

Online Safety Bill

REVISED
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
ON REPORT

The amendments have been marshalled in accordance with the Order of 4th July 2023, as follows –

Clause 1	Schedule 15
Clauses 162 to 172	Clauses 178 to 189
Schedule 14	Schedule 16
Clauses 2 and 3	Clauses 190 and 191
Schedules 1 and 2	Schedule 17
Clauses 4 to 31	Clauses 192 to 201
Schedule 3	Clauses 74 to 80
Clauses 32 to 37	Schedule 10
Schedule 4	Clauses 81 to 85
Clauses 38 to 53	Schedule 11
Schedules 5 to 7	Clauses 86 to 97
Clauses 54 to 68	Schedule 12
Schedule 8	Clauses 98 to 132
Clauses 69 to 71	Schedule 13
Schedule 9	Clauses 133 to 149
Clauses 72 and 73	Clauses 202 to 216
Clauses 150 to 161	Title.
Clauses 173 to 177	

[Amendments marked ★ are new or have been altered]

**Amendment
No.**

Before Clause 1

LORD PARKINSON OF WHITLEY BAY
LORD STEVENSON OF BALMACARA
BARONESS KIDRON
LORD CLEMENT-JONES

1 Insert the following new Clause –

“Introduction

- (1) This Act provides for a new regulatory framework which has the general purpose of making the use of internet services regulated by this Act safer for individuals in the United Kingdom.

Before Clause 1 - continued

- (2) To achieve that purpose, this Act (among other things) –
- (a) imposes duties which, in broad terms, require providers of services regulated by this Act to identify, mitigate and manage the risks of harm (including risks which particularly affect individuals with a certain characteristic) from –
 - (i) illegal content and activity, and
 - (ii) content and activity that is harmful to children, and
 - (b) confers new functions and powers on the regulator, OFCOM.
- (3) Duties imposed on providers by this Act seek to secure (among other things) that services regulated by this Act are –
- (a) safe by design, and
 - (b) designed and operated in such a way that –
 - (i) a higher standard of protection is provided for children than for adults,
 - (ii) users’ rights to freedom of expression and privacy are protected, and
 - (iii) transparency and accountability are provided in relation to those services.”

Member’s explanatory statement

This amendment provides for a new introductory Clause.

BARONESS MERRON
LORD CLEMENT-JONES

As an amendment to Amendment 1

- 2** In subsection (2)(a), after “characteristic” insert “, or a combination of characteristics”

Member’s explanatory statement

This amendment to the Minister’s introductory Clause makes it clear that some internet users experience a higher level of harm than others, as a result of having multiple characteristics.

Clause 162

BARONESS BUSCOMBE
THE EARL OF LEICESTER
LORD GARNIER

- 2A★** Page 141, line 32, after “psychological” insert “, financial”

Member’s explanatory statement

This amendment, along with the other amendment to Clause 162 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.

- 2B★** Page 141, line 33, 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 162 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.

Clause 164

BARONESS KENNEDY OF THE SHAWS

- 3 Page 142, line 41, leave out “or” and insert “, rape, disfigurement or other”
- 4 Page 143, line 2, after “out” insert “, whether by the person who sent the message or another individual”
- 5 Page 143, line 8, leave out paragraph (b)

Clause 165

BARONESS BUSCOMBE
THE EARL OF LEICESTER
LORD GARNIER

- 5A★ Page 143, line 39, 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

LORD ALLAN OF HALLAM
LORD CLEMENT-JONES

- 5B★ Page 146, line 32, at end insert –
- “(2A) No offence is committed under this section if D reasonably believes the relevant act is necessary for –
- (a) a genuine medical, scientific or educational purpose,
 - (b) the purposes of peer support or harm reduction, or
 - (c) preventing serious harm, or further serious harm, to D or another person.”

Member's explanatory statement

This amendment seeks to ensure that organisations or individuals sharing content in support of people at risk of self-harm are not liable to prosecution under the new offence.

Clause 170

BARONESS BURT OF SOLIHULL

- 5C★ Page 149, leave out lines 11 to 15 and insert –
- “(a) B does not consent to the sending or giving of the photograph or film, and

Clause 170 - continued

(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, and another to Clause 170 in the name of Baroness Burt, 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.

BARONESS BURT OF SOLIHULL
BARONESS FINLAY OF LLANDAFF

6 Page 149, line 15, at end insert “, or

(c) A intends that B will see the genitals and is reckless as to whether B will be caused alarm, distress or humiliation and B is alarmed, distressed or humiliated.”

Member’s explanatory statement

This amendment would include recklessness as a stand-alone component of the cyberflashing offence, alongside an image sent recklessly for the purpose of sexual gratification.

LORD PARKINSON OF WHITLEY BAY

7 Page 149, line 25, after “made” insert “or altered”

Member’s explanatory statement

This amendment provides that “photograph” and “film” in the new offence of sending a photograph or film of genitals (and, by extension the new offences of sharing an intimate photograph or film) includes an image which has been altered and which appears to be a photograph or film.

BARONESS BURT OF SOLIHULL

7A★ Page 149, line 30, leave out subsection (6) and insert –

“(6) 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.

(7) 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 amendment, and another to Clause 170 in the name of Baroness Burt, 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 170

LORD PARKINSON OF WHITLEY BAY

8 Insert the following new Clause—

“Sharing or threatening to share intimate photograph or film

In the Sexual Offences Act 2003, after section 66A (inserted by section 170), insert—

“66B Sharing or threatening to share intimate photograph or film

- (1) A person (A) commits an offence if—
 - (a) A intentionally shares a photograph or film which shows, or appears to show, another person (B) in an intimate state,
 - (b) B does not consent to the sharing of the photograph or film, and
 - (c) A does not reasonably believe that B consents.
- (2) A person (A) commits an offence if—
 - (a) A intentionally shares a photograph or film which shows, or appears to show, another person (B) in an intimate state,
 - (b) A does so with the intention of causing B alarm, distress or humiliation, and
 - (c) B does not consent to the sharing of the photograph or film.
- (3) A person (A) commits an offence if—
 - (a) A intentionally shares a photograph or film which shows, or appears to show, another person (B) in an intimate state,
 - (b) A does so for the purpose of A or another person obtaining sexual gratification,
 - (c) B does not consent to the sharing of the photograph or film, and
 - (d) A does not reasonably believe that B consents.
- (4) A person (A) commits an offence if—
 - (a) A threatens to share a photograph or film which shows, or appears to show, another person (B) in an intimate state, and
 - (b) A does so—
 - (i) with the intention that B or another person who knows B will fear that the threat will be carried out, or
 - (ii) being reckless as to whether B or another person who knows B will fear that the threat will be carried out.
- (5) Subsections (1) to (4) are subject to section 66C (exemptions).
- (6) For the purposes of subsections (1) to (3) and section 66C(3)(b)—
 - (a) “consent” to the sharing of a photograph or film includes general consent covering the particular act of sharing as well as specific consent to the particular act of sharing, and
 - (b) 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.
- (7) Where a person is charged with an offence under subsection (4), it is not necessary for the prosecution to prove—

After Clause 170 - continued

- (a) that the photograph or film mentioned in the threat exists, or
 - (b) if it does exist, that it is in fact a photograph or film which shows or appears to show a person in an intimate state.
- (8) It is a defence for a person charged with an offence under subsection (1) to prove that the person had a reasonable excuse for sharing the photograph or film.
- (9) A person who commits an offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding the maximum term for summary offences or a fine (or both).
- (10) A person who commits an offence under subsection (2), (3) or (4) is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding the general limit in a magistrates' court or a fine (or both);
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years.
- (11) In subsection (9) “the maximum term for summary offences” means—
- (a) if the offence is committed before the time when section 281(5) of the Criminal Justice Act 2003 comes into force, six months;
 - (b) if the offence is committed after that time, 51 weeks.
- (12) If on the trial of a person charged with an offence under subsection (2) or (3) a magistrates' court or jury finds the person not guilty of the offence charged, the magistrates' court or jury may find the person guilty of an offence under subsection (1).
- (13) The Crown Court has the same powers and duties in relation to a person who is by virtue of subsection (12) convicted before it of an offence under subsection (1) as a magistrates' court would have on convicting the person of the offence.

66C Sharing or threatening to share intimate photograph or film: exemptions

- (1) A person (A) who shares a photograph or film which shows, or appears to show, another person (B) in an intimate state does not commit an offence under section 66B(1), (2) or (3) if—
- (a) the photograph or film was taken in a place to which the public or a section of the public had or were permitted to have access (whether on payment or otherwise),
 - (b) B had no reasonable expectation of privacy from the photograph or film being taken, and
 - (c) B was, or A reasonably believes that B was, in the intimate state voluntarily.
- (2) For the purposes of subsection (1)(b), whether a person had a reasonable expectation of privacy from a photograph or film being taken is to be determined by reference to the circumstances that the person sharing the photograph or film reasonably believes to have existed at the time the photograph or film was taken.
- (3) A person (A) who shares a photograph or film which shows, or appears to show, another person (B) in an intimate state does not commit an offence under section 66B(1), (2) or (3) if—

After Clause 170 - continued

- (a) the photograph or film had, or A reasonably believes that the photograph or film had, been previously publicly shared, and
 - (b) B had, or A reasonably believes that B had, consented to the previous sharing.
- (4) A person (A) who shares a photograph or film which shows, or appears to show, another person (B) in an intimate state does not commit an offence under section 66B(1) if –
- (a) B is a person under 16,
 - (b) B lacks, or A reasonably believes that B lacks, capacity to consent to the sharing of the photograph or film, and
 - (c) the photograph or film is shared –
 - (i) with a healthcare professional acting in that capacity, or
 - (ii) otherwise in connection with the care or treatment of B by a healthcare professional.
- (5) A person who shares a photograph or film which shows, or appears to show, a child in an intimate state does not commit an offence under section 66B(1) if the photograph or film is of a kind ordinarily shared between family and friends.
- (6) A person who threatens to share a photograph or film which shows, or appears to show, another person in an intimate state does not commit an offence under section 66B(4) if, by reason of this section, the person would not commit an offence under section 66B(1), (2) or (3) by sharing the photograph or film in the circumstances conveyed by the threat.

66D Sharing or threatening to share intimate photograph or film: interpretation

- (1) This section applies for the purposes of sections 66B and 66C.
- (2) A person “shares” something if the person, by any means, gives or shows it to another person or makes it available to another person.
- (3) But a provider of an internet service by means of which a photograph or film is shared is not to be regarded as a person who shares it.
- (4) “Photograph” and “film” have the same meaning as in section 66A (see subsections (3) to (5) of that section).
- (5) Except where a photograph or film falls within subsection (8), a photograph or film “shows, or appears to show, another person in an intimate state” if it shows or appears to show –
 - (a) the person participating or engaging in an act which a reasonable person would consider to be a sexual act,
 - (b) the person doing a thing which a reasonable person would consider to be sexual,
 - (c) all or part of the person’s exposed genitals, buttocks or breasts,
 - (d) the person in an act of urination or defecation, or
 - (e) the person carrying out an act of personal care associated with the person’s urination, defecation or genital or anal discharge.
- (6) For the purposes of subsection (5)(c) the reference to all or part of a person’s “exposed” genitals, buttocks or breasts includes –
 - (a) a reference to all or part of the person’s genitals, buttocks or breasts visible through wet or otherwise transparent clothing,

After Clause 170 - continued

- (b) the case where all or part of the person’s genitals, buttocks or breasts would be exposed but for the fact that they are covered only with underwear, and
 - (c) the case where all or part of the person’s genitals, buttocks or breasts would be exposed but for the fact that they are obscured, provided that the area obscured is similar to or smaller than an area that would typically be covered by underwear worn to cover a person’s genitals, buttocks or breasts (as the case may be).
- (7) In subsection (6)(c) “obscured” means obscured by any means, other than by clothing that a person is wearing, including, in particular, by an object, by part of a person’s body or by digital alteration.
- (8) A photograph or film falls within this subsection if (so far as it shows or appears to show a person in an intimate state) it shows or appears to show something, other than breastfeeding, that is of a kind ordinarily seen in public.
- (9) For the purposes of subsection (8) “breastfeeding” includes the rearranging of clothing in the course of preparing to breastfeed or having just finished breastfeeding.”

Member’s explanatory statement

This amendment provides for new offences of sharing or threatening to share intimate photographs or films.

After Clause 171

LORD PARKINSON OF WHITLEY BAY

9 Insert the following new Clause –

“Repeals in connection with offences under section (*Sharing or threatening to share intimate photograph or film*)

Sections 33 to 35 of the Criminal Justice and Courts Act 2015 (disclosing or threatening to disclose private sexual photographs and films with intent to cause distress) are repealed.”

Member’s explanatory statement

This amendment is consequential on the new Clause creating offences of sharing or threatening to share intimate photographs or films.

Clause 172

LORD PARKINSON OF WHITLEY BAY

10 Page 150, line 15, leave out “section 170” and insert “sections 170 and (*Sharing or threatening to share intimate photograph or film*)”

Member’s explanatory statement

This amendment provides that Part 3 of Schedule 14 also makes consequential amendments on the new Clause creating offences of sharing and threatening to share intimate photographs or films.

11 Page 150, line 15, at end insert –

“(4) Part 4 of Schedule 14 contains amendments consequential on section (*Repeals in connection with offences under section (Sharing or threatening to share intimate photograph or film)*).”

Member’s explanatory statement

This amendment introduces a new Part of Schedule 14 which makes consequential amendments on the new Clause in my name repealing sections 33 to 35 of the Criminal Justice and Courts Act 2015.

Schedule 14

LORD PARKINSON OF WHITLEY BAY

12 Page 240, line 24, after first “the” insert “first”

Member’s explanatory statement

This is a technical amendment ensuring that the amendments made under Schedule 14 to Schedule 1 to the Children and Young Persons Act 1933 are inserted in the correct place in that Act.

13 Page 240, line 25, after “66A” insert “, 66B”

Member’s explanatory statement

This amendment adds a reference to the new offences of sharing and threatening to share an intimate photograph or film to Schedule 1 to the Children and Young Persons Act 1933 (offences to which certain provisions of that Act apply).

14 Page 240, line 25, at end insert –

“13A In section 65A of the Police and Criminal Evidence Act 1984 (“qualifying offences” for the purposes of Part 5 of that Act), in subsection (2)(p) after “61 to” insert “66A, 66B(2) and (3),”.

Member’s explanatory statement

This amendment adds a reference to certain of the new offences of sharing an intimate photograph or film to section 65A(2) of the Police and Criminal Evidence Act 1984 (meaning of “qualifying offence” for the purposes of Part 5 of that Act).

15 Page 240, line 25, at end insert –

“13A In section 6 of the Sexual Offences (Amendment) Act 1992 (interpretation), after subsection (2A) insert –

“(2B) For the purposes of this Act, where it is alleged or there is an accusation that an offence under section 66B(4) of the Sexual Offences Act 2003 (threatening to share intimate photograph or film) has been committed, the person against whom the offence is alleged to have been committed is to be regarded as –

- (a) the person to whom the threat mentioned in that subsection is alleged to have been made, and
- (b) (if different) the person shown, or who appears to be shown, in an intimate state in the photograph or film that is the subject of the threat.”

Member's explanatory statement

This amendment has the effect of applying the provisions of the Sexual Offences (Amendment) Act 1992 to the person shown or who appears to be shown in an intimate photograph or film where a threat to share the photograph or film is made to a person other than that person.

16 Page 240, line 27, at end insert –

“(1A) In section 78 (meaning of “sexual”), after “15A” insert “, 66B to 66D ”.”

Member's explanatory statement

This amendment provides that the existing definition of “sexual” in section 78 of the Sexual Offences Act 2003 does not apply to the new offences of sharing and threatening to share an intimate photograph or film (on account of a separate definition applying to those offences).

17 Page 240, line 29, after “66A” insert “, 66B(2) and (3)”

Member's explanatory statement

This amendment adds a reference to certain of the new offences of sharing an intimate photograph or film to section 136A(3A) of the Sexual Offences Act 2003 (offences specified as child sex offences for the purposes of Part 2A of that Act when committed against a person under 18).

18 Page 241, line 4, at end insert –

“33B An offence under section 66B(3) of this Act (sharing intimate photograph or film for purpose of obtaining sexual gratification) if –

- (a) where the offender was under 18, the offender is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
- (b) in any other case –
 - (i) the victim was under 18, or
 - (ii) the offender, in respect of the offence or finding, is or has been –
 - (a) sentenced to a term of imprisonment,
 - (b) detained in a hospital, or
 - (c) made the subject of a community sentence of at least 12 months.”

Member's explanatory statement

This amendment adds a reference to the new offence of sharing an intimate photograph or film for the purpose of obtaining sexual gratification to Schedule 3 to the Sexual Offences Act 2003 (offences to which certain provisions of that Act apply).

19 Page 241, line 10, at end insert –

“149B An offence under section 66B(2) or (3) of that Act (sharing intimate photograph or film with intent to cause alarm, distress or humiliation or for purpose of obtaining sexual gratification).”

Member's explanatory statement

This amendment adds a reference to certain of the new offences of sharing an intimate photograph or film to Schedule 15 to the Criminal Justice Act 2003 (specified sexual offences for the purposes of section 325 of that Act).

- 20 Page 241, line 12, after “66A” insert “, 66B(2) or (3)”

Member’s explanatory statement

This amendment adds a reference to certain of the new offences of sharing an intimate photograph or film to Schedule 34A to the Criminal Justice Act 2003 (child sex offences for the purposes of section 327A of that Act).

- 21 Page 241, line 12, at end insert “, and
(b) after “exposure” insert “, sending etc photograph or film of genitals, sharing intimate photograph or film with intent to cause alarm, distress or humiliation or for purpose of obtaining sexual gratification”.”

Member’s explanatory statement

This amendment is consequential on the other amendment to Schedule 34A to the Criminal Justice Act 2003 made in my name.

- 22 Page 241, line 17, after “66A” insert “, 66B(2) and (3)”

Member’s explanatory statement

This amendment adds a reference to certain of the new offences of sharing an intimate photograph or film to section 116 of the Anti-social Behaviour, Crime and Policing Act 2014 (conduct constituting offence amounting to “child sexual exploitation” when committed against a person under 18 for the purposes of that section).

- 23 Page 241, line 17, at end insert “, and
(b) after “exposure” insert “, sending etc photograph or film of genitals, sharing intimate photograph or film with intent to cause alarm, distress or humiliation or for purpose of obtaining sexual gratification”.”

Member’s explanatory statement

This amendment is consequential on the other amendment to section 116 of the Anti-social Behaviour, Crime and Policing Act 2014 made in my name.

- 24 Page 241, line 22, at end insert –
“section 66B(2) (sharing intimate photograph or film with intent to cause alarm, distress or humiliation)
section 66B(3) (sharing intimate photograph or film for purpose of obtaining sexual gratification)”.”

Member’s explanatory statement

This amendment adds a reference to certain of the new offences of sharing an intimate photograph or film to paragraph 33 of Schedule 4 to the Modern Slavery Act 2015 (offences to which the defence in section 45 does not apply).

- 25 Page 241, line 27, at end insert –
“(axb) section 66B(2) (sharing intimate photograph or film with intent to cause alarm, distress or humiliation);
(axc) section 66B(3) (sharing intimate photograph or film for purpose of obtaining sexual gratification);”.”

Member's explanatory statement

This amendment adds a reference to certain of the new offences of sharing an intimate photograph or film to Part 2 of Schedule 18 to the Sentencing Act 2020 (specified sexual offences for the purposes of section 306 of that Act).

26 Page 241, line 32, at end insert –

“PART 4

AMENDMENTS CONSEQUENTIAL ON SECTION (*REPEALS IN CONNECTION WITH OFFENCES UNDER SECTION (SHARING OR THREATENING TO SHARE INTIMATE PHOTOGRAPH OR FILM)*)

Criminal Justice and Courts Act 2015

- 20 (1) The Criminal Justice and Courts Act 2015 is amended as follows.
- (2) In section 96 (extent), in subsection (6), omit paragraphs (c) and (g).
- (3) Omit Schedule 8 (disclosing or threatening to disclose private sexual photographs or films: providers of information society services).

Domestic Abuse Act 2021

- 21 (1) The Domestic Abuse Act 2021 is amended as follows.
- (2) Omit section 69 (threats to disclose private sexual photographs and films with intent to cause distress) and the italic heading before it.
- (3) In section 85 (power to make consequential provision), in subsection (1)(b), omit “69.”
- (4) In section 86 (power to make transitional or saving provision), in subsection (1)(b), omit “69.”

Overseas Operations (Service Personnel and Veterans) Act 2021

- 22 In Part 1 of Schedule 1 to the Overseas Operations (Service Personnel and Veterans) Act 2021 (“excluded offences” for the purposes of section 6 of that Act), omit paragraph 11.

Criminal Justice (Electronic Commerce) (Amendment) (EU Exit) Regulations 2021 (S.I. 2021/835)

- 23 In the Criminal Justice (Electronic Commerce) (Amendment) (EU Exit) Regulations 2021, omit regulation 8 (amendment of the Criminal Justice and Courts Act 2015).”

Member's explanatory statement

This amendment inserts a new Part into Schedule 14 consequential on the new Clause in my name repealing sections 33 to 35 of the Criminal Justice and Courts Act 2015.

Schedule 1

LORD PARKINSON OF WHITLEY BAY
BARONESS KIDRON

27 Page 185, line 11, leave out from “provider” to end of line 13 and insert “, including where the publication of the content is effected or controlled by means of –

- (a) software or an automated tool or algorithm applied by the provider or by a person acting on behalf of the provider, or
- (b) an automated tool or algorithm made available on the service by the provider or by a person acting on behalf of the provider.”

Member's explanatory statement

This amendment is about what counts as "provider content" for the purposes of the exemption in paragraph 4 of Schedule 1 of the Bill (which provides that limited functionality services are exempt). Words are added to expressly cover the case where an automated tool or algorithm is made available on the service by a provider, such as a generative AI bot.

LORD ALLAN OF HALLAM

28 Page 185, line 23, at end insert –

"Public information services

5A A user-to-user service is exempt if its primary purpose is the creation of public information resources and it has the following characteristics –

- (a) user-to-user functions are limited to those necessary for the creation and maintenance of a public information resource,
- (b) OFCOM has determined that there is minimal risk of users sharing harmful content on the service, and
- (c) it is non-commercial."

