

ONLINE SAFETY BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the parts and clauses of the Online Safety Bill as introduced in the House of Commons on 17 March 2022 (Bill 285).

- These Explanatory Notes have been provided by the Department for Digital, Culture, Media and Sport and the Home Office in order to assist the reader of the Online Safety Bill. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Online Safety Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Online Safety Bill will affect existing legislation in this area.
- These Explanatory Notes might be best read

alongside the Online Safety Bill. They are not, and are not intended to be, a comprehensive description of the Online Safety Bill.

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Overview of the Bill

1. The Online Safety Bill establishes a new regulatory regime to address illegal and harmful content online. It imposes legal requirements on:
 - a. Providers of internet services which allow users to encounter content generated, uploaded or shared by other users (“user-to-user services”);
 - b. Providers of search engines which enable users to search multiple websites and databases (“search services”);
 - c. Providers of internet services on which provider pornographic content (pornographic content that is published by a provider and is not user generated) is published or displayed.

2. The Bill confers new powers on the Office of Communications (Ofcom) enabling them to act as the online safety regulator. This role will

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include overseeing and enforcing the new regulatory regime.

Policy background

3. As use of the internet has expanded there has been an increasing awareness that online content and activity can cause serious harm to users. There are growing levels of public concern about online content and activity that is lawful but potentially harmful. Whilst harmful content may fall short of amounting to a criminal offence, it can have damaging effects on individuals - creating toxic online environments and negatively impacting a user's ability to express themselves online.

Existing Regulation of Online Services

4. At present, most user-to-user and search services operating in the United Kingdom are not subject to any regulation concerning user safety.

5. A limited number of user-to-user services which are used in the United Kingdom are subject to the video sharing platform regime set out in Part 4B of the Communications Act 2003 (the "VSP Regime"). Only services which meet the legal definition of a video sharing

platform¹ and are established in the United Kingdom² are in scope.

6. Services subject to the VSP Regime are required to take measures to:

- a. Protect the public from videos and adverts likely to incite violence or hatred against a person on specified grounds including sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political opinion, membership of a national minority, disability, age and sexual orientation;
- b. Protect the public from material in videos or adverts where the inclusion of that material would be a criminal offence under laws relating to terrorism, child sexual abuse material, and racism and xenophobia;
- c. Protect under 18s from videos and adverts which have or would be likely to be given

¹ The legal test is set out in section 368S of the Communications Act 2003. OFCOM have produced guidance on the definition of a video sharing platform which is available on the [OFCOM website](#).

² Sections 368S(3)-(5) of the Communications Act 2003 sets out when a video sharing platform will be regarded as established in the United Kingdom for the purposes of the VSP Regime. OFCOM have produced guidance in relation to when a video sharing platform will be regarded as established in the United Kingdom, which is available on the [OFCOM website](#).

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an R18 certificate,³ or which have been or would likely be refused a certificate by the British Board of Film Classification;⁴ and

d. Protect under 18s from videos and adverts containing material that might impair their physical, mental or moral development.

7. The VSP Regime does not set standards for the content of individual videos.

8. OFCOM are responsible for enforcing video sharing platform providers' compliance with their obligations under the VSP Regime. OFCOM have the power to give enforcement notifications (which may set out the steps required to remedy a contravention)⁵ and to impose financial penalties of up to £250,000 or 5% of qualifying revenue, whichever is greater.⁶ In certain circumstances, OFCOM may also suspend and/or restrict a service.⁷

³ The R18 category is a special and legally-restricted classification, primarily for explicit videos of consenting sex or strong fetish material involving adults, and where the primary purpose of the material is sexual arousal or stimulation.

⁴ The [BBFC's current guidelines](#) outline that material likely to be unsuitable for classification could include: material which is in breach of criminal law (or created through the commission of a criminal offence); material that appears to risk harm to individuals or to society such as, for example, the detailed portrayal of violence or dangerous acts, illegal drug use; and the portrayal or invitations to conduct sadistic violence, rape or other non-consensual sexual violent behaviour or other harmful violent activities.

⁵ Sections 368Z2 and 368Z3 of the Communications Act 2003.

⁶ Section 368Z4 of the Communications Act 2003.

⁷ Sections 368Z5 and 368Z6 of the Communications Act 2003.

9. The government is of the view that, in light of the serious harm that content online can cause to users, more wide reaching and comprehensive regulation of online services should be introduced. The Bill is intended to make the services it regulates safer by placing responsibilities on the providers of those services in relation to content which is illegal, or which, although legal, is harmful to children or adults.

The Online Harms White Paper

10. The Online Harms White Paper, published in April 2019, set out the government's intention to introduce a new regulatory framework to improve protections for users online. It was proposed that this objective would be achieved via a new duty of care on companies, and an independent regulator responsible for overseeing the online safety framework. The White Paper proposed that the regulatory framework should follow a proportionate and risk-based approach, and that the duty of care should be designed to ensure that all in-scope companies had appropriate systems and processes in place to

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address harmful content and improve the safety of their users.

11. A public consultation on the White Paper proposals ran from 8 April 2019 to 1 July 2019. It received over 2,400 responses ranging from companies in the technology industry (including large tech giants and small and medium sized enterprises), academics, think tanks, children's charities, rights groups, publishers, governmental organisations, and individuals.

12. In February 2020, the government published an initial response to the consultation, providing an in-depth breakdown of the responses to each of the 18 consultation questions asked in relation to the White Paper proposals. The response also set out the government's direction of travel in a number of key areas, including:

- a. How the new regulatory framework would ensure protections for users' rights by including safeguards in the legislation;
- b. The differentiated approach to illegal and legal but harmful material;

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- c. How the new requirements would be proportionate and risk-based, including clarifying who would not be captured by the proposed scope;
 - d. A commitment to delivering a higher level of protection for children; and
 - e. That the government was minded to appoint OFCOM as the new regulator.
13. In December 2020, the full government response to the consultation was published, outlining the final policy position for the online safety regulatory framework, and the government's intention to enshrine it in law through the Online Safety Bill. The response was split into seven parts:
- a. Part 1 stated that the regulatory framework would apply to companies whose services host user-generated content or facilitate interaction between users, one or more of whom is based in the United Kingdom, as well as to search engines.
 - b. Part 2 outlined that the legislation would set out a general definition of the harmful content and activity covered by the duty of

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care. It also set out how all companies in scope would be required to understand the risk of harm to individuals on their services, and to put in place appropriate systems and processes to improve user safety and monitor their effectiveness.

- c. Part 3 confirmed that OFCOM would be appointed as the regulator, and outlined their regulatory functions and funding.
- d. Part 4 explained the proposed functions of the regulator, including their duty to set out codes of practice, enforcement powers, and user redress mechanisms.
- e. Part 5 outlined the role of technology, education, and awareness in tackling online harms.
- f. Part 6 explained how the new regulatory framework would fit into the wider digital landscape, including as part of the government's Digital Strategy.
- g. Part 7 provided the next steps for the regime, including the expected timings for the Online Safety Bill.

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Interim Codes of Practice

14. The government published two interim codes of practice covering terrorist content and child sexual exploitation and abuse (CSEA) content online alongside the full government response. These interim codes set out the voluntary action the government expects providers to take to tackle the most serious categories of harmful content online before the online harms regulator issues codes of practice using the powers conferred by the Bill.

Government Report on Transparency Reporting

15. The first government report on transparency reporting in relation to online harms was published alongside the full government response. This presented the recommendations of the multi-stakeholder transparency working group, set up in October 2019, about how the transparency framework could work in practice within the new online harms regulatory framework.

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Pre-legislative Scrutiny

16. In May 2021 the Online Safety Bill was published in draft. A Joint Committee of MPs and Peers, chaired by Damian Collins MP, was established on 23 July 2021 to carry out pre-legislative scrutiny. The Joint Committee took evidence from over 50 witnesses and received over 200 pieces of written evidence. The Committee published its report and recommendations on 10 December 2021.
17. The government responded to the report on 17 March confirming a number of substantive changes that have been made to the Bill, including, but not limited to:
 - a. Including priority offences in primary, rather than secondary legislation;
 - b. Including a new standalone provision for non-user generated pornography, meaning all providers of online pornography will be within scope of the legislation;
 - c. Including three of the Law Commission's recommendations for new harmful online communications offences;

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- d. Amending the senior manager liability offence so that it is no longer deferred, and will instead be commenced three months after Royal Assent;
- e. Including a new duty on Category 1⁸ providers to offer optional user verification and user empowerment tools on their sites;
- f. Including a new duty on Category 1 and Category 2A providers to protect users from fraudulent advertising online; and
- g. Simplifying the definition of non-designated harmful content, and requiring Category 1 providers only to address categories of content that are legal but harmful to adults, which are designated in secondary legislation.

The Online Safety Bill

18. The new legislation will impose legal requirements on:

- a. Providers of internet services which allow users to encounter content generated,

⁸ Category 1 services will be a subset of user-to-user services that will have additional duties placed on them.

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uploaded or shared by other users, i.e. user-generated content (“user-to-user services”);

b. Providers of search engines which enable users to search multiple websites and databases (“search services”);

c. Providers of internet services on which provider pornographic content is published or displayed.

19. The legislation will require providers of user-to-user and search services to:

a. Assess their user base and the risks of harm to those users present on the service;

b. Take steps to mitigate and manage the risks of harm to individuals arising from illegal content and activity, and (for services likely to be accessed by children) content and activity that is harmful to children;

c. Put in place systems and processes which allow users and affected persons to report

specified types of content and activity to the service provider;

- d. Establish a transparent and easy to use complaints procedure which allows for complaints of specified types to be made;
- e. Have regard to the importance of protecting users' legal rights to freedom of expression and protecting users from a breach of a legal right to privacy when implementing safety policies and procedures; and
- f. Put in place systems and processes designed to ensure that detected but unreported CSEA content is reported to the NCA.

20. Those user-to-user services which meet the Category 1 threshold conditions, specified by the Secretary of State, will be subject to additional legal requirements, including to:

- a. Set clear and accessible provisions in terms of service explaining how content that is legal but harmful to adults will be treated, and apply those provisions consistently;

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- b. Carry out an assessment of the impact that safety policies and procedures will have on users' legal rights to freedom of expression and users' privacy;
- c. Specify in a public statement the steps taken to protect users' legal rights to freedom of expression and users' privacy;
- d. Put in place systems and processes designed to ensure that the importance of the free expression of content of democratic importance is taken into account when making decisions about how to treat such content;
- e. Put in place systems and processes designed to ensure that the importance of the free expression of journalistic content is taken into account when making decisions about how to treat such content;
- f. Put in place a dedicated and expedited complaints procedure that ensures that the decisions of the service provider to take action against a user because of a particular piece of journalistic content can be challenged;

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- g. Offer optional user verification and user empowerment tools on their sites; and
- h. Put in place proportionate systems and processes to prevent the risk of users encountering fraudulent adverts.

21. Those search services which meet the Category 2A threshold conditions will be under a duty to produce annual transparency reports and to put in place proportionate systems and processes to prevent the risk of users encountering fraudulent adverts.

22. The Bill confers new powers on OFCOM enabling them to act as the online safety regulator. OFCOM will be responsible for enforcing the legal requirements imposed on service providers. The Bill gives OFCOM the power to compel in scope providers to provide information and to require an individual from an in scope provider to attend an interview; powers of entry and inspection; and the power to require a service provider to undertake, and pay for, a report from a skilled person.

23. The new powers conferred on OFCOM also include the power to give enforcement

notifications (which may set out the steps required to remedy a contravention) and the power to impose financial penalties of up to £18 million or 10% of qualifying worldwide revenue, whichever is greater. If a service provider fails to comply with a confirmation decision, OFCOM can, in certain circumstances, apply to the Courts for an order imposing business disruption measures on that provider.

24. The Bill requires OFCOM to produce codes of practice for service providers, setting out the recommended steps that providers can take in order to comply with the legal requirements described at paragraphs 19 and 20 above. A provider may take different measures to those recommended in the codes of practice. A provider will be treated as having complied with the relevant legal obligation if the provider takes the steps recommended in the relevant code of practice for complying with that obligation.

25. The Bill also requires providers of internet services which make pornographic material available by way of the service (as opposed to

enabling users to generate or share such content) to ensure that children are not normally able to encounter that pornographic content.

26. The Bill also replaces existing communications offences with three new communications offences: a harmful communications offence, a false communications offence and a threatening communications offence, as well as the creation of a new “cyberflashing” offence.

Legal background

27. Prior to the United Kingdom's exit from the European Union, the legal framework for the regulation of online services was primarily set out in the EU e-Commerce Directive (eCD)⁹. The eCD detailed the rules for online service providers in respect of transparency and information requirements, rules for cooperation between member states, and, most importantly for the Bill's purposes, a framework limiting the liability of online intermediaries for the content they host on their services.
28. The eCD prevented member states from imposing liability on service providers who provide a service that '*consists of the storage of information provided by the recipient of the service*' for content created by users, so long as '*the provider does not have actual knowledge of illegal activity or information and ... is not aware of facts or circumstances from which the illegal activity or information is apparent*'. This limitation was contingent on

⁹ Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market.

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the host, upon gaining knowledge of such content, removing it expeditiously. Article 15 of the eCD also contained a prohibition on the imposition of requirements on service providers to generally monitor content they transmit or store, or to actively seek facts or circumstances indicating illegal activity.

29. The status of the eCD following the United Kingdom's exit from the EU is governed by the European Union Withdrawal Act 2018 (EUWA), which contains some provision for the continued operation of EU law. Section 5 of the EUWA holds that the supremacy of EU law ceased following the end of the transition period. This means there is no longer a legal obligation on the United Kingdom to legislate in line with the provisions of the eCD following the end of the transition period on 31 December 2020.

30. The Audiovisual Media Services Regulations 2020 transposed the EU's revised Audiovisual Media Services Directive (AVMSD)¹⁰ into United Kingdom law. The

¹⁰ Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services.

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AVMSD introduced a new regulatory framework for video sharing platforms. A principal feature of a video sharing platform is that it enables users to upload and share videos with members of the public (with the platform having no editorial control over the content of the video). The government transposed the VSP framework into Part 4B of the Communications Act 2003, which came into force on 1 November 2021. Further detail on the current regulation of video sharing platforms is set out above.

31. Other related legislation includes the Digital Economy Act 2017 (“DEA”). Section 103 of the DEA obliges the Secretary of State to issue a Code of Practice for providers of online social media platforms setting out guidance on action it might be appropriate for social media providers to take to prevent bullying, insulting, intimidating and humiliating behaviours on their sites. The [Code of Practice](#) was published on 8 April 2019. Part 3 of the DEA put forward a statutory requirement for all commercial pornographic websites to prevent children’s access. The Act received

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Royal Assent in April 2017 but Part 3 was not fully commenced. The government announced in October 2019 that it would not commence Part 3 of the 2017 Act, and would instead repeal Part 3 and deliver its objectives through the online harms regulatory framework.

32. OFCOM are the independent regulator for communications in the United Kingdom. Their remit covers the regulation of broadband and telecoms, TV, radio, video-on-demand services and postal services. They are also responsible for managing the effective use of the radio spectrum.

33. OFCOM was established under the Office of Communications Act 2002. OFCOM are a statutory corporation, and their governance arrangements are set out in the Office of Communications Act 2002. As a public authority, OFCOM are also subject to other legal duties, including requirements to ensure they act in a way that is compatible with human rights (under the Human Rights Act 1998) and comply with data protection legislation.

34. OFCOM's powers are found in the Communications Act 2003 and the Wireless Telegraphy Act 2006, as well as other enactments including the Broadcasting Acts 1990 and 1996, and the Postal Services Act 2011. The Bill amends OFCOM's general duties, as set out in section 3 of the Communications Act 2003, to extend them in relation to online safety matters.
35. The Online Safety Bill repeals the following existing legislative provisions which relate to the regulation of internet services:
- a. Part 3 of the Digital Economy Act 2017 (online pornography);
 - b. Section 103 of the Digital Economy Act 2017 (code of practice for providers of online social media platforms); and
 - c. Part 4B of the Communications Act 2003 (video-sharing platform services) and Part 4 of the Audiovisual Media Services Regulations 2020 (S.I. 2020/1062) (which inserts Part 4B into the Communications Act 2003).

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36. The Online Safety Bill repeals the following existing legislative provisions which relate to communications offences:

- a. Subsections (1) and (2)(a) and (b) of section 127 of the Communications Act 2003 (improper use of electronic communications network), in so far as they extend to England and Wales.

Territorial extent and application

37. Clause 192 sets out the extra-territorial application and jurisdiction of the Online Safety Bill. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect rather than where it forms part of the law. The Online Safety Bill extends and applies to the whole of the United Kingdom (except for the communications offences in Part 10 which extend to England and Wales only). Repeals and amendments made by the Bill have the same territorial extent as the legislation that they are repealing or amending.

38. The Bill also applies to providers of regulated services (as defined in clause 3(4)) which are based outside the United Kingdom. Extraterritorial application is necessary in order to fulfil the Bill's aim of protecting United Kingdom users online. Clauses 166 and 167 make provision in relation to the extra-territorial application of the Bill.

39. Internet services policy is reserved across the United Kingdom, and as such the

government assesses that the Online Safety Bill is broadly reserved. Elements of the legislation interact with devolved competencies, and for a small number of provisions we will need to seek legislative consent motions (LCMs) from the Devolved Administrations (DAs).

40. The Bill confers a power on Ministers in Scotland, Wales, and Northern Ireland to amend the list of exempt educational institutions included at Schedule 1. The Bill also confers a power on Scottish Government Ministers to amend the list of CSEA offences included at Schedule 6. The government will seek legislative consent where these powers have been conferred.

41. The Bill contains criminal offences in relation to failures to comply with information requests from OFCOM. These offences apply and extend to the whole of the United Kingdom. These offences also apply where the entity or individual provides a regulated service under the Bill from overseas (and commits the offence overseas). The Bill also includes new communications offences on

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Part 10 relating to harmful communications. These will apply to England and Wales. The government will extend the offences at clauses 150 and 151 to Scotland and Northern Ireland via government amendment, and will seek legislative consent from Scotland to do so.

42. See the table in Annex B for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Bill

43. The Bill is divided into eleven parts:
- a. **Part 1** contains an overview clause, setting out what is included in this Bill.
 - b. **Part 2** contains definitions of the services to which the Bill applies.
 - c. **Part 3** imposes duties of care that apply to providers of regulated user-to-user and search services. It requires OFCOM to issue codes of practice relating to those duties.
 - d. **Part 4** imposes further duties on providers of regulated user-to-user and search services, including relating to user identity verification, CSEA content, and transparency reporting.
 - e. **Part 5** imposes duties on providers of regulated services that publish or display provider pornographic content.
 - f. **Part 6** imposes requirements on providers of regulated services to pay fees.
 - g. **Part 7** sets out OFCOM's powers and

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duties.

- h. **Part 8** sets out appeals and complaints procedures relating to regulated services.
- i. **Part 9** sets out the Secretary of State's functions in relation to regulated services.
- j. **Part 10** sets out the communications offences, as recommended by the Law Commission.
- k. **Parts 11 and 12** contain miscellaneous and general provisions. In particular, it defines key concepts such as providers of regulated services, users, and internet services.

Part 1: Introduction

Clause 1: Overview of Act

44. The first clause sets out the subject matter of the various parts of the Bill.

Part 2: Key definitions

Clause 2: Meaning of “user-to-user service” and “search service”

45. This clause provides definitions for the terms “user-to-user service” and “search service”.
46. Subsection (1) defines a user-to-user service as an internet service which allows users to generate, upload or share content which may be encountered by others on that service. Subsection (2) sets out that it does not matter if content is shared with another user as long as a service has the functionality that allows such sharing. It also does not matter what proportion of content on a service is user-generated content.
47. Subsection (4) provides that a search service is an internet service which is, or includes a search engine. “Search engine” is

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defined in clause 183 as a service or functionality which enables a person to search more than one website or database.

48. Subsections (5) to (7) explain whether an internet service that both enables user-generated content and includes a search engine will be a user-to-user service or a search service. If the only user-generated content enabled by the service is of a kind exempted under the specified provisions of Schedule 1 of the Bill, then it will be a search service. If a search service enables other forms of user-generated content, then it will be a user-to-user service.

Clause 3: Meaning of “regulated service”, “Part 3 service” etc

49. This clause defines the term “regulated service” and other related terms used in the Bill.
50. Subsection (2) sets out when user-to-user services and search services will be regulated user-to-user services and regulated search services. To be regulated, such services must have links with the United Kingdom and not be

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listed as exempt in Schedule 1 or Schedule 2. Subsection (3) states that these regulated user-to-user services and search services are referred to as Part 3 services in the Bill.

51. Subsection (4) defines “regulated service” as meaning a regulated user-to-user service, a regulated search service, and a service with links to the United Kingdom that publishes or displays provider pornographic content.

52. Subsections (5) and (6) clarify the circumstances under which a user-to-user or search service has links with the United Kingdom. A service will be in scope if it has a significant number of users in the United Kingdom or if the United Kingdom is a target market. A service will also be in scope if it can be used in the United Kingdom by individuals and there are reasonable grounds to believe that there is a material risk of significant harm to individuals in the United Kingdom. (Subsections (3) and (4) in Clause 67 apply an equivalent test to other internet services which publish or display provider pornographic content.)

53. As the regulatory framework established by the Bill is focused on protecting UK users, these subsections ensure that services which do not have links to the United Kingdom are not in scope of regulation.

54. Subsection (7) provides that a regulated user-to-user service that includes a public search engine (i.e. one which is not an internal business service) is referred to as a “combined service”.

Schedule 1: Exempt user-to-user and search services

55. Schedule 1 sets out which user-to-user and search services are exempt from regulatory duties. Subsection (2)(b)(i) of clause 3 (“meaning of ‘regulated service’”, “Part 3 service” etc) states that services of the descriptions set out in this Schedule are not regulated user-to-user services or regulated search services.

56. Paragraphs 1 to 3 provide that services will be exempt if the only type of user-generated content enabled by the service is, respectively, email, SMS and/or MMS

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messages (as defined in clause 49(12), or one-to-one live aural communications (as defined in clause 49(5)).

