

Online Safety Bill

THIRD
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.**

Clause 38

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 user generated or controlled characters and objects with which user characters interact 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, 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
BARONESS HOLLINS

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.

LORD CLEMENT-JONES

180A Insert the following new Clause—

“Review: offences relating to animal trafficking

- (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 the potential impact of the harm caused to individuals by offences committed under paragraphs 1(2)(e) (displaying to the public for commercial purposes) and 1(2)(h) (offering for sale) of Schedule 1 of the Control of Trade in Endangered Species Regulations 2018 in relation to online communications.
- (2) The review must recommend whether the Secretary of State should make regulations to designate offences in subsection (1) in the list of priority offences in Schedule 7 of this Act.”

Member's explanatory statement

This amendment would require the Secretary of State to carry out a review of the impact of the illegal online advertisement of endangered animals on online harms, and to make a recommendation as to whether the offences should be a priority offence under this Act.

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.

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

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,

After Clause 58 - continued

- (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 10 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.
- (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.

After Clause 67 - continued

- (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.
- (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.

BARONESS KIDRON

*As an amendment to Amendment 191***191A★** After subsection (1) insert—

“(1A) OFCOM must produce guidance for coroners or, in Scotland, procurators fiscal, on all aspects of submitting a notice or request to OFCOM in accordance with subsections (1)(a) to (c) of section (*OFCOM’s report in connection with investigation into a death*) to exercise OFCOM’s power to obtain information from providers about the use of a service by the deceased child.”

Member’s explanatory statement

This amendment requires OFCOM to produce and publish guidance for coroners and procurators fiscal to assist them in submitting notices or requests to OFCOM to obtain information from providers about the use of a service by a deceased child.

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.

After Clause 69 - continued

- (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.
- (6) For the purposes of this section, “harmful suicide or self-harm content” means content which—
- (a) encourages or promotes suicide or an act of deliberate self-injury;
 - (b) provides instructions for suicide or an act of deliberate self-injury;
 - (c) seeks or encourages an agreement to undertake mutual acts of suicide or deliberate self-injury.”

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
- (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 72LORD 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
BARONESS FOX OF BUCKLEY

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.

After Clause 161 - continued

- (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);
 - (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).

After Clause 174 - continued

- (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
 - (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).

After Clause 194 - continued

- (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.
- (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);

After Clause 194 - continued

- (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.

236C★ Insert the following new Clause –

"Power to impose duty about alternative dispute resolution procedure

- (1) The Secretary of State may by regulations amend this Act for or in connection with the imposition on providers of Category 1 services of an ADR duty.
- (2) An "ADR duty" –
 - (a) is a duty requiring providers of Category 1 services to arrange for and engage in an alternative dispute resolution procedure in specified circumstances for the resolution of disputes about their handling of relevant complaints, and
 - (b) may include a duty requiring such providers to meet the costs incurred by any other person in using a dispute resolution procedure which is so arranged.

After Clause 194 - continued

- (3) Complaints are “relevant” for the purposes of subsection (2)(a) if they –
 - (a) relate to a Category 1 service,
 - (b) are of a specified kind, and
 - (c) are made by persons of a specified kind.
- (4) Regulations under this section may not be made before the publication of a statement by the Secretary of State responding to OFCOM’s report under section (*OFCOM’s report about reporting and complaints procedures*)(report about reporting and complaints procedures in use by providers of Part 3 services: see subsection (10) of that section).
- (5) Before making regulations under this section the Secretary of State must consult –
 - (a) OFCOM,
 - (b) the Information Commissioner, and
 - (c) such other persons as the Secretary of State considers appropriate.
- (6) If the power conferred by subsection (1) is exercised, the first regulations made under the power must –
 - (a) require the use of a dispute resolution procedure which is impartial, and
 - (b) prohibit the use of a dispute resolution procedure which restricts or excludes the availability of civil proceedings.
- (7) Provision made by regulations under this section may have the effect that the duties set out in any or all of sections 17, 18 and 19 which apply in relation to duties imposed by other provisions of Chapter 2 of Part 3 are also to apply in relation to the ADR duty, and accordingly the regulations may amend –
 - (a) section 17(6),
 - (b) the definition of “safety measures and policies” in section 18(8), or
 - (c) the definition of “relevant duties” in section 19(10).
- (8) The provisions of this Act that may be amended by the regulations in connection with the imposition of the ADR duty include, but are not limited to, the following provisions (in addition to those mentioned in subsection (7)) –
 - (a) section 6(5),
 - (b) section 94(12)(a), and
 - (c) section 120(2).
- (9) If the power conferred by subsection (1) is exercised, the first regulations made under the power must require OFCOM to –
 - (a) produce and publish guidance for providers of Category 1 services to assist them in complying with the ADR duty, and
 - (b) consult the Secretary of State, the Information Commissioner and such other persons as OFCOM consider appropriate before producing the guidance.
- (10) Section 184(1) applies for the purposes of the references to Category 1 services in this section.
- (11) In this section “specified” means specified in regulations under this section.