Member's explanatory statement

This amendment would allow OFCOM to exempt services like Wikipedia from regulation where it deems them to be low risk.

LORD MOYLAN
BARONESS FOX OF BUCKLEY

29 Page 188, line 2, at end insert –

"Services provided in the public interest

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

Member's explanatory statement

This amendment exempts organisations working with communities to benefit the public interest, such as charities, user-curated scientific publications, and encyclopaedias. It would align with similar exemptions under online safety laws of other countries, such as recent French legislation. The relevant organisations' existing liability and duties relating to unlawful content are not affected.

After Clause 4

LORD MOYLAN
BARONESS FOX OF BUCKLEY

30 Insert the following new Clause –

"Removal of exemption

- (1) OFCOM may make an order disapplying a paragraph of Schedule 1 to specified services, categories of services, or parts thereof, where OFCOM can demonstrate that the application of the paragraph, in the circumstances, exposes members of the public to serious and unmitigated harm, having regard to the online safety objectives.

After Clause 4 - continued

- (2) Before making an order under subsection (1), OFCOM must—
 - (a) take reasonable steps to give affected persons at least 21 days' notice of OFCOM's intention to consider making an order,
 - (b) consider any representations made to it in respect of the prospective order,
 - (c) hold a hearing if an affected person requests one, and
 - (d) comply with any prescribed requirements for the procedure to be followed in considering whether to make an order.
- (3) If OFCOM make an order under subsection (1), they must as soon as is reasonably practicable take reasonable steps to give affected persons—
 - (a) a copy of the order, and
 - (b) written reasons for the decision to make the order.
- (4) An affected person may appeal against the making of an order under subsection (1).
- (5) An appeal under subsection (4) must be instituted—
 - (a) in a magistrates' court (or in Scotland, by the sheriff),
 - (b) by notice of appeal given to the designated officer, and
 - (c) within the period of 21 days beginning with the day on which the appellant receives a copy of the order against which the appeal is brought.
- (6) On an appeal, the magistrates' court may—
 - (a) dismiss the appeal;
 - (b) allow the appeal and quash the order made by OFCOM;
 - (c) make an order about costs.
- (7) In relation to appeals instituted in Scotland—
 - (a) the reference in subsection (6) to the magistrates' court has effect as a reference to the sheriff, and
 - (b) the reference in subsection (6)(c) to costs has effect as a reference to expenses.
- (8) In this section—

“prescribed” means prescribed by regulations made by the Secretary of State;

“affected person” means a person that provides, or intends to provide, an internet service that may reasonably be expected to be affected by a proposed order under subsection (1).”

Member's explanatory statement

This amendment allows Ofcom to selectively withdraw the benefit of a Schedule 1 exemption where its application in a given case is exposing members of the public to significant harm, having regard to the “online safety objectives” defined in Schedule 4. This is modelled on the “rescue clause” (Section 284) of the Gambling Act 2005, which gives similar powers to the Gambling Commission.

Clause 5

LORD PARKINSON OF WHITLEY BAY

- 31 Page 4, line 40, leave out “section 54” and insert “sections 54 to (“Priority content that is harmful to children”)

Member’s explanatory statement

This amendment is consequential on the new Clauses proposed to be inserted after Clause 54 in my name setting out which kinds of content count as primary priority content and priority content harmful to children.

Clause 6

LORD PARKINSON OF WHITLEY BAY

- 32 Page 5, line 29, at end insert –
“(ba) the duties about assessments related to adult user empowerment set out in section (Assessment duties: user empowerment),”

Member’s explanatory statement

This amendment ensures that the new duties in the new Clause proposed after Clause 11 in my name are imposed on providers of Category 1 services.

- 33 Page 5, line 37, leave out “duty about record-keeping set out in section 19(9)” and insert “duties about record-keeping set out in section 19(8A) and (9)”

Member’s explanatory statement

This amendment ensures that the new duties in Clause 19 proposed by amendments in my name to that clause are imposed on providers of Category 1 services.

Clause 10

LORD PARKINSON OF WHITLEY BAY

LORD CLEMENT-JONES

- 34 Page 9, line 13, after “8” insert “and, in the case of services likely to be accessed by children which are Category 1 services, the duties about assessments set out in section (Assessment duties: user empowerment)”

Member’s explanatory statement

This amendment inserts a signpost to the new duties imposed on providers of Category 1 services by the new Clause proposed after Clause 11 in my name.

BARONESS KIDRON

LORD STEVENSON OF BALMACARA

BARONESS HARDING OF WINSCOMBE

THE LORD BISHOP OF OXFORD

- 35 Page 9, line 37, at end insert –
“(iv) features, functionalities or behaviours (including those enabled or created by the design or operation of the service) that are harmful to children”

Member's explanatory statement

This amendment ensures that in carrying out risk assessments, user to user services must consider the potential for the design and operation of services to create harm separately and additionally to harm relating to the dissemination of or encountering harmful content.

Clause 11

BARONESS KIDRON
LORD STEVENSON OF BALMACARA
BARONESS HARDING OF WINSCOMBE
LORD CLEMENT-JONES

36 Page 10, line 38, at end insert –

“(c) mitigate the impact of harm to children in different age groups presented by features, functionalities or behaviours enabled or created by the design or operation of the service.”

Member's explanatory statement

This amendment ensures that User to user services' duty to protect children from harm includes the ways in which the design and operation of services may create harm separately and additionally to harm relating to the dissemination of or encountering harmful content.

LORD PARKINSON OF WHITLEY BAY

37 Page 10, line 42, leave out “(for example, by using age verification)”

Member's explanatory statement

This amendment is consequential on the next amendment of Clause 11 in my name.

BARONESS KIDRON
LORD STEVENSON OF BALMACARA
BARONESS HARDING OF WINSCOMBE
LORD CLEMENT-JONES

This amendment replaces Amendment 40, which was marshalled in the wrong place in error, and corrects its location on the Marshalled List.

37A★ Page 10, line 46, at end insert –

“(c) protect children in age groups judged to be at risk of harm from features, functionalities or behaviours enabled or created by the design or operation of the service”

Member's explanatory statement

This amendment ensures that user to user services' duty to protect children from harm includes the ways in which the design and operation of services may create harm separately and additionally to harm relating to the dissemination or encountering harmful content.

LORD PARKINSON OF WHITLEY BAY
BARONESS KIDRON

38 Page 10, line 46, at end insert –

“(3A) The duty set out in subsection (3)(a) requires a provider to use age verification or age estimation (or both) to prevent children of any age from encountering primary priority content that is harmful to children which the provider identifies on the service.

Clause 11 - continued

- (3B) That requirement applies to a provider in relation to a particular kind of primary priority content that is harmful to children in every case except where –
- (a) a term of service indicates (in whatever words) that the presence of that kind of primary priority content that is harmful to children is prohibited on the service, and
 - (b) that policy applies in relation to all users of the service.
- (3C) If a provider is required by subsection (3A) to use age verification or age estimation for the purpose of compliance with the duty set out in subsection (3)(a), the age verification or age estimation must be of such a kind, and used in such a way, that it is highly effective at correctly determining whether or not a particular user is a child.”

Member’s explanatory statement

This amendment requires providers of user-to-user services to use age verification or age estimation to prevent children from encountering identified primary priority content that is harmful to children, unless the terms of service indicate that that kind of content is prohibited; and where that requirement applies, new subsection (3C) provides that the age verification or age estimation must be highly effective.

LORD BETHELL
BARONESS RITCHIE OF DOWNPATRICK
As an amendment to Amendment 38

39 At end insert –

“(3D) If the duty in subsection (3)(a) relates to pornographic content, the duty applies regardless of the size and capacity of a service.”

Member’s explanatory statement

This amendment does not allow a service to determine age verification or age estimation is not needed because of their size and capacity.

40 [Withdrawn]

LORD PARKINSON OF WHITLEY BAY

41 Page 11, line 1, leave out from beginning to “may” in line 2 and insert “Age verification or age estimation to identify who is or is not a child user or which age group a child user is in are examples of measures which (if not required by subsection (3A))”

Member’s explanatory statement

This amendment refers to age verification and age estimation as mentioned in the preceding amendment in my name, and clarifies the relationship between Clause 11(4) and new subsection (3A) of Clause 11 inserted by that amendment.

42 Page 12, line 6, leave out “this section” and insert “section 11”

Member’s explanatory statement

This amendment is consequential on the splitting up of Clause 11 into two Clauses.

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

43 Page 12, line 11, 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.

LORD PARKINSON OF WHITLEY BAY

44 Page 12, line 12, leave out "this section" and insert "section 11"

Member's explanatory statement

This amendment is consequential on the splitting up of Clause 11 into two Clauses.

45 Page 12, line 16, leave out "subsections (3)(b)" and insert "section 11(3)(b)"

Member's explanatory statement

This amendment is consequential on the splitting up of Clause 11 into two Clauses.

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

46 Page 12, line 21, leave out subsection (15)

Member's explanatory statement

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

LORD PARKINSON OF WHITLEY BAY

47 Page 12, line 21, leave out "subsections (3)" and insert "section 11(3)"

Member's explanatory statement

This amendment is consequential on the splitting up of Clause 11 into two Clauses.

48 Page 12, line 24, leave out "this section" and insert "section 11"

Member's explanatory statement

This amendment is consequential on the splitting up of Clause 11 into two Clauses.

49 Page 12, line 27, leave out from "if" to "the" in line 29 and insert "age verification or age estimation is used on the service with"

Member's explanatory statement

This amendment provides that a provider can only conclude that children cannot access a service if age verification or age estimation is used on the service with the result that children are not normally able to access it.

50 Page 12, line 31, after “In” insert “section 11 and”

Member’s explanatory statement

This amendment is consequential on the splitting up of Clause 11 into two Clauses.

51 Page 12, line 33, leave out “this section” and insert “section 11”

Member’s explanatory statement

This amendment is consequential on the splitting up of Clause 11 into two Clauses.

52 Divide Clause 11 into two clauses, the first (*Safety duties protecting children*) to consist of subsections (1) to (11) and the second (*Safety duties protecting children: interpretation*) to consist of subsections (12) to (19)

Member’s explanatory statement

This amendment splits up Clause 11 into two Clauses.

After Clause 11

LORD PARKINSON OF WHITLEY BAY
BARONESS MERRON

53 Insert the following new Clause—

“Assessment duties: user empowerment

- (1) This section sets out the duties about assessments related to adult user empowerment which apply in relation to Category 1 services (in addition to the duties about risk assessments set out in section 8 and, in the case of Category 1 services likely to be accessed by children, section 10).
- (2) A duty to carry out a suitable and sufficient assessment for the purposes of section 12(2) at a time set out in, or as provided by, Schedule 3.
- (3) A duty to take appropriate steps to keep such an assessment up to date.
- (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 assessment for the purposes of section 12(2) relating to the impacts of that proposed change.
- (5) An assessment of a service “for the purposes of section 12(2)” means an assessment of the following matters—
 - (a) the user base;
 - (b) the incidence of relevant content on the service;
 - (c) the likelihood of adult users of the service encountering, by means of the service, each kind of relevant content (with each kind separately assessed), 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;
 - (d) the likelihood of adult users with a certain characteristic or who are members of a certain group encountering relevant content which particularly affects them;
 - (e) the likelihood of functionalities of the service facilitating the presence or dissemination of relevant content, identifying and assessing those functionalities more likely to do so;

After Clause 11 - continued

- (f) the different ways in which the service is used, and the impact of such use on the likelihood of adult users encountering relevant content;
 - (g) how the design and operation of the service (including the business model, governance, use of proactive technology, measures to strengthen adult users' control over their interaction with user-generated content, and other systems and processes) may reduce or increase the likelihood of adult users encountering relevant content.
- (6) In this section “relevant content” means content to which section 12(2) applies (content to which user empowerment duties set out in that provision apply).
- (7) See also –
- (a) section 19(8A) and (9) (records of assessments), and
 - (b) Schedule 3 (timing of providers' assessments).”

Member's explanatory statement

This amendment requires providers of Category 1 services to carry out and update as necessary an assessment about how likely it is that adult users will encounter content to which Clause 12(2) applies (suicide and self-harm content and so on - see Clause 12(10), (11) and (12)).

BARONESS MERRON

As an amendment to the Amendment 53

54 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

55 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.

LORD MOYLAN

BARONESS FOX OF BUCKLEY

56 Page 12, line 42, at end insert –

“(2A) The duty in subsection (2) must be complied with in a manner so that –

- (a) the default position is that there should be no features applied inhibiting the receipt by the user of content unless the user makes an active decision otherwise, and

Clause 12 - continued

- (b) as far as is reasonable, users may apply different levels of control in respect of different categories of content.”

Member’s explanatory statement

This amendment obliges the user empowerment features to require express consent from users for their application, rather than being a default setting from which users may opt out.

LORD PARKINSON OF WHITLEY BAY

- 57 Page 13, line 9, after “(2)” insert “(“control features”)”

Member’s explanatory statement

This amendment is a technical drafting change related to the next amendment in my name.

LORD MOYLAN
BARONESS FOX OF BUCKLEY

- 58 Page 13, line 9, leave out “easy to access” and insert “clear, easy to access and applied consistently”

Member’s explanatory statement

This amendment requires the user empowerment features to be clear and applied consistently.

LORD CLEMENT-JONES

- 59 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.

LORD PARKINSON OF WHITLEY BAY
BARONESS MERRON

- 60 Page 13, line 10, at end insert –
- “(4A) A duty to operate a service using a system or process which seeks to ensure that all registered adult users are offered the earliest possible opportunity, in relation to each control feature included in the service, to take a step indicating to the provider that –
- (a) the user wishes to retain the default setting for the feature (whether that is that the feature is in use or applied, or is not in use or applied), or
 - (b) the user wishes to change the default setting for the feature.
- (4B) The duty set out in subsection (4A) –
- (a) continues to apply in relation to a user and a control feature for so long as the user has not yet taken a step mentioned in that subsection in relation to the feature;
 - (b) no longer applies in relation to a user once the user has taken such a step in relation to every control feature included in the service.”

Member's explanatory statement

This amendment imposes a new duty on providers of Category 1 services to proactively ask all registered adult users whether they wish to opt in or opt out of any features offered in compliance with the duty in subsection (2), until a choice is made.

LORD PARKINSON OF WHITLEY BAY

- 61 Page 13, line 12, leave out from “which” to “and” in line 13 and insert “control features are offered”

Member's explanatory statement

This amendment is a technical drafting change related to the preceding amendment in my name.

LORD PARKINSON OF WHITLEY BAY
BARONESS MERRON

- 62 Page 13, line 13, at end insert –
“(5A) A duty to summarise in the terms of service the findings of the most recent assessment of a service under section (*Assessment duties: user empowerment*) (assessments related to the duty set out in subsection (2)).”

Member's explanatory statement

This amendment requires providers of Category 1 services to summarise in their terms of service the findings of their latest assessment under the new clause proposed after Clause 11 in my name.

LORD MOYLAN
BARONESS FOX OF BUCKLEY

- 63 Page 13, line 13, at end insert –
“(5A) A duty –
(a) to include clear and accessible provisions in the terms of service specifying by what methods content present on the service is to be identified as content to which subsection (2) applies, and
(b) to ensure that those provisions are applied consistently.”

Member's explanatory statement

This amendment requires providers' terms of service to include provisions about how content to which subsection (2) of Clause 12 applies is identified, and imposes a duty on providers to apply those provisions consistently, as Clause 15 already does in the context of journalistic content.

LORD CLEMENT-JONES

- 64 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.

LORD PARKINSON OF WHITLEY BAY

- 65 Page 13, line 24, leave out “subsection (2)” and insert “section 12(2)”

Member's explanatory statement

This amendment is consequential on the splitting up of Clause 12 into two Clauses.

66 Page 13, line 26, leave out paragraph (a) and insert –

“(a) all the findings of the most recent assessment under section (*Assessment duties: user empowerment*), and”

Member's explanatory statement

This amendment makes it clear that the findings of the latest assessment under the new Clause proposed after Clause 11 in my name are a relevant factor for the purposes of determining what it is proportionate for a provider to do to comply with the duty under Clause 12(2).

67 Page 13, line 29, leave out “Subsection (2)” and insert “Section 12(2)”

Member's explanatory statement

This amendment is consequential on the splitting up of Clause 12 into two Clauses.

LORD PARKINSON OF WHITLEY BAY
BARONESS MERRON

68 Page 14, line 3, at end insert –

“(12A) The duty set out in section 12(4A) applies in relation to all registered adult users, not just those who begin to use a service after that duty begins to apply.”

Member's explanatory statement

This amendment makes it clear that the new duty on providers to offer registered users a choice about whether to use the user empowerment tools applies to existing as well as new users.

LORD PARKINSON OF WHITLEY BAY

69 Page 14, line 4, after “In” insert “section 12 and”

Member's explanatory statement

This amendment is consequential on the splitting up of Clause 12 into two Clauses.

70 Page 14, line 12, after “In” insert “section 12 and”

Member's explanatory statement

This amendment is consequential on the splitting up of Clause 12 into two Clauses.

71 Page 14, line 16, after first “of” insert “section 12 and”

Member's explanatory statement

This amendment is consequential on the splitting up of Clause 12 into two Clauses.

72 Page 14, line 21, at end insert –

“(16) See also, in relation to duties set out in section 12, section 18 (*duties about freedom of expression and privacy*).”

Member's explanatory statement

This amendment inserts a signpost to Clause 18, to which the duties in Clause 12 are relevant.

- 73 Divide Clause 12 into two clauses, the first (*User empowerment duties*) to consist of subsections (1) to (7) and the second (*User empowerment duties: interpretation*) to consist of subsections (8) to (16)

Member's explanatory statement

This amendment splits up Clause 12 into two Clauses.

Clause 16

LORD PARKINSON OF WHITLEY BAY

- 74 Page 19, line 26, leave out from “if” to “the” in line 28 and insert “age verification or age estimation is used on the service with”

Member's explanatory statement

This amendment provides that a provider can only conclude that children cannot access a service if age verification or age estimation is used on the service with the result that children are not normally able to access it.

Clause 17

LORD PARKINSON OF WHITLEY BAY

- 75 Page 21, line 2, leave out “11(3)” and insert “11(2) or (3)”

Member's explanatory statement

This amendment is about complaints of content being blocked because of an incorrect assessment of a user's age. A reference to Clause 11(2) is inserted, as the duty in that provision can also be complied with by using age verification or age estimation.

- 76 Page 21, line 16, leave out from “if” to “the” in line 18 and insert “age verification or age estimation is used on the service with”

Member's explanatory statement

This amendment provides that a provider can only conclude that children cannot access a service if age verification or age estimation is used on the service with the result that children are not normally able to access it.

Clause 18

BARONESS FOX OF BUCKLEY
LORD MOYLAN

- 77 Page 21, line 30, after “implementing,” insert “terms of service,”

Member's explanatory statement

This amendment, and others in the name of Baroness Fox of Buckley, ensure free speech is not just considered at an abstract policy level but is included in providers' terms of service.

- 78 Page 21, line 33, after “implementing,” insert “terms of service,”

Member's explanatory statement

This amendment, and others in the name of Baroness Fox of Buckley, ensure free speech is not just considered at an abstract policy level but is included in providers' terms of service

79 Page 22, line 1, after “on” insert “terms of service,”

Member’s explanatory statement

This amendment, and others in the name of Baroness Fox of Buckley, ensure free speech is not just considered at an abstract policy level but is included in providers’ terms of service.

80 Page 22, line 6, after “adopted” insert “terms of service,”

Member’s explanatory statement

This amendment, and others in the name of Baroness Fox of Buckley, ensure free speech is not just considered at an abstract policy level but is included in providers’ terms of service.

81 Page 22, line 9, after second “the” insert “terms of service,”

Member’s explanatory statement

This amendment, and others in the name of Baroness Fox of Buckley, ensure free speech is not just considered at an abstract policy level but is included in providers’ terms of service.

Clause 19

LORD PARKINSON OF WHITLEY BAY
BARONESS MERRON

82 Page 23, line 30, at end insert –

“(8A) A duty to make and keep a written record, in an easily understandable form, of all aspects of every assessment under section (*Assessment duties: user empowerment*) (assessments related to the adult user empowerment duty set out in section 12(2)), including details about how the assessment was carried out and its findings.”

Member’s explanatory statement

This amendment requires providers of Category 1 services to keep full records of their assessments under the new Clause proposed after Clause 11 in my name.

LORD PARKINSON OF WHITLEY BAY

83 Page 23, line 31, leave out “a risk assessment as required by subsection (2)” and insert “an assessment as required by subsection (2) or (8A)”

Member’s explanatory statement

This amendment requires providers of Category 1 services to supply OFCOM with copies of records of their assessments under the new Clause proposed after Clause 11 in my name.

84 Page 24, line 4, at end insert “, and (*Disclosure of information about use of service by deceased child users*) (deceased child users).”

Member’s explanatory statement

This amendment has the effect that OFCOM have a duty to review compliance by user-to-user service providers with the new duties imposed by the Clause proposed after Clause 67 in my name.

Clause 25

BARONESS KIDRON
LORD STEVENSON OF BALMACARA
BARONESS HARDING OF WINSCOMBE
THE LORD BISHOP OF OXFORD

85 Page 28, line 33, at end insert –

“(c) mitigate the impact of harm to children in different age groups presented by search functions that expose children to features, functionalities or behaviours that are harmful to children.”

Member’s explanatory statement

This amendment ensures that Search services’ duty to protect children from harm includes the ways in which the design and operation of services may create harm separately and additionally to harm relating to the dissemination or encountering harmful content.

LORD PARKINSON OF WHITLEY BAY

86 Page 29, line 28, leave out “this section” and insert “section 25”

Member’s explanatory statement

This amendment is consequential on the splitting up of Clause 25 into two Clauses.

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

87 Page 29, line 33, 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.

LORD PARKINSON OF WHITLEY BAY

88 Page 29, line 34, leave out “this section” and insert “section 25”

Member’s explanatory statement

This amendment is consequential on the splitting up of Clause 25 into two Clauses.

89 Page 29, line 38, leave out “subsection (3)(b)” and insert “section 25(3)(b)”

Member’s explanatory statement

This amendment is consequential on the splitting up of Clause 25 into two Clauses.

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

90 Page 29, line 42, leave out subsection (13)

Member's explanatory statement

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

LORD PARKINSON OF WHITLEY BAY

- 91 Page 29, line 42, leave out “subsection (3)” and insert “section 25(3)”

Member's explanatory statement

This amendment is consequential on the splitting up of Clause 25 into two Clauses.