57. Under the limited functionality services exemption in paragraph 4, a user-to-user service is exempt if the only ways users can communicate on the service are the following:
- a. The posting of comments or reviews on provider content (content published on the service by or on behalf of the service provider).
 - b. The sharing of these comments or reviews on other internet services.
 - c. Expressing views on provider content or on comments and reviews on provider content through: (i) a “like or dislike” button, (ii) applying an emoji or symbol of any kind, (iii) engaging in yes/no voting or (iv) rating or scoring content.
 - d. Displaying or producing identifying content (e.g. usernames or avatars) in connection with any of these activities.

58. This will exempt services where the only user interaction is, for example, ‘below the line’ content on media articles, or user reviews of directly provided goods and services. Any services that also have additional user-to-user functionalities will remain in regulatory scope.
59. However, paragraph 6 of Schedule 1 sets out that a service which would otherwise benefit from this exemption is not exempt if it has links with the UK and pornographic content is published or displayed on the service. If paragraph 6 applies to a service, paragraph 1 of Schedule 2 may exempt the service from the user-to-user service duties while keeping it in scope of the Part 5 duties.
60. Paragraph 7 exempts “internal business services”. This exemption encompasses services such as business intranets, productivity and collaboration tools, content management systems, customer relationship management systems and database management software. To qualify as an internal business service, the service must meet the conditions set out in paragraph 7(2). Paragraph 8 provides details on internal

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business services where they make up only part of the user-to-user service or search service.

61. Paragraph 9 provides that some user-to-user and search services provided by certain public bodies are exempt from regulatory duties. This exemption covers services provided by Parliament and foreign governments, as well as services provided by public authorities in the United Kingdom and bodies outside the United Kingdom where those services are provided in the exercise of functions of a public nature only.

62. Paragraph 10 provides an exemption for user-to-user or search services that are provided by education or childcare providers as described in Part 2, where those services are provided for the purpose of education and childcare.

63. Many education and childcare providers are subject to existing safeguarding duties which require them to protect children online. This exemption ensures that those education and childcare providers listed are not subject

to oversight by both OFCOM and the relevant oversight bodies for education across the United Kingdom.

64. Paragraph 10 (1) specifies a user-to-user service or a search service is exempt if the provider of the service is:
- a. The responsible person for that education or childcare for e.g. a governing body of a maintained school in England.
 - b. A person employed or engaged to provide that education or childcare who is subject to safeguarding duties as defined in subsection 2, e.g. a teacher employed to work in an independent school in England.
65. Sub-paragraph 3 specifies that the responsible person must be a person who has day-to-day responsibility for the relevant education or childcare provision, for e.g. a governing body, rather than a person who may have a high-level duty to ensure education or child care is provided e.g. a Minister of a government department. A “person” includes (in addition to an individual and a body of persons corporate or unincorporate) any organisation or association of persons.

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66. Schedule 1 Part 2 provides a list of descriptions of education and childcare provided in the United Kingdom that will be exempt under subsection 10. Any education or childcare providers not described in Part 2 will not be exempt under subsection 10.
67. Schedule 1 Part 3 provides a set of definitions for childcare, education, further education, higher education, primary education, and secondary education for each nation in the United Kingdom.

Schedule 2: User-to-user services and search services that include regulated provider pornographic content

68. Clause 3 (2)(b)(ii) outlines the effect of Schedule 2. The effect of Schedule 2 is that certain user-to-user and search services which publish or display regulated provider pornographic content and which would otherwise be exempt under Schedule 1, are instead exempt from only the user-to-user and search services duties. Services which fall

within Schedule 2 will still be in scope of Part 5 as set out in clause 67.

Clause 4: Disapplication of Act to certain parts of services

69. This clause sets out the circumstances in which this Bill does not apply to certain parts of regulated services because of the low risk of harm associated with them.

Part 3: Providers of regulated user-to-user services and regulated search services: Duties of care

Chapter 1: Introduction

Clause 5: Overview of Part 3

70. The overview provides an outline of each of the Chapters contained within Part 3 of the Bill.

Chapter 2: Providers of user-to-user services: duties of care

User-to-user services: which duties apply, and scope of duties

Clause 6: Providers of user-to-user services: duties of care

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71. This clause determines which of the duties set out in Part 3 apply to which regulated user-to-user services. The duties on search services are set out in the following chapter.
72. Subsection (2) lists the duties that all regulated user-to-user service providers must comply with.
73. Subsection (3) provides that providers of particular kinds of regulated user-to-user services will be required to comply with additional duties, as detailed in subsections (4) to (6).
74. Subsection (4) lists the additional duties that providers of regulated user-to-user services that are likely to be accessed by children must comply with. Whether or not a service is likely to be accessed by children is determined in accordance with clause 33.
75. Subsection (5) lists the additional duties that Category 1 services must comply with. The designation as a Category 1 service is determined by OFCOM's assessment under the provisions in clause 80.

76. Subsection (6) lists the additional duties that providers of combined services must comply with in relation to the search engine component of their service.

Clause 7: Scope of duties of care

77. Subsection (1) provides that the duties in this Chapter only apply to regulated user-generated content on user-to-user services that also include regulated provider pornographic content. Subsection (2) provides that the duties in this Chapter also do not apply to search content on combined services.

78. Subsection (3) provides that the duties in this Chapter only relate to the design, operation and use of the service in the United Kingdom and how it affects users in the United Kingdom.

Illegal content duties for all user-to-user services

Clause 8: Illegal content risk assessment duties

79. This clause sets out the risk assessment duties on all providers of regulated user to user services in relation to illegal content. Providers must carry out a suitable and

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sufficient risk assessment by the relevant deadline specified in Schedule 3.

80. Subsection (5) lists the factors that the service provider must assess, including several factors relating to the likelihood of users encountering illegal content and the severity of the impact this would have on users. It requires the provider to take into account Ofcom's risk profiles (published under clause 83) relating to the kind of service it provides.
81. To carry out a suitable and sufficient risk assessment of the risks associated with illegal content, service providers will therefore need to assess how likely content is to be illegal, and therefore how likely it is that illegal content is present on their service, on the basis of the best information available to them.
82. The findings of the provider's risk assessment, including its conclusions about the levels of risk, inform the steps it must take to comply with its safety duties to protect individuals from illegal content under clause 9.

83. OFCOM will have a duty under clause 84 to issue guidance to assist service providers to carry out their risk assessments.
84. Subsection (3) requires the service provider to keep the risk assessment up to date, including when OFCOM significantly changes a risk profile which applies to it.
85. Subsection (4) requires the service provider to carry out a further risk assessment before significantly changing the design or operation of the service.

Schedule 3: Timing of providers' assessments

86. Schedule 3 specifies the deadlines by which service providers must complete their risk assessments and childrens' access assessments.
87. The general approach is that service providers will have three months from the publication of the guidance relating to a particular assessment (or, once guidance has been published, from the date on which they become a service that needs to complete a particular assessment) to complete the relevant assessment. Ofcom may extend this

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for individual or groups of service providers. The schedule also specifies how deadlines for childrens' access assessments and childrens risk assessments interact.

Clause 9: Safety duties about illegal content

88. This clause sets out the duties on all providers of user-to-user services with regard to illegal content on their service.
89. Subsection (2) provides for a duty to take or use proportionate measures to reduce and manage the risk of harm to individuals as identified in the illegal content risk assessment carried out under clause 8.
90. Subsection (3) requires service providers to use proportionate systems and processes designed to:
 - a. Prevent users from coming across priority illegal content on the service.
 - b. Where priority illegal content is present on the service, to minimise the length of time for which it is present.

c. Swiftly remove illegal content on being alerted to it by a person, or on becoming aware of it through any other means.

91. Subsection (4) provides that these duties apply to the way the service is operated and used, as well as to the content present on it. This subsection also lists areas within which the service provider may be required to take or use measures, if proportionate, to comply with their illegal content safety duties. These areas include arrangements for compliance and risk management, service design, policies on access and use (e.g. preventing repeat offenders using their services), content moderation (for example content removal), user empowerment and support measures and staff policies.

92. Subsections (5) and (6) impose obligations on providers to state in their terms of service how individuals are to be protected from illegal content and to apply these consistently to content they reasonably consider to be illegal.

93. Subsection (7) specifies that the service provider must include information in its terms

of service about any proactive technology that it will use to comply with its duties in respect of illegal content.

94. Subsection (8) sets out that the terms of service must be clear and accessible.

95. Subsection (9) specifies the factors which are particularly relevant for determining whether measures, systems and processes to comply with illegal content duties are proportionate. The factors are the levels of risk identified in the risk assessment and the service provider's size and capacity. In practice, this means that requirements will be different for a large, high risk service compared to a small, low risk service. It also means that service providers need to design their systems in a way that reflects the risk of illegal content being present on their service.

96. Subsection (11) links the duties about users' rights to freedom of expression and privacy in clause 19 to the illegal content safety duty in this clause.

User-to-user services likely to be accessed by children

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Clause 10: Children's risk assessment duties

97. This clause sets out the children's risk assessment duties for user-to-user services that are likely to be accessed by children.
98. Subsection (5) requires service providers to notify OFCOM about content they identify that is harmful to children that is not specified in secondary legislation as primary priority or priority content that is harmful to children, as well as the incidence of such content on the service.
99. Subsection (6) lists the factors that the service provider must assess, for example risks created by algorithms and how easily and quickly content can be shared - such as auto playing content. This subsection requires the provider to take into account the risk profile that relates to the kind of service it provides.
100. OFCOM will have a duty under clause 84 to issue guidance to assist service providers to carry out their children's risk assessments.

Clause 11: Safety duties protecting children

101. This clause sets out the duties on providers of user-to-user services with regard to content that is harmful to children but is not illegal. User-to-user services that are likely to be accessed by children must comply with these duties.
102. Subsection (2) provides for a duty on services to take proportionate steps:
- a. to manage the risk of harm to children in different age groups from risks identified in the children's risk assessment carried out under clause 10.
 - b. to mitigate the impact of harm to children in different age groups from content that is harmful to children.
103. Subsection (3) requires service providers to use proportionate systems and processes, which are designed to:
- a. Prevent children of any age from accessing primary priority content on their service, as defined in regulations to be made under clause 53, which could be achieved by using age verification or another form of age assurance.

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b. Protect children in age groups which are judged to be at risk from other content that is harmful to children (either priority content as defined in regulations made under clause 53 or other content that satisfies the definition of content that is harmful to children) on their service.

104. The duties described in subsections (2) and (3) apply to all areas of the service, including the way the service is operated and used, as well as to the content present on it. Subsection (4) also lists areas within which the service provider may be required to use measures, if proportionate, to comply with the safety duties for protecting children.

105. Subsection (5) requires providers to state in their terms of service how children are being prevented from encountering primary priority content and protected from encountering priority content on their service. It also requires providers to set out how children are protected from encountering other content that would satisfy the definition of harmful to children. These terms should be applied consistently

and must be clear and accessible (subsections (6) and (8)).

106. Subsection (7) specifies that information about any proactive technology the service provider will use to comply with its duties under subsections (2) and (3) must be included in the terms of service.

107. Subsection (9) specifies that the factors (in particular) which determine whether steps, systems and processes are proportionate are the levels of risk identified in the children's risk assessment and the service provider's size and capacity.

108. Subsection (10) makes clear that services are only required to fulfil the duty in this section in relation to non-designated content (i.e. neither primary priority content nor priority content, but content that would satisfy the definition of being harmful to children) if risks from non-designated content have been identified in the most recent children's risk assessment.

109. Subsection (11) explains that references in this clause to children judged to be in age

groups at risk of harm from content that is harmful to children, are to be read as being those who have been assessed as such by the provider in its most recent children's risk assessment.

110. Subsection (13) clarifies that the duties in this section to protect children only extend to those parts of the service which it is possible for children to access, in line with the assessment on children's access set out in clause 31. For example, a service could have robust systems and processes, such as effective age verification measures, that ensure children are not normally able to access a part of the service.

111. Subsection (15) links the duties about users' rights to freedom of expression and privacy in clause 19 to the safety duties for services likely to be accessed by children.

Category 1 services

Clause 12: Adults' risk assessment duties

112. This clause sets out the adults' risk assessment duties which apply to Category 1 services.

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113. OFCOM will have a duty under clause 84 to issue guidance to assist service providers to carry out their adults' risk assessments.

Clause 13: Safety duties protecting adults

114. This clause sets out the safety duties on Category 1 service providers with regards to content that is harmful to adults. Subsection (2) requires a provider to summarise the findings of its latest adults' risk assessment in its terms of service.

115. Subsection (3) requires a service provider to state in its terms of service how it will treat each kind of priority content that is harmful to adults (as defined in clause 53) if it is to be treated in one of the ways described in subsection (4).

116. Subsection (4) lists different ways in which a service provider could treat content that is harmful to adults. These are to take it down, restrict access to it, limit its promotion or recommendation or recommend or promote it.

117. Subsection (5) obliges a service provider to set out in its terms of service its response to the findings of its adults' risk assessment,

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referring to what the terms of service say about how each kind of priority harm is to be treated and any other provisions in the terms of service designed to mitigate or manage the identified risks.

118. Subsection (6) requires that terms of service included to comply with the requirement in subsection (3) must be both clear and accessible, and applied consistently in relation to content that the service provider reasonably considers to be priority content that is harmful to adults, or a particular kind of it.

119. Subsection (7) requires service providers to notify OFCOM about the kinds and incidence of any non-designated content that is harmful to adults on its service of which it becomes aware.

120. Subsection (8) explains the meaning of adult's risk assessment and non-designated content that is harmful to adults.

121. Subsection (9) refers to the duties about users' rights to freedom of expression and privacy in clause 19.

Clause 14: User empowerment duties

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122. This clause sets out the duty on Category 1 services to provide adult users with the tools to increase their control over what legal but harmful content they see and who they interact with.

123. Under subsection (2) and (3), Category 1 services will need to have tools in place to allow adult users to control what priority legal but harmful content they see on a service. These tools, when used, should result in the application of systems and processes designed to have the effect that adults are less likely to encounter this content or are alerted to the harmful nature of this content before viewing it.

124. Under subsection (6) and (7) Category 1 services will also need to provide users the tools to filter content from non-verified users. This includes ensuring that a user is able to set a preference preventing non-verified users from interacting with their content, and reducing the likelihood of them encountering content from a non-verified user.

Clause 15: Duties to protect content of democratic importance

125. This clause sets out the duties on providers of Category 1 services to protect content of democratic importance on their services.
126. Subsection (2) places a duty on Category 1 services to take into account the importance of freedom of expression when designing proportionate systems and processes for taking decisions about content of democratic importance or about users who post such content. This includes decisions about whether to take the content down, to restrict access to it or to take action against a user of the service. For example, Category 1 services could adopt processes to identify democratically important content and ensure users have access to this, even where it might otherwise be removed.
127. Subsection (3) requires service providers to apply these systems and processes in the same way to a wide diversity of political opinion. This is to ensure that Category 1

services do not privilege some political opinions over others when deciding how to protect content of democratic importance.

128. Subsection (6) defines “content of democratic importance” as news publisher content or regulated content, both defined under clause 48, which is, or appears to be, specifically intended to contribute to democratic political debate in the United Kingdom or in any part or area of the United Kingdom. Examples of such content would be content promoting or opposing government policy and content promoting or opposing a political party.

Clause 16: Duties to protect journalistic content

129. This clause sets out the duties on providers of Category 1 services with regard to protecting journalistic content on those services.

130. Subsection (2) places a duty on Category 1 services to take into account the importance of free expression when designing proportionate systems and processes for taking decisions about journalistic content, or

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about users who post such content. This includes decisions about whether to take the content down, to restrict access to the content or to take action against a user of the service. For example, Category 1 services could adopt procedures to identify journalistic content and ensure users have access to this, even where it might otherwise be removed.

131. Subsection (3) and (4) require a provider of Category 1 services to create a dedicated complaints procedure decisions relating to journalistic content, in relation to decisions by that provider to take down or restrict access to such content to take action against a user because of content shared, uploaded or generated by the user which the user considers to be journalistic content. This should be available to users who generate, upload or share what they consider to be journalistic content on the service and to creators of journalistic content. This complaints procedure must be expedited, i.e. complaints should be prioritised so that they are resolved as quickly as possible.

132. Subsection (8) defines “journalistic content” as news publisher content or regulated content, defined in clause 48, that is generated for the purposes of journalism, and which is ‘UK-linked’. This includes, but is not limited to, content generated by news publishers, freelance journalists and citizen journalists. Subsection (9) defines the term “UK-linked”.

Duties about content reporting and complaints procedure

Clause 17: Duty about content reporting

133. This clause sets out the content reporting mechanisms which regulated user-to-user services must have in place. (Clause 27 contains similar provisions relating to search services.)

134. All user-to-user services must enable reporting of illegal content, services likely to be accessed by children must enable reporting of content that is harmful to children where they are able to access such content, and Category 1 services must enable reporting of content that is harmful to adults. The types of content

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that users and affected persons must be able to report correspond to the types of content that the regulatory framework requires them to address.

135. Subsection (6) lists the types of people who might be affected by content, or who may need to assist other users with making a complaint, but who might not be users of the service themselves. These people must also be able to access the content reporting mechanisms.

Clause 18: Duties about complaints procedures

136. This clause sets out the duties regarding complaint and redress mechanisms which apply in relation to regulated user-to-user services. (Clause 28 contains similar provisions relating to search services.)

137. Subsection (2) sets out that services must have a complaints procedure that:

- a. allows for complaints to be made relevant to the type of content and the duties on the service.

b. provides for appropriate action to be taken when a complaint is upheld. Examples of appropriate action might include removal of illegal content if flagged, or reinstating content unfairly removed.

c. is easy to access and use for all users, including for children, and that the process is transparent. For example, each step of the complaints procedure should be set out clearly, including the types of complaints that can be made and what a user can expect to happen from the point at which they make the complaint.

138. Subsection (3) sets out that the policies and procedures that govern handling of complaints must be set out in a service provider's terms of service, and these must be accessible for all users, including children. This is to ensure that users and affected persons can easily find and use the complaints policies and procedures.

139. Subsections (4) to (6) set out the types of complaints for which the different categories of service provider must have a complaints

procedure. The types of complaint correspond to the types of content that the regulatory framework requires them to address.

140. Subsection (7) provides that affected persons are people who might be affected by content, or who may need to assist other users with making a complaint, but who might not be users of the service themselves. These people must also be able to access the content reporting mechanisms.

Cross-cutting duties

Clause 19: Duties about freedom of expression and privacy

141. This clause sets out the freedom of expression and privacy duties. This clause applies in relation to user-to-user services. (Clause 29 contains similar provisions relating to search services.)

All services

142. Subsection (2) places a duty on providers of all regulated user-to-user services to have regard to the importance of protecting users' legal rights to freedom of expression when

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deciding on and implementing safety measures to comply with their duties. Examples of measures that services could take to comply with this duty could include ensuring human moderators are adequately trained to assess contextual and linguistic nuance to prevent over-removal of content.

143. Subsection (3) places a duty on providers of all regulated user-to-user services to have regard to the importance of protecting users from breaches of law concerning privacy when deciding on and implementing safety measures to comply with their duties. This is intended to encompass breaches of existing statutory provisions in data protection legislation such as the Data Protection Act 2018 and the Privacy and Electronic Communications Regulations 2003, as well as common law rights such as those relating to private and confidential information. The regulator which enforces obligations which arise under data protection law is the Information Commissioner's Office.

144. Service providers can comply with their duties in subsections (2) and (3) by following

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measures in OFCOM's codes of practice. Under Schedule 4 paragraph 10, OFCOM are required to design recommended measures in light of the importance of protecting users' rights to freedom of expression and protecting users' privacy, and where appropriate, it should incorporate protections for the same. Where service providers take measures alternative to those set out in the codes of practice, they are also under an obligation to ensure that they have regard to the importance of freedom of expression and user privacy. OFCOM are obliged to consult with the Information Commissioner's Office when preparing the codes of practice (see clause 37(6)(g)).

145. Subsection (4) requires service providers to set out clearly, in their terms of service, that users have a right of action in court for breach of contract where a service provider removes content in violation of its terms of service.

Category 1 services

146. Subsections (5), (6) and (7) require providers of Category 1 services to carry out

and publish an impact assessment on the impact any steps which they have taken, or plan to take, to comply with their safety duties have, or will have, on users' rights to freedom of expression and users' privacy. They must also publish a statement specifying any positive steps they have taken in response to this impact assessment.

Clause 20: Record-keeping and review duties

147. This clause sets out the record-keeping and review obligations that apply to regulated user-to-user services.

148. User-to-user services are obliged to keep a written record of the risk assessments that they carry out. They must also keep written records explaining which of the measures recommended in a code of practice for the purposes of complying with the duties listed in subsection (9) they are taking. Where a provider is taking an alternative approach to that recommended in a code of practice, it must keep a written record explaining what it is doing instead and how that amounts to compliance with the relevant duties.

149. Subsection (6) requires providers to review compliance with the relevant duties regularly and after making any significant change to their service.

150. Subsection (7) provides OFCOM with the ability to exempt categories of providers from the need to keep written records and carry out reviews. It is anticipated that this power could be used for small, low risk services to ensure these service providers do not face an unnecessary regulatory burden. Where OFCOM considers an exemption is no longer appropriate, they may revoke that exemption. Under subsection (8), OFCOM must publish the details of any such exemptions or revocation of exemptions with reasons.

Chapter 3: Providers of search services: duties of care

Search services: which duties apply, and scope of duties

Clause 21: Providers of search services: duties of care

151. This clause lists (in subsection (2)) the duties which apply to all regulated search

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services and (in subsection (3)) the additional duties that providers of search services that are likely to be accessed by children must comply with. Whether or not a service is likely to be accessed by children is determined by the service provider in accordance with clause 33.

Clause 22: Scope of duties of care

152. Subsection (1) of this clause sets out how the duties in Part 3, Chapter 3 apply to a search engine. The duties for a search service only extend to the design, operation and use of the service in the United Kingdom or how the service affects users and others (such as individuals affected by content on services they do not themselves use) in the United Kingdom.

153. Subsection (2) sets out how the duties in the Chapter apply to the search engine of a combined service. Firstly, where duties in this Chapter require a service to include something in a publicly available statement, the provider of a combined service may set this out in terms of service. Unlike a search service, a

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combined service has a user-to-user part which will have such terms. Secondly, since the duties in this chapter refer to a “search service” and a “provider of a search service”, this provision makes clear that these references are also to the search engine of a combined service (which does not fulfil the definition of a search service). The intention is that duties apply to the search engine of a combined service, and to the provider of that service, in the same way that they apply to a search service and its provider. The references in clause 21 are excepted from this provision because the duties on the provider of a combined service in relation to its search engine are set out at clause 6(6).

