
- (f) a feature which enables auto-play of videos;
- (g) a feature which enables time-limited content;
- (h) a feature which enables pay-to-play;
- (i) a feature which enables users to exchange virtual gifts.”

Member's explanatory statement

This amendment would introduce additional examples of functionalities that can create risk.

Clause 205

LORD MOYLAN

294 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.

LORD RUSSELL OF LIVERPOOL

BARONESS KIDRON

BARONESS HARDING OF WINSCOMBE

LORD KNIGHT OF WEYMOUTH

295 Page 169, line 7, at end insert –

“(d) the volume of the content;

(e) the frequency with which the content is accessed.”

Member's explanatory statement

This amendment would add volume and frequency to the list of factors that can create risk.

After Clause 206

BARONESS FINLAY OF LLANDAFF

LORD KNIGHT OF WEYMOUTH

296 Insert the following new Clause –

“Harmful suicide or self-harm content

(1) This section applies for the purposes of this Act.

(2) “Harmful suicide or self-harm content” means content which –

(a) encourages or promotes suicide or an act of deliberate self-injury;

(b) provides instructions for suicide or an act of deliberate self-injury;

(c) seeks or encourages an agreement to undertake mutual acts of suicide or deliberate self-injury.

(3) References to “harmful suicide or self-harm content” include references to such content which has the potential to cause harm to an individual.”

Clause 207

BARONESS KIDRON

LORD STEVENSON OF BALMACARA

THE LORD BISHOP OF OXFORD

LORD BETHELL

297 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);

Clause 207 - continued

“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.

BARONESS HARDING OF WINSCOMBE
BARONESS STOWELL OF BEESTON
LORD KNIGHT OF WEYMOUTH
LORD CLEMENT-JONES

298 Page 170, line 14, at end insert –

““app” means a software application or electronic service that may be run or directed by a user on a computer, a mobile device, or any other general purpose computing device;”

Member’s explanatory statement

This amendment and another in the name of Baroness Harding of Winscombe incorporates standardised definitions of both apps and application stores as recognised in the US Open App Markets Act. These definitions allow both apps and their distributing platforms to be defined and identified within the scope of the Bill as entities subject to duties, due to their role in distributing online content through apps to children and as a primary facilitator of user-to-user experiences for children.

299 Page 170, line 14, at end insert –

““application store” means a publicly available website, software application, or other electronic service that distributes apps from third-party developers to users of a computer, a mobile device, or any other general purpose computing device;”

Member’s explanatory statement

This amendment and another in the name of Baroness Harding of Winscombe incorporates standardised definitions of both apps and application stores as recognised in the US Open App Markets Act. These definitions allow both apps and their distributing platforms to be defined and identified within the scope of the Bill as entities subject to duties, due to their role in distributing online content through apps to children and as a primary facilitator of user-to-user experiences for children.

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

- 300 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.

BARONESS FINLAY OF LLANDAFF

- 301 Page 170, line 47, at end insert –
““new technology” means anything which constitutes a change to existing communications and internet technologies;”

Member’s explanatory statement

This amendment and the new Clause in Baroness Finlay of Llandaff’s name after Clause 147 attempts to solve the problem arising whereby new communications and internet technologies are developed at an ever-quicker pace, allowing criminal codes to be updated.

LORD STEVENSON OF BALMACARA

- 302 Page 171, line 30, leave out “user-to-user” and insert “Part 3”

Member’s explanatory statement

This amendment makes clear that the phrase “terms of service” relates to all Part 3 regulated services, and not just user-to-user platforms.

LORD STEVENSON OF BALMACARA
LORD CLEMENT-JONES

- 303 Page 171, line 32, at end insert –
““user identity verification” means a system or process designed to enable a user to prove their identity, for purposes of establishing that they are a genuine, unique, human user of the service, and that the name associated with their profile is their real name, and references to “identify verification” and similar phrases are to be construed accordingly;”

Member’s explanatory statement

This amendment adds a definition of “user identity verification” to the list of terms defined in Clause 207.

BARONESS MORGAN OF COTES
BARONESS KIDRON
THE LORD BISHOP OF GLOUCESTER
LORD KNIGHT OF WEYMOUTH

304 Page 171, line 35, at end insert –

““violence against women and girls” has the same meaning as “violence against women” in Article 3 of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (“the Istanbul Convention”).”

Member’s explanatory statement

See amendment in the name of Baroness Morgan of Cotes at Clause 36, page 36, line 42.

Clause 211

BARONESS FOX OF BUCKLEY

305 Page 176, line 19, after “3” insert “and (*Further provision about notices under section 3(6)*)”

Member’s explanatory statement

This amendment provides for the new clause after Clause 4 in the name of Baroness Fox of Buckley to come into force on the day on which the Bill is passed.

Online Safety Bill

MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

17 April 2023