- 92 Page 30, line 1, leave out “this section” and insert “section 25”

Member's explanatory statement

This amendment is consequential on the splitting up of Clause 25 into two Clauses.

- 93 Page 30, line 4, leave out from “if” to “the” in line 6 and insert “age verification or age estimation is used on the service with”

Member's explanatory statement

This amendment provides that a provider can only conclude that children cannot access a service if age verification or age estimation is used on the service with the result that children are not normally able to access it.

- 94 Page 30, line 8, after “In” insert “section 25 and”

Member's explanatory statement

This amendment is consequential on the splitting up of Clause 25 into two Clauses.

- 95 Page 30, line 10, leave out “this section” and insert “section 25”

Member's explanatory statement

This amendment is consequential on the splitting up of Clause 25 into two Clauses.

- 96 Divide Clause 25 into two clauses, the first (*Safety duties protecting children*) to consist of subsections (1) to (9) and the second (*Safety duties protecting children: interpretation*) to consist of subsections (10) to (17)

Member's explanatory statement

This amendment splits up Clause 25 into two Clauses.

Clause 27

LORD PARKINSON OF WHITLEY BAY

- 97 Page 32, line 2, leave out “25(3)” and insert “25(2) or (3)”

Member's explanatory statement

This amendment is about complaints of content being blocked because of an incorrect assessment of a user's age. A reference to Clause 25(2) is inserted, as the duty in that provision can also be complied with by using age verification or age estimation.

Clause 29

LORD PARKINSON OF WHITLEY BAY
 LORD KNIGHT OF WEYMOUTH
 LORD CLEMENT-JONES
 BARONESS KIDRON

- 98 Page 33, line 41, at end insert “,
 and for the purposes of subsection (6), also includes the duties set out in
 section (*Disclosure of information about use of service by deceased child users*)
 (deceased child users).”

Member’s explanatory statement

*This amendment has the effect that OFCOM have a duty to review compliance by search
 service providers with the new duties imposed by the Clause proposed after Clause 67 in my
 name.*

Clause 30

LORD PARKINSON OF WHITLEY BAY

- 99 Page 34, line 12, leave out from “if” to “the” in line 13 and insert “age verification or
 age estimation is used on the service with”

Member’s explanatory statement

*This amendment provides that a provider can only conclude that children cannot access a
 service if age verification or age estimation is used on the service with the result that children
 are not normally able to access it.*

BARONESS KIDRON
 LORD STEVENSON OF BALMACARA
 BARONESS HARDING OF WINSCOMBE
 THE LORD BISHOP OF OXFORD

- 100 Page 34, line 23, after “significant” insert “in itself or”

Member’s explanatory statement

*This amendment aligns the definition of “significant” with the ICO’s Age Appropriate Design
 Code and draft guidance to ensure regulatory alignment and to ensure the protection of the
 greatest number of children.*

- 101 Page 34, line 24, after second “service” insert “and means that there are more than a de
 minimis or insignificant number of children using the service”

Member’s explanatory statement

*This amendment aligns the definition of “significant” with the ICO’s Age Appropriate Design
 Code and draft guidance to ensure regulatory alignment and to ensure the protection of the
 greatest number of children.*

Clause 31

LORD PARKINSON OF WHITLEY BAY

- 102** Page 35, line 1, leave out from “of” to “as” in line 2 and insert “age verification or age estimation that is used on the service”

Member’s explanatory statement

This amendment is consequential on the amendment of clause 30 in my name.

Schedule 3

LORD PARKINSON OF WHITLEY BAY

LORD STEVENSON OF BALMACARA

- 103** Page 195, line 34, at end insert –
- “5A(1) In this paragraph “the relevant day”, in relation to a regulated user-to-user service, means –
- (a) the first day on which the service is a Category 1 service, or
 - (b) the first day on which the service again becomes a Category 1 service (following a period during which the service was not a Category 1 service).
- (2) If, on the relevant day, section 12(2) guidance is available, a section 12(2) assessment of the service must be completed within the period of three months beginning with that day.
- (3) Sub-paragraph (4) applies if –
- (a) on the relevant day, the first section 12(2) guidance has not yet been published, and
 - (b) immediately before the publication of that guidance, the service is still a Category 1 service.
- (4) The first section 12(2) assessment of the service must be completed within the period of three months beginning with the day on which the first section 12(2) guidance is published.”

Member’s explanatory statement

This amendment and the rest of the amendments of Schedule 3 in my name provide for the timing of the first assessments under the new Clause proposed after Clause 11 in my name.

LORD PARKINSON OF WHITLEY BAY

- 104** Page 196, line 36, leave out “and 12” and insert “to 12A”

Member’s explanatory statement

See the explanatory statement for the first amendment to Schedule 3 in the Minister’s name.

- 105** Page 196, line 43, at end insert –
- “(2A) If the effect of paragraph 5A is that the period within which the first section 12(2) assessment of the service must be completed begins on a day before the assessment start day, the time for carrying out that assessment is extended as set out in paragraph 12A.”

Member's explanatory statement

See the explanatory statement for the first amendment to Schedule 3 in the Minister's name.

106 Page 196, line 44, leave out “and 12” and insert “to 12A”

Member's explanatory statement

See the explanatory statement for the first amendment to Schedule 3 in the Minister's name.

107 Page 197, line 14, at end insert –

“12A (1) If section 12(2) guidance is available on the assessment start day, the first section 12(2) assessment of the service must be completed within the period of three months beginning with that day.

(2) If, on the assessment start day, the first section 12(2) guidance has not yet been published, the first section 12(2) assessment of the service must be completed within the period of three months beginning with the day on which the first section 12(2) guidance is published.”

Member's explanatory statement

See the explanatory statement for the first amendment to Schedule 3 in the Minister's name.

108 Page 197, line 24, after “1” insert “or paragraph 5A”

Member's explanatory statement

See the explanatory statement for the first amendment to Schedule 3 in the Minister's name.

109 Page 197, line 25, leave out “or CAA” and insert “, CAA or section 12(2) assessment”

Member's explanatory statement

See the explanatory statement for the first amendment to Schedule 3 in the Minister's name.

110 Page 197, line 28, leave out “or 15” and insert “, 15 or 15A”

Member's explanatory statement

See the explanatory statement for the first amendment to Schedule 3 in the Minister's name.

111 Page 197, line 30, leave out “applies” and insert “and paragraph 5A apply”

Member's explanatory statement

See the explanatory statement for the first amendment to Schedule 3 in the Minister's name.

112 Page 198, line 8, at end insert –

“15A (1) If section 12(2) guidance is available on the assessment start day, a section 12(2) assessment of the Part 4B part must be completed within the period of three months beginning with that day.

(2) If, on the assessment start day, the first section 12(2) guidance has not yet been published, a section 12(2) assessment of the Part 4B part must be completed within the period of three months beginning with the day on which the first section 12(2) guidance is published.”

Member's explanatory statement

See the explanatory statement for the first amendment to Schedule 3 in the Minister's name.

- 113 Page 198, line 13, at end insert –
“(b) a section 12(2) assessment of the regulated service if a section 12(2) assessment is due to be carried out in relation to the Part 4B part of the service in accordance with paragraph 15A.”

Member's explanatory statement

See the explanatory statement for the first amendment to Schedule 3 in the Minister's name.

- 114 Page 198, line 15, leave out “or a CAA” and insert “, a CAA or a section 12(2) assessment”

Member's explanatory statement

See the explanatory statement for the first amendment to Schedule 3 in the Minister's name.

- 115 Page 198, line 25, leave out “or a CAA” and insert “, a CAA or a section 12(2) assessment”

Member's explanatory statement

See the explanatory statement for the first amendment to Schedule 3 in the Minister's name.

- 116 Page 198, line 26, after “1” insert “or paragraph 5A”

Member's explanatory statement

See the explanatory statement for the first amendment to Schedule 3 in the Minister's name.

- 117 Page 198, line 37, at end insert –
“(c) a section 12(2) assessment is not required to be carried out at the time provided for by paragraph 5A.”

Member's explanatory statement

See the explanatory statement for the first amendment to Schedule 3 in the Minister's name.

- 118 Page 198, line 38, leave out “or CAA” and insert “, CAA or section 12(2) assessment”

Member's explanatory statement

See the explanatory statement for the first amendment to Schedule 3 in the Minister's name.

- 119 Page 198, line 39, at end insert “or paragraph 5A.”

Member's explanatory statement

See the explanatory statement for the first amendment to Schedule 3 in the Minister's name.

- 120 Page 199, line 18, at end insert –
“section 12(2) assessment” means OFCOM's assessment under section (Assessment duties: user empowerment) (assessments related to the adult user empowerment duty set out in section 12(2));

Schedule 3 - continued

“section 12(2) guidance” means OFCOM’s guidance under section 47(A1).”

Member’s explanatory statement

See the explanatory statement for the first amendment to Schedule 3 in the Minister’s name.

121 Page 200, line 6, after “CAA” insert “, a section 12(2) assessment”

Member’s explanatory statement

See the explanatory statement for the first amendment to Schedule 3 in the Minister’s name.

122 Page 200, line 12, after “CAAs” insert “, section 12(2) assessments”

Member’s explanatory statement

See the explanatory statement for the first amendment to Schedule 3 in the Minister’s name.

After Clause 37

LORD MOYLAN
BARONESS FOX OF BUCKLEY

123 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

LORD PARKINSON OF WHITLEY BAY BARONESS KIDRON

124

Page 203, line 23, at end insert –

“Content of codes of practice: age assurance

11A(1) This paragraph is about the inclusion of age assurance in a code of practice as a measure recommended for the purpose of compliance with any of the duties set out in section 11(2) or (3) or 25(2) or (3), and subparagraph (2) sets out some further principles, in addition to those in paragraphs 1 and 2 (general principles) and 10(2) (freedom of expression and privacy), which are particularly relevant.

- (2) In deciding whether to recommend the use of age assurance, or which kinds of age assurance to recommend, OFCOM must have regard to the following –
- (a) the principle that age assurance should be effective at correctly identifying the age or age-range of users;
 - (b) relevant standards set out in the latest version of the code of practice under section 123 of the Data Protection Act 2018 (age-appropriate design code);
 - (c) the need to strike the right balance between –
 - (i) the levels of risk and the nature, and severity, of potential harm to children which the age assurance is designed to guard against, and
 - (ii) protecting the right of users and (in the case of search services or the search engine of combined services) interested persons to freedom of expression within the law;
 - (d) the principle that more effective kinds of age assurance should be used to deal with higher levels of risk of harm to children;
 - (e) the principle that age assurance should be easy to use, including by children of different ages and with different needs;
 - (f) the principle that age assurance should work effectively for all users regardless of their characteristics or whether they are members of a certain group;
 - (g) the principle of interoperability between different kinds of age assurance.
- (3) In a code of practice that describes measures for the purpose of compliance with the duty set out in section 11(3)(a), OFCOM must recommend (among other things) age verification or age estimation which is such of a kind, and which is to be used in such a way, that it is highly effective at correctly determining whether or not a particular user is a child (see section 11(3C)).
- (4) In deciding which kinds and uses of age verification or age estimation to recommend for the purpose of compliance with the duty set out in section 11(3)(a), OFCOM must have regard to their guidance under section 73 that gives examples of kinds and uses of age verification and age estimation that are, or are not, highly effective at correctly determining whether or not a particular user is a child.

Schedule 4 - continued

- (5) Nothing in sub-paragraph (2) is to be read as allowing OFCOM to recommend, for the purpose of compliance with the duty set out in section 11(3)(a) by providers subject to the requirement in section 11(3A), a kind or use of age verification or age estimation which does not meet the requirement to be highly effective as mentioned in section 11(3C).
- (6) A code of practice that recommends the use of age assurance for the purpose of compliance with the duties set out in section 11(2) or (3) must also describe measures recommended for the purpose of compliance with the duties set out in –
- (a) section 11(6), (8) and (10) (inclusion of clear information in terms of service), and
 - (b) section 17(2) and (3) (see, in particular, section 17(5)(e) (complaints about age assurance)).
- (7) A code of practice that recommends the use of age assurance for the purpose of compliance with the duties set out in section 25(2) or (3) must also describe measures recommended for the purpose of compliance with the duties set out in –
- (a) section 25(5) and (8) (inclusion of clear information in publicly available statement), and
 - (b) section 27(2) and (3) (see, in particular, section 27(5)(d) (complaints about age assurance)).
- (8) A code of practice may –
- (a) refer to industry or technical standards for age assurance (where they exist);
 - (b) elaborate on the principles mentioned in paragraphs (a) and (c) to (g) of sub-paragraph (2).
- (9) In this paragraph “age assurance” means age verification or age estimation, and see in particular section (“Age verification” and “age estimation”) (4) (self-declaration of age not to be regarded as age verification or age estimation).”

Member’s explanatory statement

This amendment contains provisions which relate to OFCOM’s recommendation of age assurance in codes of practice for the purposes of Part 3 of the Bill. It includes some relevant principles and makes it clear that OFCOM must recommend highly effective age assurance in connection with the duty in Clause 11(3)(a) (preventing children from encountering primary priority content that is harmful to children).

BARONESS KIDRON
LORD STEVENSON OF BALMACARA
BARONESS HARDING OF WINSCOMBE
THE LORD BISHOP OF OXFORD
As an amendment to Amendment 124

125

after paragraph 11(2)(g), insert –

- “(i) the principle that adults and children have a right to privacy, and data used for estimating or verifying age should not be used for any other purpose;

Schedule 4 - continued

- (j) the principle that data relating to age verification or age estimations should be discarded or stored securely.”

Member’s explanatory statement

This amendment makes it clear that data collected for age assurance must be stored securely, deleted as soon as possible and not used for other purposes.

LORD PARKINSON OF WHITLEY BAY

- 126 Page 204, line 10, leave out “existing”

Member’s explanatory statement

This amendment is a minor drafting change to omit a superfluous word.

- 127 Page 204, line 14, at end insert –

“(7) Sub-paragraph (6) does not apply in relation to proactive technology which is a kind of age verification or age estimation technology.”

Member’s explanatory statement

This amendment carves out age assurance technologies from the paragraph of Schedule 4 which is about proactive technology, because age assurance principles etc are covered by new paragraph 11A proposed to be inserted by the amendment in my name above.

Clause 38

LORD MOYLAN
BARONESS FOX OF BUCKLEY

- 128 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.

LORD PARKINSON OF WHITLEY BAY

- 129 Page 40, line 29, after “39” insert “(A1), (B1) or”

Member’s explanatory statement

This amendment is consequential on the amendments made to Clause 39 in my name.

LORD MOYLAN
BARONESS FOX OF BUCKLEY

- 130 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.

LORD PARKINSON OF WHITLEY BAY

- 131 Page 41, line 4, leave out “This section applies” and insert “Subsections (1) to (6) apply”

Member’s explanatory statement

This amendment is consequential on the amendment inserting new subsections (9) to (13) into this Clause in my name.

- 132 Page 41, line 5, leave out “it applies” and insert “they apply”

Member’s explanatory statement

This amendment is consequential on the amendment inserting new subsections (9) to (13) into this Clause in my name.

LORD PARKINSON OF WHITLEY BAY
LORD STEVENSON OF BALMACARA
LORD CLEMENT-JONES

- 133 Page 41, line 7, at end insert –

“(9) Subsection (11) applies to –

- (a) a draft of the first code of practice prepared under section 36(1) (terrorism code of practice);
 - (b) a draft of the first code of practice prepared under section 36(2) (CSEA code of practice);
 - (c) a draft of the first code of practice prepared under section 36(3) relating to a duty set out in section 9 or 23 (illegal content);
 - (d) a draft of the first code of practice prepared under section 36(3) relating to a duty set out in section 11 or 25 (children’s online safety);
 - (e) a draft of the first code of practice prepared under section 36(3) relating to a duty set out in section 16 or 26 (content reporting);
 - (f) a draft of the first code of practice prepared under section 36(3) relating to –
 - (i) a duty set out in section 17 (complaints procedures) that concerns complaints of a kind mentioned in subsection (4) or (5) of that section, or
 - (ii) a duty set out in section 27 (complaints procedures).
- (10) For the purposes of paragraphs (c) to (f) of subsection (9) a draft of a code of practice is a draft of the first code of practice relating to a duty if –

Clause 38 - continued

- (a) it describes measures recommended for the purpose of compliance with the duty, and
 - (b) it is a draft of the first code of practice prepared under section 36(3) that describes measures for that purpose.
- (11) OFCOM must submit a draft to which this subsection applies to the Secretary of State under subsection (1) within the period of 18 months beginning with the day on which this Act is passed.
- (12) If OFCOM consider that it is necessary to extend the period mentioned in subsection (11) in relation to a draft mentioned in any of paragraphs (a) to (f) of subsection (9), OFCOM may extend the period in relation to that draft by up to 12 months by making and publishing a statement.
- But this is subject to subsection (15).
- (13) A statement under subsection (12) must set out –
- (a) the reasons why OFCOM consider that it is necessary to extend the period mentioned in subsection (11) in relation to the draft concerned, and
 - (b) the period of extension.
- (14) A statement under subsection (12) may be published at the same time as (or incorporate) a statement under section (*Time for publishing first guidance under certain provisions of this Act*)(3) (extension of time to prepare certain guidance).
- (15) But a statement under subsection (12) may not be made in relation to a draft mentioned in a particular paragraph of subsection (9) if –
- (a) a statement has previously been made under subsection (12) (whether in relation to a draft mentioned in the same or a different paragraph of subsection (9)), or
 - (b) a statement has previously been made under section (*Time for publishing first guidance under certain provisions of this Act*)(3).”

Member’s explanatory statement

This amendment provides that OFCOM must prepare the first draft of certain codes of practice within 18 months of Royal Assent, unless they consider a longer period to be necessary in which case OFCOM may (on one occasion only) extend the period and set out why in a published statement.

Clause 39

LORD PARKINSON OF WHITLEY BAY
LORD STEVENSON OF BALMACARA

134

Page 41, line 8, at end insert –

“(A1) The Secretary of State may direct OFCOM to modify a draft of a code of practice submitted under section 38(1) if the Secretary of State believes that modifications are required for the purpose of securing compliance with an international obligation of the United Kingdom.

Clause 39 - continued

(B1) The Secretary of State may direct OFCOM to modify a draft of a code of practice, other than a terrorism or CSEA code of practice, submitted under section 38(1) if the Secretary of State believes that modifications are required for exceptional reasons relating to –

- (a) national security,
- (b) public safety,
- (c) public health, or
- (d) relations with the government of a country outside the United Kingdom.”

Member’s explanatory statement

This amendment (together with other amendments to this Clause in my name) sets out the circumstances in which the Secretary of State can direct OFCOM to modify a draft of a code of practice.

LORD PARKINSON OF WHITLEY BAY

135 Page 41, line 9, after second “a” insert “terrorism or CSEA”

Member’s explanatory statement

This amendment is consequential on the other amendments to this Clause in my name.

136 Page 41, line 12, leave out “public policy” and insert “national security or public safety”

Member’s explanatory statement

This amendment removes the ability of the Secretary of State to direct OFCOM to modify a draft of a code of practice for public policy reasons.

LORD PARKINSON OF WHITLEY BAY

LORD STEVENSON OF BALMACARA

137 Page 41, line 13, leave out paragraph (b) and insert –

- “(b) for exceptional reasons relating to public health or relations with the government of a country outside the United Kingdom.”

Member’s explanatory statement

This amendment (together with other amendments to this Clause in my name) sets out the circumstances in which the Secretary of State can direct OFCOM to modify a draft of a code of practice.

138 Page 41, line 37, at end insert “, and

- (c) must be published, except where the Secretary of State considers that doing so would have the effect mentioned in paragraph (b).”

Member’s explanatory statement

This amendment requires a direction given under Clause 39 to be published except in cases where the Secretary of State considers that to do so would be against the interests of national security, public safety or relations with the government of a country outside the United Kingdom.

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

As an amendment to Amendment 138

- 139 after “published” insert “and laid before each House of Parliament as soon as reasonably practical”

Member’s explanatory statement

This amendment would require the Secretary of State to notify Parliament when a direction is given.

- 140 Page 41, line 37, at end insert –

“(5A) In cases which the Secretary of State considers have the effect mentioned in subsection (5)(b), the Secretary of State must publish and lay before each House of Parliament as soon as reasonably practical a notification that a direction has been issued.

(5B) A notification under subsection (5A) must at a minimum contain the topic of the direction and the title of the draft code in question.”

Member’s explanatory statement

This amendment is contingent on the amendment in the name of Lord Parkinson of Whitley Bay to Clause 39, page 41, line 37. It would require the Secretary of State to notify Parliament that a direction has been issued, but without including the details of that direction to avoid undermining national security, public safety or international relations.

LORD MOYLAN
BARONESS FOX OF BUCKLEY

- 141 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.

LORD PARKINSON OF WHITLEY BAY
LORD STEVENSON OF BALMACARA

- 142 Page 42, line 2, at end insert –

“(ca) publish the document, and”

Member’s explanatory statement

This amendment requires OFCOM to publish a document submitted to the Secretary of State in response the Secretary of State giving a direction under this Clause.

LORD PARKINSON OF WHITLEY BAY

- 143 Page 42, line 8, after “subsection” insert “(A1), (B1),”

Member's explanatory statement

This amendment is consequential on the other amendments to this Clause in my name.

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

144 Page 42, line 10, at end insert –

“(8A) The Secretary of State may not give more further directions than are necessary to achieve the objective set out in the original direction in relation to the draft code.”

Member's explanatory statement

This amendment would provide that the Secretary of State may give only the minimum number of directions necessary to achieve the objective set out in the original direction.

145 Page 42, line 11, leave out “When the Secretary of State is satisfied that no further modifications to the draft are required,”

Member's explanatory statement

This amendment would remove a provision that enables the Secretary of State to reject OFCOM's draft codes indefinitely.

Clause 40

LORD PARKINSON OF WHITLEY BAY

146 Page 42, line 34, leave out “(1)(a)” and insert “(A1), (B1) or (1)(b)”

Member's explanatory statement

This amendment is consequential on the amendments made to Clause 39 in my name.

147 Page 42, line 36, leave out “(b)” and insert “(a)”

Member's explanatory statement

This amendment is consequential on the amendments made to Clause 39 in my name.

Clause 43

LORD MOYLAN
BARONESS FOX OF BUCKLEY

148 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.