Illegal content duties for all search services

Clause 23: Illegal content risk assessment duties

154. This clause sets out the risk assessment duties on all providers of regulated search services in relation to illegal content. Providers must carry out a suitable and sufficient risk assessment by the relevant deadline specified in Schedule 3.

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155. Subsection (5) lists the factors that the service provider must assess, including several factors relating to the likelihood of users encountering illegal content and the severity of the impact this would have on users. It requires the provider to take into account Ofcom's risk profiles (published under clause 83) relating to the kind of service it provides when doing so.

156. To carry out a suitable and sufficient risk assessment of the risks associated with illegal content, service providers will therefore need to assess how likely content is to be illegal, and therefore how likely it is that their search content contains illegal content, on the basis of the best information available to them.

157. The findings of the provider's risk assessment, including its conclusions about the levels of risk, inform the steps it must take to comply with its safety duties to protect individuals from illegal content under clause 24.

158. OFCOM will have a duty under clause 84 to issue guidance to assist service providers to carry out their risk assessments.

159. Subsection (3) requires the provider of a service to keep the risk assessment up to date, including when OFCOM significantly changes a risk profile which applies to that kind of service.

160. Subsection (4) requires the service provider to carry out a further risk assessment before significantly changing the design or operation of the service such that the impact of the proposed change is assessed.

Clause 24: Safety duties about illegal content

161. This clause imposes duties on providers of regulated search services with regards to illegal content. Subsection (2) requires service providers to take proportionate steps to mitigate and manage the risks of harm to individuals, as identified in the most recent illegal content risk assessment of the service, set out in clause 23.

162. Subsection (3) requires service providers to ensure they have proportionate systems

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and processes to minimise the risk of users encountering either priority illegal content or other illegal content that the provider knows about.

163. Subsection (4) provides that these duties apply to the way the service is operated and used, as well as to the content present on it. This subsection also lists areas in which the service provider is required to use measures, if proportionate, to comply with their illegal safety duties.

164. Subsections (5), (6) and (8) require service providers to set out their policies and procedures for protecting users from illegal content in a clear and accessible publicly available statement and apply them consistently to content that they reasonably consider to be illegal.

165. Subsection (7) specifies that the service provider must include information in a publicly available statement about any proactive technology that it will use to comply with its duties in respect of illegal content.

166. Subsection (9) specifies the factors which are particularly relevant for determining whether measures, systems and processes to comply with illegal content duties are proportionate. These factors are the levels of risk identified in the risk assessment and the service provider's size and capacity. In practice, this means that the requirements will be different for a large, high risk service compared to a small, low risk service. It also means that service providers need to design their systems in a way that reflects the risk of their search content containing illegal content.

Search services likely to be accessed by children

Clause 25: Children's risk assessment duties

167. This clause sets out the children's risk assessment duties for search services that are likely to be accessed by children. Service providers must carry out a suitable and sufficient children's risk assessment by the relevant deadline specified in Schedule 3.

168. Subsection (3) requires the provider of a service to keep its children's risk assessment up-to-date, including when OFCOM

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significantly changes the risk profile which applies to that kind of service.

169. Subsection (4) requires the service provider to carry out a further risk assessment before significantly changing the design or operation of their service such that the impact of the proposed change is assessed.

170. Subsection (5) lists the factors that the service provider must assess in the children's risk assessment and requires it to take into account the risk profile that relates to the kind of service it provides.

171. OFCOM will have a duty under clause 84 to issue guidance to assist service providers to carry out their children's risk assessments.

Clause 26: Safety duties protecting children

172. This clause sets out the duties on providers of regulated search services with regards to content that is harmful to children but is not illegal. As established in clause 21, regulated search services that are likely to be accessed by children must comply with these duties.

173. Subsection (2) provides for a duty on services to take proportionate steps:
- a. to manage the risks of harm to children in different age groups which have been identified in the children's risk assessment as carried out under clause 25; and
 - b. to mitigate the impact of harm to children in different age groups from search content that is harmful to children.
174. Subsection (3) requires service providers to use proportionate systems and processes:
- a. to minimise the risk of children of any age from encountering search content which is primary priority content that is harmful to children, as defined in regulations made under clause 53.
 - b. to minimise the risk of children in certain age groups encountering other search content that is harmful to children, where those age groups have been judged to be at risk of content of that kind.
175. Subsection (4) sets out that the duties described in subsections (2) and (3) apply to

all areas of the service, including the way the search engine is operated and used, as well as to the search content present on it. This subsection also lists areas in which the service provider is required to use measures, if proportionate, to comply with the safety duties for protecting children.

176. Subsection (5) requires service providers to specify clearly in a publicly available statement how children will be protected from different types of search content that is harmful for children on their service. Service providers must then apply the provisions in the publicly available statement consistently (subsection (6)).

177. Subsection (7) specifies that information about any proactive technology the service provider will use to comply with its duties under subsections (2) and (3) must be included in the publicly available statement.

178. Subsection (9) specifies that the factors which determine whether steps, systems and processes are proportionate particularly include the levels of risk identified in the

children's risk assessment and the service provider's size and capacity.

179. Subsection (10) clarifies that services are only required to fulfil the duty in this clause in relation to content that is harmful to children but neither primary priority content nor priority content if risks from such content have been identified in the most recent children's risk assessment.

180. Subsections (12) and (13) clarify that the duties in this clause to protect children only extend to those parts of the service which it is possible for children to access, in line with the assessment on children's access set out in clause 31. For example, a service could have robust systems and processes, such as effective age verification measures, that ensure children are not normally able to access a part of the service.

Duties about content reporting and complaints procedures

Clause 27: Duty about content reporting

181. This clause sets out the content reporting mechanisms which apply in relation to all

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regulated search services (see clause 17 for the provisions relating to user-to-user services).

182. Subsection (2) places a duty on providers of services to have systems and processes in place that allow users and affected persons (as defined in subsection (5)) to report content of the kinds listed which are relevant to the service in question.

Clause 28: Duties about complaints procedures

183. This clause sets out the duties regarding complaint and redress mechanisms which apply in relation to all regulated search services as set out in clause 21 (see clause 6 for the provisions relating to user-to-user services).

184. Subsection (2) sets out the requirements on services' complaints procedures. Subsection (3) sets out that the policies and procedures that govern handling of complaints must be set out in a service provider's terms of service, and these must be accessible for all users, including children. This is to ensure that

users and affected persons can easily find and use the complaints policies and procedures.

185. Subsection (4) sets out the types of complaints that can be made to all search services.

186. Subsection (5) sets out the types of complaints that can be made to search services likely to be accessed by a child.

Cross-cutting duties

Clause 29: Duties about freedom of expression and privacy

187. This clause sets out the freedom of expression and privacy duties that apply in relation to all search services (see clause 19 for the provisions relating to user-to-user services).

188. Subsection (2) places a duty on all search services to have regard to the importance of protecting users' and interested persons' legal rights to freedom of expression when deciding on and implementing steps to comply with their safety duties.

189. Subsection (3) places a duty on providers of all regulated search services subject to the safety duties to have regard to the importance of protecting users from breaches of law concerning their privacy when deciding on and implementing safety measures to comply with their duties. This is intended to encompass existing obligations on service providers regarding users' privacy under data protection law, in particular the Data Protection Act 2018 and the Privacy and Electronic Communications Regulations 2003, as well as common law rights such as those relating to private and confidential information. The regulator which enforces obligations which arise under data protection law is the Information Commissioner's Office.

190. Service providers can comply with duties in subsections (2) and (3) by following steps in OFCOM's codes of practice. Under Schedule 4 paragraph 10, OFCOM are required to design recommended steps to be included in codes of practice in light of the importance of protecting users' legal rights to freedom of expression and protecting users' privacy, and,

where appropriate, it should incorporate protections for the same. Where service providers take alternative measures to those set out in the codes of practice, they are also under an obligation to ensure that they have regard to the importance of freedom of expression and user privacy. OFCOM are obliged to consult with the Information Commissioner's Office when preparing the codes of practice (see clause 37(6)(g)).

Clause 30: Record-keeping and review duties

191. This clause sets out the record-keeping and review obligations that apply to search services.

192. Search services are obliged to keep a written record of the risk assessments that they carry out. They must also keep written records explaining which of the measures recommended in a code of practice for the purposes of complying with the duties listed in subsection (9) they are taking. Where a provider is taking an alternative approach to that recommended in a code of practice, it must keep a written record explaining what it is

doing instead and how that amounts to compliance with the relevant duties.

193. Subsection (6) requires providers to review compliance with the relevant duties regularly and after making any significant change to their service.

194. Subsection (7) provides OFCOM with the ability to exempt categories of providers from the need to keep written records and carry out reviews. It is anticipated that this power could be used for small, low risk services to ensure these service providers do not face an unnecessary regulatory burden. Where OFCOM considers an exemption is no longer appropriate, they may revoke that exemption. Under subsection (8), OFCOM must publish the details of any such exemptions or revocation of exemptions with reasons.

Chapter 4: Children's Access Assessments

Clause 31: Children's Access Assessments

195. This clause establishes a requirement for providers of regulated services to assess whether it is possible for children to access the service (or part of it) and, if so whether a

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significant number of children use the service (or the relevant part) and/or whether the service (or relevant part) is likely to attract a significant number of users who are children. Where either of the latter two conditions is satisfied, the service provider will be obliged to conduct a children's risk assessment (see clauses 10 and 25) and will be subject to the safety duties protecting children (see clauses 11 and 26).

196. Subsection (2) provides that a provider is only able to conclude that it is not possible for a child to access a service (or part of it), if there are systems and processes, such as effective age verification measures, in place that ensure that children are not normally able to access the service. Age verification is intended to refer to the age assurance measures that provide the highest level of confidence about a user's age.

197. A provider is only required to consider parts of its service that are user-to-user services or search services when assessing the likelihood of children's access.

Clause 32: Duties about children's access assessments

198. This clause explains when children's access assessments must be carried out. It also explains that children's access assessments must be suitable and sufficient and that providers must make and keep a written record of each assessment.

199. For example, if a platform provides services which can be publicly accessible (e.g. public profiles) but also private (e.g. private messaging), the likelihood of children accessing each part of the service will need to be accessed separately.

Clause 33: Meaning of "likely to be accessed by children"

200. This clause sets out three cases in which a regulated Part 3 service is to be considered likely to be accessed by children and therefore subject to the children's risk assessment and child safety duties at either clauses 10 and 11 for regulated user-to-user services or 25 and 26 for regulated search services.

201. The first case at subsection (2) is when it is both possible for children to access the service and when the “child user condition” (referred to in clause 31(3)) is met in relation to the service as a whole, or any part of the service which it is possible for children to access.

202. The second case at subsection (3) is when the service provider has failed to complete the first children’s access assessment required under clause 32(1).

203. The third case at subsection (5) is when following an investigation into a failure to comply with the duty set out in clause 32, OFCOM concludes that a service should be considered “likely to be accessed” by children in accordance with the provisions under clause 115(4) and (5) relating to confirmation decisions made by OFCOM on children’s access assessments.

Chapter 5: Duties about fraudulent advertising

Clause 34: Duties about fraudulent advertising:
Category 1 services

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204. This clause sets out duties about fraudulent advertising for Category 1 services. Category 1 service providers must operate their services using proportionate systems and processes designed to prevent individuals from encountering fraudulent advertisements, minimise the amount of time that fraudulent advertising is present, and swiftly remove fraudulent advertising once they are made aware of it through any means. The definition of a fraudulent advertisement to which the duties on providers apply is at subsection (3).

205. Subsection (2) specifies that a Category 1 provider must include information in its terms of service about any proactive technology that it will use to comply with its duties in respect of fraudulent advertising.

206. Subsection (4) specifies that if a person is the provider of more than one Category 1 service, the duties set out in this clause apply in relation to each such service.

207. Subsection (5) sets out factors for determining proportionality regarding service providers' systems and processes to comply

with the duty about fraudulent advertising. These are a) the nature and severity of potential harm from fraudulent advertisement and b) the degree of control a provider has over the placement of advertisements on the service. This recognises that a Category 1 service may rely on third party intermediaries to display paid advertisements on its service, and will therefore have less control over measures to prevent posting of fraudulent adverts.

Clause 35: Duties about fraudulent advertising: Category 2A services

208. This clause sets out the fraudulent advertising duties for Category 2A services. Category 2A services must operate their services using proportionate systems and processes designed to minimise the risk of individuals encountering fraudulent advertisements in or via search results of the service. A fraudulent advertisement to which the duties on providers apply is defined in subsection (3).

209. Subsection (2) specifies that a Category 2A provider must include information in a publicly available statement about any proactive technology that it will use to comply with its duties in respect of fraudulent advertising.

210. Subsection (4) defines what is meant by references to encountering fraudulent advertisements in or via search results of a search service. This includes interacting with a paid-for advertisement in search results, for example by clicking on the fraudulent advertisement in a search result and then being redirected to a web page which was linked to the original fraudulent advertisement. Encountering does not include any subsequent interactions with a website, for example leaving the original fraudulent advertisement web page.

211. Subsection (5) specifies that if a person is the provider of more than one Category 2A service, the duties set out in this clause apply in relation to each such service.

212. Subsection (6) sets out factors for determining proportionality regarding service providers' systems and processes to comply with the duty about fraudulent advertising. These are a) the nature and severity of potential harm from fraudulent advertisement and b) the degree of control a provider has over the placement of advertisements on the service. This recognises that a Category 2A service may rely on third party intermediaries to display paid advertisements on its service, and will therefore have less control over measures to prevent posting of fraudulent adverts.

Clause 36: Fraud etc offences

213. This clause sets out a list of offences that will constitute fraud offences in relation to the duties about fraudulent advertising.

214. Subsection (5) states that the relevant inchoate offences also apply to the definition of fraud offences i.e. attempting or conspiring to commit an offence specified in subsection (2), (3) or (4).

Chapter 6: Codes of practice and guidance

Codes of practice

Clause 37: Codes of practice about duties

215. OFCOM are required to produce specific codes of practice in relation to the illegal content duties (set out in clauses 9 and 24) covering terrorist content (subsection (1)) and child sexual exploitation and abuse content (subsection (2)).

216. Subsection (3) requires OFCOM to prepare one or more codes of practice in relation to the relevant safety duties beyond those set out in subsections (1) and (2). How these codes should be structured and organised will be a matter for OFCOM to decide as appropriate. The codes of practice will set out the recommended steps that service providers can take to comply with the relevant duties. The relevant duties are set out in subsection (10).

217. Subsection (4) sets out that OFCOM must prepare a code of practice for providers of Category 1 and Category 2A services in

relation to the duties set out in Chapter 5 (duties about fraudulent advertising).

218. Subsection (5) allows OFCOM to prepare amendments and replacements to the codes of practice or to withdraw a code of practice.

219. When preparing draft codes of practice or amendments to them, subsection (6) sets out the parties whom OFCOM must consult. OFCOM must also consult those with expertise in national security or the enforcement of criminal law which is relevant to online safety matters dealing with illegal content (subsection (7)). Subsection (8) sets out the circumstances in which this consultation requirement applies.

220. Subsection (9) sets out that the consultation requirements in subsections (6) and (7) are subject to exceptions where minor amendments are made to the codes of practice (as set out in clause 44).

Clause 38: Codes of practice: principles, objectives, content

221. This clause introduces Schedule 4 which establishes the principles OFCOM must

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consider when preparing codes of practice, the online safety objectives and the measures that may be recommended by codes of practice. It also contains other provisions related to codes of practice.

Schedule 4: Codes of practice under section 37: principles, objectives, content

222. Paragraph 1 requires OFCOM to consider how appropriate the provisions of codes of practice are for the different kinds of regulated user-to-user and search services and to the differing sizes and capacities of the providers of those services.

223. Paragraph 2 sets out various principles OFCOM must have regard to when preparing or amending a code of practice.

224. Paragraph 3 requires OFCOM to ensure that the measures set out in its codes of practice are compatible with the online safety objectives, which are set out at paragraph 4 for regulated user-to-user services and paragraph 5 for regulated search services.

225. Paragraph 6 clarifies how the objectives for user to user services and search services apply to combined services.

226. Paragraph 7 gives the Secretary of State power to make changes to the online safety objectives by regulations subject to the affirmative resolution procedure. Paragraph 8 obliges OFCOM to consider as soon as is reasonably practicable whether they should review and subsequently amend the codes of practice following changes to the online safety objectives.

227. Paragraph 9 contains obligations on OFCOM relating to the content of their codes of practice. These are that codes of practice for illegal content and children's online safety must include measures in the areas set out in those duties where this is proportionate to the type and size of service providers and to risk (sub-paragraph (5)). Sub-paragraphs (1) and (2) cover user-to-user services and (3) and (4) cover search services.

228. Paragraph 10 requires OFCOM to design measures in the codes of practice with the

importance of protecting users' rights to freedom of expression and privacy and incorporate safeguards for these rights where appropriate.

229. Paragraph 11 provides that measures set out in a code of practice may only apply to services that are in the United Kingdom or affect users in the United Kingdom. This means that OFCOM could not set out measures in codes of practice that apply to services that do not operate in the United Kingdom or have UK users.

230. Paragraph 12 sets constraints on how OFCOM may recommend proactive technologies in the codes of practice (relating to illegal content, child online safety and fraudulent advertising). Any such recommendation must be a proportionate response to the risk. In relation to the accuracy and effectiveness of tools, OFCOM may refer to industry standards or set principles through the codes. A proactive technology measure may not be recommended to analyse user-generated content, or metadata thereof, which has been communicated privately.

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231. Paragraph 13 allows codes of practice to make provisions that are different for user to user and search services and to make different provisions for different kinds of service. It also allows OFCOM to differentiate between services and service providers as appropriate.

232. Paragraph 14 provides that codes of practice can apply to service providers based outside of the United Kingdom.

233. Paragraph 15 specifies that a code of practice for the purposes of this schedule means a code of practice about duties issued by OFCOM under clause 37.

Clause 39: Procedure for issuing codes of practice

234. This clause sets out the procedural requirements for approval of the draft codes of practice.

235. Subsections (1) and (2) set out that OFCOM must submit a draft code of practice to the Secretary of State and, provided the Secretary of State does not intend to issue a direction to OFCOM (see clause 40), the

Secretary of State must lay the draft code before Parliament.

236. Subsection (3) provides that, once the draft code of practice has been laid before Parliament, Parliament has 40 days within which it may resolve not to approve it. If either House of Parliament makes such a resolution, OFCOM must not issue the draft code and instead must prepare another version of it under clause 37.

237. If neither House of Parliament makes such a resolution, OFCOM must issue the code of practice and it will come into force after 21 days.

238. This clause applies in the same way to amendments to a code of practice prepared under clause 37 as it does to a new code of practice, but not to minor amendments made under clause 44.

Clause 40: Secretary of State's powers of direction

239. Subsection (1) confers a power on the Secretary of State to direct OFCOM to modify a draft code of practice submitted to the Secretary of State under clause 39(1), if the

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Secretary of State believes that modifications are required for reasons of public policy; or, in respect of the CSEA and terrorism codes only, for reasons of national security or public safety.

240. Subsection (2) qualifies this power by providing that, where the Secretary of State has required OFCOM to review a draft code of practice under clause 43(2), a direction may not be made under this clause requiring OFCOM to modify a draft code of practice unless the Secretary of State believes modifications are required for reasons of national security or public safety.

241. Subsection (3) allows the Secretary of State to direct OFCOM to modify a code of practice, following a review under clause 43(2) where OFCOM have decided no change is required and have submitted a statement under 43(3)(b), should the Secretary of State still believe that modifications are required for reasons of national security or public safety.

242. Subsection (4) requires that any direction to OFCOM under subsection (3) must be given

within a period of 45 days from the day on which OFCOM's review statement is submitted to the Secretary of State, and must make particular reference to OFCOM's review statement.

243. Under subsection (5), a direction made under this clause cannot require OFCOM to include a particular step to be recommended to providers of regulated user-to-user or search services in a code of practice. The Secretary of State must give reasons for requiring modifications, except where setting out those reasons would be against the interests of national security, public safety, or the relations with the government of a country outside the United Kingdom.

244. Subsection (6) provides that OFCOM must as soon as reasonably practicable comply with a direction made under this clause, and sets out what OFCOM must do when sending the modified draft code back to the Secretary of State.

245. Subsections (7) and (8) provide that the Secretary of State may direct OFCOM to make

further modifications. Subsections (1) to (6) of this clause apply to any further directions.

246. Under subsection (9), once the Secretary of State is content that no further modifications are necessary, they must as soon as reasonably practicable lay the revised draft code of practice before Parliament, along with any document submitted by OFCOM that details what changes have been made to the draft code of practice, as mentioned in subsection (6)(c).

247. Subsection (10) allows the Secretary of State, with OFCOM's agreement, to remove or obscure information in OFCOM's review statement, prior to laying it before Parliament, where the Secretary of State considers that its disclosure would be against the interests of national security, public safety, or relations with the government of a country outside the United Kingdom.

248. Subsection (11) provides that the process set out in this clause also applies to amendments to a code of practice submitted to the Secretary of State under clause 39(1).

249. Subsection (12) defines “terrorism or CSEA code of practice” in this clause as a code of practice under clause 37(1) or (2).

Clause 41: Procedure for issuing codes of practice following direction under section 40

250. This clause explains the affirmative and negative procedures for parliamentary approval of the draft codes of practice and sets out when each of the procedures will be applied.

251. Subsection (1) sets out that this clause applies where a draft of a code of practice is laid before Parliament under clause 40(9).

252. Subsection (2) sets out that if the draft contains modifications made following a direction from the Secretary of State for reasons of public policy under clause 40(1)(a) then the affirmative procedure applies.

253. Subsection (3) sets out that if the draft terrorism or CSEA code of practice contains modifications made following a direction from the Secretary of State for reasons of national security or public safety under clause 40(1)(b), (2), or (3) then the negative procedure applies.