After Clause 194 - continued

- (12) For the meaning of “Category 1 service”, see section 86 (register of categories of services).”

Member’s explanatory statement

This amendment provides that the Secretary of State may make regulations amending this Bill so as to impose a new duty on providers of Category 1 services to arrange for and engage in an out of court, impartial dispute resolution procedure. The regulations may not be made until the Secretary of State has responded to OFCOM’s report about content reporting and complaints procedures under the new clause proposed to be inserted after Clause 147 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).

After Clause 195 - continued

- (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.

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

“(da) regulations under section (*Power to impose duty about alternative dispute resolution procedure*)(1),”

Member’s explanatory statement

This amendment provides that regulations made under the new Clause proposed to be inserted in my name after Clause 194, concerning regulations to impose a duty on providers of Category 1 services about using an alternative dispute resolution procedure, 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),

After Clause 201 - continued

- (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.”

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 –

After Clause 201 - continued

- (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
 - (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.

After Clause 201 - continued

(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,
- (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,

Clause 76 - continued

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.
- (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 (*OFCEM'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 (*OFCEM'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,

After Clause 91 - continued

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
 - (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

250B★ Page 86, line 26, leave out "any" and insert "either"

Member's explanatory statement

This amendment is consequential on the next amendment of Clause 94 in my name.

250C★ Page 86, line 34, leave out paragraph (c)

Member's explanatory statement

This amendment is consequential on the new Clause proposed to be inserted in my name after Clause 111. It omits words in Clause 94 (skilled person's reports) because that new Clause now requires OFCOM to obtain a skilled person's report before giving a provider a notice under Clause 111.

250D★ Page 86, line 41, at end insert –

“(2A) Section (Requirement to obtain skilled person's report) requires OFCOM to exercise the power in subsection (3) for the purpose of assisting OFCOM in connection with a notice under section 111(1).”

Member's explanatory statement

This amendment is consequential on the new Clause proposed to be inserted in my name after Clause 111. It inserts a signpost in Clause 94 (skilled persons' reports).

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—

“(xiiia) 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 –
 - (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 PARKINSON OF WHITLEY BAY

255A★ Page 98, line 8, at end insert –

“(za) section (*Requirement to obtain skilled person’s report*), which requires OFCOM to obtain a skilled person’s report before giving a notice under subsection (1),”

Member’s explanatory statement

This amendment is consequential on the new Clause proposed to be inserted in my name after Clause 111. It inserts a signpost to the requirement in that new Clause to obtain a skilled person’s report before giving a provider a notice under Clause 111.

LORD STEVENSON OF BALMACARA
LORD CLEMENT-JONES

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 PARKINSON OF WHITLEY BAY

256A★ Insert the following new Clause—

“Requirement to obtain skilled person’s report

- (1) OFCOM may give a notice under section 111(1) to a provider only after obtaining a report from a skilled person appointed by OFCOM under section 94(3).

After Clause 111 - continued

- (2) The purpose of the report is to assist OFCOM in deciding whether to give a notice under section 111(1), and to advise about the requirements that might be imposed by such a notice if it were to be given.”

Member’s explanatory statement

This amendment requires OFCOM to obtain a skilled person’s report under Clause 94 before giving a notice to a provider under 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
 - (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 112

LORD PARKINSON OF WHITLEY BAY

257A★

Page 98, line 24, at end insert—

- “(za) contain a summary of the report obtained by OFCOM under section (Requirement to obtain skilled person’s report),”

Member's explanatory statement

This amendment requires a warning notice given to a provider to contain a summary of the skilled person's report obtained by OFCOM under the new Clause proposed to be inserted in my name after Clause 111.