Clause 47

LORD PARKINSON OF WHITLEY BAY
BARONESS MERRON

149 Page 48, line 11, at end insert –

“(A1) OFCOM must produce guidance for providers of Category 1 services to assist them in complying with their duties set out in section (*Assessment duties: user empowerment*) (assessments related to the adult user empowerment duty set out in section 12(2)).”

Member's explanatory statement

This amendment requires OFCOM to produce guidance to assist providers of Category 1 services in carrying out their assessments as required by the new Clause proposed after Clause 11 in my name.

LORD PARKINSON OF WHITLEY BAY

150 Page 48, line 20, after “subsection” insert “(A1) or”

Member's explanatory statement

This amendment requires OFCOM to consult the Information Commissioner before producing guidance mentioned in the preceding amendment in my name.

Clause 48

LORD PARKINSON OF WHITLEY BAY

151 Page 48, line 33, leave out “12(9)” and insert “(*User empowerment duties: interpretation*)”

Member's explanatory statement

This amendment is consequential on the splitting up of Clause 12 into two Clauses.

After Clause 48

LORD PARKINSON OF WHITLEY BAY
BARONESS MERRON
BARONESS MORGAN OF COTES
BARONESS BURT OF SOLIHULL

152 Insert the following new Clause –

“OFCOM’s guidance about protecting women and girls

- (1) OFCOM must produce guidance for providers of Part 3 services which focuses on content and activity –
 - (a) in relation to which such providers have duties set out in this Part or Part 4, and
 - (b) which disproportionately affects women and girls.

After Clause 48 - continued

- (2) The guidance may, among other things—
- (a) contain advice and examples of best practice for assessing risks of harm to women and girls from content and activity mentioned in subsection (1), and for reducing such risks;
 - (b) refer to provisions contained in a code of practice under section 36 which are particularly relevant to the protection of women and girls from such content and activity.
- (3) Before producing the guidance (including revised or replacement guidance), OFCOM must consult—
- (a) the Commissioner for Victims and Witnesses,
 - (b) the Domestic Abuse Commissioner, and
 - (c) such other persons as OFCOM consider appropriate.
- (4) OFCOM must publish the guidance (and any revised or replacement guidance).”

Member’s explanatory statement

This new Clause requires OFCOM to produce and publish a guidance document focusing on online content and activity which disproportionately affects women and girls.

Clause 49

LORD CLEMENT-JONES

- 152A★** Page 49, line 22, at end insert “including in-service characters and objects provided by the service provider with which user characters interact and in visual or audio environments within which users interact”

Member’s explanatory statement

This amendment seeks to probe whether the bill sufficiently covers certain harmful content users may encounter in services from service providers, for example in the metaverse.

LORD PARKINSON OF WHITLEY BAY
BARONESS KIDRON
LORD CLEMENT-JONES

- 153** Page 49, line 27, after “bot” insert “or other automated tool”

Member’s explanatory statement

This amendment, and the next two amendments in my name, make it clear that an automated tool which is not a bot - as well as a bot - may be regarded as a user for the purposes of the definition of “user-generated content”.

LORD PARKINSON OF WHITLEY BAY

- 154** Page 49, line 28, leave out “bot’s functions” and insert “functions of the bot or tool”

Member’s explanatory statement

See the explanatory statement to the preceding amendment in my name.

- 155** Page 49, line 30, after “bot” insert “or tool”

Member's explanatory statement

See the explanatory statement to the first amendment of this Clause in my name.

156 Page 49, line 38, leave out “description” and insert “kind”

Member's explanatory statement

This amendment ensures consistency of language in referring to kinds of content.

LORD PARKINSON OF WHITLEY BAY
BARONESS KIDRON

157 Page 49, line 45, leave out from beginning to end of line 2 on page 50 and insert “, including where the publication of the content is effected or controlled by means of—

- (a) software or an automated tool or algorithm applied by the provider or by a person acting on behalf of the provider, or
- (b) an automated tool or algorithm made available on the service by the provider or by a person acting on behalf of the provider.”

Member's explanatory statement

This amendment is about what counts as “provider content” for the purposes of the exemption in Clause 49(6) of the Bill (which provides that comments/reviews on provider content don't count as regulated user-generated content). Words are added to expressly cover the case where an automated tool or algorithm is made available on the service by a provider, such as a generative AI bot.

LORD PARKINSON OF WHITLEY BAY
LORD STEVENSON OF BALMACARA

158 Page 50, line 17, leave out sub-paragraphs (ii) and (iii) and insert—
“(ii) is video or audio content that was originally published or broadcast by a recognised news publisher, and is not a clipped or edited form of such content (unless it is the recognised news publisher who has clipped or edited it), or
(iii) is a link to an article or item within sub-paragraph (i) or to content within sub-paragraph (ii).”

Member's explanatory statement

This amendment revises the definition of “news publisher content” so that, in particular, online content published by a recognised news publisher that has not first been broadcast is covered by the definition.

Clause 50

LORD LIPSEY
LORD MCNALLY
BARONESS NEWLOVE

159 Page 50, line 38, leave out “and” and insert—
“(ca) a member of an approved regulator as defined in section 42(2) of the Crime and Courts Act 2013 (interpretative provisions), or”

160 Page 51, line 4, at end insert “drawn up by a regulator”

Clause 51

LORD PARKINSON OF WHITLEY BAY
LORD STEVENSON OF BALMACARA

- 161 Page 52, line 14, leave out sub-paragraphs (ii) and (iii) and insert—
“(ii) is video or audio content that was originally published or broadcast by a recognised news publisher, and is not a clipped or edited form of such content (unless it is the recognised news publisher who has clipped or edited it), or
(iii) is a link to an article or item within sub-paragraph (i) or to content within sub-paragraph (ii).”

Member’s explanatory statement

This amendment ensures that, in particular, online content published by a recognised news publisher that has not first been broadcast is included in the list of content which does not count as search content for the purposes of the Bill.

Schedule 7

BARONESS FOX OF BUCKLEY
LORD MOYLAN

- 162 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.

Clause 54

LORD PARKINSON OF WHITLEY BAY

- 163 Page 54, line 44, leave out “applies” and insert “and sections (“Primary priority content that is harmful to children”) and (“Priority content that is harmful to children”) apply”

Member’s explanatory statement

This technical amendment ensures that the new Clauses proposed to be inserted after Clause 54 in my name setting out which kinds of content count as primary priority content and priority content harmful to children apply for the purposes of Part 3 of the Bill.

- 164 Page 55, line 1, leave out subsections (2) and (3)

Member’s explanatory statement

This amendment omits powers to make regulations setting out which kinds of content count as primary priority content and priority content harmful to children. Those kinds of content are now set out on the face of the Bill (see the new Clauses proposed to be inserted after Clause 54 in my name).

- 165 Page 55, line 8, after “children” insert “(see section (“Primary priority content that is harmful to children”))”

Member's explanatory statement

This amendment inserts a signpost to the new Clause proposed to be inserted after Clause 54 in my name setting out which kinds of content count as primary priority content harmful to children.

- 166 Page 55, line 9, after “children” insert “(see section (“Priority content that is harmful to children”))”

Member's explanatory statement

This amendment inserts a signpost to the new Clause proposed to be inserted after Clause 54 in my name setting out which kinds of content count as priority content harmful to children.

- 167 Page 55, leave out line 13

Member's explanatory statement

This is a technical amendment omitting a line which is superfluous as a result of the next amendment in my name.

- 168 Page 55, line 14, leave out paragraph (a)

Member's explanatory statement

This amendment omits a provision about the relationship between illegal content and content harmful to children.

- 169 Page 55, line 34, leave out “is” and insert “and sections (“Primary priority content that is harmful to children”) and (“Priority content that is harmful to children”) are”

Member's explanatory statement

This amendment ensures that technical provision about content harmful to children extends to primary priority and priority content harmful to children in the new Clauses proposed to be inserted after Clause 54 in my name.

- 170 Page 55, line 36, leave out subsection (9)

Member's explanatory statement

This amendment omits a signpost to regulations about primary priority and priority content harmful to children, which is no longer needed as the new Clauses proposed to be inserted after Clause 54 in my name set out those kinds of content on the face of the Bill.

After Clause 54**LORD PARKINSON OF WHITLEY BAY**

- 171 Insert the following new Clause—

““Primary priority content that is harmful to children”

- (1) “Primary priority content that is harmful to children” means content of any of the following kinds.
- (2) Pornographic content, other than content within subsection (6).
- (3) Content which encourages, promotes or provides instructions for suicide.

After Clause 54 - continued

- (4) Content which encourages, promotes or provides instructions for an act of deliberate self-injury.
- (5) Content which encourages, promotes or provides instructions for an eating disorder or behaviours associated with an eating disorder.
- (6) Content is within this subsection if it—
 - (a) consists only of text, or
 - (b) consists only of text accompanied by—
 - (i) identifying content which consists only of text,
 - (ii) other identifying content which is not itself pornographic content,
 - (iii) a GIF which is not itself pornographic content,
 - (iv) an emoji or other symbol, or
 - (v) any combination of content mentioned in sub-paragraphs (i) to (iv).
- (7) In this section and section (“*Priority content that is harmful to children*”) “injury” includes poisoning.”

Member’s explanatory statement

This amendment describes which kinds of content count as primary priority content harmful to children for the purposes of Part 3 of the Bill.

172

Insert the following new Clause—

““Priority content that is harmful to children”

- (1) “Priority content that is harmful to children” means content of any of the following kinds.
- (2) Content which is abusive and which targets any of the following characteristics—
 - (a) race,
 - (b) religion,
 - (c) sex,
 - (d) sexual orientation,
 - (e) disability, or
 - (f) gender reassignment.
- (3) Content which incites hatred against people—
 - (a) of a particular race, religion, sex or sexual orientation,
 - (b) who have a disability, or
 - (c) who have the characteristic of gender reassignment.
- (4) Content which encourages, promotes or provides instructions for an act of serious violence against a person.
- (5) Bullying content.
- (6) Content which—
 - (a) depicts real or realistic serious violence against a person;
 - (b) depicts the real or realistic serious injury of a person in graphic detail.

After Clause 54 - continued

- (7) Content which—
- (a) depicts real or realistic serious violence against an animal;
 - (b) depicts the real or realistic serious injury of an animal in graphic detail;
 - (c) realistically depicts serious violence against a fictional creature or the serious injury of a fictional creature in graphic detail.
- (8) Content which encourages, promotes or provides instructions for a challenge or stunt highly likely to result in serious injury to the person who does it or to someone else.
- (9) Content which encourages a person to ingest, inject, inhale or in any other way self-administer—
- (a) a physically harmful substance;
 - (b) a substance in such a quantity as to be physically harmful.
- (10) In subsections (2) and (3)—
- (a) “disability” means any physical or mental impairment;
 - (b) “race” includes colour, nationality, and ethnic or national origins;
 - (c) references to religion include references to a lack of religion.
- (11) For the purposes of subsection (3), a person has the characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person’s sex by changing physiological or other attributes of sex, and the reference to gender reassignment in subsection (2) is to be construed accordingly.
- (12) For the purposes of subsection (5) content may, in particular, be “bullying content” if it is content targeted against a person which—
- (a) conveys a serious threat;
 - (b) is humiliating or degrading;
 - (c) forms part of a campaign of mistreatment.
- (13) In subsection (6) “person” is not limited to a real person.
- (14) In subsection (7) “animal” is not limited to a real animal.”

Member’s explanatory statement

This amendment describes which kinds of content count as priority content harmful to children for the purposes of Part 3 of the Bill.

BARONESS MERRON

As an amendment to Amendment 172

173

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.

BARONESS KIDRON
LORD STEVENSON OF BALMACARA
BARONESS HARDING OF WINSCOMBE
THE LORD BISHOP OF OXFORD
As an amendment to Amendment 172

174 After subsection (9), insert –

“(9A) Misinformation and disinformation content.

(9B) Adult or sexualised content that does not meet the bar of pornography in section 70(2) but which is age inappropriate or creates unwanted sexual pressure or commentary.”

Member’s explanatory statement

This amendment addresses gaps in the proposed list of harms which fall within the category of Priority content including mis- and disinformation that was agreed to at the despatch box during committee (see Hansard).

Clause 55

LORD PARKINSON OF WHITLEY BAY

175 Leave out Clause 55

Member’s explanatory statement

This amendment omits Clause 55 (regulations describing kinds of content harmful to children), as the kinds of content are now set out in the Bill - see the new Clauses proposed to be inserted after Clause 54 in my name.

Clause 56

LORD PARKINSON OF WHITLEY BAY

176 Page 56, line 22, leave out subsection (1)

Member’s explanatory statement

This amendment and the next two amendments in my name omit references to regulations which are no longer needed, as primary priority content and priority content harmful to children are now set out in the new Clauses proposed to be inserted after Clause 54 in my name, not in regulations.

177 Page 56, line 23, leave out “For so long as regulations are in force,”

Member’s explanatory statement

See the explanatory statement for the first amendment of Clause 56 in my name.

178 Page 56, line 32, leave out “the regulations” and insert “sections (“Primary priority content that is harmful to children”) and (“Priority content that is harmful to children”)”

Member’s explanatory statement

See the explanatory statement for the first amendment of Clause 56 in my name.

179 Page 56, line 36, leave out “the first statutory instrument containing regulations is made” and insert “this Act is passed”

Member's explanatory statement

This amendment provides that OFCOM have 3 years from the date this Bill is passed to produce a report reviewing content harmful to children.

After Clause 56

BARONESS MERRON
LORD CLEMENT-JONES

180 Insert the following new Clause—

“Review: offences relating to animal torture content

- (1) Within the period of six months beginning with the day on which this Act is passed, the Secretary of State must carry out a review of relevant offences under the—
 - (a) Communications Act 2003, and
 - (b) Animal Welfare Act 2006,
 to determine whether there is an offence of sending a communication to encourage or assist an act of animal torture, or sharing content related to animal torture, on a regulated service.
- (2) If the review under subsection (1) determines that one or more offences contained within the Acts does extend to such communications or content, the Secretary of State must, as soon as practicable, make regulations to designate the offence or offences under Schedule 7 to this Act (see section 198(3)).

Member's explanatory statement

Following answers to a recent oral question (27 June), this amendment would require the Secretary of State to undertake a review of existing criminal offences under the listed enactments to determine whether they apply to online posts containing or facilitating animal torture. If they do, the Secretary of State would be compelled to add these offences to the list of priority offences in Schedule 7.

Clause 57

LORD CLEMENT-JONES
LORD STEVENSON OF BALMACARA

181 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.

182 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.

LORD MOYLAN
BARONESS FOX OF BUCKLEY

183 Page 57, line 26, at end insert –

“(9) OFCOM may exempt a provider of a Category 1 service, or parts of a Category 1 service, from the duty set out in subsection (1), if it is proportionate to do so.”

Member’s explanatory statement

This amendment would give OFCOM the discretion to exempt services, or parts of services, from the requirement to offer users the option to verify their identity, which could better account for a variety of business models. This discretionary power would also enable OFCOM to modify the requirement if it is not serving its purpose of ensuring safety for users, proportionately, in line with the principles of the Bill.

After Clause 58

BARONESS FOX OF BUCKLEY
LORD MOYLAN

184 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 60

LORD PARKINSON OF WHITLEY BAY

185 Page 59, line 15, at end insert –

“(2A) The regulations may also –

- (a) require providers to retain, for a specified period, data of a specified description associated with a report, and
- (b) impose restrictions or requirements in relation to the retention of such data (including how the data is to be secured or stored or who may access the data).

(2B) The power to require the retention of data associated with a report includes power to require the retention of –

- (a) content generated, uploaded or shared by any user mentioned in the report (or metadata relating to such content), and
- (b) user data relating to any such person (or metadata relating to such data).

“User data” here has the meaning given by section 206.”

Member's explanatory statement

This amendment provides that regulations under this Clause may require a provider to retain data associated with a report sent to the NCA and impose restrictions or requirements in relation to the retention of the data.

186 Page 59, line 16, leave out “the regulations” and insert “regulations under this section”

Member's explanatory statement

This amendment is consequential on the other amendment to Clause 60 in my name.

Before Clause 64

LORD MOYLAN

186A★ Insert the following new Clause –

“Terms of service as a contract

The terms of service under which a Category 1 service is provided to a person who is a consumer for the purposes of the Consumer Rights Act 2015 must be treated as being a contract for a trader to provide a service to a consumer.”

Member's explanatory statement

This purpose of this amendment is to ensure that providers' terms of service are treated as consumer contracts, and to give users recourse to the remedies under the Consumer Rights Act 2015 in the event of breach.

Clause 65

LORD PARKINSON OF WHITLEY BAY
LORD STEVENSON OF BALMACARA

- 187 Page 62, line 18, leave out from “service” to “down” in line 20 and insert “indicate (in whatever words) that the presence of a particular kind of regulated user-generated content is prohibited on the service, the provider takes”

Member’s explanatory statement

This amendment makes a change to a provision about what the terms of service of a Category 1 service say. The effect of the change is to cover a wider range of ways in which a term of service might indicate that a certain kind of content is not allowed on the service.

BARONESS FOX OF BUCKLEY
LORD MOYLAN

- 188 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.”

Clause 67

LORD PARKINSON OF WHITLEY BAY
LORD STEVENSON OF BALMACARA

- 189 Page 64, line 15, leave out from “65(9),” to “and” in line 16 and insert “indicates (in whatever words) that the presence of content of that kind is prohibited on the service or that users’ access to content of that kind is restricted,”

Member’s explanatory statement

This amendment makes a change to the definition of “relevant content” which applies for the purposes of Chapter 3 of Part 4 of the Bill (transparency of terms of service etc). The effect of the change is to cover a wider range of ways in which a term of service might indicate that a certain kind of content is not allowed on the service.

After Clause 67

LORD PARKINSON OF WHITLEY BAY
LORD KNIGHT OF WEYMOUTH
BARONESS KIDRON
LORD CLEMENT-JONES

- 190 Insert the following new Clause –

“CHAPTER 3A

DECEASED CHILD USERS

Disclosure of information about use of service by deceased child users

- (1) A provider of a relevant service must make it clear in the terms of service what their policy is about dealing with requests from parents of a deceased child for information about the child’s use of the service.

After Clause 67 - continued

- (2) A provider of a relevant service must have a dedicated helpline or section of the service, or some similar means, by which parents can easily find out what they need to do to obtain information and updates in those circumstances, and the terms of service must provide details.
- (3) A provider of a relevant service must include clear and accessible provisions in the terms of service –
 - (a) specifying the procedure for parents of a deceased child to request information about the child’s use of the service,
 - (b) specifying what evidence (if any) the provider will require about the parent’s identity or relationship to the child, and
 - (c) giving sufficient detail to enable child users and their parents to be reasonably certain about what kinds of information would be disclosed and how information would be disclosed.
- (4) A provider of a relevant service must respond in a timely manner to requests from parents of a deceased child for information about the child’s use of the service or for updates about the progress of such information requests.
- (5) A provider of a relevant service must operate a complaints procedure in relation to the service that –
 - (a) allows for complaints to be made by parents of a deceased child who consider that the provider is not complying with a duty set out in any of subsections (1) to (4),
 - (b) provides for appropriate action to be taken by the provider of the service in response to such complaints, and
 - (c) is easy to access, easy to use and transparent.
- (6) A provider of a relevant service must include in the terms of service provisions which are easily accessible specifying the policies and processes that govern the handling and resolution of such complaints.
- (7) If a person is the provider of more than one relevant service, the duties set out in this section apply in relation to each such service.
- (8) The duties set out in this section extend only to the design, operation and use of a service in the United Kingdom, and references in this section to children are to children in the United Kingdom.
- (9) A “relevant service” means –
 - (a) a Category 1 service (see section 86(10)(a));
 - (b) a Category 2A service (see section 86(10)(b));
 - (c) a Category 2B service (see section 86(10)(c)).
- (10) In this section “parent”, in relation to a child, includes any person who is not the child’s parent but who –
 - (a) has parental responsibility for the child within the meaning of section 3 of the Children Act 1989 or Article 6 of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)), or
 - (b) has parental responsibilities in relation to the child within the meaning of section 1(3) of the Children (Scotland) Act 1995.

After Clause 67 - continued

- (11) In the application of this section to a Category 2A service, references to the terms of service include references to a publicly available statement.”

Member’s explanatory statement

This amendment imposes new duties on providers of Category 1, 2A and 2B services to have a policy about disclosing information to the parents of deceased child users, and providing details about it in the terms of service or a publicly available statement.

LORD PARKINSON OF WHITLEY BAY
LORD KNIGHT OF WEYMOUTH

191 Insert the following new Clause –

“OFCOM’s guidance about duties set out in section (*Disclosure of information about use of service by deceased child users*)

- (1) OFCOM must produce guidance for providers of relevant services to assist them in complying with their duties set out in section (*Disclosure of information about use of service by deceased child users*).
- (2) OFCOM must publish the guidance (and any revised or replacement guidance).
- (3) In this section “relevant service” has the meaning given by section (*Disclosure of information about use of service by deceased child users*).”

Member’s explanatory statement

This amendment requires OFCOM to give guidance to providers about the new duties imposed by the other Clause proposed after Clause 67 in my name.

Schedule 8

LORD PARKINSON OF WHITLEY BAY

192 Page 212, line 26, leave out “and relevant content” and insert “, relevant content and content to which section 12(2) applies”

Member’s explanatory statement

This amendment adds a reference to content to which section 12(2) applies (content to which certain user empowerment duties apply) to paragraph 1 of the transparency reporting Schedule, which allows OFCOM to require providers of user-to-user services to include information in their transparency reports about the incidence of content.

193 Page 212, line 28, leave out “and relevant content” and insert “, relevant content and content to which section 12(2) applies”

Member’s explanatory statement

This amendment adds a reference to content to which section 12(2) applies to paragraph 2 of the transparency reporting Schedule, which allows OFCOM to require providers of user-to-user services to include information in their transparency reports about the dissemination of content.

- 194 Page 212, line 31, leave out “or relevant content” and insert “, relevant content or content to which section 12(2) applies”

Member’s explanatory statement

This amendment adds a reference to content to which section 12(2) applies to paragraph 3 of the transparency reporting Schedule, which allows OFCOM to require providers of user-to-user services to include information in their transparency reports about the number of users encountering content.

- 195 Page 212, line 33, after “The” insert “formulation, development, scope and”

Member’s explanatory statement

This amendment allows OFCOM to require providers of user-to-user services to include information in their transparency report about the formulation, development and scope of their terms of service (as well as the application of the terms of service).