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254. Subsection (4) sets out the affirmative procedure, which stipulates that a draft code of practice laid before Parliament under this procedure must not be issued by OFCOM unless the draft has been approved by each House of Parliament.

If the draft is approved, then it comes into force 21 days from the day on which it was issued. If the draft is not approved, OFCOM must prepare another draft under clause 37.

255. Subsection (5) sets out the negative procedure, which stipulates that a code of practice laid before Parliament under this procedure will be issued by OFCOM after a 40 day period unless Parliament resolves not to approve it. If Parliament resolves not to approve the draft codes then OFCOM must prepare another draft under clause 37.

256. Subsection (6) defines "40 day period" as the same as is set out in clause 39.

257. Subsection (7) sets out that this clause also applies to drafts of amendments of a code of practice laid before Parliament under clause 40(9).

Clause 42: Publication of codes of practice

258. This clause sets out what OFCOM must do once a code is ready for publication. Subsections (1) and (2) state that OFCOM must publish a code of practice or amendments to a code of practice within 3 days of the code or amendments being issued under clause 39 or 41.
259. Subsection (3) requires OFCOM to publish a notice where a code has been withdrawn.

Clause 43: Review of codes of practice

260. This clause makes provision for review of codes of practice by OFCOM. Subsection (1) requires OFCOM to keep all codes of practice published under review.
261. Subsection (2) gives the Secretary of State the power to require OFCOM to review a code of practice on CSEA or terrorism if the Secretary of State deems it necessary for reasons of national security or public safety; and requires the Secretary of State to notify OFCOM of which category the reasons fall into. OFCOM must then carry out a review and either prepare a draft of amendments to the

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code of practice if they consider that changes are required or, if not, submit a statement to the Secretary of State explaining the reasons for that conclusion.

262. OFCOM must publish the statement submitted to the Secretary of State as soon as is reasonably practicable after a period of 45 days has elapsed, if the Secretary of State has not given a direction to make modifications under clause 40(3).

263. Subsection (6) allows the Secretary of State to make representations to OFCOM regarding the removal or obscuring of information in the statement in the interests of national security, public safety, or relations with the government of a country outside the United Kingdom

Clause 44: Minor amendments of codes of practice

264. This clause allows OFCOM to make minor amendments to the codes of practice (for example to reflect the changes of the name of a relevant organisation) without needing to comply with the requirements for consultation

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and parliamentary scrutiny. This flexibility should allow the codes to remain up-to-date.

265. Subsection (1) explains that this clause applies when OFCOM proposes amendments to a code of practice and OFCOM considers that the minor nature of the amendments means that consultation is unnecessary and the amendments should not be required to be laid before Parliament.

266. Subsection (2) provides that OFCOM must notify the Secretary of State of these proposed amendments.

267. Subsection (3) provides that, if the Secretary of State agrees that it is appropriate, the amendments may be made and issued without complying with the requirements of clause 37(6) and (7) or clause 39. This means that OFCOM does not have to consult on the proposed changes and the amended codes do not need to be laid before Parliament.

268. Subsection (4) provides that if the Secretary of State agrees with OFCOM that the changes are minor and do not require consultation or to be laid before Parliament,

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OFCOM may prepare and issue the amendments of the code of practice.

269. Subsection (5) provides that amendments issued under this clause come into force at the end of 21 days, beginning with the day on which the amendments are issued.

270. Subsection (6) provides that amendments of a code of practice issued under this clause must be published within three days of issue.

Clause 45: Relationship between duties and codes of practice

271. This clause sets out how providers of Part 3 services can comply with their relevant duties under this Bill.

272. Subsection (1) states that providers will be treated as complying with their duties if they follow the recommended measures set out in the relevant codes of practice. Subsections (2) and (3) provide that user-to-user service and search service providers are to be treated as complying with their duties to protect users' rights to freedom of expression and privacy if they follow the measures in the codes incorporating safeguards for the protection of

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freedom of expression and privacy. Separately, subsection (4) makes this provision for providers of Category 1 or Category 2A services in relation to a fraudulent advertising code.

273. A provider is not obliged to follow a code of practice, they may instead take alternative measures to comply with the relevant duties in the legislation.

274. Where a regulated provider seeks to comply with a relevant duty by taking alternative measures to those set out in the codes, they must have regard to protecting users' rights to freedom of expression and privacy (subsection (5)). When OFCOM assess compliance when a regulated provider has taken alternative measures to those set out in the codes of practice, they must also consider the extent to which users' rights have been safeguarded (where relevant) (subsection (6)).

Clause 46: Effect of codes of practice

275. Subsection (1) provides that not taking or using a measure in a code of practice does not

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of itself make the provider liable to legal proceedings.

276. Subsection (2) confirms that codes of practice can be used as evidence in legal proceedings. Subsection (3) requires a court or tribunal, when determining a question in legal proceedings, to take into account a provision of a code of practice that was in force at the time relating to the question and appears to the court to be relevant.

277. Subsection (4) puts an equivalent requirement on OFCOM when they determine a question which arises in connection with their exercise of a relevant function.

Clause 47: Duties and the first codes of practice

278. This clause establishes that duties in respect of which OFCOM must issue a code of practice (under clause 37) will only apply once the first code of practice for that duty has come into force. This could mean that different duties will apply at different times, depending on when the relevant code for a particular duty comes into force. This clause specifies the

relevant duties and the corresponding codes under clause 37.

Guidance

Clause 48: OFCOM's guidance: record-keeping duties and children's access assessments

279. Subsection (1) requires OFCOM to produce guidance for providers of services on how to carry out their record-keeping and review duties at clauses 20 and 30 and the children's access assessment duties at clause 32.

280. Subsection (2) requires OFCOM to consult the Information Commissioner before preparing, revising or replacing this guidance. OFCOM must publish this guidance, including any revised guidance (subsection (3)).

Chapter 7: Interpretation of Part 3

Clause 49: Meaning of "regulated user-generated content" and "news publisher content"

281. This clause defines "regulated user-generated content" and describes the types of user-generated content that are exempt from this definition, including "news publisher

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content”. Part 3 duties on regulated user-to-user services apply with regard to “regulated user-generated content”.

282. Subsections (3) and (4) define “user-generated content”. This is content that is generated by a user of the service, or uploaded to or shared on the service by a user of the service, and which may be encountered by another user (or users) by means of the service. This means that content shared only between a user and the service provider (such as through a customer service chat function) would not fall under the definition of user-generated content.

283. Subsection (5) defines “one-to-one live aural communications”. It states that only aural communications between two users which are not accompanied by written messages, videos or other visual images (other than identifying content, such as a user name or profile picture) and which are not recordings of such content, are exempt from the definition of “regulated content”. For example, a one-to-one live voice call over an internet service would not count as “regulated content”, but a one-to-

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one video call or a recording of a call shared on a regulated service would.

284. Subsections (6) and (7) define “comments and reviews on provider content” in respect of user-to-user services. This definition encompasses user comments and reviews in relation to all content that is published on a service by the service provider or someone acting on their behalf.

285. Subsections (8) to (10) define “news publisher content”. This includes any content on a service directly generated by a recognised news publisher (as defined in clause 50). In addition, it includes content originally published by a recognised news publisher but uploaded to or shared on a service by a user of that service, either in its entirety or by way of a link to the entirety of the material. For example, if a user shares the text of an article copied from a recognised news publisher’s website, with no additions or amendments, that text will not count as user-generated content. If a user amends content generated by a recognised news publisher that content will count as user-generated content,

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as will any user-generated text or images accompanying the news publisher content.

Clause 50: Meaning of “recognised news publisher”

286. This clause defines the term “recognised news publisher”. Subsection (1) states that the British Broadcasting Corporation, Sianel Pedwar Cymru, and any entity that holds a licence under the Broadcasting Act 1990 or 1996 and which publishes news-related content under that licence will qualify as a recognised news publisher.

287. Subsection (1)(d) adds that any entity that meets the conditions listed in subsection (2) will also be considered a “recognised news publisher”, providing it is not excluded under subsection (3).

288. Subsection (2) then sets out the conditions that other entities have to meet in order to be considered a “recognised news publisher” under subsection (1)(d).

289. Subsection (3) sets out the conditions in which an entity is excluded from the definition of “recognised news publisher”, even where it

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otherwise meets the criteria set out in subsection (2). These are that the entity is a proscribed organisation under the Terrorism Act 2000 or is an entity which supports such an organisation.

290. Subsection (4)(a) defines the conditions in which news-related material can be said to be “subject to editorial control”. This relates to the conditions for a “recognised news publisher” in subsection (2).

Clause 51: Meaning of “search content” etc.

291. This clause defines “search content” and describes the types of content that are exempt from this definition, including content on the website of a recognised news publisher and paid-for advertisements.

292. Search content is content that may be encountered in or via search results of a search service or search engine. Search results are the content which is presented to a user of the service by the search engine when they make a search request. Typical examples would be a link to a website or an image on an image search results page. Search results

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may also include short pieces of text from a website, media in other forms, links which are icons or anything else provided it is presented by the operation of the search engine when a search request is made. Content encountered “via search results” is content which is presented to a user when they interact with a search result itself, for example by clicking on it. It does not include content which a user comes across as a result of any subsequent interaction (that is, interaction with anything other than a search result). This means that search content includes content on a webpage that is accessed by interacting search results but would not include all content on that internet service, such as if a user clicked a link on that webpage.

293. “Search” includes by input of images, speech or any other means, as well as by inputting text. This is designed to capture the variety of different ways in which search engines can be operated, including speech based virtual assistants.

Clause 52: “Illegal content” etc

These explanatory notes relate to the Online Safety Bill as introduced in the House of Commons on 17 March 2022 (Bill 285)

294. This clause defines illegal content as content which amounts to a relevant offence.

295. Subsection (4) defines a “relevant offence” as a terrorism offence specified in Schedule 4, a child sexual exploitation and abuse (CSEA) offence specified in Schedule 5, an offence specified in Schedule 6, or another offence which has or is intended to have one or more victim who is an individual. Subsection (8) excludes from this definition certain categories of offence.

296. Subsection (7) defines priority illegal content as terrorism content, CSEA content or content that amounts to an offence listed in Schedule 6.

297. Under subsection (9), content does not need to be generated, uploaded or accessed (or have anything else done in relation to it) in any part of the United Kingdom to amount to an offence under this provision. This is the case regardless of whether the criminal law would require the offence, or any element of it, to take place in the United Kingdom (or a particular part of it).

298. Subsections (10) and (11) clarify that for user-to-user services and the user-to-user part only of combined services, illegal content, terrorism content, CSEA content and priority illegal content does not have to be present on a regulated service to meet the relevant definitions for these types of content. This provision is necessary to allow service providers to take steps in relation to content which would not otherwise meet the definitions because it has not yet been uploaded to or shared on their services. In relation to such a service (or part of a service), content of these types must nevertheless be, or be capable of being were it present on the service, regulated user-generated content.

299. Content amounting to any offence under the law of England and Wales, Scotland or Northern Ireland which meets the definition under subsection (4) is illegal content (or, as appropriate, priority illegal content, CSEA content etc.) in all parts of the United Kingdom for the purposes of regulation under this Bill.

Schedule 5: Terrorism offences

These explanatory notes relate to the Online Safety Bill as introduced in the House of Commons on 17 March 2022 (Bill 285)

300. Schedule 5 defines the offences that constitute “terrorism content”. They are based in existing domestic legislation, including from the Terrorism Act 2000 and 2006, and the Anti-terrorism, Crime and Security Act 2001. The Bill does not introduce any new terrorism offences.
301. Paragraph 1 lists the relevant provisions that apply from the Terrorism Act 2000.
302. Paragraph 2 sets out the relevant section from the Anti-terrorism, Crime and Security Act 2001.
303. Paragraph 3 lists the relevant provisions that apply from the Terrorism Act 2006.
304. Paragraph 4 sets out the offences that constitute an inchoate offence. These offences include attempting or conspiring to commit an offence in the Schedule, or encouraging or assisting, aiding, abetting, counselling or procuring the commission of one of those offences (or in Scotland being involved in the commission of such an offence).

Schedule 6: Child sexual exploitation and abuse (CSEA) offences

305. Schedule 6 defines the offences, in the component jurisdictions of the United Kingdom, that constitute “CSEA content”. The Bill does not introduce any new CSEA offences.
306. Schedule 6, Part 1 lists the relevant CSEA offences in England, Wales and Northern Ireland.
307. Paragraph (1) sets out the offence under the Obscene Publications Act 1959, relating to an obscene article tending to deprave and corrupt others. The inclusion of this offence is for instances in which the article would encourage an individual to commit a CSEA offence, as listed in paragraphs 2, 4, 5, 7 or 8.
308. Paragraph (2) sets out offences with regard to indecent photographs, and pseudo-photographs of children: taking; permitting to be taken; making, distributing or showing, possessing with a view to their being distributed or shown by himself or others; and publishing, or causing to be published, any

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advertisement likely to be understood as conveying that the advertiser distributes or shows such indecent photographs.

309. Paragraph (3) sets out equivalent offences in Northern Ireland regarding indecent photographs, or pseudo-photographs, of children, as set out in the Protection of Children (Northern Ireland) Order 1978.

310. Paragraph (4) lists the offence of possession of any indecent photograph, or pseudo-photograph of a child, as set out in Section 160 of the Criminal Justice Act 1988.

311. Paragraph (5) lists relevant CSEA related offences from the Sexual Offences Act 2003 which can be committed online.

312. Paragraph (6) lists equivalent relevant CSEA related offences in Northern Ireland from the Sexual Offences (Northern Ireland) Order 2008.

313. Paragraph (7) lists the offence under Section 62 of the Coroners and Justice Act 2009 (possession of a prohibited image of a child).

314. Paragraph (8) lists the offence under Section 69 of the Serious Crime Act 2015 (possession of a paedophile manual)
315. Paragraph (9) lists CSEA-related inchoate offences: the offence of attempting or conspiring to commit an offence specified in this Part (Schedule 6, Part 1); an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting) in relation to an offence specified in this Part; and an offence of aiding, abetting, counselling or procuring the commission of an offence specified in this Part.
316. Schedule 6, Part 2 lists the relevant CSEA offences in Scotland. Paragraph (10) sets out the relevant offences under the Civic Government (Scotland) Act 1982: Section 52 (indecent photographs etc of children) and Section 52A (possession of indecent photographs of children).
317. Paragraph (11) lists relevant CSEA offences from the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005.

318. Paragraph (12) lists relevant CSEA offences from the Sexual Offences (Scotland) Act 2009.

319. Paragraph (13) lists CSEA-related inchoate offences: attempting or conspiring to commit an offence specified in this Part; inciting a person to commit an offence specified in this Part; and aiding, abetting, counselling or procuring the commission of an offence specified in this Part, or being involved art and part in the commission of such an offence.

Schedule 7: Priority offences

320. Content which amounts to the criminal offences which are set out in Schedule 7 is priority illegal content. We intend to amend Schedule 7 via government amendment to list corresponding offences which extend only to Scotland or Northern Ireland (“devolved offences”), alongside the offences extending to England and Wales (and, in some cases, also to Scotland, Northern Ireland, or both) included for introduction. Terrorism and CSEA

offences are set out in Schedules 5 and 6 respectively.

Clause 53: “Content that is harmful to children” etc
321. This clause defines “content that is harmful to children”.

322. Subsections (2) and (3) define “primary priority content that is harmful to children” and “priority content that is harmful to children”. This is content which the Secretary of State has designated in regulations (see clause 55).

323. Subsection (4) defines “content that is harmful to children” as primary priority or priority content that is harmful to children or a third category of “non-designated content that is harmful to children” - another kind of content which presents a material risk of significant harm to an appreciable number of children in the UK.

324. The definition of “non-designated content that is harmful to children” means that content need not affect a very large number of children to be considered harmful, but kinds of content

which affect only one child or very few children are not in scope. Harm is itself defined in clause 187. The effect of these two clauses together is that service providers will need to consider all the information available to them when deciding if content is harmful to children. Such information includes knowledge that the content particularly affects children with certain characteristics or belonging to a certain group, for example disabled people or people of a certain religion. It also includes any knowledge they have about particular users at whom the content is directed.

325. Subsection (5) specifies that certain types of content should not be regarded as content that is harmful to children. These types of content are illegal content (which is dealt with separately by other clauses of the Bill) and content where the risk of harm comes from the content's potential financial impact, the safety or quality of goods featured in the content or a way in which a service featured in the content may be performed.

326. Subsection (8) provides that only regulated user-generated content present or potentially present on a regulated user-to-user service can be content that is harmful to children. Subsection (7) clarifies that for a combined service, this would only apply to the regulated user-generated content but not any search content on the service.

Clause 54: “Content that is harmful to adults” etc

327. This clause defines “content that is harmful to adults”. Subsection (2) defines “priority content that is harmful to adults”. This is content which the Secretary of State has designated in regulations (see clause 55).

328. Subsection (3) defines “content that is harmful to adults” as priority content that is harmful to adults or another kind of content which presents a material risk of significant harm to an appreciable number of adults in the UK.

329. This definition means that content need not affect very large numbers of people to be

considered harmful, but kinds of content which affect only one person or very few people are not in scope. Harm is itself defined in clause 187. The effect of these two clauses together is that service providers will need to consider all the information available to them when deciding if content is harmful to adults. Such information includes knowledge that the content particularly affects people with certain characteristics or belonging to a certain group, for example disabled people or people of a certain religion. It also includes any knowledge they have about particular users at whom the content is directed.

330. Subsection (4) specifies that certain types of content should not be regarded as content that is harmful to adults. These types of content are illegal content (which is dealt with separately by other clauses of the Bill) and content where the risk of harm comes from the content's potential financial impact, the safety or quality of goods featured in the content or a way in which a service featured in the content may be performed.

331. Subsection (5) provides that only regulated user-generated content present or potentially present on a regulated user-to-user service can be content that is harmful to adults.

Clause 55: Regulations under sections 53 and 54

332. This clause makes provision in relation to the making of regulations under clauses 53 and 54 designating primary priority and priority content that is harmful to children, and priority content that is harmful to adults. The Secretary of State may only specify a description of content in regulations if the Secretary of State considers that there is a material risk of significant harm to an appreciable number of children or adults in the United Kingdom presented by user-generated or search content of that description, and must consult OFCOM before making such regulations.

Clause 56: Regulations under sections 53 and 54: OFCOM's review and report

333. This clause relates to OFCOM's ongoing review of the prevalence and severity of

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content that is harmful to children and to adults on user-to-user services and content that is harmful to children on search services. It requires OFCOM to prepare and publish reports on this at least every three years, and include advice as to whether it is appropriate for the Secretary of State to make changes to the regulations setting out priority content that is harmful to adults and children in clauses 53 and 54. Subsection (7) requires Ofcom to send a copy of each report to the Secretary of State.

Part 4: Other duties of providers of regulated user-to-user services and regulated search services

Chapter 1: Providers of Category 1 services: User identity verification

Clause 57: User identity verification

334. This clause places a duty on all Category 1 services to offer adult users the option to verify their identity. Services will have discretion as to which form of identity verification they offer.

335. They will need to make it clear to users in their terms of service what form of identity

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verification is available and how the process works.

Clause 58: OFCOM's guidance about user identity verification

336. This clause places a requirement on OFCOM to publish guidance for providers of Category 1 services to assist them in complying with the user identity verification duty.

337. As part of preparing the guidance, OFCOM must have particular regard to the desirability of ensuring that the recommended identity verification measures are accessible to vulnerable users. In preparing the guidance OFCOM must consult the Information Commissioner, persons with technical expertise, persons representing the interests of vulnerable adult users and anyone else they consider appropriate.

Chapter 2: Reporting Child Sexual Exploitation and Abuse Content

Clause 59: Requirement to report CSEA content to the NCA

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338. This clause sets out the requirement on relevant services to report CSEA content to the National Crime Agency (NCA). The NCA will be the organisation responsible for receiving reports from services via secure transmission, processing reports including triaging and disseminating reports to law enforcement and other appropriate agencies in the United Kingdom and internationally.

339. Subsection (1) states that a UK provider of a regulated user-to-user service must have systems and processes in place which are capable of making all detected, but unreported CSEA content into a report that meets the requirements set out in regulations and that these reports are submitted to the NCA.

340. Subsection (2) places the same requirement on non-UK providers of regulated user-to-user services. Non-UK services will only be required to report CSEA content to the NCA where they can establish a UK link, unless that provider is already reporting all CSEA content, including UK CSEA content to overseas law enforcement or an alternative

reporting body outside the UK – whether on a mandatory or voluntary basis.

341. It is a service’s responsibility to ensure all relevant UK offences are reported to the NCA or reported to another body under an alternative reporting regime, regardless of whether the content constitutes an offence in the country the service is based. If the service starts to voluntarily report these additional offences to the relevant reporting body in their country they will remain exempt from this requirement.

342. Subsection (3) sets out the reporting requirement for UK providers of regulated search services. Search services will be required to report CSEA content which they detect during routine web crawling which those services already carry out for business purposes. This element of the reporting duty is separate from safety duties under the Bill.

343. Subsection (4) places the same requirement on non-UK providers of regulated search services where there exists a UK link to the CSEA content.

344. Subsection (7) sets out that reports must meet requirements set out in regulations and must be sent to the NCA in the manner, and within timeframes set out in regulations.

345. Subsection (10) states that the requirement to report CSEA content will be based on when it is detected, not when the offence occurred. An offence may have occurred before the commencement of this requirement, but if it is detected on or after commencement, the service would need to report it.

Clause 60: Regulations about reports to the NCA

346. This clause places a duty on the Secretary of State to produce regulations about the reports being made to the NCA.

347. Subsection (2) lists the provisions which may be covered in regulations but is not exhaustive. The information that can or should be reported will vary depending on the nature of the service and the offence that has occurred. Services will be required to report all and any available information relating to

instances of CSEA, including any that help identify a perpetrator or victim.

348. Services will need to include information relating to the identity of any individual who is suspected of committing a CSEA offence; information relating to the geographic location of the involved individual or website, which may include the Internet Protocol address or verified address; evidence of the CSEA offence itself, such as indecent images or sexual communications between an adult and a child; and any information relating to a child.

349. Subsection (3) requires that before making (including revising), regulations, the Secretary of State must consult the NCA, OFCOM and any other appropriate persons. Regulations will be adaptable to allow for ongoing technological and industry developments and can be revised as necessary.