257B★ Page 98, line 37, at end insert –

“(za) contain a summary of the report obtained by OFCOM under section (Requirement to obtain skilled person's report),”

Member's explanatory statement

This amendment requires a warning notice given to a provider to contain a summary of the skilled person's report obtained by OFCOM under the new Clause proposed to be inserted in my name after Clause 111.

Clause 113

LORD PARKINSON OF WHITLEY BAY

257C★ Page 99, line 32, at end insert –

“(ga) the contents of the skilled person's report obtained as required by section (Requirement to obtain skilled person's report);”

Member's explanatory statement

This amendment requires OFCOM to consider the contents of the skilled person's report obtained as required by the new Clause proposed to be inserted in my name after Clause 111, as part of OFCOM's decision about whether it is necessary and proportionate to give a notice to a provider under Clause 111.

257D★ Page 99, line 40, at end insert –

“(ia) in the case of a notice relating to a user-to-user service (or to the user-to-user part of a combined service), the extent to which the use of the specified technology would or might –
 (i) have an adverse impact on the availability of journalistic content on the service, or
 (ii) result in a breach of the confidentiality of journalistic sources;”

Member's explanatory statement

This amendment requires OFCOM to consider the impact of the use of technology on the availability of journalistic content and the protection of journalistic sources, as part of OFCOM's decision about whether it is necessary and proportionate to give a notice to a provider under Clause 111.

257E★ Page 100, line 4, after “(i)” insert “, (ia)”

Member's explanatory statement

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

257F★ Page 100, line 5, at end insert –

““journalistic content” has the meaning given by section 15;”

Member's explanatory statement

This amendment adds a definition of journalistic content to Clause 113.

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 115

LORD PARKINSON OF WHITLEY BAY

258A★ Page 102, line 24, leave out “Section 112 (warning notices) does” and insert “Sections (Requirement to obtain skilled person's report)(skilled person's report) and 112 (warning notices) do”

Member's explanatory statement

This amendment provides that, if OFCOM propose to issue a further notice under Clause 111, it is not necessary to obtain a further skilled person's report under the new Clause proposed to be inserted in my name after Clause 111.

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 –

<p>“Section (Assessment duties: user empowerment)</p>	<p>Assessments related to duty in section 12(2)”</p>
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Clause 120 - continued***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
(disclosure of information about use of
service by deceased child users)

Information about
use of service by deceased child users”

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.

262A★ Page 107, line 17, at end insert –

“(ba) specify which of those requirements (if any) have been designated as CSEA requirements (see subsections (5A) and (5B)),”

Member's explanatory statement

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

262B★ Page 107, line 35, at end insert –

“(5A) If the condition in subsection (5B) is met in relation to a requirement imposed by a confirmation decision which is of a kind described in subsection (1), OFCOM must designate the requirement as a “CSEA requirement” for the purposes of section 127(2A) (offence of failure to comply with confirmation decision).

(5B) The condition referred to in subsection (5A) is that the requirement is imposed (whether or not exclusively) in relation to either or both of the following –

Clause 122 - continued

- (a) a failure to comply with section 9(2)(a) or (3)(a) in respect of CSEA content, or in respect of priority illegal content which includes CSEA content;
- (b) a failure to comply with section 9(2)(b) in respect of an offence specified in Schedule 6 (CSEA offences), or in respect of priority offences which include such an offence.”

Member’s explanatory statement

This amendment provides that where a confirmation decision imposes a requirement to take steps in relation to a failure to comply with a duty under Clause 9(2)(a), (2)(b) or (3)(a) in respect of CSEA content or an offence under Schedule 6, OFCOM must designate the requirement as a CSEA requirement with the result that failure to comply with it is an offence (see the amendment inserting subsection (2A) into Clause 127 in my name).

262C★ Page 107, line 44, at end insert –

““CSEA content”, “priority illegal content” and “priority offence” have the same meaning as in Part 3 (see section 53);”

Member’s explanatory statement

This amendment is consequential on the preceding amendment to this Clause 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 PARKINSON OF WHITLEY BAY

- 264A★** Page 112, line 22, leave out “relates (whether or not exclusively) to” and insert “is imposed (whether or not exclusively) in relation to a failure to comply with”

Member’s explanatory statement

This is a technical amendment which adjusts the language of this provision.

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.

LORD PARKINSON OF WHITLEY BAY

- 266A★** Page 112, line 27, at end insert –
“(2A) A person to whom a confirmation decision is given commits an offence if, without reasonable excuse, the person fails to comply with a CSEA requirement imposed by the decision (see section 122 (5A) and (5B)).”