LORD PARKINSON OF WHITLEY BAY
BARONESS KIDRON

- 196 Page 213, line 5, at end insert –

“8A The design and operation of algorithms which affect the display, promotion, restriction or recommendation of illegal content, content that is harmful to children, relevant content or content to which section 12(2) applies.”

Member’s explanatory statement

This amendment makes it clear that OFCOM can require providers of user-to-user services to include information in their transparency report about algorithms, as mentioned in this new paragraph.

LORD PARKINSON OF WHITLEY BAY

- 197 Page 213, line 16, at end insert –

“12A Measures taken or in use by a provider to comply with any duty set out in section (Disclosure of information about use of service by deceased child users) (deceased child users).”

Member’s explanatory statement

This amendment means that OFCOM can require providers of user-to-user services to include information in their transparency report about measures taken to comply with the new duties imposed by the Clause proposed after Clause 67 in my name.

- 198 Page 214, line 3, after “The” insert “formulation, development, scope and”

Member’s explanatory statement

This amendment allows OFCOM to require providers of search services to include information in their transparency report about the formulation, development and scope of their public statements of policies and procedures (as well as the application of those statements).

LORD PARKINSON OF WHITLEY BAY
BARONESS KIDRON

199 Page 214, line 15, at end insert –

“24A The design and operation of algorithms which affect the display, promotion, restriction or recommendation of illegal search content or search content that is harmful to children.”

Member’s explanatory statement

This amendment means that OFCOM can require providers of search services to include information in their transparency report about algorithms, as mentioned in this new paragraph.

200 Page 214, line 22, at end insert –

“26A Measures taken or in use by a provider to comply with any duty set out in section (Disclosure of information about use of service by deceased child users) (deceased child users).”

Member’s explanatory statement

This amendment means that OFCOM can require providers of search services to include information in their transparency report about measures taken to comply with the new duties imposed by the Clause proposed after Clause 67 in my name.

LORD PARKINSON OF WHITLEY BAY

201 Page 215, line 9, leave out “to 3” and insert “to 3A”

Member’s explanatory statement

This amendment requires OFCOM, in considering which information to require from a provider in a transparency report, to consider whether the provider is subject to the duties imposed by Chapter 3A, which is the new Chapter containing the new duties imposed by the Clause proposed after Clause 67 in my name.

202 Page 215, line 25, leave out from “(2),” to “and” in line 26 and insert “indicates (in whatever words) that the presence of content of that kind is prohibited on the service or that users’ access to content of that kind is restricted,”

Member’s explanatory statement

This amendment makes a change to the definition of “relevant content” which applies for the purposes of the transparency reporting Schedule. The effect of the change is to cover a wider range of ways in which a term of service might indicate that a certain kind of content is not allowed on the service.

203 Page 215, line 34, at end insert –

“(4) The reference in sub-paragraph (1) to users’ access to content being restricted is to be construed in accordance with sections 52 and 211(5).”

Member’s explanatory statement

This technical amendment makes it clear that the reference to users’ access to content being restricted in the transparency reporting Schedule has the meaning given to it in Part 3 of the Bill.

After Clause 69

BARONESS FINLAY OF LLANDAFF

204 Insert the following new Clause—

“Suicide or self-harm content duties

- (1) This section applies in respect of all service users.
- (2) All providers of regulated user-to-user services and search services have a duty to include provisions in the terms of service specifying the treatment to be applied to harmful suicide or self-harm content in facilitating access to such content.
- (3) The possible kinds of treatment of content referred to in subsection (2) are—
 - (a) taking down the content;
 - (b) restricting users’ access to the content;
 - (c) limiting the recommendation or promotion of the content.
- (4) Such providers have 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—
 - (a) any provisions of the terms of service included in compliance with the duty set out in subsection (2), and
 - (b) any other provisions of the terms of service designed to mitigate or manage those risks.
- (5) If provisions are included in the terms of service in compliance with the duty set out in subsection (2), such providers have 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 70

LORD PARKINSON OF WHITLEY BAY

205 Page 66, line 42, leave out subsection (2)

Member’s explanatory statement

This amendment is consequential on the amendment to Clause 211 in my name adding a definition of “pornographic content” to that Clause.

LORD PARKINSON OF WHITLEY BAY
BARONESS KIDRON

206 Page 67, leave out lines 4 to 6 and insert “, including pornographic content published or displayed on the service by means of—

- (a) software or an automated tool or algorithm applied by the provider or by a person acting on behalf of the provider, or

Clause 70 - continued

- (b) an automated tool or algorithm made available on the service by the provider or by a person acting on behalf of the provider.”

Member’s explanatory statement

This amendment is about what counts as “provider pornographic content” for the purposes of Part 5 of the Bill. Words are added to expressly cover the case where an automated tool or algorithm is made available on the service by a provider, such as a generative AI bot.

LORD PARKINSON OF WHITLEY BAY

- 207 Page 67, line 8, leave out from “than” to end of line 10 and insert “content within subsection (4A) or (4B).”

Member’s explanatory statement

This amendment is related to the next amendment in my name which inserts new subsection (4A) into Clause 70. The change is to the scope of what it means for content to consist only of text.

- 208 Page 67, line 10, at end insert –

“(4A) Content is within this subsection if it –

- (a) consists only of text, or
- (b) consists only of text accompanied by –
 - (i) a GIF which is not itself pornographic content,
 - (ii) an emoji or other symbol, or
 - (iii) a combination of content mentioned in sub-paragraphs (i) and (ii).

(4B) Content is within this subsection if it consists of a paid-for advertisement (see section 211).”

Member’s explanatory statement

This amendment clarifies the scope of the exemption from the Part 5 duties for content which consists only of text. Such content does not count as regulated provider pornographic content.

LORD PARKINSON OF WHITLEY BAY

BARONESS KIDRON

- 209 Page 67, line 20, at end insert “and
 (iii) references to pornographic content that is generated on the service by means of an automated tool or algorithm in response to a prompt by a user and is only visible or audible to that user (no matter for how short a time);”

Member’s explanatory statement

This amendment makes it clear that, for the purposes of Part 5 (provider pornography), content is within scope of the duties if it is AI-generated content.

Clause 72

LORD PARKINSON OF WHITLEY BAY
BARONESS KIDRON

210 Page 68, line 18, leave out subsection (2) and insert –

“(2) A duty to ensure, by the use of age verification or age estimation (or both), that children are not normally able to encounter content that is regulated provider pornographic content in relation to the service.

(2A) The age verification or age estimation must be of such a kind, and used in such a way, that it is highly effective at correctly determining whether or not a particular user is a child.”

Member’s explanatory statement

This amendment requires providers within scope of Part 5 to use highly effective age verification or age estimation (or both) to comply with the duty in Clause 72(2) (preventing children from encountering provider pornographic content).

LORD PARKINSON OF WHITLEY BAY

211 Page 68, line 21, leave out “A” and insert “In relation to the duty set out in subsection (2), a”

Member’s explanatory statement

This amendment is a technical change relating to the preceding amendment in my name.

212 Page 68, line 23, leave out paragraph (a) and insert –

“(a) the kinds of age verification or age estimation used, and how they are used, and”

Member’s explanatory statement

This amendment requires Part 5 providers to keep a written record about the age verification or age estimation measures they use to comply with the duty in Clause 72(2).

213 Page 68, line 25, leave out from “on” to “has” in line 26 and insert “the kinds of age verification or age estimation and how they should be used,”

Member’s explanatory statement

This amendment is consequential on the preceding amendment in my name.

214 Page 68, line 31, at end insert –

“(4) A duty to summarise the written record in a publicly available statement, so far as the record concerns compliance with the duty set out in subsection (2), including details about which kinds of age verification or age estimation a provider is using and how they are used.”

Member’s explanatory statement

This amendment requires Part 5 providers to make publicly available a summary of the age verification or age estimation measures used to comply with the duty in Clause 72(2), and how they are used.

Clause 73

LORD PARKINSON OF WHITLEY BAY
BARONESS KIDRON

- 215** Page 68, line 36, leave out from “of” to end of line 37 and insert “kinds and uses of age verification and age estimation that are, or are not, highly effective at correctly determining whether or not a particular user is a child,”

Member’s explanatory statement

This amendment requires OFCOM’s guidance about the duty in Clause 72(2) to give examples of kinds and uses of age verification and age estimation that are, or are not, highly effective at determining whether or not a user is a child.

- 216** Page 68, line 43, at end insert –

“(2A) The guidance may elaborate on the following principles governing the use of age verification or age estimation for the purpose of compliance with the duty set out in section 72(2) –

- (a) the principle that age verification or age estimation should be easy to use;
- (b) the principle that age verification or age estimation should work effectively for all users regardless of their characteristics or whether they are members of a certain group;
- (c) the principle of interoperability between different kinds of age verification or age estimation.

(2B) The guidance may refer to industry or technical standards for age verification or age estimation (where they exist).”

Member’s explanatory statement

This amendment sets out principles about age verification or age estimation, which are relevant to OFCOM’s guidance to providers about their duty in Clause 72(2).

BARONESS KIDRON
LORD STEVENSON OF BALMACARA
BARONESS HARDING OF WINSCOMBE
THE LORD BISHOP OF OXFORD
As an amendment to Amendment 216

- 217** after paragraph (2A)(c) insert –

- “(d) the principle that adults and children have a right to privacy, and data used for estimating or verifying age should not be used for any other purpose;
- (e) the principle that personal data relating to age verification and estimation should be discarded or stored securely.”

Member’s explanatory statement

This amendment makes it clear that data collected for age assurance must be stored securely, deleted as soon as possible and not used for other purposes.

Clause 156

LORD MOYLAN
BARONESS FOX OF BUCKLEY

218 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 157

BARONESS MERRON

218A★ Page 138, line 10, leave out “chairman” and insert “chairperson”

Member’s explanatory statement

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

Clause 158

LORD PARKINSON OF WHITLEY BAY

218B★ Page 139, line 5, leave out “duty” and insert “duties”

Member’s explanatory statement

This amendment is consequential on the new Clause proposed to be inserted after Clause 149 in my name expanding OFCOM’s duties to promote media literacy in relation to regulated user-to-user and search services.

LORD CLEMENT-JONES

219 Leave out Clause 158

Member’s explanatory statement

This amendment would remove Clause 158 (Directions in special circumstances) from the bill and is intended to further probe the Secretary of State’s power in this area.

Clause 159

LORD MOYLAN
BARONESS FOX OF BUCKLEY

220 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.

221 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.

LORD CLEMENT-JONES

222 Leave out Clause 159

Member's explanatory statement

This amendment would remove Clause 159 (Secretary of State's guidance) from the bill and is intended to further probe the Secretary of State's power in this area.

After Clause 159

LORD MOYLAN
BARONESS FOX OF BUCKLEY

223 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).
- (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.

Clause 161

LORD PARKINSON OF WHITLEY BAY

224 Page 140, line 27, leave out “or 3” and insert “, 3 or 3A”

Member's explanatory statement

Clause 161 is about a review by the Secretary of State of the regulatory framework established by this Bill. This amendment inserts a reference to Chapter 3A, which is the new Chapter containing the new duties imposed by the Clause proposed after Clause 67 in my name.

After Clause 161

LORD MOYLAN

225 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 173

BARONESS FOX OF BUCKLEY
LORD MOYLAN

226 Page 150, line 22, at end insert—

- “(aa) a determination to be made for the purposes of provision included under this Act in a provider's terms of service, or”

Member's explanatory statement

This amendment ensures that where a provider has to make a decision about the status of content for the purposes of provision included in its terms of service, the procedure set out in Clause 173 will apply.

LORD PARKINSON OF WHITLEY BAY

227 Page 150, line 23, at end insert “or

(c) an assessment required to be carried out by section (*Assessment duties: user empowerment*),”

Member's explanatory statement

This amendment ensures that Clause 173, which is about the approach to be taken by providers to judgements about the status of content, applies to assessments under the new Clause proposed after Clause 11 in my name.

LORD ALLAN OF HALLAM
VISCOUNT COLVILLE OF CULROSS

228 Page 151, leave out lines 1 and 2

Member's explanatory statement

This amendment removes a requirement on providers which could encourage excessive content removal in borderline cases of illegality.

BARONESS FOX OF BUCKLEY
LORD MOYLAN

229 Page 151, line 14, at end insert –

“(7A) Subsection (2) applies in relation to judgements by providers about whether content falls under section 12(9), and in making such judgements, the approach to be followed is whether a provider has reasonable grounds to infer that content is content of the kind in question.”

Member's explanatory statement

This amendment specifies that in judging what content is to be filtered after a user has switched on various filters, as per the user empowerment duties at Clause 12, providers act reasonably.

After Clause 174

LORD PARKINSON OF WHITLEY BAY
LORD STEVENSON OF BALMACARA
BARONESS KIDRON
LORD CLEMENT-JONES

230 Insert the following new Clause –

“Time for publishing first guidance under certain provisions of this Act

- (1) OFCOM must publish guidance to which this section applies within the period of 18 months beginning with the day on which this Act is passed.
- (2) This section applies to –
 - (a) the first guidance under section 47(2)(a) (record-keeping and review);
 - (b) the first guidance under section 47(2)(b) (children’s access assessments);

After Clause 174 - continued

- (c) the first guidance under section 48(1) (content harmful to children);
 - (d) the first guidance under section 73 (provider pornographic content);
 - (e) the first guidance under section 90(1) (illegal content risk assessments under section 8);
 - (f) the first guidance under section 90(2) (illegal content risk assessments under section 22);
 - (g) the first guidance under section 90(3) (children’s risk assessments);
 - (h) the first guidance under section 140 (enforcement);
 - (i) the first guidance under section 174 relating to illegal content judgements within the meaning of subsection (2)(a) of that section (illegal content and fraudulent advertisements).
- (3) If OFCOM consider that it is necessary to extend the period mentioned in subsection (1) in relation to guidance mentioned in any of paragraphs (a) to (i) of subsection (2), OFCOM may extend the period in relation to that guidance by up to 12 months by making and publishing a statement.
- But this is subject to subsection (6).
- (4) A statement under subsection (3) must set out—
- (a) the reasons why OFCOM consider that it is necessary to extend the period mentioned in subsection (1) in relation to the guidance concerned, and
 - (b) the period of extension.
- (5) A statement under subsection (3) may be published at the same time as (or incorporate) a statement under section 38(12) (extension of time to prepare certain codes of practice).
- (6) But a statement under subsection (3) may not be made in relation to guidance mentioned in a particular paragraph of subsection (2) if—
- (a) a statement has previously been made under subsection (3) (whether in relation to guidance mentioned in the same or a different paragraph of subsection (2)), or
 - (b) a statement has previously been made under section 38(12).”

Member’s explanatory statement

This amendment provides that OFCOM must prepare the first guidance under certain provisions of the Bill within 18 months of Royal Assent, unless they consider a longer period to be necessary in which case OFCOM may (on one occasion only) extend the period and set out why in a published statement.

Clause 176

LORD PARKINSON OF WHITLEY BAY
BARONESS KIDRON

231

Page 152, line 33, at end insert—

“(ga) Chapter 3A of Part 4 (deceased child users);”

Member's explanatory statement

Clause 176 is about liability of providers who are individuals. This amendment inserts a reference to Chapter 3A, which is the new Chapter containing the new duties imposed by the Clause proposed after Clause 67 in my name, so that individuals may be jointly and severally liable for the duties imposed by that clause.

Clause 179

LORD PARKINSON OF WHITLEY BAY

- 231A★** Page 154, line 8, leave out “is” and insert “has been”

Member's explanatory statement

This amendment is a minor change to ensure consistency of tenses.

- 231B★** Page 154, line 11, leave out “is” and insert “has been”

Member's explanatory statement

This amendment is a minor change to ensure consistency of tenses.

Schedule 17

LORD PARKINSON OF WHITLEY BAY

- 232** Page 247, line 35, at end insert –
“(ba) section (Assessment duties: user empowerment) (assessments related to the adult user empowerment duty set out in section 12(2)), and”

Member's explanatory statement

This amendment ensures that, during the transitional period when video-sharing platform services continue to be regulated by Part 4B of the Communications Act 2003, providers of such services are not exempt from the new duty in the new clause proposed after Clause 11 in my name to carry out assessments for the purposes of the user empowerment duties in Clause 12(2).

- 233** Page 247, line 36, leave out “and (9) (records of risk assessments)” and insert “, (8A) and (9) (records of assessments)”

Member's explanatory statement

This amendment ensures that, during the transitional period when video-sharing platform services continue to be regulated by Part 4B of the Communications Act 2003, providers of such services are not exempt from the new duty inserted in Clause 19 (see the amendments of that Clause proposed in my name) to keep records of the new assessments.

- 234** Page 248, line 20, at end insert –
“(ea) the duties set out in section (Disclosure of information about use of service by deceased child users) (deceased child users);”

Member's explanatory statement

This amendment ensures that services already regulated under Part 4B of the Communications Act 2003 (video-sharing platform services) are not required to comply with the new duties imposed by the clause proposed after Clause 67 in my name during the transitional period.

- 235 Page 250, line 12, leave out “risk assessments and children’s access” and insert “certain”

Member's explanatory statement

This amendment makes a technical drafting change related to the new Clause proposed after Clause 11 in my name.

- 236 Page 250, line 15, leave out “risk assessments and children’s access” and insert “certain”

Member's explanatory statement

This amendment makes a technical drafting change related to the new Clause proposed after Clause 11 in my name.

After Clause 194**LORD PARKINSON OF WHITLEY BAY**

- 236A★ Insert the following new Clause—

“Power to regulate app stores

- (1) Subject to the following provisions of this section and section (*Power to regulate app stores: supplementary*), the Secretary of State may by regulations amend any provision of this Act to make provision for or in connection with the regulation of internet services that are app stores.
- (2) Regulations under this section may not be made before OFCOM have published a report under section (*OFCOM’s report about use of app stores by children*)(report about use of app stores by children).
- (3) Regulations under this section may be made only if the Secretary of State, having considered that report, considers that there is a material risk of significant harm to an appreciable number of children presented by either of the following, or by both taken together—
 - (a) harmful content present on app stores, or
 - (b) harmful content encountered by means of regulated apps available in app stores.
- (4) Before making regulations under this section the Secretary of State must consult—
 - (a) persons who appear to the Secretary of State to represent providers of app stores,
 - (b) persons who appear to the Secretary of State to represent the interests of children (generally or with particular reference to online safety matters),
 - (c) OFCOM,
 - (d) the Information Commissioner,
 - (e) the Children’s Commissioner, and

After Clause 194 - continued

- (f) such other persons as the Secretary of State considers appropriate.
- (5) In this section and in section (*Power to regulate app stores: supplementary*) –
 “amend” includes repeal and apply (with or without modifications);
 “app” includes an app for use on any kind of device, and “app store” is to be read accordingly;
 “content that is harmful to children” has the same meaning as in Part 3 (see section 54);
 “harmful content” means –
 (a) content that is harmful to children,
 (b) search content that is harmful to children, and
 (c) regulated provider pornographic content;
 “regulated app” means an app for a regulated service;
 “regulated provider pornographic content” has the same meaning as in Part 5 (see section 70);
 “search content” has the same meaning as in Part 3 (see section 51).
- (6) In this section and in section (*Power to regulate app stores: supplementary*) references to children are to children in the United Kingdom.”

Member’s explanatory statement

This amendment provides that the Secretary of State may make regulations amending this Bill so as to bring app stores within its scope. The regulations may not be made until OFCOM have published their report about the use of app stores by children (see the new Clause proposed to be inserted after Clause 147 in my name).

236B★ Insert the following new Clause –

“Power to regulate app stores: supplementary

- (1) In this section (except in subsection (4)(c)) “regulations” means regulations under section (*Power to regulate app stores*)(1).
- (2) Provision may be made by regulations only for or in connection with the purposes of minimising or mitigating the risks of harm to children presented by harmful content as mentioned in section (*Power to regulate app stores*)(3)(a) and (b).
- (3) Regulations may not have the effect that any body other than OFCOM is the regulator in relation to app stores.
- (4) Regulations may –
 (a) make provision exempting specified descriptions of app stores from regulation under this Act;
 (b) make provision amending Part 2, section 49 or Schedule 1 in connection with provision mentioned in paragraph (a);
 (c) make provision corresponding or similar to provision which may be made by regulations under paragraph 1 of Schedule 11 (“threshold conditions”), with the effect that only app stores which meet specified conditions are regulated by this Act.

After Clause 194 - continued

- (5) Regulations may make provision having the effect that app stores provided from outside the United Kingdom are regulated by this Act (as well as app stores provided from within the United Kingdom), but, if they do so, must contain provision corresponding or similar to section 3(5) and (6)(UK links).
- (6) The provision that may be made by regulations includes provision—
 - (a) imposing on providers of app stores duties corresponding or similar to duties imposed on providers of Part 3 services by—
 - (i) section 10 or 11 (children’s online safety: user-to-user services) or any of sections 16 to 19 so far as relating to section 10 or 11;
 - (ii) section 24 or 25 (children’s online safety: search services) or any of sections 26 to 29 so far as relating to section 24 or 25;
 - (b) imposing on providers of app stores duties corresponding or similar to duties imposed on providers of internet services within section 71(2) by section 72 (duties about regulated provider pornographic content);
 - (c) imposing on providers of app stores requirements corresponding or similar to requirements imposed on providers of regulated services by, or by OFCOM under, Part 6 (fees);
 - (d) imposing on OFCOM duties in relation to app stores corresponding or similar to duties imposed in relation to Part 3 services by Chapter 3 of Part 7 (OFCOM’s register of risks, and risk profiles);
 - (e) conferring on OFCOM functions in relation to app stores corresponding or similar to the functions that OFCOM have in relation to regulated services under—
 - (i) Chapter 4 of Part 7 (information), or
 - (ii) Chapter 6 of Part 7 (enforcement), including provisions of that Chapter conferring power for OFCOM to impose monetary penalties;
 - (f) about OFCOM’s production of guidance or a code of practice relating to any aspect of the regulation of app stores that is included in the regulations.
- (7) The provision that may be made by regulations includes provision having the effect that app stores fall within the definition of “Part 3 service” or “regulated service” for the purposes of specified provisions of this Act (with the effect that specified provisions of this Act which apply in relation to Part 3 services or regulated services, or to providers of Part 3 services or regulated services, also apply in relation to app stores or to providers of app stores).
- (8) Regulations may not amend or make provision corresponding or similar to—
 - (a) Chapter 2 of Part 4 (reporting CSEA content),
 - (b) Chapter 5 of Part 7 (notices to deal with terrorism content and CSEA content), or
 - (c) Part 10 (communications offences).
- (9) Regulations may make different provision with regard to app stores of different kinds.
- (10) In this section “specified” means specified in regulations.”