Clause 61: NCA: information sharing

350. This clause amends the definition of 'permitted purpose' in section 16(1) of the Crime and Courts Act 2013 to allow the NCA to disclose information to OFCOM for the

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purpose of its functions under the Online Safety Bill.

Clause 62: Offence in relation to CSEA reporting

351. This clause sets out the offence of providing false information in relation to the reporting requirement.

352. Subsection (1) states that an offence has been committed where a person provides false information either knowingly or without regard to its accuracy.

353. Subsections (2) sets out the sentencing for a person who is convicted of this offence in England and Wales, Scotland and Northern Ireland.

Clause 63: Interpretation of this Chapter

354. This clause provides clarification of terms used in this chapter.

355. Subsection (4) provides clarification of when content is considered detected. This content may be detected by the service provider through a number of means, including automated monitoring systems (such as hash

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matching), human moderators or user reports. The requirement to report CSEA content will be based on when content is detected, not when the offence occurred.

356. Subsection (5) sets out that content is considered ‘unreported’ by the service if that service does not meet exemptions listed at subsection (5)(a) and (5)(b) by reporting on to a foreign agency or to the NCA. The reporting to the foreign agency may be on a mandatory or voluntary basis.

357. Subsection (6) describes the term ‘UK linked’ for the purpose of the reporting requirement. The content may be UK-linked based on the place where content is published, generated, uploaded or shared in the UK; the nationality of the person suspected of committing the related offence; or where the person suspected of committing the related offence is located in the UK or where the child who is the suspected victim of the related offence is located in the UK. Where a non-UK service is able to establish a UK link as described in subsection (6), this content must be reported to the NCA if it has not already

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been reported under alternative voluntary or mandatory reporting regimes. The information that a service provider has available to them to determine whether CSEA content is linked to the UK will vary depending on the nature of that service and the information they collect on their users. The legislation does not specify how services could determine location, but this can be determined through multiple indicators, which may include Internet Protocol (IP) addresses, Media Access Control (MAC) addresses, information provided by users on their profiles, etc.

358. There will not be a consequence if the provider reports CSEA content to the NCA which the provider thinks might have a UK link, but does not.

359. The term ‘foreign agency’ noted at subsection (7) denotes the exemption for services who report under alternative voluntary or mandatory reporting outside of the UK.

Chapter 3: Transparency Reporting

Clause 64: Transparency reports about certain Part 3 Services

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360. This clause requires providers of relevant services to publish annual transparency reports and sets out OFCOM's powers in relation to these reports. The information set out in transparency reports is intended to help users understand the steps providers are taking to keep them safe, and provide OFCOM with the information required to hold them to account.

361. Transparency reports are required from Category 1, Category 2A and Category 2B services, as included in the register of categories of certain Part 3 Services (established under clause 81). OFCOM may request different types of information depending on which category a particular service meets the conditions for. The Secretary of State may change by regulations the frequency of production of transparency reports, and must consult OFCOM before doing so.

Schedule 8: Transparency reports by providers of Category 1 services, Category 2A services and Category 2B services

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362. Schedule 8 lists matters about which information may be required from Category 1 and Category 2B services (Part 1) and Category 2A services (Part 2) in their transparency reports under clause 64. It describes high-level types of information that OFCOM will be able to require a service provider to report on. OFCOM will then set out the specific information within these categories that service providers will need to report on in a notice. This will give OFCOM the flexibility to tailor the reporting requirements so the information sought is as useful as possible. It will also allow OFCOM to account for differences between services in setting the transparency requirements and will allow the requirements to evolve over time.

363. This schedule also sets out various factors that OFCOM must take into account when deciding which types of information to require under clause 64. These include the service provider's capacity, the type of service and the functionalities the service offers, the number of users of the service and the proportion of

users who are children. This will help ensure that the reporting requirements account for the differences between services and are proportionate. These factors are designed to help ensure the information that OFCOM selects is the most appropriate and proportionate type of information to require from the service provider in question.

Clause 65: OFCOM's guidance about transparency reports

364. This clause places a requirement on OFCOM to prepare and publish guidance on how they will exercise their power relating to transparency reports. Subsection (1) sets out the matters which must be included in guidance and subsection (2) lists expert bodies and interested parties which must be consulted before preparing this guidance, if OFCOM consider them appropriate consultees. OFCOM must have regard to this guidance when preparing or giving a notice to a provider to produce a transparency report (under clause 64) or producing their own transparency reports (under clause 135).

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Part 5: Duties of providers of regulated services: Certain pornographic content

Clause 66: Meaning of “pornographic content”, “provider pornographic content” and “regulated provider pornographic content”

365. This clause sets out what content the duties in clause 68 apply to.

366. Subsection (2) defines what content (see clause 189 for the definition of content) is considered to be pornographic for the purposes of Part 5.

367. Subsection (3) sets out what is meant by “provider pornographic content”. This is pornographic content which is published or displayed on a service by the service provider itself, or an individual acting on behalf of the service provider. It does not include user-generated content (as set out in subsection (6)). Provider pornographic content also includes pornographic content which is published or displayed on the service by means of software, automated tools or algorithms. This may include instances where the provider displays on the service

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thumbnails of images or videos which are hosted on the server of a third party.

368. Subsection (4) sets out that “regulated provider pornographic content” includes any content which meets the definition of “provider pornographic content” but does not include text-only content or paid-for advertisements.

369. Subsection (5) clarifies that pornographic content that is “published or displayed” on a service includes content that may require user interaction in order to be visible or audible (for example, by clicking on content that is blurred, distorted or obscured) and present on the service but not such content that is in the search results of a search service or a combined service. It clarifies that pornographic content that is “published or displayed” on a service includes content that is embedded on the service.

370. Subsection (6) provides that user-generated content, as defined in clause 49 is not to be considered provider pornographic content for the purposes of subsection (3).

This subsection keeps the categories of user-

generated content and provider pornographic content mutually exclusive.

Clause 67: Scope of duties about regulated provider pornographic content

371. Subsections (1) and (2) set out the providers of internet services which are required to comply with the duties under clause 68. Providers are required to comply i) where they have regulated provider pornographic content published or displayed on their service, ii) they are not exempt as set out in subsection (3) and iii) have links with the United Kingdom for the purposes of this Part as set out in subsection (4).

372. Subsection (3) sets out that a service is exempt if it is a user-to-user or search service that is exempt as provided for by Schedule 1 or any internet service described in Schedule 9.

373. Subsection (4) sets out that a service “has links to the United Kingdom” if it has a significant number of users in the United

Kingdom or if the service is targeted partially or solely at users in the United Kingdom.

374. Subsection (5) states that Part 5 does not apply to a part of a regulated service if that part meets the definition of an internal business service in either: (a) paragraph 7(2) of Schedule 1 if it is a Part 3 service, or (b) in paragraph 1(2) of Schedule 9 if it is an internet service which is not a Part 3 service. Part 5 may still apply to the non-internal business service part of the service if that part has regulated provider pornographic content. Further exemptions for internal business services are contained in Schedule 9.

375. The effect of subsection (6) is that the duties of Part 5 do not apply to the part of a regulated service which is an on-demand programme service (ODPS) as defined by section 368A of the Communications Act 2003. Part 5 may still apply to the non-ODPS part of the service if that part has regulated provider pornographic content. Further exemptions for ODPS are contained in Schedule 9.

376. The purpose of the combination of exemptions contained in subsections (5), (6), and paragraphs 2 and 6 of Schedule 9 is to provide for where only part of a service is exempt and the remainder of the service remains in scope of Part 5.

377. Subsection (7) clarifies that a service provider's compliance with the duties in clause 68 only applies to the design, operation and use of the service in the United Kingdom or as it affects United Kingdom users of the service.

Schedule 9: Certain internet services not subject to duties relating to regulated provider pornographic content

378. Schedule 9 sets out the providers of internet services which are not subject to the duties on regulated provider pornographic content.

379. This includes services which meet the definition of internal business services (either as a whole or for part of the service) and which are not user-to-user or search services. It also includes services provided by public bodies or

services provided for by persons providing education or childcare. It also includes internet services which are an on-demand programme service as defined by section 368A of the Communications Act 2003 (either as a whole or for part of the service).

Clause 68: Duties about regulated provider pornographic content

380. Clause 68 establishes the duties which apply to providers of services with regulated provider pornographic content as set out in clause 67(2).

381. Subsection (2) requires service providers to restrict those under the age of 18 from being able to view regulated provider pornographic content on their service. One example of a measure which service providers could use to prevent children from accessing this content is age verification. Age verification refers to the age assurance measures that provide the highest level of confidence about a user's age.

382. Subsection (3)(a) requires service providers to keep an easily understood, written record of the measures they have taken or which are in use, and any policies they have implemented, to comply with the duty in subsection (2). Subsection (3)(b) requires service providers to keep such a record of the ways they have protected users from a breach of any statutory provision or rule of law concerning privacy (including, but not limited to, any such provision or rule concerning the processing of personal data).

Clause 69: OFCOM's guidance about duties under section 68

383. This clause requires OFCOM to produce guidance for providers of services with regulated provider pornographic content as set out in clause 67(2) to assist them in complying with the duties under clause 68.

384. Subsection (2) sets out what OFCOM must include within guidance under this section. The intention is that the guidance will provide services with practical examples to assist them with complying with their

obligations which are set in primary legislation. The guidance will also provide additional transparency on how OFCOM will determine if a service has complied with its duties under clause 68.

385. Subsection (3) requires OFCOM to consult with particular persons as set out in this subsection prior to preparing, revising or replacing the guidance for providers.

386. Subsection (4) provides that where OFCOM consider any proposed changes to the guidance to be of a minor nature, there is no requirement on OFCOM to consult as set out subsection (3) providing the Secretary of State is notified of the proposed changes and agrees that the amendments are minor and consultation is unnecessary.

387. Subsection (5) places a duty on OFCOM to keep the guidance under this section under review. Subsection (6) places a duty on OFCOM to publish the guidance and any revised or replacement guidance produced under this section.

Part 6: Duties of providers of regulated services: fees

Clause 70: Duty to notify OFCOM

388. The cost to OFCOM of exercising their online safety functions will be met by fees charged to providers of regulated services. The regulated providers whose qualifying worldwide revenue is at or above a specified threshold must notify OFCOM for the relevant charging year as per the conditions set out in clause 70(1)(a) and (1)(b). A provider is not required to notify OFCOM should they fall within an exemption designated by OFCOM and approved by the Secretary of State.

389. When notifying OFCOM, regulated services must provide specific evidence within the timeframes stipulated in subsection (5).

390. The evidence which services must provide at the point of notification will be set out in regulations to be made by the Secretary of State. OFCOM will also issue a statement defining the terms “qualifying worldwide revenue” and “qualifying period”.

Clause 71: Duty to pay fees

391. The cost to OFCOM of exercising their online safety functions will be met by fees charged to providers of regulated services. This clause empowers OFCOM to require a provider of a regulated service to pay the fee.

392. The fee payable to OFCOM will be based on the provider's qualifying worldwide revenue for the qualifying period and any other factors that OFCOM consider appropriate.

Clause 72: OFCOM's statement about "qualifying worldwide revenue" etc

393. This clause sets out the content of the statement, and the process to be followed, when OFCOM prepares the statement setting out the definition of "qualifying worldwide revenue" and "qualifying period".

394. Before publishing the statement, OFCOM must consult with the Secretary of State, the HM Treasury and any other persons who OFCOM consider may be affected by the content in the statement.

395. OFCOM will publish and send a copy of the statement to the Secretary of State who will lay it before Parliament.

Clause 73: Threshold figure

396. OFCOM will be funded via fees from providers of regulated services whose qualifying worldwide revenue is equal to or greater than the specified threshold as determined by clause 73.

397. This clause sets out that OFCOM will consult persons affected by the threshold in order to inform the threshold figure for the purposes of clauses 70 and 71. The Secretary of State will then determine the figure for the threshold after having taken advice from OFCOM following the conclusion of the consultation.

398. Subsections (3)-(5) set out the process to be followed when the threshold is first set and each time it is revised.

Clause 74: Secretary of State's guidance about fees

399. This clause sets out the requirement for the Secretary of State to issue guidance to OFCOM regarding the principles to be included in their Statement of Principles (see clause 75).

400. The Secretary of State must consult with OFCOM before issuing or revising the guidance. The Secretary of State must also publish and lay the guidance (and any subsequent revisions) before Parliament. OFCOM are required to have regard to the fees guidance when exercising their funding functions.

Clause 75: OFCOM's fees statements

401. The cost to OFCOM of exercising their online safety functions will be met by fees charged to providers of regulated services. OFCOM are required to produce a Statement of Principles that it will apply when setting the fees payable by providers of regulated services. Without publication of this document,

OFCOM is not permitted to require providers to pay a fee.

402. The principles included in the Statement of Principles should justify that the fees payable are sufficient to cover OFCOM's operating costs and are justifiable and proportionate.

403. The content within the Statement of Principles must include the following: (a) details of the computation model used to calculate the fees; (b) the definition of qualifying worldwide revenue and qualifying period; and (c) the details of the threshold figure.

404. Subsection 9 (a) and (b) of this clause clarify that "OFCOM's costs" include costs incurred by OFCOM in preparing to carry out their online safety functions during a charging year and also include preparatory costs incurred after Part 6 of the Bill comes into force.

Clause 76: Meaning of "charging year" and "initial charging year"

405. This clause sets out the definitions of "charging year" and "initial charging year".

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The charging year will run for 12 months beginning on 1st April.

Part 7: OFCOM's powers and duties in relation to regulated services

Chapter 1: General Duties

Clause 77: General duties of OFCOM under section 3 of the Communications Act

406. This clause amends OFCOM's existing general duties under section 3 of the Communications Act 2003 (CA 2003), in order to set out duties applicable to OFCOM's new role as the online safety regulator.

407. This clause introduces a new general duty on OFCOM to secure, in the carrying out of their functions, the adequate protection of citizens from harm arising from content on regulated services, through the appropriate use by providers of such services of systems and processes designed to reduce the risk of such harm.

408. The amendments include listing the factors that OFCOM must have regard to in performing the new general duty, and

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specifying that OFCOM do not need to have regard to the desirability of promoting and facilitating the development of self-regulation in carrying out their functions under this Bill.

409. This clause also provides that the terms ‘content’, ‘harm’, ‘provider’ and ‘regulated service’ have the same meaning in the CA 2003 as in this Bill.

Clause 78: Duties in relation to strategic priorities

410. This clause sets out OFCOM’s duties in relation to statements of strategic priorities designated by the Secretary of State under clause 143(1).

411. In particular, OFCOM must have regard to any such statement in carrying out their online safety functions.

Clause 79: Duty to carry out impact assessments

412. This clause extends OFCOM’s duty to carry out impact assessments on important proposals under section 7 of the Communications Act 2003 (CA 2003) to their online safety functions.

413. Section 7(2A) of the CA 2003 will provide that all proposals to introduce, replace or amend codes of practice under this Bill are “important proposals” for the purposes of OFCOM’s duty to carry out impact assessments. This means that OFCOM will either need to undertake and publish an impact assessment on these proposals, or to publish a statement detailing why they consider such an assessment unnecessary.

414. Section 7(4B) of the CA 2003 will provide that all assessments of proposals which relate to the carrying out of OFCOM’s online safety functions must include an assessment of the likely impact of implementing the proposal on small and micro businesses. If only part of the proposal relates to OFCOM’s online safety functions, then only that part must be assessed to determine its likely impact on small and micro businesses.

Chapter 2: Register of categories of regulated user-to-user services and regulated search services

Clause 80: Meaning of threshold conditions etc

These explanatory notes relate to the Online Safety Bill as introduced in the House of Commons on 17 March 2022 (Bill 285)

415. This clause sets out how Schedule 10, which provides details about the regulations for establishing threshold conditions, applies in relation to Part 3 Services.

Schedule 10: Categories of regulated user-to-user services and regulated search services: regulations

416. This Schedule sets out the procedure for making and amending the regulations that establish the threshold conditions a relevant service must meet in order to be designated as a Category 1, Category 2A or Category 2B service.

417. Paragraph 1(4) provides that these regulations must specify how a service may meet the relevant threshold conditions. It makes clear that, in order to meet the threshold conditions to become a Category 1 or 2A Service, a service must meet at least one condition relating to the number of users and at least one condition relating to functionality. For Category 2A Services, a service must meet at least one condition relating to the number of users. This ensures that the factors which are set out on the face

of the Bill as being most important in determining whether it is proportionate to place additional duties on the provider of a user-to-user service or a search service will be reflected in each designation decision.

418. Under sub-paragraphs (5) to (7) of paragraph 1, the Secretary of State, in making regulations under this Schedule, must consider the likely impact the factors set out in the previous sub-paragraphs will have on the level of risk of certain types of harm.

419. Paragraph 2 establishes the procedure for making the first set of regulations under paragraph 1. Sub-paragraphs (2), (3) and (4) of paragraph 2 set out that OFCOM must carry out research to inform the making of these regulations. This research must be carried out within six months of Royal Assent. However, for research in relation to Category 2A and 2B services, paragraph 2(10) allows for the Secretary of State to give OFCOM extra time to carry out the research, up to a limit of 18 months after Royal Assent. Extra time could be required if, for example, the Secretary of State determined that it were necessary to

consider the effectiveness of the transparency reporting framework for Category 1 services before extending its scope.

420. OFCOM must then provide advice to the Secretary of State, based on their research, as to what they consider would be the appropriate threshold conditions (paragraph 2(5) of Schedule 10). In respect of Category 2A and 2B threshold conditions, OFCOM may advise that the regulations should include another factor in addition to number of users (and, for user-to-user services, functionalities), and what that other factor should be.

421. If the regulations include provisions which differ in any material respect from what was advised by OFCOM, the Secretary of State must publish a statement explaining why they have departed from that advice (paragraph 2(8) of Schedule 10).

422. After the regulations are made, OFCOM will be required to assess services which they consider are likely to meet the relevant threshold conditions against the threshold conditions set out in the regulations, and to

establish a register of Category 1, Category 2A and Category 2B services (see clause 80(1)). Services become subject to Category 1, 2A or 2B duties by virtue of being added to the relevant part of the register.

423. Paragraph 3 establishes the procedure for updating the threshold conditions by amending or replacing regulations made under paragraph 1. Paragraphs 3(1), (2) and (3) state that regulations may only be amended or replaced by further regulations, once OFCOM have carried out further research.

424. Paragraph 3(4) states that either OFCOM or the Secretary of State may initiate the carrying out of this further research and the research should be carried out to the depth that OFCOM consider appropriate.

425. Paragraph 3(6) states that following further research being carried out, OFCOM must advise the Secretary of State whether or not, in OFCOM's opinion, changes to the regulations are appropriate (and, if appropriate, what those changes should be). Paragraph 3(7) notes that OFCOM must

publish this advice as soon as reasonably practicable after providing it.

426. To ensure oversight of the process, paragraphs 3(8) and (9) impose duties on the Secretary of State to publish a statement explaining their decision if they take action which departs from OFCOM's advice.

Clause 81: Register of categories of certain Part 3 services

427. This clause imposes a duty on OFCOM to establish and publish a register of each regulated service that meets the various threshold conditions set out in Schedule 10 and will therefore be designated as a Category 1, 2A or 2B Service.

428. Subsections (5) and (6) set out how services should be treated if they meet the threshold conditions for different categories of service. This can happen either where a user-to-user service (with no search engine) meets both the Category 1 and Category 2B threshold conditions or in the case of a combined service. Where a user-to-user

service meets both the Category 1 and Category 2B conditions, it is considered a Category 1 service, and added only to the Category 1 part of the register. As a combined service is a user-to-user service with a search engine part, it is possible that the user-to-user part of the service will meet the threshold conditions for Category 1 or Category 2B and, at the same time, the search engine will meet the threshold conditions for Category 2A.

Where this happens, the service is considered both a Category 1 and Category 2A service or both a Category 2B and Category 2A service, and added to both relevant parts of the register. Where a service meets the threshold conditions for all three categories, it is considered both a Category 1 and a Category 2A service and added to these parts of the register.

429. Subsection (9) outlines that OFCOM must take steps to obtain or generate information in order to assess whether Part 3 services meet the threshold conditions.

Clause 82: Duty to maintain register

These explanatory notes relate to the Online Safety Bill as introduced in the House of Commons on 17 March 2022 (Bill 285)

430. This clause sets out OFCOM's duties with regards to maintaining the register of regulated services that are designated as either Category 1, Category 2A or Category 2B. Further detail on the register is set out in clause 80.

431. Subsections (1), (2) and (3) state that, for Category 1, Category 2A and Category 2B services respectively, if regulations setting threshold conditions are amended or replaced, OFCOM must conduct a full reassessment of services which they consider are likely to meet the amended thresholds set in the relevant regulations. They must then update the register accordingly. OFCOM must do this as soon as is reasonably practicable after the date on which the amending or replacement regulations are made.

432. Subsection (4) requires OFCOM, at any other time, to assess those services which are not on the register, but which they consider are likely to meet the threshold conditions for designation as a Category 1, Category 2A or Category 2B service, and to add them to the relevant part of the register accordingly if they

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are assessed to meet the threshold conditions. In practice, this allows OFCOM to respond to changes relating to a regulated service and to ensure that the register remains up-to-date.

433. Subsections (6) to (8) allow providers of a service listed in the register to request the service's removal from the register. If they make such a request, OFCOM must first determine whether they are satisfied, based on the evidence submitted by the provider in question, that there has been a change to the service or to regulations under paragraph 1 of Schedule 10 which appears likely to be relevant. Only if OFCOM are satisfied that this is the case are they obliged to assess the service and notify the provider of their decision. This ensures that OFCOM do not have to do a full assessment every time a request is made, which could create disproportionate burdens. If OFCOM assess the service and consider that they no longer meet the relevant threshold, OFCOM must remove them from the relevant part of the register.

434. Subsection (9) requires OFCOM to take reasonable steps to obtain or generate information or evidence to inform their assessments of services under this clause, in the same way as they are required to do for the original assessments undertaken when the register is first established.

435. Subsection (11) refers to the appeals section of the Bill, for provisions about appeals against a decision to either include a service in the register, or a decision not to remove a service from the register.