Member’s explanatory statement

This amendment provides that a person commits an offence if the person fails to comply, without reasonable excuse, with a CSEA requirement imposed by a confirmation decision given to the person (see the amendment inserting new subsections (5A) and (5B) into Clause 122 in my name.)

LORD BETHELL

- 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 CLEMENT-JONES

269AA★ Page 128, line 13, after “should” insert “verify the provenance and attribution of content on such services and”

Member's explanatory statement

This is a probing amendment to determine why OFCOM's mis/disinformation committee is not required to consider the provenance of content as part of the solution to empower users to understand whether content is real or not.

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
BARONESS NEWLOVE
LORD CLEMENT-JONES

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;

After Clause 144 - continued

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

272 Page 131, line 19, at end insert –

“(aa) in separate analyses, the online interests and experiences of users in –
 (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.

272AA★ Insert the following new Clause—

“OFCOM’s report about reporting and complaints procedures

- (1) OFCOM must produce a report assessing the measures taken or in use by providers of Part 3 services to enable users and others to—
 - (a) report particular kinds of content present on such services, and
 - (b) make complaints to providers of such services.
- (2) OFCOM’s report must take into account the experiences of users and others in reporting content and making complaints to providers of Part 3 services, including—
 - (a) how clear the procedures are for reporting content and making complaints,
 - (b) how easy it is to do those things, and
 - (c) whether providers are taking appropriate and timely action in response to reports and complaints that are made.
- (3) The report must include advice from OFCOM about whether they consider that the Secretary of State should make regulations under section (*Power to impose duty about alternative dispute resolution procedure*)(duty about alternative dispute resolution procedure).
- (4) In the report, OFCOM may make recommendations that they consider would improve the experiences of users and others in reporting content or making complaints to providers of Part 3 services, or would deliver better outcomes in relation to reports or complaints that are made.
- (5) In preparing the report under this section, OFCOM must consult—
 - (a) the Secretary of State,
 - (b) persons who appear to OFCOM to represent the interests of United Kingdom users of Part 3 services,
 - (c) persons who appear to OFCOM to represent the interests of children (generally or with particular reference to online safety matters),
 - (d) the Information Commissioner, and
 - (e) such other persons as OFCOM consider appropriate.
- (6) The report may draw on OFCOM’s research under section 14 of the Communications Act (see subsection (6B) of that section).
- (7) The report is not required to address any matters which are the subject of a report by OFCOM under section 146 (report about the availability and treatment of news publisher content and journalistic content).
- (8) OFCOM must publish the report within the period of two years beginning with the day on which this section comes into force.
- (9) OFCOM must send a copy of the report to the Secretary of State, and the Secretary of State must lay it before Parliament.

After Clause 147 - continued

- (10) The Secretary of State must publish a statement responding to the report within the period of three months beginning with the day on which the report is published, and the statement must include a response to OFCOM's advice about whether to make regulations under section (*Power to impose duty about alternative dispute resolution procedure*).
- (11) The statement must be published in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons who may be affected by it.
- (12) For further provision about the report under this section, see section 149.
- (13) References in this section to "users and others" are to United Kingdom users and individuals in the United Kingdom."

Member's explanatory statement

This amendment requires OFCOM to produce a report about the content reporting and complaints procedures used by providers of Part 3 services, including user experiences of those procedures. OFCOM must specifically advise whether they consider that regulations ought to be made under the new Clause proposed to be inserted in my name after Clause 194 (duty about alternative dispute resolution procedure).

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).

LORD BETHELL

272BA Page 132, line 11, leave out "two years" and insert "six months"

LORD PARKINSON OF WHITLEY BAY

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.

LORD BETHELL

273A Insert the following new Clause—

“Access to information by approved independent researchers

- (1) OFCOM may appoint an approved independent researcher to access information from providers of regulated services where OFCOM consider that it is necessary and proportionate to do so for the following research purposes—
 - (a) improving the understanding of the following risks and mitigations in relation to regulated services—
 - (i) risks of illegal content, as set out in section 8, and
 - (ii) risks to children, as set out in section 10;
 - (b) improving the functioning of the following duties, including safeguards to protect the rights of users—