Member's explanatory statement

This amendment makes provision about the purpose and contents of regulations to regulate app stores which may be made by the Secretary of State under the preceding new Clause proposed to be inserted in my name.

After Clause 195

LORD PARKINSON OF WHITLEY BAY

237 Insert the following new Clause—

“Powers to amend sections (“Primary priority content that is harmful to children”) and (“Priority content that is harmful to children”)

- (1) The Secretary of State may by regulations amend—
 - (a) section (“Primary priority content that is harmful to children”) (primary priority content that is harmful to children);
 - (b) section (“Priority content that is harmful to children”) (priority content that is harmful to children).

But the power to add a kind of content is limited by subsections (2) to (4).

- (2) A kind of content may be added to section (“Primary priority content that is harmful to children”) only if the Secretary of State considers that, in relation to Part 3 services—
 - (a) there is a material risk of significant harm to an appreciable number of children presented by content of that kind that is regulated user-generated content or search content, and
 - (b) it is appropriate for the duties set out in sections 11(3)(a) and 25(3)(a) (duty in relation to children of all ages) to apply in relation to content of that kind.
- (3) A kind of content may be added to section (“Priority content that is harmful to children”) only if the Secretary of State considers that, in relation to Part 3 services, there is a material risk of significant harm to an appreciable number of children presented by content of that kind that is regulated user-generated content or search content.
- (4) A kind of content may not be added to section (“Primary priority content that is harmful to children”) or (“Priority content that is harmful to children”) if the risk of harm presented by content of that kind flows from—
 - (a) the content’s potential financial impact,
 - (b) the safety or quality of goods featured in the content, or
 - (c) the way in which a service featured in the content may be performed (for example, in the case of the performance of a service by a person not qualified to perform it).
- (5) The Secretary of State must consult OFCOM before making regulations under this section.
- (6) In this section references to children are to children in the United Kingdom.
- (7) In this section—

“regulated user-generated content” has the same meaning as in Part 3 (see section 49);

“search content” has the same meaning as in Part 3 (see section 51).”

Member's explanatory statement

This amendment gives power for the Secretary of State to make regulations changing the kinds of content that count as primary priority content and priority content harmful to children, subject to certain constraints set out in the Clause.

Clause 200

LORD PARKINSON OF WHITLEY BAY

237A★ Page 168, line 5, after “State” insert “or OFCOM”

Member's explanatory statement

This amendment has the effect that regulations made by OFCOM under the Bill must be made by statutory instrument.

237B★ Page 168, line 6, at end insert –

“(3A) The Statutory Instruments Act 1946 applies in relation to OFCOM’s powers to make regulations under this Act as if OFCOM were a Minister of the Crown.

(3B) The Documentary Evidence Act 1868 (proof of orders and regulations etc) has effect as if –

- (a) OFCOM were included in the first column of the Schedule to that Act;
- (b) OFCOM and persons authorised to act on their behalf were mentioned in the second column of that Schedule.”

Member's explanatory statement

This amendment makes technical provision in relation to regulations made by OFCOM under the Bill.

Clause 201

LORD PARKINSON OF WHITLEY BAY

237C★ Page 168, line 11, at end insert –

“(aa) regulations under section (“Regulations by OFCOM about qualifying worldwide revenue etc”)(1),”

Member's explanatory statement

This amendment provides that regulations made by OFCOM under subsection (1) of the new Clause 76 proposed in my name regarding “qualifying worldwide revenue” etc are subject to the affirmative Parliamentary procedure.

237D★ Page 168, line 14, at end insert –

“(da) regulations under section (Power to regulate app stores)(1),”

Member's explanatory statement

This amendment provides that regulations made under the new Clause proposed in my name after Clause 194 are subject to the affirmative Parliamentary procedure.

237E★ Page 168, line 23, at end insert –

“(m) regulations under paragraph 5(9) of Schedule 13,”

Member's explanatory statement

This amendment provides that regulations made by OFCOM under paragraph 5(9) of Schedule 13 regarding "qualifying worldwide revenue" etc for the purposes of that paragraph are subject to the affirmative Parliamentary procedure.

- 238** Page 168, line 26, leave out "54(2) or (3)" and insert "(Powers to amend sections ("Primary priority content that is harmful to children") and ("Priority content that is harmful to children"))(1)"

Member's explanatory statement

This amendment ensures that regulations made under the new Clause proposed to be inserted after Clause 195 in my name are subject to the affirmative procedure, except in cases of urgency.

- 238A★** Page 169, line 3, at end insert –

“(7A) A statutory instrument containing the first regulations under paragraph 1(1) of Schedule 11 (whether alone or with regulations under paragraph 1(2) or (3) of that Schedule) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(7B) Any other statutory instrument containing regulations under paragraph 1(1) of Schedule 11 is subject to annulment in pursuance of a resolution of either House of Parliament.”

Member's explanatory statement

This amendment provides that the first regulations made under paragraph 1(1) of Schedule 11 (regulations specifying Category 1 threshold conditions) are subject to the affirmative Parliamentary procedure.

- 238B★** Page 169, line 6, leave out "74(3)(b)" and insert "(“Regulations by OFCOM about qualifying worldwide revenue etc”)(2)"

Member's explanatory statement

This amendment provides that regulations made by OFCOM about supporting evidence to be supplied by providers for the purposes of Part 6 of the Bill (fees) are subject to the negative Parliamentary procedure.

- 238C★** Page 169, line 6, at end insert –

“(ba) regulations under section 77,”

Member's explanatory statement

This amendment provides that regulations made by the Secretary of State specifying the threshold figure for the purposes of Part 6 of the Bill are subject to the negative Parliamentary procedure.

- 238D★** Page 169, line 11, leave out "(1),"

Member's explanatory statement

This amendment is consequential on the amendment in my name inserting new subsections (7A) and (7B) into this Clause.

238E★ Page 169, line 13, at end insert –

- “(8A) As soon as a draft of a statutory instrument containing regulations under section (*“Regulations by OFCOM about qualifying worldwide revenue etc”*)(1) or paragraph 5(9) of Schedule 13 (whether alone or with provision under section (*“Regulations by OFCOM about qualifying worldwide revenue etc”*)(2)) is ready for laying before Parliament, OFCOM must send the draft to the Secretary of State, and the Secretary of State must lay the draft before Parliament.
- (8B) Immediately after making a statutory instrument containing only regulations under section (*“Regulations by OFCOM about qualifying worldwide revenue etc”*)(2), OFCOM must send the instrument to the Secretary of State, and the Secretary of State must lay it before Parliament.”

Member’s explanatory statement

This amendment provides for the Secretary of State’s involvement in the Parliamentary procedure to which regulations made by OFCOM under this Bill are subject.

After Clause 201

LORD STEVENSON OF BALMACARA

239 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 195 (powers to amend section 35),
 - (c) section 196 (powers to amend or repeal provisions relating to exempt content or services),
 - (d) section 197 (powers to amend Part 2 of Schedule 1),
 - (e) section 198 (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),
- 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.”

After Clause 201 - continued

BARONESS HARDING OF WINSCOMBE
 LORD STEVENSON OF BALMACARA
 BARONESS STOWELL OF BEESTON
 LORD CLEMENT-JONES

239A★ Insert the following new Clause—

“Application stores and other access means

- (1) Subject to subsections (2) to (7), the Secretary of State must make regulations specifying—
 - (a) the threshold conditions for which application stores and other means for children to access Part 3 services are “regulated application stores and other access means”,
 - (b) the duties of regulated applications stores and other access means to use proportionate means to support the objectives of Part 3 of the Act, and
 - (c) the extension of—
 - (i) Chapter 6 of Part 3,
 - (ii) Part 7, and
 - (iii) Part 8,
 to regulated application stores and other access means.
- (2) OFCOM must prepare—
 - (a) advice to the Secretary of State as to whether it is appropriate for the Secretary of State to make regulations under subsection (1) and, if so, what provision would be appropriate for those regulations, and
 - (b) a code of practice for application stores and other access means describing the means recommended for the purposes of compliance with the duties set out in this section.
- (3) Before preparing advice or a code (or amendments to a code) under this section, OFCOM must conduct reasonable research and consult with relevant persons on the matters mentioned in subsections (1) and (2).
- (4) In preparing research, advice and codes (or amendments to a code) and conducting the consultation under this section, OFCOM must consider—
 - (a) that providers of Part 3 services are responsible for compliance with the duties in Part 3,
 - (b) the role of application stores and other access means in facilitating access to Part 3 services and revenue derived from that role,
 - (c) proportionate means by which application stores and other access means could support the objectives of Part 3 of the Act (including in relation to age assurance, awareness raising and facilitating access to measures taken by Part 3 services in compliance with their duties in Part 3),
 - (d) fair, reasonable and non-discriminatory provision of those means,
 - (e) exclusions on liability for application stores and other access means for child access to Part 3 services (subject to compliance with the duties in this Part), and

After Clause 201 - continued

- (f) such other matters as OFCOM consider to be relevant.
- (5) When research, advice or a code (or amendments to a code) are prepared under this section, OFCOM must submit the final version to the Secretary of State.
- (6) OFCOM must prepare the first research, advice and code under this section within 12 months of the first code of practice relating to the duties set out in sections 11 and 25 (children’s online safety) coming into force, and must prepare research, advice and a code in accordance with this Part annually thereafter while no regulations and a code have been brought into force under this Part.
- (7) Within 40 days of OFCOM providing the Secretary of State with research, advice or a code (or amendments to a code) under this section—
 - (a) OFCOM must publish the research, consultation responses, advice and code (or amendments to a code), and
 - (b) the Secretary of State must, unless advised not to by OFCOM, make the regulations and approve the code (or amendments to a code).
- (8) If regulations under subsection (1) include provision which differs from that advised by OFCOM—
 - (a) the Secretary of State must, before the regulations enter into force, lay before both Houses of Parliament a statement outlining reasons for departing from the advice offered by OFCOM, and
 - (b) OFCOM must, within the period of 40 days beginning with the day on which the statement under paragraph (a) has been made—
 - (i) make such revisions to the code as they consider appropriate, and
 - (ii) provide the revisions to the Secretary of State for approval.
- (9) OFCOM must promptly publish a code (or amendment to that code) approved under this section and keep it under review.
- (10) OFCOM may prepare a replacement of, or amendments to, a code or regulation that is in force at any time.
- (11) Non-material amendments to a code may be brought into force by OFCOM, with reasonable public notice, without following the process in this section.
- (12) In this section—
 - “other access means” means any website or online marketplace which allows users to download or subscribe to a user-to-user service;
 - “relevant persons” means the Secretary of State and such other persons as OFCOM consider appropriate, including—
 - (a) providers of application stores and other access means,
 - (b) providers of Part 3 services,
 - (c) children,
 - (d) parents (and other adults responsible for children),
 - (e) persons who appear to OFCOM to represent the interests of children,
 - (f) persons whom OFCOM consider to have expertise in innovation, or emerging technology, relevant to the objectives of Part 3 of the Act,

After Clause 201 - continued

- (g) the Information Commissioner, and
- (h) the public.”

Member’s explanatory statement

This amendment ensures OFCOM researches and consults on the role of applications stores and produces implementing regulations and a code of practice for the Secretary of State to bring into force appropriate additional duties to support the objectives of Part 3. Alternative routes to access Part 3 services exist now and more will be developed in the future so this amendment ensures OFCOM and the Secretary of State consider the broad range of application stores and access means.

Clause 74**LORD PARKINSON OF WHITLEY BAY**

- 239B★** Page 70, line 3, leave out from “information” to end of line 5 and insert “as required by regulations made by OFCOM under section (“Regulations by OFCOM about qualifying worldwide revenue etc”).”

Member’s explanatory statement

This amendment omits a reference to regulations made by the Secretary of State. Details about supporting evidence etc to accompany providers’ notifications for the purposes of the fees regime are now to be contained in regulations made by OFCOM (see the new Clause 76 proposed in my name).

- 239C★** Page 70, line 6, leave out subsection (4) and insert –
- “(4) Section (“Regulations by OFCOM about qualifying worldwide revenue etc”) confers power on OFCOM to make regulations about the determination of a provider’s qualifying worldwide revenue, and the meaning of “qualifying period”, for the purposes of this Part.”

Member’s explanatory statement

This amendment is a signpost to the new Clause 76 proposed in my name, conferring power on OFCOM to make regulations about the meaning of qualifying worldwide revenue and qualifying period for the purposes of the fees regime.

- 239D★** Page 70, line 11, leave out “threshold figure under section 77 is published” and insert “regulations under section 77 come into force (first threshold figure)”

Member’s explanatory statement

This amendment is consequential on the first amendment of Clause 77 in my name (threshold figure now to be specified in regulations made by the Secretary of State).

- 239E★** Page 70, line 29, leave out subsection (11)

Member's explanatory statement

This amendment omits a provision about procedure for regulations made by the Secretary of State under subsection (3)(b). That is no longer required because details about supporting evidence etc to accompany providers' notifications for the purposes of the fees regime are now to be contained in regulations made by OFCOM (see the new Clause 76 proposed in my name).

Clause 76

LORD PARKINSON OF WHITLEY BAY

239F★ Leave out Clause 76 and insert the following new Clause—

“Regulations by OFCOM about qualifying worldwide revenue etc

- (1) For the purposes of this Part, OFCOM may by regulations make provision—
 - (a) about how the qualifying worldwide revenue of a provider of a regulated service is to be determined, and
 - (b) defining the “qualifying period” in relation to a charging year.
- (2) OFCOM may by regulations also make provision specifying or describing evidence, documents or other information that providers must supply to OFCOM for the purposes of section 74 (see subsection (3)(b) of that section), including provision about the way in which providers must supply the evidence, documents or information.
- (3) Regulations under subsection (1)(a) may provide that the qualifying worldwide revenue of a provider of a regulated service (P) who is a member of a group during any part of a qualifying period is to include the qualifying worldwide revenue of any entity that—
 - (a) is a group undertaking in relation to P for all or part of that period, and
 - (b) receives or is due to receive, during that period, any amount referable (to any degree) to a regulated service provided by P.
- (4) Regulations under subsection (1)(a) may, in particular—
 - (a) make provision about circumstances in which amounts do, or do not, count as being referable (to any degree) to a regulated service for the purposes of the determination of the qualifying worldwide revenue of the provider of the service or of an entity that is a group undertaking in relation to the provider;
 - (b) provide for cases or circumstances in which amounts that—
 - (i) are of a kind specified or described in the regulations, and
 - (ii) are not referable to a regulated service,
 are to be brought into account in determining the qualifying worldwide revenue of the provider of the service or of an entity that is a group undertaking in relation to the provider.
- (5) Regulations which make provision of a kind mentioned in subsection (3) may include provision that, in the case of an entity that is a group undertaking in relation to a provider for part (not all) of a qualifying period, only amounts relating to the part of the qualifying period for which the entity was a group undertaking may be brought into account in determining the entity's qualifying worldwide revenue.
- (6) Regulations under subsection (1)(a) may make provision corresponding to paragraph 5(8) of Schedule 13.

Clause 76 - continued

- (7) Before making regulations under subsection (1) OFCOM must consult –
- (a) the Secretary of State,
 - (b) the Treasury, and
 - (c) such other persons as OFCOM consider appropriate.
- (8) Before making regulations under subsection (2) OFCOM must consult the Secretary of State.
- (9) Regulations under this section may make provision subject to such exemptions and exceptions as OFCOM consider appropriate.
- (10) In this section –
- “group” means a parent undertaking and its subsidiary undertakings, reading those terms in accordance with section 1162 of the Companies Act 2006;
- “group undertaking” has the meaning given by section 1161(5) of that Act.”

Member’s explanatory statement

This amendment substitutes Clause 76, which is about what is meant by “qualifying worldwide revenue”. The new Clause provides for OFCOM to make regulations about this and related matters for the purposes of the fees regime, and allows the regulations (among other things) to provide that revenue arising to certain entities in the same group as a provider of a regulated service is to be brought into account.

Clause 77**LORD PARKINSON OF WHITLEY BAY**

- 239G★** Page 72, line 2, leave out from “must” to “the” in line 3 and insert “make regulations specifying”

Member’s explanatory statement

This amendment provides that the Secretary of State must specify the threshold figure in regulations (rather than in a published statement).

- 239H★** Page 72, line 4, leave out subsection (3)

Member’s explanatory statement

This amendment is consequential on the first amendment of this Clause in my name.

- 239J★** Page 72, line 11, leave out “to (3)” and insert “and (2)”

Member’s explanatory statement

This amendment is consequential on the preceding amendment of this Clause in my name.

- 239K★** Page 72, line 12, leave out “A” and insert “Regulations must provide that a”

Member’s explanatory statement

This amendment is consequential on the first amendment of this Clause in my name.

- 239L★** Page 72, line 14, leave out from beginning to “at” and insert “Regulations specifying a threshold figure must be in force”

Member’s explanatory statement

This amendment provides that regulations specifying a threshold figure must be in force at least 9 months before the first charging year for which that figure applies.

- 239M★** Page 72, line 17, leave out “threshold figure published” and insert “regulations made”

Member’s explanatory statement

This amendment is consequential on the first amendment of this Clause in my name.

Clause 79

LORD PARKINSON OF WHITLEY BAY

- 239N★** Page 73, line 18, leave out from “period” to end of line 19 and insert “for the purposes of this Part, and”

Member’s explanatory statement

This amendment is consequential on the new Clause 76 proposed in my name.

- 239P★** Page 73, line 20, leave out “published in accordance with” and insert “contained in regulations under”

Member’s explanatory statement

This amendment is consequential on the first amendment of Clause 77 in my name (threshold figure now to be specified in regulations made by the Secretary of State).

Clause 82

BARONESS KIDRON
LORD STEVENSON OF BALMACARA
BARONESS HARDING OF WINSCOMBE
THE LORD BISHOP OF OXFORD

- 240** Page 74, line 25, leave out “presented by content”

Member’s explanatory statement

This amendment ensures that Ofcom is empowered to consider harms presented by features, functionalities, behaviours and the design and operation of services not just by content.

LORD PARKINSON OF WHITLEY BAY

- 241** Page 74, line 31, leave out “or 3” and insert “, 3 or 3A”

Member’s explanatory statement

Clause 82 is about OFCOM’s general duties. This amendment and the next amendment in my name insert a reference to Chapter 3A, which is the new Chapter containing the new duties imposed by the Clause proposed after Clause 67 in my name.

BARONESS KIDRON
LORD STEVENSON OF BALMACARA
BARONESS HARDING OF WINSCOMBE
THE LORD BISHOP OF OXFORD

242 Page 74, leave out line 37

Member's explanatory statement

This amendment ensures that Ofcom is not fettered in exercising its functions in relation to services due to their size or capacity if it considers it is proportionate to do so given the risk of harm presented by a particular service.

LORD PARKINSON OF WHITLEY BAY

243 Page 75, line 2, leave out “or 3” and insert “, 3 or 3A”

Member's explanatory statement

See the explanatory statement for the preceding amendment in my name.

After Clause 84

LORD MOYLAN
BARONESS FOX OF BUCKLEY

244 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.

Schedule 11

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

245 Page 223, line 32, leave out “and” and insert “or”

Clause 91

LORD PARKINSON OF WHITLEY BAY

246 Page 83, line 14, leave out “(an “information notice”)”

Member's explanatory statement

This technical amendment is needed because the new notice requiring information in connection with an investigation into the death of a child (see the new Clause proposed after Clause 91 in my name) is also a form of information notice.

247 Page 83, line 19, at end insert –

“(b) provide information about the use of a service by a named individual.”

Member's explanatory statement

This amendment makes it clear that OFCOM have power by notice to require providers to provide information about a particular person's use of a service.

247A★ Page 83, line 19, at end insert –

“(2A) The power conferred by subsection (1) also includes power to require a person within any of paragraphs (a) to (d) of subsection (4) to take steps so that OFCOM are able to remotely access the service provided by the person, or remotely access equipment used by the service provided by the person, in order to view, in particular –

- (a) information demonstrating in real time the operation of systems, processes or features, including functionalities and algorithms, used by the service;
- (b) information generated in real time by the performance of a test or demonstration of a kind required by a notice under subsection (1).”

Member's explanatory statement

This amendment makes it clear that OFCOM have the power by notice to require a provider of a regulated service (among others) to take steps to allow OFCOM to remotely access the service so that they can view the operation in real time of systems, processes, functionalities and algorithms, and tests and demonstrations.

248 Page 84, line 2, at end insert –

“(iva) any duty set out in section (Disclosure of information about use of service by deceased child users) (deceased child users),”

Member's explanatory statement

This amendment mentions the new duties imposed by the Clause proposed after Clause 67 in my name in the Clause that sets out the purposes for which OFCOM may require people to provide information.

248A★ Page 84, line 12, leave out “section 75 (duty to pay fees)” and insert “Part 6 (fees)”

Member's explanatory statement

This amendment makes it clear that OFCOM's powers to gather information in relation to a provider's qualifying worldwide revenue apply for the purposes of Part 6.

248B★ Page 84, line 37, leave out “duty” and insert “duties”

Member's explanatory statement

This amendment is consequential on the new clause proposed to be inserted after Clause 149 in my name expanding OFCOM's duties to promote media literacy in relation to regulated user-to-user and search services.

248C★ Page 84, line 38, leave out “duty to promote”

Member's explanatory statement

This amendment is consequential on the new Clause proposed to be inserted after Clause 149 in my name expanding OFCOM's duties to promote media literacy in relation to regulated user-to-user and search services.