Chapter 3: Risk assessments of regulated user-to-user services and regulated search services

Clause 83: OFCOM's register of risks, and risk profiles, of Part 3 services

436. This clause places a duty on OFCOM to carry out risk assessments to identify and assess the risks of harm to individuals in the United Kingdom presented by in-scope services. These risk assessments must cover illegal content, content that is harmful to

children and content that is harmful to adults. OFCOM must publish a register of risks of Part 3 services which reflects the findings of the risk assessments carried out.

437. Subsection (5) sets out that OFCOM must develop risk profiles for different groupings of regulated services to assist them in complying with their risk assessment and safety duties. OFCOM should categorise these services as they consider appropriate. This must take into account the services' characteristics, which include user base, business model, governance and other systems and processes (see subsection (12)), the risk levels, and any other relevant matters identified in its risk assessment.

438. Subsection (6) specifies that OFCOM should disregard non-designated content that is harmful to adults when developing risk profiles.

Clause 84: OFCOM's guidance about risk assessments

439. This clause sets out OFCOM's duties to provide guidance for providers of regulated

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services to assist them with complying with their risk assessment duties.

440. The clause sets out the types of guidance that must be prepared, when the guidance must be prepared and when it must be updated. The clause requires Ofcom to consult the Information Commissioner before producing any guidance.

Chapter 4: Information

Information power and information notices

Clause 85: Power to require information

441. This clause gives OFCOM the power to require the provision of information they require in order to discharge their online safety functions. For instance, OFCOM could use this power to require a service provider to share its risk assessment in order to understand how a service provider was identifying risks.

Clause 86: Information notices

442. This clause provides further information on OFCOM's information gathering powers. The clause sets out the information that can, and the information that must, be included in a

notice requiring the provision of information and imposes a duty on the recipient of such a notice to comply with it.

443. The clause also clarifies that OFCOM may require the provision of information in any form; that OFCOM may cancel an information notice; and that a person to whom a document is produced, for example an OFCOM employee, can take copies of a document and require an explanation of it.

Clause 87: Requirement to name a senior manager

444. Criminal proceedings may be pursued against a named senior manager of a regulated service that fails to comply with an information notice (see clause 93). This clause provides OFCOM with the power to require, in an information notice, that an entity names a relevant senior manager who will then be responsible for ensuring the entity complies with the notice.

445. Subsection (4) defines a senior manager as an individual who plays a significant role in making decisions or the managing and

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organising of the entity's relevant activities, as defined in subsection (5).

Skilled persons' reports

Clause 88: Reports by skilled persons

446. Subsection (1) sets out the circumstance under which OFCOM can require a report from a skilled person. The first scenario is for the purpose of identifying and assessing a failure or a possible failure, by a provider of a regulated service to comply with a relevant requirement (as listed in subsection (12)). The second scenario, which applies only where OFCOM consider that the provider may be at risk of failing to comply with a relevant requirement, is for the purpose of developing OFCOM's understanding of this risk and ways to mitigate it.

447. Subsections (3) and (4) set out that OFCOM may appoint a skilled person (an external third party with relevant expertise) to carry out a report and notify the provider, or, alternatively, OFCOM can give a notice to a provider requiring them to appoint a skilled person to produce a report for OFCOM, in the

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form stipulated by OFCOM, and specifying the relevant matters that must be dealt with in the report.

448. Subsection (6) sets out that the service provider, their employees, their contractors and other providers have a duty to assist the skilled person in any way reasonably required to prepare the report. Subsection (7) states that the provider is liable to pay the skilled person directly for the production of the report, which can be recovered through the courts

Investigations and interviews

Clause 89: Investigations

449. This clause relates to investigations by OFCOM into whether a provider of a regulated service has failed, or is failing, to comply with a requirement mentioned in subsection (2). Subsection (1) lays down that the provider must cooperate fully with the investigation.

450. Subsection (2) sets out that the requirements cover the list of duties and requirements in clause 111 (enforceable requirements) and any requirements imposed by a notice under clause 103(1) (notices to

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deal with terrorism content or CSEA content (or both)).

Clause 90: Power to require interviews

451. This clause gives OFCOM the power to require an individual to attend an interview. Subsection (1) states that this power can be used when OFCOM are carrying out an investigation into the failure, or possible failure, of a provider of a regulated service to comply with a relevant requirement.

452. Subsections (2) and (3) specify what information OFCOM must provide when giving an individual a notice to attend an interview and subsection (4) lists the individuals who can be required to attend an interview.

453. Subsection (5) states that OFCOM must give a copy of the notice to the provider of the service if they give a notice to an officer, a partner or an employee of the provider of the service.

454. Subsection (6) specifies that this clause does not require a person to disclose information that would be protected by legal professional privileges (or, in Scotland, to

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confidentiality of communications) in legal proceedings.

Powers of entry, inspection and audit

Clause 91: Powers of entry, inspection and audit

455. This clause refers to Schedule 11 to the Bill, which makes provision about powers of entry, inspection and audit.

Schedule 11: OFCOM's powers of entry, inspection and audit

Authorised persons

456. Schedule 11 sets out OFCOM's powers of entry, inspection and audit. Paragraph (1) states that OFCOM may authorise persons to exercise their powers of entry and inspection, carry out audits or apply for and execute a warrant.

Power of entry and inspection without a warrant

457. Paragraph 2, sub-paragraphs (1), (2) and (3) set out conditions on OFCOM's powers of entry without a warrant.

458. Sub-paragraphs (4),(5), and (6) list what an authorised person may do.

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Notice requiring information or documents at inspection

459. Paragraph (3) sets out information about the process associated with an inspection notice.

Audit

460. Paragraph (4) relates to the function of an audit notice. An audit notice may require a regulated provider to take actions mentioned in sub-paragraph (2) to assist OFCOM's audit.

Conditions for issue of a warrant

461. Paragraph (5) deals with the conditions for the issue of a warrant by a justice for the inspection of premises by OFCOM.

Evidence of authority

462. Paragraph (6) states the requirements an authorised person must meet before exercising a power of entry under a warrant.

Powers exercisable by warrant

463. Paragraph (7) lists what a warrant may allow an authorised person to do.

Powers of seizure: supplementary

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464. Paragraph (8) deals with powers of seizure (i.e. when a person executing a warrant seizes a document, record or other thing).

Further provision about executing warrants

465. Paragraphs (9) to (15) set out further provisions relating to the execution of a warrant.

Return of warrants

466. Paragraph (16) sets out provisions relating to the return of warrants.

Restrictions on powers

467. Paragraph (17) applies limitations to the powers set out in paragraph (2), relating to entry and inspection of premises without a warrant, and to powers exercisable under a warrant.

Offences

468. Paragraph 18 lays down that a person commits an offence if the person intentionally obstructs a person acting under this Schedule or the person fails, without reasonable excuse,

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to comply with any requirement imposed under this Schedule or knowingly provides false information.

469. Sub-paragraph (2) sets out the penalty of fine and/or maximum sentences that can be imposed by the relevant criminal court on conviction.

Interpretation

470. Paragraphs (19) to (23) define “domestic premises”, “premises”, person “acting under this Schedule”, “enforceable requirement”, “warrant” and “justice” for the purposes of this Schedule. Paragraphs (24) and (25) provide clarification around interpretation when paragraph (5)(1) is applied in Scotland or Northern Ireland.

Information offences and penalties

Clause 92: Offences in connection with information notices

471. This clause sets out the criminal offences that can be committed in relation to information notices issued by OFCOM. It is an offence for such persons to:

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- a. fail to comply with OFCOM's information request;
- b. provide false information to OFCOM in response to their information request;
- c. provide encrypted information to OFCOM that it is not possible to understand in response to OFCOM's information request; and
- d. suppress, destroy or alter information requested by OFCOM.

472. Subsection (8) provides for a subsequent court order requiring compliance with an information notice, where a person has been convicted of an offence.

Clause 93: Senior managers' liability: information offences

473. This clause sets out the criminal offences that can be committed by named senior managers in relation to their entity's information obligations. Senior managers who are named in a response to an information notice can be held criminally liable for failing to

prevent the relevant service provider from committing an information offence.

474. Senior managers can only be prosecuted under this clause where the regulated provider has already been found liable for failing to comply with OFCOM's information request.

Clause 94: Offences in connection with notices under Schedule 11

475. This clause establishes offences in connection with notices under Schedule 11. It is an offence, in connection with audit notices, for persons to fail to comply with a requirement of an audit notice without reasonable excuse. It is also an offence to knowingly provide false information in response to an audit notice.

476. It is an offence in connection with inspection or audit notices for a person to intentionally suppress, destroy or alter information required to be provided to OFCOM.

477. Upon conviction of an offence under this clause, the court may, on the prosecutor's application, make an order requiring the convicted person to comply with a requirement

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of a notice under paragraph 3 of Schedule 11 or an audit notice.

Clause 95: Other information offences

478. This clause establishes additional information-related offences. It is a criminal offence for persons to:

- a. intentionally obstruct or delay a person copying a document;
- b. fail to attend or participate in an interview with OFCOM; and
- c. knowingly or recklessly provide false information when being interviewed by OFCOM.

479. Upon conviction under this clause, the court may require the convicted person to comply with making a copy of a document or a requirement under section 90 within a specified period.

Clause 96: Penalties for information offences

480. This clause establishes penalties for various information offences contained in clauses 92, 93, 94 and 95.

Disclosure of information

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Clause 97: Co-operation and disclosure of information: overseas regulators

481. This clause grants OFCOM an express power for collaboration and information sharing with an overseas regulator, including by disclosing online safety information in order to facilitate an overseas regulator exercising their online safety functions, or to cooperate with any related criminal investigations or proceedings. An overseas regulator is a person in a country outside the United Kingdom which exercises functions corresponding to OFCOM's online safety functions and the power only applies in relation to an overseas regulator specified in regulations made by the Secretary of State.

482. Under subsection (3), unless an overseas regulator has OFCOM's consent or is acting in accordance with an order of a court or tribunal, they cannot use the information disclosed under this power for another purpose, or disclose it further.

483. Subsection (4) provides that disclosure under this power does not breach any

obligation of confidence owed by the person making the disclosure, or any other restriction on such disclosure, other than the exceptions specified in subsection (5).

484. Subsection (6) allows the Secretary of State to give a direction prohibiting the disclosure of information under this power for the purposes of overseas proceedings or overseas proceedings of any description specified in that direction.

Clause 98: Disclosure of information

485. This clause amends section 393 of the Communications Act 2003 (CA 2003) (general restrictions on disclosure of information) to include new provisions under this Bill. Section 393 provides that, subject to specific exceptions, information obtained by OFCOM in the exercise of their functions under the CA 2003, Broadcasting Act 1990 and Broadcasting Act 1996 cannot be disclosed without the consent of the business in question.

486. Subsection (2) has the effect that, subject to the specific exceptions in section 393 of the

CA 2003, OFCOM cannot disclose information with respect to a business which they have obtained by exercising their powers under the Online Safety Bill without the consent of the business in question.

487. Subsection (3) amends the list of exceptions in section 393 (2) of the CA 2003 so OFCOM can disclose information about a business, without its consent, for the purposes of any civil proceedings brought under this Bill.

488. Subsection (4) has the effect that the section 393 CA 2003 restriction on disclosure does not apply to details of enforcement action under clause 127 or research or other information published under Schedule 8.

489. Similarly, subsection (5) ensures that section 393 of the CA 2003 does not limit the matters that may be included in, or made public as part of, a report made by OFCOM under this Bill.

Clause 99: Intelligence service information

490. This clause places a duty on OFCOM to consult the relevant intelligence service before OFCOM discloses or publishes any

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information they have received from that intelligence service.

491. Subsection (1) sets out that OFCOM cannot disclose any information that they have received from an intelligence service, or information about an intelligence service, unless OFCOM have received consent from the intelligence service to disclose the information.

492. Subsection (2) states that if OFCOM discloses information as set out in subsection (1) to a person, then that person must not further disclose the information unless they have received consent from the intelligence service to do so.

493. Subsection (3) states that if OFCOM were to publish the documents set out in (a) and (b) which contain information set out in subsection (1), then OFCOM must remove or obscure the information that cannot be disclosed due to subsection (1) before the documents are published.

Clause 100: Provision of information to the Secretary of State

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494. The clause makes amendments to Section 24B of the Communications Act 2003 (CA 2003), which allows OFCOM to provide information to the Secretary of State that OFCOM considers may assist the Secretary of State in the formulation of policy.

495. Subsection (2) of this clause amends section 24B(2) of the CA 2003 so that, where information relating to a particular business has been obtained using a power under the Online Safety Bill, OFCOM may not provide this information to the Secretary of State without the consent of the person carrying on that business whilst the business is carried on. This does not affect the fact that consent must still also be obtained for OFCOM to share information that has been acquired using powers in the CA 2003, the Broadcasting Act 1990, the Broadcasting Act 1996, the Wireless Telegraphy Act 2006 or Part 3 of the Postal Services Act 2011 (which were already listed in section 24B(2) of CA 2003).

496. Subsection (3) inserts a new subsection (3) into section 24B of the CA 2003. This new subsection provides that section 24B(2) does

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not apply, and therefore the consent of the person carrying on the relevant business is not required, for OFCOM to share information which is reasonably required by the Secretary of State and:

- a. Was obtained by OFCOM using the power under clause 84 in order to determine a proposed threshold figure, which if met or exceeded by providers renders them liable to pay fees to OFCOM (the purpose under subsection (5)(c) of that clause); or
- b. Was obtained by OFCOM using the power under clause 145(5) to require information from a provider of a regulated service in response to potential threats to national security, or to the health or safety of the public.

Clause 101: Information for users of regulated services

497. The clause makes amendments to Section 26 of the Communications Act 2003 (CA 2003) which provides for publication of information and advice for various persons, such as consumers.

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Clause 102: Admissibility of statements

498. Subsection (1) sets out the circumstances in which a statement given to OFCOM, in connection with OFCOM's power to require information under clause 85, OFCOM's power to require interviews under clause 90 or required under OFCOM's powers of entry and inspection under Schedule 11, may be used in evidence against the person who gave the statement.

Chapter 5: Regulated user-to-user services and regulated search services: notices to deal with terrorism content and CSEA content

Clause 103: Notices to deal with terrorism content or CSEA content (or both)

499. Chapter 5 provides the statutory basis for OFCOM's power to require a service provider to use accredited technology to identify and remove terrorism content on public channels and child sexual exploitation and abuse (CSEA) content on private and public channels.

500. Subsection (1) sets out that OFCOM may issue a notice to a service provider of a

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regulated user-to-user service or a regulated search service, when doing so is necessary and proportionate.

501. Subsections (2) and (3) state that OFCOM may require a service provider of a regulated user-to-user service or regulated search services to use accredited technology to identify terrorism content on public parts of the service (as defined in subsection (10)) and/or child sexual exploitation and abuse (CSEA) content on any part of the service. The service must take down that content without delay.

502. Subsection (4) states that OFCOM may require a provider of a service that has both user-to-user functions and search functions to use accredited technology as described in subsection (2) and/or subsection (3).

503. Subsection (5) states that in removing terrorism or CESA content under subsections (2) and (3), providers may solely deploy accredited technology, or a combination of accredited technology and human moderators.

504. Subsection (6) refers to section 104, which provides criteria that OFCOM must consider before issuing a notice to a service provider as set out in subsection (1).

505. Subsection (7) states that OFCOM may only issue a notice under subsections (1) to a service provider once they have given a warning notice. This warning notice will tell the service provider that OFCOM are considering requiring it to use the technology that is specified in the notice for that service, or for part of that service.

506. Subsection (8) sets out the information contained within the warning notice. These include OFCOM's reasons for issuing the notice and the type of technology the service provider would be required to use, and how they must use it.

507. Subsection (9) sets out how OFCOM must give a warning notice to providers of services that have both user-to-user functions and search functions.

508. Subsection (10) states that after OFCOM have issued a warning notice, they must wait

until the end of the period in which the service provider is able to give evidence before issuing a notice.

509. Subsection (11) defines public terrorism content.

510. Subsection (12) refers to sections 105(9) and (10) which provide the definition of “accredited” technology.

Clause 104: Matters relevant to a decision to give a notice under section 103(1)

511. This clause sets out the circumstances under which OFCOM may issue a notice to a service provider, and the conditions that must be met before the power can be used.

512. Subsection (1) states that OFCOM may only issue a notice, as set out in 103(1), when it is necessary and proportionate, and this section provides information to aid this decision making.

513. Subsection (2) provides a list of criteria for OFCOM to use when deciding whether issuing a notice is necessary and proportionate.

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514. Subsection (3) sets out the significance of the term “relevant content” as used in subsection (2) (f) and (j) for a user-to-user service, search service or combined service.

515. Subsection (4) provides the definitions of “illegal content risk assessment”, “relevant content”, and “specified technology” as used in section 103(1).

Clause 105: Notices under section 103(1):
supplementary

516. Subsection (2) provides that where a service provider is already using technology on a voluntary basis, but this is ineffective, OFCOM can still intervene and require a service provider to use a more effective technology, or the same technology in a more effective way.

517. Subsections (3) and (4) specify that OFCOM can include in the notice to the service provider of a user-to-user service, search service or combined service a requirement to operate an effective procedure for users to challenge the removal of their content from the service.

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518. Subsections (5) and (6) set out the information that must be contained within a notice and the period of time that it may last for.

519. Subsection (7) states that a notice may only require a regulated provider to use accredited technology in relation to regulated services in the United Kingdom or regulated services that affect UK users.

520. Subsections (9) and (10) explain that OFCOM will only be able to require the use of tools that meet the minimum standards for accuracy for detecting terrorism and/or CSEA content as set out by the Secretary of State. Any tools that OFCOM require the use of must have been accredited by either OFCOM or a delegated third party as meeting these minimum standards.

Clause 106: Review and further notice under section 103(1)

521. Subsection (2) sets out that under clause 105(8), OFCOM also have the power to revoke the notice if there are reasonable

grounds to believe that the provider is not complying with it.

522. Subsection (3) sets out that if a notice is revoked under subsection (2) and the matters as set out in clause 103 are considered, OFCOM can issue the provider a further notice.

523. Subsection (4) requires OFCOM to review the use of the specified technology before the end of the period set by OFCOM in the original notice. Subsection (5) specifies what OFCOM must consider in its review.

524. Subsection (6) specifies that following the review, and after consultation with the provider, OFCOM may give the provider a further notice if OFCOM consider that it is necessary and proportionate to do so, taking into account the criteria set out in section 103. Under subsection (7), the conditions set out in subsections (3)-(6) apply again.

525. Subsection (9) provides that a warning notice is not required under section 103) (7)-(10) if OFCOM issue a further notice.

Clause 107: OFCOM'S guidance about functions under this Chapter

526. This clause requires OFCOM to issue guidance setting out the circumstances under which they could require a service provider in scope of the power to use technology to identify CSEA and/or terrorism content.

527. OFCOM will have the discretion to decide on the exact content of the guidance and must keep it under review and publish it. OFCOM must also have regard to their guidance when exercising these powers. Before preparing the guidance, OFCOM must consult the Information Commissioner.

Clause 108: OFCOM's annual report

528. This clause requires OFCOM to report annually to the Secretary of State on the exercise of their power during the last year and on current technology and technology in-development that is likely to meet the required minimum standards of accuracy.

529. Subsection (2) says that the Secretary of State must lay this report before Parliament.

530. Subsection (3) cross-refers to section 137 which sets out provisions for OFCOM excluding confidential information from its published reports.

Clause 109: Interpretation of the Chapter

531. This clause sets out that the definitions of “terrorism content” and “CSEA content” used in chapter 5 are the same as those used in Part 3.

Chapter 6: Enforcement Powers

Provisional notices and confirmation decisions

Clause 110: Provisional notice of contravention

532. This clause addresses the process of starting enforcement. OFCOM must first issue a “provisional notice of contravention” to an entity before they reach their final decision. This is required before OFCOM can reach a final decision that a regulated service has breached an enforceable requirement, and before OFCOM makes the final decision regarding any specific steps the service will be required to take and/or any financial penalty that will be imposed as a result.

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533. The provisional notice of contravention must be sent to the relevant entity or person. This notice sets out OFCOM's provisional decision that an entity has breached its duties, sets out how it has failed, or is failing, and the evidence OFCOM have of this. The notification must detail any proposed requirements that the person must take to comply with the duty or requirement, or remedy the contravention and/or the financial penalties OFCOM intend to impose.

534. Subsection (8) establishes a process for recipients of provisional notices to make representations to OFCOM, and provide evidence in response to the provisional findings set out in the notice. OFCOM's notice has to explain this process, and give a deadline for providing representations. This process means that OFCOM can only reach a final decision after allowing the recipient the chance to make representations.

Clause 111: Requirements enforceable by OFCOM against providers of regulated services

535. This clause lists the “enforceable requirements”. Failure to comply with these enforceable requirements can trigger enforcement action.

536. The enforceable requirements include, for example, duties to carry out and report on risk assessments, safety duties (including specific duties relating to children) and duties related to users’ rights (freedom of expression and privacy).

Clause 112: Confirmation decisions

537. If, having followed the required process (see clause 110), OFCOM’s final decision is that a regulated service has breached an enforceable requirement, OFCOM will issue a confirmation decision. This will set out OFCOM’s final decision and will explain whether OFCOM requires the recipient of the notice to take any specific steps and/or pay a financial penalty.

Clause 113: Confirmation decisions: requirements to take steps

538. A confirmation decision may require a person to take specific steps to either come

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into compliance with their duties or remedy the breach that they have committed.

539. OFCOM must allow a reasonable period for the recipient to complete the required steps. However, subsection (5) provides that OFCOM can require immediate action when the recipient has breached its information duties (because it will already be on notice as to what is required).

540. Clause 116 allows OFCOM to require services to use a particular kind of “proactive technology” in their confirmation decisions, with certain constraints and safeguards. Proactive technology is defined in clause 184.

541. Subsection (3) says that these requirements can only relate to the operation of a regulated service within the UK, or in so far as it affects UK users of the service.

542. Subsection (4) sets out certain details that must be included in a confirmation decision which requires specific steps to be taken. This includes the steps that are required, OFCOM’s reasoning and the recipient’s appeal rights.

Clause 114: Confirmation decisions: risk assessments

543. This clause applies where OFCOM have found that a regulated provider has failed to carry out an illegal content or children's risk assessment properly or at all; and identified a risk of serious harm which the regulated provider is not effectively mitigating or managing.