After Clause 148 - continued

- (i) user empowerment duties,
 - (ii) duties to protect content of democratic importance,
 - (iii) duties to protect news publisher content,
 - (iv) duties to protect journalistic content,
 - (v) duties about content reporting, and
 - (vi) duties about freedom of expression and privacy.
- (2) Where OFCOM make such an appointment, they must notify the provider or providers about the appointment and the relevant matters to be explored in the research.
- (3) It is the duty of—
- (a) the provider of the service (“P”),
 - (b) any person who works for (or used to work for) P, or is providing (or used to provide) services to P related to the relevant matters, and
 - (c) other providers of internet services,
- to give the approved independent researcher all such assistance as they may reasonably require to carry out their research.
- (4) For the purposes of this section a person is an independent researcher if the person—
- (a) can demonstrate independence from commercial interests, and
 - (b) can demonstrate that appropriate legal, technical and organisational safeguards are in place to protect the confidentiality of the data and the rights of any individuals affected.
- (5) For the purposes of this section, research must—
- (a) be carried out on behalf of an organisation pursuing scientific research such as educational institutions and non-profit organisations pursuant to a public interest mission,
 - (b) be disseminated publicly free of charge, without prejudice to the protection of the rights to privacy and data protection of any individual, and
 - (c) be clearly linked to the purposes in subsection (1).
- (6) References in this section to “approved independent researcher” are to an independent researcher meeting the requirements of subsection (4) and who—
- (a) has had an application to OFCOM following procedures laid out in the code of practice under section (*Code of practice on access to data by researchers*) approved, and
 - (b) appears to OFCOM to have the skills necessary to carry out the research about the relevant matters.”

273B

Insert the following new Clause—

“Code of practice on access to data by researchers

- (1) OFCOM must prepare and issue a code of practice for researchers and providers of regulated services describing measures and procedures for the purpose of enabling access to information by researchers, including—

After Clause 148 - continued

- (a) describing how, and to what extent, persons carrying out independent research into online safety matters and systemic risks from online platforms are currently able to obtain information from providers of regulated services to inform their research,
 - (b) exploring the legal and other issues which currently constrain the sharing of information for such purposes,
 - (c) assessing how access to information for such purposes might be achieved to the greatest extent possible while ensuring the protections of the rights of service users and protection of confidential information, and
 - (d) exploring the appropriate structure and processes for a public organisation to manage and provide oversight of access by researchers.
- (2) The code of practice under subsection (1) must include guidance on relevant issues, including—
- (a) criteria for assessing and approving research applications,
 - (b) measures for removing undue barriers to proportionate access by independent researchers to data and information from regulated services,
 - (c) criteria for vetting different researchers,
 - (d) appropriate conditions, processes and interfaces for safe access to information by researchers, and
 - (e) safeguards required, including the protection of personal data, the protection of confidential information, and the security of the services.
- (3) In preparing a draft of a code of practice or amendments to a code of practice under this section, OFCOM must—
- (a) consult persons as mentioned in subsection (4),
 - (b) follow the procedures for issuing codes of practice laid out in section 38,
 - (c) include in each transparency report under section 148 an assessment of the effectiveness of the code.
- (4) The persons that OFCOM must consult are—
- (a) the Information Commissioner,
 - (b) the Centre for Data Ethics and Innovation,
 - (c) United Kingdom Research and Innovation,
 - (d) persons who appear to OFCOM to represent providers of regulated services,
 - (e) persons representing the interests of United Kingdom users of regulated services,
 - (f) persons whom OFCOM consider to have expertise in independent research into regulated services, and
 - (g) such other persons as OFCOM consider appropriate.
- (5) OFCOM must publish the code within the period of six months beginning with the day on which this section comes into force.
- (6) OFCOM must send a copy of the code to the Secretary of State, and the Secretary of State must lay it before Parliament.”

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.

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

“(ca) a report under section (*OFCOM’s report about reporting and complaints procedures*) (report about reporting and complaints procedures),”

Member’s explanatory statement

This amendment is consequential on the new Clause proposed to be inserted after Clause 147 in my name about OFCOM’s report concerning reporting and complaints procedures used by providers of Part 3 services. The amendment ensures that the usual confidentiality provisions apply to matters contained in that report.

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 –

After Clause 149 - continued

- “(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 –
- (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.

After Clause 149 - continued

- (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—
- (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 (OFCCOM’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 OFCCOM 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.

After Clause 149 - continued

- (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.
- (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
LORD PARKINSON OF WHITLEY BAY

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 estimation

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

LORD PARKINSON OF WHITLEY BAY

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

THIRD
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
ON REPORT

10 July 2023