After Clause 91

LORD PARKINSON OF WHITLEY BAY
LORD KNIGHT OF WEYMOUTH
BARONESS KIDRON
LORD CLEMENT-JONES

249 Insert the following new Clause—

“Information in connection with an investigation into the death of a child

- (1) OFCOM may by notice under this subsection require a relevant person to provide them with information for the purpose of—
 - (a) responding to a notice given by a senior coroner under paragraph 1(2) of Schedule 5 to the Coroners and Justice Act 2009 in connection with an investigation into the death of a child, or preparing a report under section (*OFCOM's report in connection with investigation into a death*) in connection with such an investigation;
 - (b) responding to a request for information in connection with the investigation of a procurator fiscal into, or an inquiry held or to be held in relation to, the death of a child, or preparing a report under section (*OFCOM's report in connection with investigation into a death*) in connection with such an inquiry;
 - (c) responding to a notice given by a coroner under section 17A(2) of the Coroners Act (Northern Ireland) 1959 (c. 15 (N.I.)) in connection with—
 - (i) an investigation to determine whether an inquest into the death of a child is necessary, or
 - (ii) an inquest in relation to the death of a child,
 or preparing a report under section (*OFCOM's report in connection with investigation into a death*) in connection with such an investigation or inquest.
- (2) The power conferred by subsection (1) includes power to require a relevant person to provide OFCOM with information about the use of a regulated service by the child whose death is under investigation, including, in particular—
 - (a) content encountered by the child by means of the service,
 - (b) how the content came to be encountered by the child (including the role of algorithms or particular functionalities),
 - (c) how the child interacted with the content (for example, by viewing, sharing or storing it or enlarging or pausing on it), and

After Clause 91 - continued

- (d) content generated, uploaded or shared by the child.
- (3) The power conferred by subsection (1) includes power to require a relevant person to obtain or generate information.
- (4) The power conferred by subsection (1) must be exercised in a way that is proportionate to the purpose mentioned in that subsection.
- (5) The power conferred by subsection (1) does not include power to require the provision of information in respect of which a claim to legal professional privilege, or (in Scotland) to confidentiality of communications, could be maintained in legal proceedings.
- (6) Nothing in this section limits the power conferred on OFCOM by section 91.
- (7) In this section—
- “inquiry” means an inquiry held, or to be held, under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2);
- “information” includes documents, and any reference to providing information includes a reference to producing a document (and see also section 92(9));
- “relevant person” means a person within any of paragraphs (a) to (e) of section 91(4).”

Member’s explanatory statement

This amendment makes it clear that OFCOM have the power to obtain information for the purposes of responding to a notice given to them by a coroner or, in Scotland, a request from a procurator fiscal, in connection with the death of a child, including a power to obtain information from providers about the use of a service by the deceased child.

Clause 92

LORD PARKINSON OF WHITLEY BAY
BARONESS KIDRON

250 Page 85, line 3, at end insert—

“(A1) A notice given under section 91(1) or (*Information in connection with an investigation into the death of a child*)(1) is referred to in this Act as an information notice.”

Member’s explanatory statement

This amendment provides that a notice under the new Clause proposed in my name concerning OFCOM’s power to obtain information in connection with an investigation into the death of a child is called an “information notice” (as well as a notice under Clause 91). This ensures that provisions of the Bill that relate to information notices also apply to a notice given under that Clause.

LORD PARKINSON OF WHITLEY BAY

250A★ Page 85, line 24, leave out “provide the information” and insert “act”

Member’s explanatory statement

This amendment ensures that the duty to comply with an information notice covers the case where a provider is required to take steps to allow OFCOM to remotely access the service.

Clause 94

LORD PARKINSON OF WHITLEY BAY

- 251** Page 87, line 39, at end insert –
 “(iia) section (*Assessment duties: user empowerment*) (assessments related to the adult user empowerment duty set out in section 12(2));”

Member’s explanatory statement

This amendment ensures that OFCOM are able to require a skilled person’s report about a failure or possible failure to comply with the new duties to carry out assessments (see the new Clause proposed after Clause 11 in my name).

LORD PARKINSON OF WHITLEY BAY
 BARONESS KIDRON

- 252** Page 88, line 2, at end insert –
 “(xii) section (*Disclosure of information about use of service by deceased child users*) (deceased child users);”

Member’s explanatory statement

This amendment has the effect that OFCOM may require a skilled person’s report in relation to compliance with the new duties imposed by the Clause proposed after Clause 67 in my name.

Schedule 12

LORD PARKINSON OF WHITLEY BAY

- 252A★** Page 228, line 4, at end insert –
 “(4A) The power to observe the carrying on of the regulated service at the premises includes the power to view, using equipment or a device on the premises, information generated in real time by the performance of a test or demonstration required by a notice given under paragraph 3.”

Member’s explanatory statement

This amendment ensures that during an inspection of a service, OFCOM have the power to observe a test or demonstration of which notice has been given.

- 252B★** Page 228, line 7, leave out from “paragraph” to “is” in line 9 and insert “only so far as”

Member’s explanatory statement

This is a technical amendment consequential on the preceding amendment in my name.

- 252C★** Page 228, line 15, leave out “or relevant documents to be produced,” and insert “relevant documents to be produced, or a relevant test or demonstration to be performed,”

Member’s explanatory statement

This amendment, and the next two amendments in my name, concern OFCOM giving advance notice to a provider that they will want to observe a test or demonstration during an inspection.

- 252D★** Page 228, line 19, leave out “documents are “relevant” if they are” and insert “a document, test or demonstration is “relevant” if it is”

Member’s explanatory statement

See the explanatory statement to the preceding amendment in my name.

- 252E★** Page 228, line 23, leave out “or the documents to be produced,” and insert “the documents to be produced, or the test or demonstration to be performed,”

Member’s explanatory statement

See the explanatory statement to the preceding amendment in my name.

- 252F★** Page 229, line 3, at end insert –
- “(da) to assist an authorised person to view, using equipment or a device on the premises, information demonstrating in real time the operation of systems, processes or features of a specified description, including functionalities or algorithms of a specified description;
 - “(db) to assist an authorised person to view, using equipment or a device on the premises, information generated in real time by the performance of a test or demonstration of a specified description;”

Member’s explanatory statement

This amendment makes it clear that the powers of OFCOM during an audit of a service extend to using equipment on the premises to view real time information showing the operation of the service or the performance of a test or demonstration, if specified in advance in the audit notice.

- 252G★** Page 233, line 38, leave out paragraph (ii)

Member’s explanatory statement

This is a drafting change removing a redundant paragraph from the Bill.

After Clause 104

LORD CLEMENT-JONES

- 253** 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 on subsection (1), the person may not –

After Clause 104 - continued

- (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.

Clause 105

LORD PARKINSON OF WHITLEY BAY
BARONESS KIDRON

254 Page 94, line 33, at end insert —

- “(3A) In subsection (3), after paragraph (h) insert —
- “(ha) a person appointed under —
 - (i) paragraph 1 of Schedule 3 to the Coroners and Justice Act 2009, or
 - (ii) section 2 of the Coroners Act (Northern Ireland) 1959 (c. 15 (N.I.));
 - (hb) the procurator fiscal, within the meaning of the enactment mentioned in subsection (5)(s);”.
- (3B) In subsection (5) —
- (a) before paragraph (d) insert —
 - “(ca) the Coroners Act (Northern Ireland) 1959;”;
 - (b) after paragraph (na) insert —
 - “(nb) Part 1 of the Coroners and Justice Act 2009;”;
 - (c) after paragraph (r) insert —
 - “(s) the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2).”.

Member's explanatory statement

This amendment ensures that it is not necessary for OFCOM to obtain the consent of providers of internet services before disclosing information to a coroner or, in Scotland, procurator fiscal, who is investigating a person's death.

Clause 107

LORD PARKINSON OF WHITLEY BAY

254A★ Page 95, line 20, leave out “(2)” and insert “(3)”

Member's explanatory statement

This is a technical drafting change needed because section 24B of the Communications Act 2003 has been amended after this Bill was introduced.

254B★

Page 95, leave out line 21 and insert—

(4) Subsection (2) does not apply to information—”

Member's explanatory statement

This is a technical drafting change needed because section 24B of the Communications Act 2003 has been amended after this Bill was introduced.

Clause 111

LORD MOYLAN
BARONESS FOX OF BUCKLEY

255

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 STEVENSON OF BALMACARA

256

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.
- (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

Clause 111 - continued

- (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).

Member’s explanatory statement

This new version of Clause 111 introduces additional safeguards relating to the issuing of OFCOM notices to deal with terrorism or CSEA content on encrypted services. This includes a requirement for OFCOM’s decision to be approved by a Judicial Commissioner.

After Clause 111

LORD STEVENSON OF BALMACARA

257

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

After Clause 111 - continued

- (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.”

Member’s explanatory statement

This amendment outlines the process to be followed by a Judicial Commissioner when OFCOM makes a decision to issue a notice to deal with terrorism or CSEA content on encrypted services.

Clause 114

LORD ALLAN OF HALLAM
LORD CLEMENT-JONES

258 Page 101, line 3, at end insert—

“(7A) A notice may only be issued to a provider after it has been made available for public comment for a period of no less than 45 days.”

Member’s explanatory statement

This amendment ensures that there is a period of public consultation before OFCOM issues an order requiring a provider to implement a particular technical solution under Clause 111 of the Bill.

Clause 118

LORD STEVENSON OF BALMACARA

259 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;”

Member’s explanatory statement

This amendment adds definitions for two terms used in earlier encryption-related amendments in the name of Lord Stevenson of Balmacara.

Clause 120

LORD PARKINSON OF WHITLEY BAY
BARONESS MERRON

260 Page 105, line 4, at end insert –

“Section (<i>Assessment duties: user empowerment</i>)	Assessments related to duty in section 12(2)”
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Member’s explanatory statement

This amendment ensures that OFCOM are able to use their enforcement powers in Chapter 6 of Part 7 in relation to a breach of any of the new duties imposed by the Clause proposed after Clause 11 in my name.

LORD PARKINSON OF WHITLEY BAY
BARONESS KIDRON

261 Page 105, line 28, at end insert –

“Section (<i>Disclosure of information about use of service by deceased child users</i>)	Information about use of service by deceased child users”
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Member’s explanatory statement

This amendment ensures that OFCOM are able to use their enforcement powers in Chapter 6 of Part 7 in relation to a breach of any of the new duties imposed by the Clause proposed after Clause 67 in my name.

Clause 122

LORD PARKINSON OF WHITLEY BAY

262 Page 107, line 7, leave out “for constraints on” and insert “in relation to”

Member’s explanatory statement

This amendment is consequential on the amendments of Clause 125 in my name.

Clause 125

LORD PARKINSON OF WHITLEY BAY

263 Page 109, line 27, leave out “constraints on OFCOM’s power” and insert “what powers OFCOM have”

Member’s explanatory statement

This amendment is consequential on the next amendment in my name.

264 Page 109, line 30, at end insert –

- “(1A) A proactive technology requirement may be imposed in a confirmation decision if –
- (a) the decision is given to the provider of an internet service within section 71(2), and
 - (b) the decision is imposed for the purpose of complying with, or remedying the failure to comply with, the duty set out in section 72(2) (provider pornographic content).
- (1B) The following provisions of this section set out constraints on OFCOM’s power to include a proactive technology requirement in a confirmation decision in any case not within subsection (1A).”

Member’s explanatory statement

This amendment has the effect that OFCOM may, in a confirmation decision, require a provider to use proactive technology if the purpose is to deal with non-compliance with Clause 72(2) (preventing children encountering provider pornographic content).

Clause 127

LORD BETHELL

265 Page 112, line 22, at end insert “or a child sexual exploitation and abuse (CSEA) duty.”

Member’s explanatory statement

This amendment, and others in the name of Lord Bethell to this clause, extend the scope of the confirmation decisions offence. It increases the scope to also make individuals responsible for illegal safety duties, as they relate to child sexual abuse and exploitation, and brings search services into scope of the amendment.

266 Page 112, line 25, at end insert –

“(ba) section 25(3),”

Member’s explanatory statement

This amendment, and others in the name of Lord Bethell to this clause, extend the scope of the confirmation decisions offence. It increases the scope to also make individuals responsible for illegal safety duties, as they relate to child sexual abuse and exploitation, and brings search services into scope of the amendment.

267 Page 112, line 27, at end insert –

- “(2A) A “CSEA duty” means a duty set out in –
- (a) section 9(2),
 - (b) section 9(3)(a),
 - (c) section 23(2), or
 - (d) section 23(3)(a),
- as they relate to child sexual exploitation and abuse.”

Member's explanatory statement

This amendment, and others in the name of Lord Bethell to this clause, extend the scope of the confirmation decisions offence. It increases the scope to also make individuals responsible for illegal safety duties, as they relate to child sexual abuse and exploitation, and brings search services into scope of the amendment.

LORD STEVENSON OF BALMACARA

268 Page 112, line 39, at end insert –

“(4) The Secretary of State may, if they deem it appropriate, make regulations to add to the duties listed under subsection (2).

(5) Regulations under subsection (4) are subject to the affirmative procedure.”

Member's explanatory statement

This amendment would allow the Secretary of State to expand the list of children's online safety duties specified in Clause 127(2) via regulations subject to the affirmative procedure.

Schedule 13

LORD PARKINSON OF WHITLEY BAY

268A★ Page 236, line 12, leave out sub-paragraph (9) and insert –

“(9) Regulations made by OFCOM under section (*Regulations by OFCOM about qualifying worldwide revenue etc*)(1)(a)(including regulations making provision of a kind mentioned in section (*Regulations by OFCOM about qualifying worldwide revenue etc*)(3), (4) or (5)) apply for the purpose of determining the qualifying worldwide revenue of a provider of a regulated service for an accounting period as mentioned in this paragraph as they apply for the purpose of determining the qualifying worldwide revenue of a provider of a regulated service for a qualifying period for the purposes of Part 6.”

Member's explanatory statement

This amendment provides that regulations under the new Clause 76 proposed in my name about “qualifying worldwide revenue” for the purposes of Part 6 of the Bill (fees) also applies for the purposes of financial penalties under paragraph 4 of Schedule 13.

268B★ Page 237, line 18, at end insert –

“(9) OFCOM may by regulations make provision about how the qualifying worldwide revenue of a group of entities is to be determined for the purposes of this paragraph.

(10) Before making regulations under sub-paragraph (9) OFCOM must consult –

(a) the Secretary of State,

(b) the Treasury, and

(c) such other persons as OFCOM consider appropriate.

(11) Regulations under sub-paragraph (9) may make provision subject to such exemptions and exceptions as OFCOM consider appropriate.”

Member's explanatory statement

This amendment provides a power for OFCOM to make regulations setting out what is meant in paragraph 5 of Schedule 13 by references to the qualifying worldwide revenue of a group of entities.

After Clause 139

LORD MOYLAN
BARONESS FOX OF BUCKLEY

269 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 141

BARONESS MERRON

269A★ Page 127, line 39, leave out “chairman” and insert “chairperson”

Member's explanatory statement

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

LORD PARKINSON OF WHITLEY BAY

269B★ Page 128, line 19, leave out “duty” and insert “duties”

Member's explanatory statement

This amendment is consequential on the new Clause proposed to be inserted after Clause 149 in my name expanding OFCOM's duties to promote media literacy in relation to regulated user-to-user and search services.

LORD KNIGHT OF WEYMOUTH

269C★ Page 128, line 22, 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.

269D★ Page 128, line 22, 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.

Clause 143

BARONESS FRASER OF CRAIGMADDIE
LORD STEVENSON OF BALMACARA

270 Page 129, line 10, at end insert –

“(e) in separate analyses, the online interests and experiences of users in –
(i) England,
(ii) Wales,
(iii) Scotland, and
(iv) Northern Ireland.”

After Clause 144

LORD KNIGHT OF WEYMOUTH

270A★ 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,

After Clause 144 - *continued*

- (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—
 - (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.

After Clause 145

LORD PARKINSON OF WHITLEY BAY
BARONESS KIDRON

271

Insert the following new Clause—

“OFCOM’s reports about use of age assurance

- (1) OFCOM must produce and publish a report assessing—
 - (a) how providers of regulated services have used age assurance for the purpose of compliance with their duties set out in this Act,
 - (b) how effective the use of age assurance has been for that purpose, and

After Clause 145 - continued

- (c) whether there are factors that have prevented or hindered the effective use of age assurance, or a particular kind of age assurance, for that purpose,
(and in this section, references to a report are to a report described in this subsection).
- (2) A report must, in particular, consider whether the following have prevented or hindered the effective use of age assurance –
- (a) the costs to providers of using it, and
 - (b) the need to protect users from a breach of any statutory provision or rule of law concerning privacy that is relevant to the use or operation of a regulated service (including, but not limited to, any such provision or rule concerning the processing of personal data).
- (3) Unless the Secretary of State requires the production of a further report (see subsection (6)), the requirement in subsection (1) is met by producing and publishing one report within the period of 18 months beginning with the day on which sections 11 and 72(2) come into force (or if those provisions come into force on different days, the period of 18 months beginning with the later of those days).
- (4) In preparing a report, OFCOM must consult –
- (a) the Information Commissioner, and
 - (b) such other persons as OFCOM consider appropriate.
- (5) OFCOM must send a copy of a report to the Secretary of State, and the Secretary of State must lay it before Parliament.
- (6) The Secretary of State may require OFCOM to produce and publish a further report in response to –
- (a) the development of age assurance technology, or
 - (b) evidence of the reduced effectiveness of such technology.
- (7) But such a requirement may not be imposed –
- (a) within the period of three years beginning with the date on which the first report is published, or
 - (b) more frequently than once every three years.
- (8) For further provision about reports under this section, see section 149.
- (9) In this section “age assurance” means age verification or age estimation.”

Member’s explanatory statement

This new Clause requires OFCOM to produce and publish a report about the use of age assurance by providers of regulated services.

Clause 147

BARONESS FRASER OF CRAIGMADDIE
LORD STEVENSON OF BALMACARA

Clause 147 - continued

- (i) England,
- (ii) Wales,
- (iii) Scotland, and
- (iv) Northern Ireland.”

After Clause 147

LORD PARKINSON OF WHITLEY BAY

272A★ Insert the following new Clause—**“OFCOM’s report about use of app stores by children**

- (1) OFCOM must produce a report about the use of app stores by children.
- (2) In particular, the report must—
 - (a) assess what role app stores play in children encountering content that is harmful to children, search content that is harmful to children or regulated provider pornographic content by means of regulated apps which the app stores make available,
 - (b) assess the extent to which age assurance is currently used by providers of app stores, and how effective it is, and
 - (c) explore whether children’s online safety would be better protected by the greater use of age assurance or particular kinds of age assurance by such providers, or by other measures.
- (3) OFCOM must publish the report during the period beginning two years, and ending three years, after the day on which sections 11 and 25 come into force (or if those sections come into force on different days, the later of those days).
- (4) For further provision about the report under this section, see section 149.
- (5) In this section—
 - “app” includes an app for use on any kind of device, and “app store” is to be read accordingly;
 - “content that is harmful to children” has the same meaning as in Part 3 (see section 54);
 - “regulated app” means an app for a regulated service;
 - “regulated provider pornographic content” has the same meaning as in Part 5 (see section 70);
 - “search content” has the same meaning as in Part 3 (see section 51).
- (6) In this section references to children are to children in the United Kingdom.”

Member’s explanatory statement

This amendment requires OFCOM to produce a report about the use of app stores by children, including consideration of whether children would be better protected by greater use of age assurance.

Clause 148

LORD PARKINSON OF WHITLEY BAY

272B★ Page 132, line 11, leave out “two years” and insert “18 months”

Member's explanatory statement

This amendment provides that the report that OFCOM must publish under Clause 148 (report about researchers' access to information) must be published within 18 months of Clause 148 coming into force (rather than two years).

- 272C★** Page 132, line 16, leave out “Following the publication of the report, OFCOM may” and insert “OFCOM must”

Member's explanatory statement

This amendment provides that OFCOM must (rather than may) produce guidance about matters dealt with by the report published under Clause 148.

- 272D★** Page 132, line 19, leave out subsections (8) and (9) and insert –
- “(8) Before producing the guidance (including revised guidance) OFCOM must consult the persons mentioned in subsection (3).
 - (9) OFCOM must publish the guidance (and any revised guidance).
 - (10) OFCOM must include in each transparency report under section 147 an assessment of the effectiveness of the guidance.”

Member's explanatory statement

This amendment is consequential on the amendment in my name making the production of guidance under Clause 148(7) mandatory.

After Clause 148

LORD PARKINSON OF WHITLEY BAY
LORD KNIGHT OF WEYMOUTH
BARONESS KIDRON
LORD CLEMENT-JONES

- 273** Insert the following new Clause –

“OFCOM’s report in connection with investigation into a death

- (1) Subsection (2) applies if OFCOM receive –
 - (a) a notice from a senior coroner under paragraph 1(2) of Schedule 5 to the Coroners and Justice Act 2009 in connection with an investigation into the death of a person;
 - (b) a request for information in connection with the investigation of a procurator fiscal into, or an inquiry held or to be held in relation to, the death of a person;
 - (c) a notice from a coroner under section 17A(2) of the Coroners Act (Northern Ireland) 1959 (c. 15 (N.I.)) in connection with –
 - (i) an investigation to determine whether an inquest into the death of a person is necessary, or
 - (ii) an inquest in relation to the death of a person.
- (2) OFCOM may produce a report for use by the coroner or procurator fiscal, dealing with any matters that they consider may be relevant.
- (3) In subsection (1)(b) “inquiry” means an inquiry held, or to be held, under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2).”

Member's explanatory statement

This amendment makes it clear that OFCOM may produce a report in connection with a person's death, if the coroner gives OFCOM a notice or, in Scotland, the procurator fiscal requests information, for that purpose.

Clause 149

LORD PARKINSON OF WHITLEY BAY

274 Page 132, line 41, at end insert –

“(aa) a report under section (OFCOM's reports about use of age assurance) (report about use of age assurance),”

Member's explanatory statement

This amendment is consequential on the new Clause to be inserted after Clause 145 in my name. It ensures that the usual confidentiality provisions apply to matters contained in OFCOM's report about the use of age assurance.

274A★ Page 133, line 1, at end insert –

“(ca) a report under section (OFCOM's report about use of app stores by children) (report about use of app stores by children),”

Member's explanatory statement

This amendment is consequential on the new Clause proposed to be inserted after Clause 147 in my name. It ensures that the usual confidentiality provisions apply to matters contained in OFCOM's report about the use of app stores by children.