544. In such cases OFCOM can require the regulated provider to comply with the parts of its illegal content safety duties or children's safety duties that require the provider to mitigate and manage that risk of harm as if it had been identified in the relevant risk assessment. The intention is that the provider will be required to mitigate the risk that OFCOM have identified despite the provider not having identified the risk in its risk assessment. OFCOM will specify the date by which the regulated provider must take or use measures to comply with the duty in question.

545. The requirement to take these measures will apply until the regulated provider has fully

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complied with the relevant risk assessment duties.

Clause 115: Confirmation decisions: children's access assessments

546. This clause applies where OFCOM have found that a regulated provider has failed to properly carry out a children's access assessment.

547. In such cases, OFCOM can require a regulated provider to carry out or re-do the children's access assessment and would set a deadline for the completion of the assessment in the confirmation decision. The maximum period of time OFCOM can allow the service to complete the assessment is three months from the date of the confirmation decision (although this can subsequently be extended at OFCOM's discretion).

548. This clause also gives OFCOM the power to determine that a service is likely to be accessed by children where there is evidence that it is possible for children to access all or part of the service and the child user condition in clause 31(3) is met. (The child user

condition is met if either: (a) a significant number of children are users of the service, or part of the service; or (b) the service, or part of it, is likely to attract a significant number of child users). If OFCOM determine that a service is likely to be accessed by children, the children’s risk assessment duties in clause 25 and the children’s safety duties in clause 26 will apply to the service. OFCOM will specify the date from which the duties would apply in their confirmation decision. OFCOM can also set out the circumstances in which their determination will cease to apply in their confirmation decision.

Clause 116: Confirmation decisions: proactive technology

549. This clause sets out when OFCOM may, in a confirmation decision, require a service to use a kind of “proactive technology” specified in the confirmation decision. The clause also sets out the matters OFCOM must consider before deciding to impose such a requirement.

550. OFCOM may only require the use of proactive technology on content which is

communicated publicly. Therefore, subsection (8) provides that a confirmation decision which requires the use of such technology must identify the content, or parts of the service that include content, which OFCOM considers meets that description of communicated publicly.

551. Subsection (7) provides that OFCOM may set the requirement for the regulated service to review their use of any technology imposed in response to a confirmation decision.

552. “Proactive technology” is defined in clause 184.

Clause 117: Confirmation decisions: penalties

553. This clause allows OFCOM to impose financial penalties in their confirmation decision. These can be a single amount or a daily rate penalty if the failure is ongoing. Before imposing any financial penalty in their confirmation decision, OFCOM must set out the proposed amount(s) to the recipient in their provisional notice of contravention and allow the recipient the chance to make representations.

554. Certain details must be included in a confirmation decision which imposes a penalty. This includes OFCOM's reasons for imposing a penalty, the breaches that have attracted the penalty, a deadline for payment and the consequences of non-payment.

Penalty notices etc

Clause 118: Penalty for failure to comply with confirmation decision

555. This clause allows OFCOM to impose a financial penalty on a person who fails to complete steps that have been required by OFCOM in their confirmation decision. OFCOM can only impose a penalty under this clause if they have not imposed a daily rate penalty in respect of the same failure in its confirmation decision (to prevent the person being penalised twice for the same delay).

Clause 119: Penalty for failure to comply with notice under section 103(1)

556. This clause allows OFCOM to impose a financial penalty on a person who fails to comply with a notice issued under section 103(1), which is a notice that requires

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technology to be implemented to identify and deal with terrorism content and/or CSEA content on a service.

Clause 120: Non-payment of fee

557. Clause 71 explains where OFCOM may require a provider of a regulated service to pay a fee. If a provider of a regulated service does not pay its fee to OFCOM in full, OFCOM may give that provider a notice specifying the outstanding sum and the date by which it must be paid.

558. Clause 120 allows OFCOM to give a penalty notice to a provider of a regulated service who does not pay the fee due to OFCOM in full. OFCOM may only impose such a penalty where it has first notified the provider that it proposes to do so in a notice issued under this clause and given the provider the opportunity to make representations in relation to the same. OFCOM must also be satisfied that the unpaid fee is outstanding.

Clause 121: Information to be included in notices under sections 119 and 120

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559. This clause requires OFCOM to include certain information in penalty notices issued under clauses 119 and 120. For example, OFCOM must state the reasons why it is imposing a penalty, the amount of the penalty and any aggravating or mitigating factors. OFCOM must also state when the penalty must be paid.

Amount of penalties etc

Clause 122: Amount of penalties etc

560. This clause cross-refers to Schedule 12 which sets out details on the financial penalties that OFCOM may impose under this Bill, including the maximum amount that may be imposed. OFCOM are required to produce guidelines setting out how they determine penalty amounts.

Schedule 12: Penalties imposed by OFCOM under Chapter 6 of Part 7

Amount of penalties: principles

561. Paragraph 2 of Schedule 12 sets out the things that OFCOM must take into account when determining the size of the penalty. This

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includes any representations made by the person or evidence provided by the person and the effects of the failure. OFCOM must also consider any steps taken by the person to comply with the requirements set out in the provisional notice or confirmation decision and any steps taken to remedy the failure. OFCOM must impose a penalty that they consider to be appropriate and proportionate to the failure (or failures) in respect of which the penalty is imposed.

Limitation to type and amount of penalties previously proposed

562. Paragraph 3 of Schedule 12 confirms that a penalty imposed by a confirmation decision or penalty notice may not exceed the amount of the penalty, or (if relevant) be payable over a longer period, than was proposed in the earlier notice about the same breach(es).

563. However, OFCOM may impose a higher penalty in a confirmation decision or penalty notice if, after issuing the provisional notice, they decide to hold an additional legal person

jointly liable for the breach: see paragraph 3(2).

Maximum amount of penalties

564. Paragraph 4(1) of Schedule 12 says that the maximum penalty that OFCOM can impose on the provider of a regulated service is the greater of £18 million and 10% of the person's "qualifying worldwide revenue" for the person's most recent complete accounting period.

565. Paragraph 4(4)-(6) also includes further detail on how "qualifying worldwide revenue" will be calculated. The term "qualifying worldwide revenue" will be defined in regulations made by the Secretary of State following consultation with OFCOM.

Maximum amount of penalties: group of entities

566. Schedule 12 sets out the circumstances when OFCOM may hold two or more entities jointly and severally liable for a breach. This may occur where OFCOM deem a parent company jointly liable for the breach of their subsidiary, or where OFCOM deem a

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subsidiary company to be jointly liable for the breach of their fellow subsidiary or parent company. Paragraph 5 of Schedule 12 sets out how penalties are to be calculated in such a scenario.

567. Paragraph 5(3) states that the maximum penalty that OFCOM can impose in such cases is the greater of £18 million and 10% of the “qualifying worldwide revenue” of the group of entities of which the two entities are members.

568. Paragraph 5(4) defines the “qualifying worldwide revenue” for a group of entities.

569. “Qualifying worldwide revenue” will be defined in regulations made by the Secretary of State following consultation with OFCOM. The regulations may include details for applying this term to a group of entities.

Providers of regulated services

570. Paragraph 6 of Schedule 12 allows OFCOM to impose penalties to persons who have at any time been a provider of a regulated service, even if they have stopped

being the provider of such a service by the time OFCOM issue a notice.

Recovery of penalties

571. Paragraph 7 of Schedule 12 sets out how payment of penalties can be recovered and enforced.

Paying penalties into the Consolidated Fund

572. Paragraph 8 of Schedule 12 amends section 400 of the Communications Act 2003 so that it applies to amounts paid to OFCOM in respect of penalties imposed under this Bill. This clause requires OFCOM to pay any penalty sums they receive into the Consolidated Fund of the United Kingdom.

Business disruption measures

Clause 123: Service restriction orders

573. The Bill gives OFCOM the power to apply to the courts for “business disruption measures”. Business disruption measures are court orders that require third parties to withdraw services or block access to non-compliant regulated services. They are designed to only be used for the most serious

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instances of user harm. There are two types of business disruption measures - “service restriction orders” and “access restriction orders”. The details and grounds for both are covered in the following clauses.

574. This clause sets out the circumstances in which OFCOM may apply to the court for a “service restriction order”. Service restriction orders are orders that require providers of “ancillary services” (persons providing, for example, payment or advertising services) to take steps aimed at disrupting the business or revenue of a non-compliant provider’s operations in the United Kingdom. For example, an order could require an advertising service to cease the provision of its service to a non-compliant provider’s service.

Clause 124: Interim service restriction orders

575. This clause sets out the circumstances in which OFCOM may apply to the courts for an “interim service restriction order”. OFCOM can pursue an interim service restriction order in circumstances where it is not appropriate to wait for the failure to be established before

making the order. OFCOM are not required to demonstrate to the court that a failure has been established (something which can take a long time), but must demonstrate that it is likely that the provider is failing to comply with a requirement under the Bill and that the nature and severity of that harm, mean that it would not be appropriate to wait to establish the failure before applying for the order.

576. An interim service restriction order will cease to have effect on the earlier of either the date specified in the order, or the date on which the court makes a service restriction order under clause 123 that imposes requirements on the persons who are subject to the interim service restriction order (or dismisses the application for such an order).

Clause 125: Access restriction orders

577. This clause sets out the circumstances in which OFCOM may apply to the courts for an “access restriction order”. An access restriction order can require third parties who provide an “access facility” to take steps to impede access to a non-compliant regulated

service, by preventing, restricting or deterring individuals in the United Kingdom from accessing that service. Examples of access facilities are internet service providers and app stores which may be required to restrict access to a service provider's website or app via their service.

578. In order to apply for an access restriction order, OFCOM must consider that a service restriction order under clause 123 or 124 would not be sufficient to prevent significant harm to individuals in the United Kingdom.

Clause 126: Interim access restriction orders

579. This clause sets out the circumstances in which OFCOM may apply to the courts for an interim access restriction order. OFCOM can seek to pursue an interim access restriction order in those circumstances where it is not appropriate to wait for the failure to be established before making the order (for example, if there is serious user harm that requires quick action to impede access). OFCOM are not required to demonstrate to the court that a failure has been established

(something which can take a long time), but must demonstrate that certain conditions exist which mean that it would not be appropriate to wait to establish the failure before applying for the order.

Clause 127: Interaction with other action by OFCOM

580. This clause explains how business disruption orders interact with OFCOM's other enforcement powers. Where OFCOM exercise their powers to apply to the courts for business disruption orders under clauses 123 to 126, they are not precluded from taking action under their other enforcement powers.

Publication of enforcement action

Clause 128: Publication of details of enforcement action

581. If, having followed the required process (see clause 110), OFCOM's final decision is that a regulated service has breached an enforceable requirement, OFCOM will issue a confirmation decision under clause 112. This will set out OFCOM's final decision and will explain whether OFCOM require the recipient

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of the notice to take any specific steps and/or pay a financial penalty.

582. Where OFCOM issue a confirmation decision, they are obliged to publish the identity of the person to whom the confirmation decision was sent, details of the failure to which the confirmation decision relates and details relating to OFCOM's response.

583. OFCOM are also obliged to publish these details when they give a person a penalty notice for: failing to comply with a confirmation decision (under clause 118); failing to comply with a notice to deal with terrorism content or CSEA content (or both) (under clause 119); and failing to pay a fee in full (under clause 120).

584. This is intended to provide transparency in relation to OFCOM's enforcement activities.

Guidance

Clause 129: OFCOM's guidance about enforcement action

585. This clause requires OFCOM to publish guidance about how they will use their

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enforcement powers. This is intended to help regulated providers and other stakeholders understand how OFCOM will exercise their suite of enforcement powers.

Chapter 7: Committees, research and reports

Clause 130: Advisory committee on disinformation and misinformation

586. This clause places an obligation on OFCOM to form an advisory committee on disinformation and misinformation. This is because the spread of inaccurate information, regardless of intent, is particularly concerning. The clause sets out what OFCOM should consider when appointing committee members, what the functions of the committee are, and what the committee's reporting obligations are.

Clause 131: Functions of the Content Board

587. The Content Board is a committee of the main OFCOM Board, with delegated and advisory responsibilities. This clause amends Section 13 of the Communications Act 2003 (functions of the Content Board) to clarify that it allows, but does not require, OFCOM to

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confer functions on the Content Board in relation to OFCOM's content related functions under the Online Safety Act.

Clause 132: Research about users' experiences of regulated services

588. This clause amends Section 14 of the Communications Act 2003 (consumer research) to require OFCOM to arrange research into United Kingdom users' opinions and experiences relating to regulated services.

589. Subsection (2) provides that OFCOM must make arrangements to understand a number of factors - including public opinion concerning providers of regulated services and the experiences and interests of those using regulated services. The intention is to provide OFCOM with the flexibility to choose the most appropriate methods for such research. This subsection also provides that OFCOM must include a statement of the research carried out in their annual report to the Secretary of State and the devolved administrations, under paragraph 12 of the Schedule to the Office of Communications Act 2002.

Clause 133: Consumer consultation

590. This clause extends the Communications Panel's remit to include online safety by amending Section 16 of the Communications Act 2003 (consumer consultation).

It ensures that the Communications Panel is able to give advice on matters relating to different types of online content (under this Act) and the impacts of online content on UK users of regulated services.

Clause 134: OFCOM's statement about freedom of expression and privacy

591. This clause requires OFCOM to publish annual reports on the steps they have taken when carrying out online safety functions to uphold users' rights under Articles 8 and 10 of the Convention, as required by section 6 of the Human Rights Act 1998.

Clause 135: OFCOM's transparency reports

592. This clause creates a duty on OFCOM to produce their own reports based on information from the transparency reports that providers are required to publish. The intention is for the report to highlight key insights from

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the providers' reports, giving users a better understanding of the steps service providers are taking. The report must be published annually.

Clause 136: OFCOM's report about researchers' access to information

593. This clause requires OFCOM to publish a report about the access independent researchers have, or could have, into matters relating to the online safety of regulated services. The clause sets out what OFCOM's report must cover and requirements around consultation, parliamentary procedure and publication. OFCOM may also publish guidance relating to the content of the report

Clause 137: OFCOM's reports

594. This clause gives OFCOM a discretionary power to publish reports about certain online safety matters. OFCOM will need to consider excluding confidential matters from their reports to the extent it is practicable. An example of this would be information that could be considered commercially sensitive.

Part 8: Appeals and super-complaints

Chapter 1: Appeals

Clause 138: Appeals against OFCOM decisions relating to the register under section 81

595. This clause allows for appeals against OFCOM's decisions to include or not to remove services from OFCOM's register of Category 1, Category 2A, and Category 2B services. Service providers who are registered by OFCOM as Category 1, Category 2A, and Category 2B services become subject to additional duties under the Bill.

596. Appeals may be made by regulated providers to the Upper Tribunal. The Tribunal must apply the same principles as a court would when hearing an application for judicial review. The clause also lays down that where a regulated provider has filed an appeal, any additional duties or requirements applying under the Act associated with that provider being designated as a Category 1, 2A or 2B operator need not be complied with until the determination or withdrawal of the appeal.

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597. The Upper Tribunal may either dismiss the provider's appeal or quash OFCOM's decision. Should the Tribunal quash the decision then the Tribunal must remit the decision back to OFCOM.

Clause 139: Appeals against OFCOM notices

598. This clause allows for appeals against decisions by OFCOM to issue a confirmation decision, a notice under section 103(1) or a penalty notice. An appeal may be brought to the Upper Tribunal by any person with 'sufficient interest' in the decision, although anyone other than the recipient requires permission from the Upper Tribunal to appeal.

599. The Tribunal will apply the same principles as a court would when hearing an application for judicial review .

600. The Upper Tribunal may either dismiss the appeal or quash OFCOM's decision. Should the Tribunal quash the decision then the Tribunal must remit the decision back to OFCOM for reconsideration, with any directions that the Tribunal thinks are appropriate.

Chapter 2: Super-complaints

Clause 140: Power to make super-complaints

601. This clause establishes a super-complaints mechanism which enables any organisation or other entity that meets the relevant eligibility criteria to bring systemic issues to OFCOM in specific circumstances.

602. A super-complaint can be about any feature of a regulated service or conduct of the provider of such a service. It may relate to one or more regulated services or providers and may be about any combination of features and conduct. Where this feature, conduct or combination of the two is causing, appears to be causing or is at material risk of causing users or members of the public significant harm, significantly adversely affecting their right to freedom of expression, or having a significant adverse impact on them, an eligible entity may make a super-complaint.

603. Where a super-complaint that relates to the conduct of a single regulated service or single provider of one or more regulated services, OFCOM may only consider it if they

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believe that the complaint is of particular importance or it relates to impacts on a particularly large number of people.

Clause 141: Procedure about super complaints

604. This clause requires the Secretary of State to make regulations which set out the procedural aspects of complaints made under clause 140. It provides examples of the matters that these regulations may include provision for; for example, pre-notifying OFCOM of an organisation's intention to make a super-complaint.

605. The Secretary of State must consult OFCOM and anyone else they consider to be appropriate before making these regulations.

Clause 142: OFCOM's guidance about super-complaints

606. This clause puts a requirement on OFCOM to produce and publish guidance on super-complaints and sets out what the guidance must include.

Part 9: Secretary of State's functions in relation to regulated services

Strategic Priorities

Clause 143: Statement of strategic priorities

607. This clause introduces a power for the Secretary of State to set out a statement of the Government's strategic priorities in relation to online safety matters. This power is similar to the existing power the Secretary of State has in the Communications Act 2003 in relation to telecommunications, management of radio spectrum and postal services.

608. Before designating the statement, the Secretary of State must first consult and follow the parliamentary procedure set out in clause 144.

609. The statement may specify particular outcomes to be achieved with a view to delivering the strategic priorities. For example, the Secretary of State may set a target eradication rate for child sexual exploitation and abuse (CSEA) images online or look to reduce regulatory burdens on service providers.

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610. If a statement of strategic priorities is to be amended in whole or in part, this must be done by issuing a subsequent statement following the procedure in clause 144. There are limited circumstances in which amendments may be made within a five year period, for example where there has been a significant change in government policy affecting online safety matters.

Clause 144: Consultation and parliamentary procedure

611. This clause sets out the consultation and parliamentary procedure requirements that must be satisfied before the Secretary of State can designate a statement of strategic priorities under clause 143.

612. The Secretary of State must consult OFCOM and other persons the Secretary of State considers appropriate on a draft of the statement. For example, the Secretary of State may wish to consult other government departments, industry bodies, academics, policy institutes/think-tanks, or other regulators.

613. Subsection (3) provides for a period of at least 40 days for such consultation with OFCOM, following which the Secretary of State must make any changes to the draft statement that appear necessary to the Secretary of State. They must then lay the draft statement before Parliament (subsection (4)) where it is subject to the negative resolution procedure as set out in subsections (5) - (7). After that procedure the Secretary of State may designate the statement.

Directions to OFCOM

Clause 145: Directions about advisory committees

614. This clause enables the Secretary of State to give OFCOM a direction to establish an expert committee to advise OFCOM on a specific online safety matter. By way of example, a direction could be issued requiring OFCOM to establish a committee to provide advice on an emerging online safety issue. The committee could do this by facilitating multi-stakeholder dialogue and building a greater understanding of the respective issue.

615. Subsection (3) sets out that OFCOM must appoint a committee chair, and that the number of additional members is at OFCOM's discretion unless the direction specifies otherwise in either case.

616. Subsection (4) places a duty on an advisory committee established under this direction to publish a report within 18 months of it being established, unless the direction specifies otherwise. After the initial report, the committee are required to publish reports periodically at their own discretion.

Clause 146: Directions in special circumstances

617. This clause enables the Secretary of State to give OFCOM directions in circumstances where they consider there is a threat to the health or safety of the public, or to national security. This includes directing OFCOM to prioritise action to respond to a specific threat when exercising its media literacy functions and to require specified service providers, or providers of regulated services generally, to publicly report on what steps it is taking to respond to that threat. For example, the

Secretary of State could issue a direction during a pandemic to require OFCOM to; give priority to ensuring that health misinformation and disinformation is effectively tackled when exercising its media literacy function; and to require service providers to report on the action they are taking to address this issue.

618. Subsection (6) specifies that the Secretary of State must publish the reasons for giving a direction in circumstances where this is given in response to a threat to the health or safety of the public. There is no requirement to publish reasons for giving a direction where this is done in response to a threat to national security.

619. The Secretary of State can vary or revoke a direction at any time. If so, OFCOM can vary or revoke the public statement notice they have given pursuant to the Secretary of State's direction: see subsection (7) and (8).

Guidance

Clause 147: Secretary of State's guidance

620. This clause enables the Secretary of State to give guidance to OFCOM relating to

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OFCOM's exercise of their statutory powers and functions under the Online Safety Bill. The guidance will provide clarity to OFCOM and others about how the Secretary of State expects OFCOM to carry out their statutory functions.

621. Subsections (3) to (7) detail the requirements for producing guidance issued under this clause.

622. OFCOM must have regard to the guidance when exercising any functions to which the guidance relates or when considering whether or not to exercise such functions.

Annual Report

Clause 148: Annual report on the Secretary of State's functions

623. Section 390 of the Communications Act 2003 requires the Secretary of State to prepare and lay before Parliament annual reports about their performance of the Secretary of State's functions under specific legislation, including the Communications Act 2003, the Office of Communications Act 2002 and the Broadcasting Acts 1990 and 1996.

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624. This clause amends the Communications Act 2003 by adding the functions under this Bill to the list of functions which the Secretary of State must include in their annual report to Parliament.

Review

Clause 149: Review

625. This clause provides for a review to be undertaken by the Secretary of State, published and laid before Parliament, between 2 and 5 years after the duties on services in Part 3 are commenced, in order to assess the effectiveness of the regulatory framework. The timing requirement is designed to ensure there is adequate time to allow the regime to be in operation before the review takes place, and that a review will take place in a timely manner.

626. The review must consider a number of areas in assessing the effectiveness of the regulatory framework. These areas include how effective the regulatory regime has been at ensuring that regulated services are operating, using systems and processes that

minimise the risk of harm to individuals in the United Kingdom, and in providing higher levels of protection for children than for adults.

627. The review must also consider the effectiveness of: OFCOM's information gathering, information sharing and enforcement powers; and the extent to which OFCOM have had regard to the desirability of encouraging innovation.

