

Online Safety Bill

AMENDMENTS TO BE MOVED ON REPORT

After Clause 11

BARONESS MERRON

As an amendment to the amendment in the name of Lord Parkinson of Whitley Bay to insert a new clause after Clause 11 as printed on sheet HL Bill 151(c)

In subsection (5)(d), after “characteristic” insert “, or a combination of characteristics,”

Member’s explanatory statement

This amendment to the Minister’s user empowerment assessment duties Clause would require services to consider the likelihood of users with more than one characteristic encountering content which particularly affects them.

Clause 12

LORD CLEMENT-JONES

Page 12, line 42, after “over” insert “individually each kind of content in subsection (10), (11) or (12) and any other”

Member’s explanatory statement

This amendment seeks to ensure that the user empowerment tools for Category One services are customisable in relation to each harm identified by Parliament, rather than an on/off option for all harms.

Page 13, line 10, at end insert “at no additional cost to the user”

Member’s explanatory statement

This amendment, and similar amendments in the name of Lord Clement-Jones, seek to ensure that the user empowerment tools in the bill are available at no additional cost to the user.

Page 13, line 15, at end insert “at no additional cost to the user”

Member’s explanatory statement

This amendment, and similar amendments in the name of Lord Clement-Jones, seek to ensure that the user empowerment tools in the bill are available at no additional cost to the user.

After Clause 37

LORD MOYLAN

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.

Clause 38

LORD MOYLAN

Page 40, line 27, 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 proposed by Lord Moylan after Clause 37; 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.

Page 40, line 30, after “the draft” insert “and statement submitted under subsection (1)”

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 Lord Moylan’s amendment to page 40, line 27; 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

LORD MOYLAN

Page 41, line 45, 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 proposed by Lord Moylan after Clause 37.

Clause 43

LORD MOYLAN

Page 44, line 28, 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 proposed by Lord Moylan after Clause 37.

After Clause 54

BARONESS MERRON

As an amendment to the second amendment in the name of Lord Parkinson of Whitley Bay to insert a new clause after Clause 54 as printed on sheet HL Bill 151(c)

In subsection (2), leave out “any” and insert “one or more”

Member’s explanatory statement

This amendment to the Minister’s Clause on priority content that is harmful to children makes it clear that content which targets more than one of the characteristics listed in subsection (2) is also in scope of the provision.

Clause 57

LORD CLEMENT-JONES

Page 57, line 8, after “verify” insert “at no additional cost to the user”

Member’s explanatory statement

This amendment, and similar amendments in the name of Lord Clement-Jones, seek to ensure that the user empowerment tools in the bill are available at no additional cost to the user.

Page 57, line 9, at end insert “and must offer users who have opted to verify their identity an option to make their verified status visible to other users”

Member’s explanatory statement

This amendment would require Category 1 services to give verified users an option to make visible to users the fact that they are verified.

After Clause 58

BARONESS FOX OF BUCKLEY
LORD MOYLAN

Insert the following new Clause –

“Ofcom guidance about privacy and rights protection in user identification and age assurance or verification

- (1) Before producing guidance on the measures and policies that may be appropriate for companies to comply with duties in sections 16 (content reporting) and 72 (regulated provider pornographic content), Ofcom must first evaluate, and publish its evaluation of, whether user identification including age verification or assurance should be conducted by internet service providers and internet-connected devices, including an evaluation of mandating existing age restrictions to be on as standard, or by individual websites. This evaluation must take into account –
 - (a) protection of privacy, including minimising the creation of new data,
 - (b) efficacy of the stage at which identification takes place,
 - (c) minimising the cost to businesses affected by the duties in clauses 16 and 72, and
 - (d) which system allows the fewest possible workarounds, such as the use of virtual private networks.
- (2) Following the publication of this evaluation, Ofcom must produce guidance on systems of age verification and assurance which ensures –
 - (a) age verification with zero knowledge of what the user is attempting to access,
 - (b) no data is stored or created as part of the verification process,
 - (c) no collection of browsing habits or internet history during the process,
 - (d) no use of biometrics, and
 - (e) adherence to the highest possible standards of cyber security and data protection.
- (3) Before such guidance comes into force, the Secretary of State must provide a draft to be laid before Parliament and it must be approved by resolution of each House of Parliament.”

Member’s explanatory statement

This amendment requires Ofcom to review whether age assurance or verification processes are best done through existing systems, and requires that Ofcom’s guidance ensures the protection of privacy, other rights, and data security. It further ensures that both Houses of Parliament can scrutinise and approve or reject the precise guidance from Ofcom.

Clause 65

BARONESS FOX OF BUCKLEY
LORD MOYLAN

Page 63, line 31, at end insert –

“(11A) The duties set out in this section do not apply to terms of service that restrict lawful expression or expression otherwise protected by Article 8 of the European Convention on Human Rights.”

After Clause 84

LORD MOYLAN

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 (and revised or replacement guidance) OFCOM must publish a statement accompanying the guidance (or revised or replacement 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.

Clause 111

LORD MOYLAN

Page 98, line 7, 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.”