After Clause 149

LORD PARKINSON OF WHITLEY BAY

274B★ Insert the following new Clause –

“CHAPTER 8

MEDIA LITERACY

Media literacy

- (1) Section 11 of the Communications Act is amended in accordance with subsections (2) to (5).
- (2) Before subsection (1) insert –
 - “(A1) In this section –
 - (a) subsection (1) imposes duties on OFCOM which apply in relation to material published by means of the electronic media (including by means of regulated services), and
 - (b) subsections (1A) to (1E) expand on those duties, and impose further duties on OFCOM, in relation to regulated services only.”
- (3) After subsection (1) insert –
 - “(1A) OFCOM must take such steps, and enter into such arrangements, as they consider most likely to be effective in heightening the public's awareness and understanding of ways in which they can protect themselves and others when using regulated services, in particular by helping them to –

After Clause 149 - continued

- (a) understand the nature and impact of harmful content and the harmful ways in which regulated services may be used, especially content and activity disproportionately affecting particular groups, including women and girls;
 - (b) reduce their and others' exposure to harmful content and to the use of regulated services in harmful ways, especially content and activity disproportionately affecting particular groups, including women and girls;
 - (c) use or apply –
 - (i) features included in a regulated service, including features mentioned in section 12(2) of the Online Safety Act 2023, and
 - (ii) tools or apps, including tools such as browser extensions, so as to mitigate the harms mentioned in paragraph (b);
 - (d) establish the reliability, accuracy and authenticity of content;
 - (e) understand the nature and impact of disinformation and misinformation, and reduce their and others' exposure to it;
 - (f) understand how their personal information may be protected.
- (1B) OFCOM must take such steps, and enter into such arrangements, as they consider most likely to encourage the development and use of technologies and systems for supporting users of regulated services to protect themselves and others as mentioned in paragraph (a), (b), (c), (d) or (e) of subsection (1A), including technologies and systems which –
- (a) provide further context to users about content they encounter;
 - (b) help users to identify, and provide further context about, content of democratic importance present on regulated user-to-user services;
 - (c) signpost users to resources, tools or information raising awareness about how to use regulated services so as to mitigate the harms mentioned in subsection (1A)(b).
- (1C) OFCOM's duty under subsection (1A) is to be performed in the following ways (among others) –
- (a) pursuing activities and initiatives,
 - (b) commissioning others to pursue activities and initiatives,
 - (c) taking steps designed to encourage others to pursue activities and initiatives, and
 - (d) making arrangements for the carrying out of research (see section 14(6)(a)).
- (1D) OFCOM must draw up, and from time to time review and revise, a statement recommending ways in which others, including providers of regulated services, might develop, pursue and evaluate activities or initiatives relevant to media literacy in relation to regulated services.
- (1E) OFCOM must publish the statement and any revised statement in such manner as they consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.”
- (4) After subsection (2) insert –
- “(3) In this section and in section 11A, “regulated service” means –

After Clause 149 - continued

- (a) a regulated user-to-user service, or
- (b) a regulated search service.

“Regulated user-to-user service” and “regulated search service” have the same meaning as in the Online Safety Act 2023 (see section 3 of that Act).

- (4) In this section—
 - (a) “content”, in relation to regulated services, means regulated user-generated content, search content or fraudulent advertisements;
 - (b) the following terms have the same meaning as in the Online Safety Act 2023—
 - “content of democratic importance” (see section 13 of that Act);
 - “fraudulent advertisement” (see sections 33 and 34 of that Act);
 - “harm” (see section 209 of that Act) (and “harmful” is to be interpreted consistently with that section);
 - “provider”(see section 202 of that Act);
 - “regulated user-generated content” (see section 49 of that Act);
 - “search content” (see section 51 of that Act).”
- (5) In the heading, for “Duty” substitute “Duties”.
- (6) In section 14 of the Communications Act (consumer research), in subsection (6)(a), after “11(1)” insert “, (1A) and (1B)”.

Member’s explanatory statement

This amendment inserts provisions into section 11 of the Communications Act 2003 (OFCOM’s duties to promote media literacy). The new provisions expand on the existing duties so far as they relate to regulated user-to-user and search services, and impose new duties on OFCOM aimed at enhancing users’ media literacy.

274C★ Insert the following new Clause—

“Media literacy strategy and media literacy statement

After section 11 of the Communications Act insert—

“11A Regulated services: media literacy strategy and media literacy statement

- (1) OFCOM must prepare and publish a media literacy strategy within the period of one year beginning with the day on which the Online Safety Act 2023 is passed.
- (2) A media literacy strategy is a plan setting out how OFCOM propose to exercise their functions under section 11 in the period covered by the plan, which must be not more than three years.
- (3) In particular, a media literacy strategy must state OFCOM’s objectives and priorities for the period it covers.

After Clause 149 - continued

- (4) Before the end of the period covered by a media literacy strategy, OFCOM must prepare and publish a media literacy strategy for a further period, ensuring that each successive strategy covers a period beginning immediately after the end of the last one.
- (5) In preparing or revising a media literacy strategy, OFCOM must consult such persons as they consider appropriate.
- (6) OFCOM's annual report must contain a media literacy statement.
- (7) A media literacy statement is a statement by OFCOM –
 - (a) summarising what they have done in the financial year to which the report relates in the exercise of their functions under section 11, and
 - (b) assessing what progress has been made towards achieving the objectives and priorities set out in their media literacy strategy in that year.
- (8) A media literacy statement must include a summary and an evaluation of the activities and initiatives pursued or commissioned by OFCOM in the exercise of their functions under section 11 in the financial year to which the report relates.
- (9) The first annual report that is required to contain a media literacy statement is the report for the financial year during which OFCOM's first media literacy strategy is published, and that first statement is to relate to the period from publication day until the end of that financial year.
- (10) But if OFCOM's first media literacy strategy is published during the second half of a financial year –
 - (a) the first annual report that is required to contain a media literacy statement is the report for the next financial year, and
 - (b) that first statement is to relate to the period from publication day until the end of that financial year.
- (11) References in this section to OFCOM's functions under section 11 are to those functions so far as they relate to regulated services.
- (12) In this section –

“annual report” means OFCOM's annual report under paragraph 12 of the Schedule to the Office of Communications Act 2002;

“financial year” means a year ending with 31 March.”

Member's explanatory statement

This amendment requires OFCOM to produce a media literacy strategy every three years (or more frequently), and to include, in their annual report, a statement summarising and evaluating their media literacy activities, so far as they relate to regulated services, during the year.

BARONESS FOX OF BUCKLEY
LORD MOYLAN

275 Insert the following new Clause –

“OFCOM: duty to align classification framework

OFCOM must take steps to ensure that any classification framework operated by the British Board of Film Classification which has the purpose or effect of restricting access to content regulated by this Act complies with, and does not undermine the purpose of, the following duties –

- (a) duties to protect content of democratic importance (section 13),
- (b) duties to protect news publisher content (section 14),
- (c) duties to protect journalistic content (section 15), and
- (d) duties about freedom of expression and privacy (section 18).”

Member’s explanatory statement

This amendment ensures that OFCOM takes steps to ensure that the BBFC Mobile Classification Framework must be compliant with, and not undermine, the key protections provided by this Bill.

BARONESS FINLAY OF LLANDAFF

275A★ Insert the following new Clause –

“Duty to report on behaviours using new technologies

- (1) OFCOM must produce a report describing –
 - (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 or clarification in response to findings under paragraphs (a) and (b).
- (2) OFCOM must publish the report within 12 months beginning on the day this section comes into force and every 12 months subsequently.
- (3) OFCOM must send a copy of the report to the Secretary of State, and the Secretary of State must lay it before both Houses of Parliament.”

Member’s explanatory statement

This creates a duty on OFCOM to report on where the UK’s legal system is falling behind new technological developments and needs to be clarified.

Clause 202

LORD PARKINSON OF WHITLEY BAY

276 Page 171, line 2, at end insert –

- “(15) For the purposes of subsections (8) and (9), a person who makes available on a service an automated tool or algorithm by means of which content is generated is to be regarded as having control over content so generated.”

Member's explanatory statement

This amendment is about who counts as the provider of a service (other than a user-to-user or search service) that hosts provider pornographic content for the purposes of the Bill. The amendment makes it clear that a person who controls a generative tool on the service, such as a generative AI bot, is regarded as controlling the content generated by that tool.

After Clause 205

LORD PARKINSON OF WHITLEY BAY

BARONESS KIDRON

277 Insert the following new Clause—

“Age verification” and “age estimation”

- (1) This section applies for the purposes of this Act.
- (2) “Age verification” means any measure designed to verify the exact age of users of a regulated service.
- (3) “Age estimation” means any measure designed to estimate the age or age-range of users of a regulated service.
- (4) A measure which requires a user to self-declare their age (without more) is not to be regarded as age verification or age estimation.”

Member's explanatory statement

This new Clause defines age verification and age estimation, and makes it clear that mere self-declaration of age does not count as either.

Clause 206

LORD PARKINSON OF WHITLEY BAY

278 Page 172, line 34, leave out “assessing or establishing” and insert “verifying or estimating”

Member's explanatory statement

This amendment is made to ensure consistency of language in the Bill when referring to age verification and age estimation.

279 Page 173, line 11, at end insert—

- “(c) in relation to an internet service within section 71(2), content that is provider pornographic content in relation to the service.”

Member's explanatory statement

This amendment is about what counts as “relevant content” for the purposes of defining “proactive technology” for the purposes of the Bill. The effect is for provider pornographic content to now be included.

280 Page 173, line 15, leave out “Part 3” and insert “regulated”

Member's explanatory statement

This amendment revises the definition of "user data" for the purposes of defining "proactive technology" for the purposes of the Bill. The effect is for user data to now include data created etc by providers of all services regulated by the Bill (including providers subject to the Part 5 pornography duties).

Clause 208

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

281 Page 174, line 14, 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.

281A★ Page 174, line 47, at end insert –

- “(n) using a feature that –
- (i) turns notifications on by default;
 - (ii) enables loot boxes;
 - (iii) enables infinite scroll;
 - (iv) enables auto-play of videos;
 - (v) enables time-limited content;
 - (vi) enables pay-to-play;
 - (vii) enables users to exchange virtual gifts.”

Member's explanatory statement

This amendment would introduce additional examples of functionalities that are known to be addictive and can cause harm.

281B★ Page 175, line 1, leave out "search" and insert "regulated"

Member's explanatory statement

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

Clause 209

LORD PARKINSON OF WHITLEY BAY

281C★ Page 175, line 17, leave out from "dissemination" to end of line 18

Member's explanatory statement

This amendment is consequential on the next amendment to this Clause in my name.

281D★ Page 175, line 18, at end insert –

- “(3A) References to harm presented by content, and any other references to harm in relation to content, include references to cumulative harm arising or that may arise in the following circumstances –

Clause 209 - continued

- (a) where content, or content of a particular kind, is repeatedly encountered by an individual (including, but not limited to, where content, or a kind of content, is sent to an individual by one user or by different users or encountered as a result of algorithms used by, or functionalities of, a service);
- (b) where content of a particular kind is encountered by an individual in combination with content of a different kind (including, but not limited to, where a kind of content is sent to an individual by one user or by different users or encountered as a result of algorithms used by, or functionalities of, a service)."

Member's explanatory statement

This amendment makes clear that references to harm presented by content include cumulative harm that arises or that may arise in the circumstances mentioned and, in particular, covers the case where this occurs as a result of algorithms used by, or functionalities of, a service.

281E★ Page 175, line 29, at end insert –

“(4A) References to a risk of harm in relation to functionalities, and references to the risk of functionalities facilitating users encountering particular kinds of content (however expressed), include references to risks arising or that may arise due to multiple functionalities which, used in combination, increase the likelihood of harm arising (for example, as mentioned in subsection (3A)).”

Member's explanatory statement

This amendment makes clear that references to a risk of harm in relation to functionalities and references to the risk of functionalities facilitating users encountering particular kinds of content include references to risks from a combination of those functionalities.

BARONESS KIDRON
LORD STEVENSON OF BALMACARA
BARONESS HARDING OF WINSCOMBE
THE LORD BISHOP OF OXFORD

281F★ Page 175, line 29, at end insert –

“(4A) When in relation to children, references to harm include the potential impact of the design and operation of a regulated service separately and additionally from harms arising from content, including the following considerations –

- (a) the potential cumulative impact of exposure to harm or a combination of harms;
- (b) the potential for harm to result from features, functionalities or behaviours enabled or created by the design and operation of services;
- (c) the potential for some features and functionalities within a service to be higher risk than other aspects of the service;
- (d) that a service may, when used in conjunction with other services, facilitate harm to a child on a different service;
- (e) the potential for design strategies that exploit a child's developmental vulnerabilities to create harm, including validation metrics and compulsive reward loops;

Clause 209 - continued

- (f) the potential for real time services, features and functionalities such as geolocation, livestream broadcasts or events, augmented and virtual environments to put children at immediate risk;
- (g) the potential for content neutral systems that curate or generate environments, content feeds or contacts to create harm to children;
- (h) that new and emerging harms may arise from artificial intelligence, machine generated and immersive environments.”

Member’s explanatory statement

This amendment describes the ways in which the design and operation of services may create harm separately and additionally to harm relating to the dissemination of or encountering harmful content.

LORD PARKINSON OF WHITLEY BAY

281G★ Page 175, line 33, leave out “and (4)” and insert “to (4)”

Member’s explanatory statement

This amendment is consequential on the amendment in my name inserting new subsection (3A) into this Clause.

Clause 210

LORD PARKINSON OF WHITLEY BAY

281H★ Page 176, line 12, leave out “section 11 (duty)” and insert “sections 11 and 11A (duties)”

Member’s explanatory statement

This amendment provides that the term “online safety functions” includes OFCOM’s functions under section 11A of the Communications Act 2003 (inserted by the new Clause proposed to be inserted after Clause 149 in my name) regarding OFCOM’s media literacy strategy (as well as OFCOM’s functions under section 11 of that Act).

LORD PARKINSON OF WHITLEY BAY

LORD KNIGHT OF WEYMOUTH

BARONESS KIDRON

LORD CLEMENT-JONES

282 Page 176, line 21, at end insert –

“(2A) References to OFCOM’s “online safety functions” also include references to OFCOM’s duty to comply with any of the following, so far as relating to the use of a regulated service by a person who has died –

- (a) a notice from a senior coroner under paragraph 1(2) of Schedule 5 to the Coroners and Justice Act 2009 in connection with an investigation into a person’s death;
- (b) a request for information in connection with the investigation of a procurator fiscal into, or an inquiry held or to be held in relation to, a person’s death;
- (c) a notice from a coroner under section 17A(2) of the Coroners Act (Northern Ireland) 1959 (c. 15 (N.I.)) in connection with –

Clause 210 - continued

- (i) an investigation to determine whether an inquest into a person's death is necessary, or
- (ii) an inquest in relation to a person's death."

Member's explanatory statement

This amendment makes it clear that OFCOM's online safety functions include the duty of complying with a coroner's notice or, in Scotland, a request from the procurator fiscal, in connection with the use of a regulated service by a person who has died.

LORD PARKINSON OF WHITLEY BAY
BARONESS KIDRON

283 Page 176, line 23, at end insert –

- “(4) In subsection (2A)(b) “inquiry” means an inquiry held, or to be held, under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2).”

Member's explanatory statement

This amendment defines a term used in the preceding amendment in my name.

Clause 211

LORD PARKINSON OF WHITLEY BAY

284 Page 176, leave out lines 27 and 28

Member's explanatory statement

This amendment removes a definition of “age assurance” from Clause 211 as that term is now defined separately where used.

285 Page 176, line 29, at end insert –

““automated tool” includes bot;”

Member's explanatory statement

This amendment makes it clear that references in the Bill to automated tools include bots.

BARONESS FRASER OF CRAIGMADDIE
LORD STEVENSON OF BALMACARA
LORD HOPE OF CRAIGHEAD

286 Page 177, line 7, at end insert –

““freedom of expression”: any reference to freedom of expression (except in sections 36(6)(f) and 69(2)(d)) is to the freedom to receive and impart ideas, opinions or information (referred to in Article 10(1) of the Convention) by means of speech, writing or images;”

Member's explanatory statement

This amendment inserts a definition of freedom of expression into the Bill.

LORD PARKINSON OF WHITLEY BAY
BARONESS KIDRON

- 287 Page 177, line 10, after “91(1)” insert “or (*Information in connection with an investigation into the death of a child*)(1)”

Member’s explanatory statement

This amendment revises the definition of “information notice” so that it includes a notice under the new Clause proposed in my name concerning OFCOM’s power to obtain information in connection with an investigation into the death of a child.

LORD PARKINSON OF WHITLEY BAY

- 288 Page 177, line 31, at end insert –
 ““pornographic content” means content of such a nature that it is reasonable to assume that it was produced solely or principally for the purpose of sexual arousal;”

Member’s explanatory statement

This amendment adds a definition of “pornographic content” to Clause 211 of the Bill.

- 288A★ Page 178, line 3, at end insert –
 “(2A) References in this Act to an individual with a certain characteristic include references to an individual with a combination of characteristics.”

Member’s explanatory statement

This amendment makes clear that references in the Bill to an individual with a certain characteristic include an individual with a combination of characteristics.

- 288B★ Page 178, line 9, leave out “description” and insert “kind”

Member’s explanatory statement

This amendment ensures consistency of language in referring to kinds of content.

- 288C★ Page 178, line 11, leave out “description” and insert “kind”

Member’s explanatory statement

This amendment ensures consistency of language in referring to kinds of content.

LORD PARKINSON OF WHITLEY BAY
BARONESS KIDRON

- 289 Page 178, line 32, leave out from “of” to end of line 34 and insert “ –
 (a) software or an automated tool or algorithm applied by the provider of the service or by a person acting on behalf of the provider, or
 (b) an automated tool or algorithm made available on the service by the provider or by a person acting on behalf of the provider.”

Member’s explanatory statement

This amendment revises an interpretative provision relating to the borderline between provider content and user-generated content. The provision is revised to use consistent wording about automated tools/algorithms made available by a provider (such as a generative AI bot), as used in the amendments of Clauses 49, 70 and paragraph 4 of Schedule 1 in my name.

LORD PARKINSON OF WHITLEY BAY

290 Page 178, line 36, leave out “(within the meaning of section 70(2))”

Member’s explanatory statement

This amendment is consequential on the amendment of this Clause in my name adding a definition of “pornographic content” to this Clause.

Clause 212

LORD PARKINSON OF WHITLEY BAY

291 Page 179, leave out line 3

Member’s explanatory statement

This amendment removes the entry for “age assurance” in the index of defined terms as that term is now defined separately where used.

292 Page 179, line 3, at end insert –

“age estimation

age verification

|Section (“Age verification” and “age estimation”)
|Section (“Age verification” and “age estimation”)

Member’s explanatory statement

This amendment adds definitions of “age estimation” and “age verification” to the index of defined terms.

293 Page 179, line 4, at end insert –

“automated tool

|Section 211”

Member’s explanatory statement

This amendment adds a definition of “automated tool” to the index of defined terms.

BARONESS FRASER OF CRAIGMADDIE
LORD STEVENSON OF BALMACARA
LORD HOPE OF CRAIGHEAD

294 Page 179, line 22, at end insert –

“freedom of expression

|section 211”

Clause 212 - continued***Member's explanatory statement***

This amendment adds a definition of "freedom of expression" to the index of defined terms.

LORD PARKINSON OF WHITLEY BAY

295 Page 180, line 17, leave out "(in Part 5)"

Member's explanatory statement

This amendment updates the entry for pornographic content consequential on the amendment to Clause 211 which inserts a definition of that term into that Clause which applies for the purposes of the whole Bill.

296 Page 180, line 17, leave out "70" and insert "211"

Member's explanatory statement

This amendment updates the entry for pornographic content consequential on the amendment to Clause 211 inserting a definition of that term into that clause.

297 Page 180, line 18, leave out "54" and insert "(*Primary priority content that is harmful to children*)"

Member's explanatory statement

This amendment updates the entry for primary priority content that is harmful to children in the index of defined terms, consequential on the new Clause proposed to be inserted after Clause 54 in my name.

298 Page 180, line 20, leave out "54" and insert "(*Priority content that is harmful to children*)"

Member's explanatory statement

This amendment updates the entry for priority content that is harmful to children in the index of defined terms, consequential on the new Clause proposed to be inserted after Clause 54 in my name.

Clause 214

LORD PARKINSON OF WHITLEY BAY

299 Page 182, line 9, at end insert –

“(aa) section (*Sharing or threatening to share intimate photograph or film*);

(ab) section 171(2);

(ac) section (*Repeals in connection with offences under section (Sharing or threatening to share intimate photograph or film)*);”

Member's explanatory statement

This amendment revises the extent Clause so that the provisions mentioned extend to England and Wales only.

Clause 215

LORD PARKINSON OF WHITLEY BAY

300 Page 182, line 37, leave out subsection (1)

Member’s explanatory statement

Clause 215(1) specifies which provisions of the Bill come into force on Royal Assent. This amendment omits subsection (1), but only because it is being moved further down in the section and replaced (see the amendment in my name below).

301 Page 183, line 8, leave out “The other provisions of this Act come” and insert “Except as provided by subsection (4A), this Act comes”

Member’s explanatory statement

This technical amendment is needed because of the additions to the list of provisions which are to be commenced on Royal Assent (see the next amendment in my name).

302 Page 183, line 14, at end insert –

“(4A) The following provisions come into force on the day on which this Act is passed –

- (a) Parts 1 and 2;
- (b) Chapter 1 of Part 3;
- (c) section 36, except subsection (4) of that section;
- (d) section 37 and Schedule 4;
- (e) sections 38 to 43;
- (f) section 47(2), (3) and (4);
- (g) section 48, except subsection (2) of that section;
- (h) Chapter 7 of Part 3 and Schedules 5, 6 and 7;
- (i) section 63;
- (j) section 67;
- (k) section 70;
- (l) section 71(4);
- (m) section 73;
- (n) sections 81 and 82;
- (o) section 84;
- (p) section 85 and Schedule 11;
- (q) Chapter 3 of Part 7;
- (r) section 118;
- (s) section 140;
- (t) section 143 so far as relating to a duty imposed on OFCOM under Schedule 11;
- (u) section 174, except subsection (2)(b) of that section;
- (v) section (*Time for publishing first guidance under certain provisions of this Act*);
- (w) section 184(1);

Clause 215 - continued

- (x) section 187;
- (y) section 192;
- (z) section 194;
- (z1) section (*Powers to amend sections (“Primary priority content that is harmful to children”) and (“Priority content that is harmful to children”)*);
- (z2) sections 197 to 201;
- (z3) this Part.”

Member’s explanatory statement

This amendment specifies the provisions of the Bill that come into force on Royal Assent.

Online Safety Bill

REVISED
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
ON REPORT

5 July 2023