LORD KNIGHT OF WEYMOUTH

Leave out Clause 111 and insert the following new Clause –

“Notices to deal with terrorism content or CSEA content (or both)

- (1) OFCOM may give a notice described in subsection (2), (3) or (4) relating to a regulated user-to-user service or a regulated search service to the provider of the service where –
 - (a) they consider that it is necessary and proportionate to do so, and
 - (b) the decision of OFCOM to issue a notice has been approved by a Judicial Commissioner.

Clause 111 - continued

- (2) A notice under subsection (1) that relates to a regulated user-to-user service is a notice requiring the provider of the service to do either or both of the following—
 - (a) use accredited technology to identify CSEA content, communicated privately by means of the service, and to swiftly take down that content, or
 - (b) use accredited technology to prevent individuals from encountering CSEA content, communicated privately, by means of the service.
- (3) A notice under subsection (1) that relates to a regulated search service is a notice requiring the provider of the service to do either or both of the following—
 - (a) use accredited technology to identify search content of the service that is terrorism content and to swiftly take measures designed to secure, so far as possible, that search content of the service no longer includes terrorism content identified by the technology, or
 - (b) use accredited technology to identify search content of the service that is CSEA content and to swiftly take measures designed to secure, so far as possible, that search content of the service no longer includes CSEA content identified by the technology.
- (4) A notice under subsection (1) that relates to a combined service is a notice requiring the provider of the service to do any of the following—
 - (a) use accredited technology as described in subsection (2)(a) or (b), or both, in relation to the user-to-user part of the service,
 - (b) use accredited technology as described in subsection (3)(a) or (b), or both, in relation to the search engine of the service, or
 - (c) use accredited technology as described in subsection (2)(a) or (b), or both, in relation to the user-to-user part of the service, and use accredited technology as described in subsection (3)(a) or (b), or both, in relation to the search engine.
- (5) For the purposes of subsections (2) and (3), a requirement to take down terrorism or CSEA content, or to take measures to secure that search content does not include terrorism or CSEA content, may be complied with by the use of accredited technology alone or by means of the technology together with the use of human moderators to review terrorism or CSEA content (as the case may be) identified by the technology.
- (6) See—
 - (a) section 112, which requires OFCOM to give a warning notice before giving a notice under subsection (1), and
 - (b) section 113 for provision about matters which OFCOM must consider before giving a notice under subsection (1).
- (7) A notice under subsection (1) that relates to a user-to-user service (or to the user-to-user part of a combined service) and requires the use of technology in relation to terrorism content must identify the content, or parts of the service that include content, that OFCOM consider is communicated publicly on that service (see section 207).
- (8) For the meaning of “accredited” technology, see section 114(12) and (13).

After Clause 111

LORD KNIGHT OF WEYMOUTH

Insert the following new Clause—

“Approval of notices by Judicial Commissioners

- (1) In deciding whether to approve OFCOM’s decision to issue a notice under section 111(1), a Judicial Commissioner must review OFCOM’s conclusions as to the following matters—
 - (a) whether the notice is necessary to deal with relevant content, and
 - (b) whether the conduct that would be required by the notice is proportionate to what is sought to be achieved by that conduct.
- (2) In doing so, the Judicial Commissioner must—
 - (a) apply the same principles as would be applied by a court on an application for judicial review;
 - (b) consider the matters referred to in subsection (1) with a sufficient degree of care to ensure that appropriate regard has been given to the duties about freedom of expression and privacy which apply to regulated user-to-user services and regulated search services.
- (3) The Judicial Commissioner must give the service provider concerned the opportunity to provide evidence, or make representations, to them before reaching their conclusions.
- (4) Where a Judicial Commissioner refuses to approve OFCOM’s decision to issue a notice under section 111(1), the Judicial Commissioner must give OFCOM written reasons for the refusal.”

Clause 118

LORD KNIGHT OF WEYMOUTH

Page 103, line 5, at end insert—

“Judicial Commissioner” means a person appointed under the Investigatory Powers Act 2016, section 227(1)(a) or (b);
“relevant content” means terrorism content or CSEA content or both those kinds of content;”

After Clause 139

LORD MOYLAN

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 156

LORD MOYLAN

Page 137, line 32, 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 159

LORD MOYLAN

Page 139, line 23, leave out subsection (3)

Member's explanatory statement

This amendment is consequential on the new Clause proposed by Lord Moylan after Clause 159, which makes provision for consultation with OFCOM before guidance is issued under Clause 159.

Page 139, line 33, leave out subsection (6)

Member's explanatory statement

This amendment is consequential on the new Clause proposed by Lord Moylan after Clause 159, which makes provision about the parliamentary procedure applicable to guidance issued under Clause 159.

After Clause 159

LORD MOYLAN

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 159, or may revise or replace guidance previously issued under section 159.
- (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).

After Clause 159 - continued

- (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 159 (other than guidance under Clause 78) to be approved by resolution of each House of Parliament.

Schedule 7

BARONESS FOX OF BUCKLEY

Page 208, 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.

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3 July 2023