Part 10: Communications offences

Harmful, false and threatening communications offences

Clause 150: Harmful communications offence

628. The three offences in the following three clauses replace the offences in the Malicious Communications Act 1988 and sections 127(1) and 127(2)(a)-(b) of the Communications Act 2003. Some aspects of the existing law are carried into the new offences, albeit with amendments, such as the offences relating to false communications and threats.

629. As with the existing offences, particularly the Malicious Communications Act 1988, the offences are not limited to the internet or online environment. They cover electronic communications, but could also cover letters, for example (see clause 153(2)).

630. The three offences criminalise communications based on the potential for harm in a particular context (so the focus is no longer on whether the communication is “grossly offensive”, for example), and also on the culpability of the sender: the person sending the message must intend a particular result.

631. This clause creates a criminal offence for sending of harmful communications. Any person who, intending to cause at least serious distress and without reasonable excuse, sends (or causes to be sent) a message that presents a real and substantial risk of causing at least serious distress to those likely to encounter it, is guilty of the offence.

632. The prosecution must prove beyond reasonable doubt that the sender lacked a reasonable excuse, and this assessment must include consideration of whether the message was or was intended as a contribution to a matter of public interest.

633. Subsection (6) provides, for the avoidance of doubt, that the offence cannot be committed by certain bodies. Those bodies are defined as recognised news publishers (as defined in clause 50), those with licences under the Broadcasting Act 1990 or 1996 or section 8 of the Wireless Telegraphy Act 2006, or the providers of on-demand programme services (as defined in section 368A of the Communications Act 2003). Further, an offence cannot be committed in connection with the showing to members of the public of a film that was made for cinema.

634. A person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding the maximum summary term for either-way offences or a fine (or both); or on conviction on

indictment, to imprisonment for a term not exceeding two years or a fine (or both).

635. This offence replaces the offence in section 127(1) of the Communications Act 2003 and the offence in section 1 of the Malicious Communications Act 1988.

Clause 151: False communications offence

636. This clause creates a criminal offence for the sending of false communications. A person who, without reasonable excuse, sends a message conveying information the person knows to be false, and in sending the message intends to cause psychological or physical harm that is more than trivial to those likely to encounter the message, is guilty of an offence.

637. The prosecution must prove beyond reasonable doubt that the sender lacked a reasonable excuse, and this assessment must include consideration of whether the message was or was intended as a contribution to a matter of public interest.

638. Subsection (4) provides, for the avoidance of doubt, that the offence cannot be committed by certain bodies. Those bodies are defined as recognised news publishers (as defined in clause 50), those with licences under the Broadcasting Act 1990 or 1996 or section 8 of the Wireless Telegraphy Act 2006, or the providers of on-demand programme services (as defined in section 368A of the Communications Act 2003). Further, an offence cannot be committed in connection with the showing to members of the public of a film that was made for cinema.

639. A person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding the maximum term for summary offences or a fine (or both). Subsection (7) set out the definition of ‘maximum terms for summary offences.’

640. This offence replaces the offence in section 127(2)(a) and (b) of the Communications Act 2003 and the offence in section 1 of the Malicious Communications Act 1988.

Clause 152: Threatening communications offence

641. This clause creates a criminal offence for the sending of threatening communications. A person who sends a message conveying a threat of serious injury, rape, assault by penetration, or serious financial loss, intending that those who encounter the message will fear the threat will be carried out (or is reckless as to that fact), is guilty of an offence.

642. With respect to threats of serious financial loss, it is a defence for a person to show that, first, the threat was used to reinforce a reasonable demand and, second, that they reasonably believed the threat was a proper means of reinforcing the demand. This is similar to the defence contained in section 1(2) of the Malicious Communications Act 1988.

643. It is worth noting that threats to kill are already criminalised under section 16 of the Offences Against the Person Act 1861.

644. A person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding the maximum summary term for either-way

offences or a fine (or both); on conviction on indictment, to imprisonment for a term not exceeding five years or a fine (or both).

645. This offence replaces the offences in section 127(1) of the Communications Act 2003 and section 1 of the Malicious Communications Act 1988.

Clause 153: Interpretations of sections 150 to 152

646. This clause sets out how different aspects of the offences in section 150, 151 and 152 should be interpreted.

647. Subsection (2) and (3) sets out the interpretations of the phrase “sends a message.” Subsection (5) sets out the interpretation of the phrase “encounter” in relation to a message.

648. Subsection (4) sets out that a provider of an internet service is not regarded as a person who sends a message by virtue of providing that internet service.

649. Subsection (6) sets out that for the purposes of the offences it does not matter if the content of the message is created by the

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person who sends it. Subsection (7) sets out that a message can consist of or include a hyperlink to other content.

Clause 154 and 155: Extra-territorial application and jurisdiction and Liability of corporate officers

650. Clause 154 and 155 set out that the offences outlined in section 150, 151 and 152 can be committed outside the United Kingdom, though, in that case, only by those habitually resident in England & Wales or by bodies incorporated under the law of England & Wales.

Offence of sending etc photograph or film of genitals

Clause 156: Sending etc photograph or film of genitals

651. Clause 156 creates a new offence of sending etc a photograph or film of a person's genitals to another person, in England and Wales. It inserts a new section 66A into the Sexual Offences Act 2003 ("the 2003 Act"). New section 66A(1) provides that where a person (A) intentionally sends or gives a

photograph or film of any person's genitals to another person (B), and either A intends that B will see the genitals and be caused alarm, distress or humiliation, or sends or gives the photograph or film for the purpose of obtaining sexual gratification and is reckless as to whether B will be caused alarm, distress or humiliation, A commits an offence.

652. Subsection (2) makes clear that “sending or giving” a photograph or film includes in particular sending it to another person by any means, electronically or otherwise, showing it to another person, and placing it for a particular person to find.

653. Subsections (3) to (5) set out what is meant by “photograph” and “film”. In particular, subsection (5) makes clear that the terms include an image, whether made by computer graphics or in any other way, which appears to be a photograph or film; a copy of such an image, photograph, or film, and data stored by any means which is capable of conversion into such an image; photograph, or film.

654. Subsection (6) provides that the offence is triable either way, and is subject to a maximum penalty of 12 months' imprisonment, a fine, or both, following summary conviction, and 2 years' imprisonment following conviction on indictment. The reference to twelve months' imprisonment is to be read as six months in relation to an offence committed before paragraph 24(2) of Schedule 22 to the Sentencing Act 2020 comes into force (new subsection (7)).

Repeals and amendments in connection with offences

Clause 157: Repeals in connection with offences under sections 150, 151 and 152

655. Clause 157 sets out that subsection (1), and (2)(a) and (b) of the Section 127 of the Communications Act 2003 will be repealed in so far as they extend to England and Wales. The Malicious Communication Act 1988 will also be repealed.

Clause 158: Consequential amendments

656. Clause 158 sets out in which part of Schedule 13 the consequential amendments

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in connection with the offences created in sections 150, 151, 152 and 156 are found.

Schedule 13: Amendments consequential on offences in Part 10 of this Act

Part 1

Amendments consequential on offences in sections 150, 151 and 152

Sexual Offences Act 2003

657. Schedule 5 of the Sexual Offences Act 2003 lists offences in connection with which a sexual harm prevention order may be made. Paragraph 1 of Schedule 13 adds to this list an offence under section 150 of the Online Safety Act 2022 (harmful communications); an offence under section 151 of that Act (false communications); and an offence under section 152 of that Act (threatening communications).

Regulatory Enforcement and Sanctions Act 2008

658. Paragraph 2 removes the reference to the Malicious Communications Act 1988 in Schedule 3 of the Regulatory Enforcement and Sanctions Act 2008, replacing it with a

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reference to the Online Safety Act 2022, sections 150, 151 and 152 (harmful communications, false communications and threatening communications).

Part 2

Amendments consequential on offence in section 156

Children and Young Persons Act 1933

659. Paragraph 3 amends Schedule 1 of the Children and Young Persons Act 1933 (offences against children and young persons with respect to which special provisions of Act apply) to refer to section 66a in the entry relating to the Sexual Offences Act 2003.

Sexual Offences Act 2003

660. Paragraph 4 amends the Sexual Offences Act 2003. Subparagraph (2) amends section 136A(3A) (specified child sex offences), and inserts “66A” in paragraph (c).

661. Sub-paragraph (3) inserts a clause into Schedule 3 (sexual offences for purposes of

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Part 2), paragraph 33A, referring to an offence under section 66A of that Act (sending etc photograph or film of genitals) in specific circumstances.

Criminal Justice Act 2003

662. Paragraph 5 amends the Criminal Justice Act 2003 to refer to an offence under section 66A of the Sexual Offences Act 2003 (sending etc photograph or film of genitals) in Part 2 of Schedule 15 (specified sexual offences for purposes of section 325) and Schedule 34A (child sex offences for purposes of section 327A).

Anti-social Behaviour, Crime and Policing Act 2014

663. Paragraph 6 amends section 116 of the Anti-social Behaviour, Crime and Policing Act 2014 (information about guests at hotels believed to be used for child sexual exploitation) to add a reference to section 66A in the entry that relating to exposure and voyeurism offences in the Sexual Offences Act 2003.

Modern Slavery Act 2015

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664. Paragraph 7 amends Schedule 4 of the Modern Slavery Act 2015 (offences to which defence in section 45 does not apply) to refer to section 66A under paragraph 33 (offences under Sexual Offences Act 2003).

Sentencing Act 2020

665. Paragraph 8 amends Part 2 of Schedule 18 to the Sentencing Act 2020 (specified sexual offences for purposes of section 306) to refer to section 66A under paragraph 38 (offences under Sexual Offences Act 2003).

Schedule 14: Liability of parent entities etc

Joint provisional notices of contravention

666. Schedule 14 establishes that decisions or notices can be given jointly to both a regulated provider and its parent company (or controlling individual(s)), its subsidiary company or a fellow subsidiary.

667. All relevant entities must be given the opportunity to make representations when OFCOM are seeking to establish joint liability, including on the matters contained in the

decision or notice and whether joint liability would be appropriate.

668. When OFCOM issue decisions or notices to multiple parties, they are all jointly liable to comply with any requirements or penalties imposed.

Part 11: Supplementary and General

Liability of providers etc

Clause 159: Providers that are not legal persons

669. This clause provides for the situation in which a penalty notice or confirmation decision needs to be given to a provider of a regulated service that is not a legal person. This may occur, for example, where a partnership or an unincorporated association (an organisation set up through an agreement between a group of people who come together for a reason other than to make a profit, such as a voluntary group or a sports club) provides a regulated service.

Clause 160: Individuals providing regulated services: liability

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670. This clause sets out how various provisions of the Bill may apply to a group of two or more individuals who together are providers of a regulated service. Where two or more individuals together are providers of a regulated service, they will be jointly and severally liable for any duty, requirement or liability to pay a fee. Two or more individuals jointly given a penalty notice or confirmation decision will also be jointly and severally liable to pay the penalty or meet the requirements.

671. The clause also provides for how penalty notices or confirmation decisions may be given to individuals who are together providers.

Clause 161: Liability of parent entities etc

672. This clause cross-refers to Schedule 14, which contains provisions about how joint liability operates under the Bill.

Offences

Clause 162: Information offences: supplementary

673. This clause sets out further detail on how the information offences in clause 92(1) and paragraph 18(1)(b) of Schedule 11 operate.

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674. Proceedings against a person for an offence of failing to comply with requirements in an information notice or failing to comply with any requirement imposed by a person authorised by OFCOM to exercise powers of entry and inspection may be brought only if:

- a. the person has been given a provisional notice of contravention;
- b. they have received a confirmation decision in respect of that failure (requiring them to comply with the original requirement or remedy their failure to comply with it) and they have not complied with its requirements by the deadline it sets;
- c. a penalty has not been imposed on them by OFCOM in respect of that failure; and
- d. neither a service restriction order nor an access restriction order has been made in relation to a regulated service provided by them in respect of that failure.

675. Subsection (2) confirms that, if any proceedings are to be brought against a senior manager for the offence of failing to prevent an offence of failing to comply with an information

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notice, these conditions must also be met in relation to the failure to comply with an information notice.

Clause 163: Defences

676. This clause applies where a person relies on a defence under clause 92 or 93.

677. Where a defendant adduces evidence which raises an issue with respect to the defence, the burden is on the prosecution to prove beyond reasonable doubt that the defence is not satisfied.

Clause 164: Liability of corporate officers for offences

678. This clause means that in certain circumstances ‘corporate officers’ of regulated providers may be found liable for information offences committed by that entity. Corporate officers are generally directors, managers or similarly senior employees.

679. If an offence is found to be committed by an entity, and that offence is proved to have been committed with the consent, connivance or neglect of a corporate officer, both the

officer and the relevant entity can be found guilty of the offence.

Clause 165: Application of offences to providers that are not legal persons

680. This clause sets how information offences apply to providers that are not legal persons under the law under which they are formed. Under English and Welsh law, a partnership and an unincorporated association would both be examples of such entities.

681. Subsection (2) specifies that proceedings for an offence under this Act alleged to have been committed by a relevant entity must be brought against the entity in its own name. It must not be brought in the name of any of its officers, members or partners. For such proceedings, the rules of court relating to service of documents have the same effect as if the entity were a body corporate (e.g. a company), and that the listed provisions in subsection (3)(b) also apply as they would apply in relation to a body corporate. A fine imposed on a relevant entity on its conviction

of an offence under this Act is to be paid out of the entity's funds.

682. Subsection (5) provides that, if the relevant entity commits an offence, and this offence was committed with the consent or connivance of, or can be attributed to the neglect of, an officer, then the officer also commits the offence. Proceedings may thus be brought against the officer (subject to clause 162(1)) and they may be punished accordingly. The liability of an officer under this subsection is not prejudiced by subsection (2).

Extra territorial application

Clause 166: Extra-territorial application

683. This clause specifies that references to regulated services and OFCOM's information-gathering powers apply to services provided from outside the United Kingdom (as well as to services provided from within the United Kingdom).

Clause 167: Information offences: extra-territorial application and jurisdiction

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684. This clause outlines that the information offences in the Bill apply to acts done in the United Kingdom and outside of the United Kingdom. All offences can be prosecuted in any part of the United Kingdom as if they occurred in that part of the United Kingdom.

Publication by OFCOM

Clause 168: Publication by OFCOM

685. This clause requires OFCOM to publish anything they must publish under the Bill in a way which is appropriate to bring it to the attention of any audience likely to be affected by it.

Service of notices

Clause 169: Service of notices

686. This clause sets out the process for issuing any notices or decisions under the Act, including notices to deal with CSEA or terrorism content, information notices, enforcement notices, penalty notices and public statement notices to providers of regulated services both within and outside of the United Kingdom.

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Repeals and amendments

Clause 170: Repeal of Part 4B of the Communications Act 2003

687. This deletes clauses pertaining to the regulation of video sharing platform services from the Communications Act 2003 and the Audiovisual Media Services Regulations 2020.

Clause 171: Repeals: Digital Economy Act 2017

688. This clause repeals Part 3 of the Digital Economy Act 2017 (which makes provision in relation to online pornography and an age verification system) and removes the obligation for the Secretary of State to issue a code of practice for online service providers by repealing section 103 of that Act. As a consequence of the repeal of Part 3, the power to extend it to the Channel Islands or the Isle of Man is also repealed.

Clause 172: Offences regarding indecent photographs of children: OFCOM defence

689. This clause makes amendment to Section 1B of the Protection of Children Act 1978 (defence to offence relating to indecent

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photographs of children) to create a defence for OFCOM when exercising their online safety functions.

690. It inserts an additional clause into the 1978 Act to create a defence for the offence of making an indecent photograph or pseudo-photograph of a child in circumstances where the defendant is a member of OFCOM, employed or engaged by OFCOM or assisting OFCOM in the exercise of their online safety functions and the photograph or pseudo-photograph is made for the purpose of any of OFCOM's online safety functions, as defined in Section 188. We expect that the handling of this material may be necessary in the course of OFCOM's delivery of its online safety functions, as services will be required by duties in the legislation to proactively identify and remove this content. An example of a scenario in which OFCOM may be required to handle this material would be if OFCOM is assessing a services' systems and processes to assess how they handle illegal content or needs to show that a service is not handling complaints about illegal content correctly.

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691. The clause provides for amendment to the equivalent legislation in Scotland (Section 52 of the Civic Government (Scotland) Act 1982 (indecent photographs of children)) and in Northern Ireland (Article 3A of the Protection of Children (Northern Ireland) Order 1978 (defence to offence relating to indecent photographs of children)).

Powers to amend Act

Clause 173: Powers to amend Section 36

692. This clause gives the Secretary of State the power to amend the list of fraudulent offences in section 36 in relation to the duties about fraudulent advertising. This power is subject to some constraints.

693. Subsection (2) lists the criteria any new offences must meet before the Secretary of State may include it in the list of fraudulent offences in clause 36. Subsection (3) further limits the Secretary of State's power to include new fraud offences, listing types of offences which may not be added to clause 36. This is to avoid regulatory duplication.

Clause 174: Powers to amend or repeal provisions relating to exempt content or services

694. This clause allows the Secretary of State to make regulations to amend or repeal provisions relating to exempt content or services. Regulations made under this clause can be used to exempt certain content or services from the scope of the regulatory regime or to bring them into scope.

Clause 175: Powers to amend Part 2 of Schedule 1

695. Schedule 1, paragraph 10 exempts user-to-user or search services that are provided by education or childcare providers as described in Schedule 1, Part 2, from regulatory duties where those services are provided for the purpose of education and childcare. Clause 174 provides a set of powers to amend the list of exempt education and childcare providers listed in Schedule 1 Part 2. This includes powers for the Secretary of State to amend the list in Part 2 Schedule 1 which relates to England (Clause 175, subsection 1) and for the relevant Devolved Ministers to amend the

list in their respective areas. This clause also sets out the criteria that must be met in order for an amendment to be made.

Clause 176: Powers to amend Schedules 5, 6 and 7

696. This clause gives the Secretary of State power to amend three related schedules of the Bill. Together, the three schedules list the criminal offences that content must amount to to be priority illegal content, as defined in clause 52(7).

697. The Secretary of State may amend the list of terrorism offences and the list of CSEA offences other than those CSEA offences which extend only to Scotland, which may be amended by the Scottish Ministers. The Secretary of State may also amend Schedule 7 (priority offences), but only if they consider it appropriate for the reasons set out in subsection (4) and the amendment would not add an offence of a type listed in subsection (5).

698. Each of the three schedules also covers inchoate offences, meaning that where content

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relates to attempting or conspiring to commit any of the offences listed in the three schedules it will also be considered priority illegal content, and will need to be proactively sought out and removed by providers in the same way that content amounting to the offences themselves will need to be.

Regulations

Clause 177: Power to make consequential provision

699. This clause gives the Secretary of State a power to make consequential provisions relating to this Bill or to regulations under this Bill. The power is exercised by regulations and includes the power to amend the Communications Act 2003.

Clause 178: Regulations: general

700. This clause sets out how the powers to make regulations conferred on the Secretary of State can be used. Regulations made under this Act can make different provisions for different purposes, in particular relating to different types of services.

Clause 179: Parliamentary procedure for regulations

701. This clause sets out the Parliamentary procedure that must be followed when regulations made using powers conferred by the Bill are made.

Part 12: Interpretation and final provisions

Interpretation

Clause 180: “Provider” of internet service

702. This clause determines who is the ‘provider’ of an internet service, and therefore who is subject to the duties imposed on providers. For user-to-user services, subsections (2) and (3) set out that the provider is the entity (or individual(s)) which controls who can use the user-to-user elements of a service. The intention is for the duties to apply to the entity or person that directly controls users’ access to functionality that enables users to interact or share user-generated content, rather than on any other entity that may embed that service or control other aspects of it. It also makes clear which

entity within a broader corporate structure the duties apply to.

703. Subsections (4) and (5) set out that a provider of a search service is the entity (or individual(s)) that has direct control over the operations of the search engine. As set out in subsection (13), the operations of the search service are taken to mean operations which enable users to make search requests, and which subsequently generate responses to those requests. The intention is for duties to fall on the person or entity that controls which search results appear to users and how they appear, rather than on any other entity that may embed or otherwise use a search engine. It also makes clear which entity within a broader corporate structure the duties apply to.

704. Subsections (6) and (7) provide that the provider of a combined service is the entity which meets both definitions in the preceding four subsections. If the entity (or individual(s)) which controls who can use the user-to-user part of the service is different from the entity (or individual(s)) which controls the search

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engine, there is not a combined service (see clause 180(2)).

705. Subsections (8) and (9) provide that the provider of an internet service which is neither a user-to-user service nor a search service is the entity (or individual(s)) which has control over which content is published or displayed on the service. This is particularly relevant for determining which entities in relation to services other than Part 3 services have duties under Part 5.

706. Subsection (12) clarifies that someone who provides an access facility in relation to a user-to-user service, which is a facility that can be withdrawn, adapted or manipulated in order to impede access to the user-to-user service (see clause 125), is not a provider of that service. Examples of “access facilities” would include internet access services, web hosting services, domain name services, security software, content delivery network services, app stores, payment service providers and enterprise software.

Clause 181: “User”, “United Kingdom user” and “interested person”

707. This clause defines the terms “user”, “United Kingdom user”, and “interested person”, in relation to regulated services.

708. Subsection (1) makes clear that a “United Kingdom user” can be either an individual who is in the United Kingdom, or an entity which is incorporated or formed under the law in any part of the United Kingdom.

709. Subsections (3) and (4) outline the circumstances where someone would not be counted as a user because they are using the service in the course of the service provider’s business. For example, the intention is that an employee of a social media company would not count as a user if uploading content to the service in the course of their employment, for example a company blog. However, they would count as a user of the service if uploading content to that service in a personal capacity.

710. Subsection (7) defines an “interested person” in relation to search services and

combined services. This is intended to recognise that these services' actions may affect people and entities who do not directly use search engines where search engines index their website or database.

Clause 182: "Internet service"

711. This clause sets out the meaning of the term "internet service", which includes services made available by the internet, or by a combination of the internet and an electronic communications service (as defined in section 32(2) of the Communications Act 2003). For example, a service which is partly made available over the internet and partly by routing through the public switched telephone network would count as an internet service. This captures services accessed by a mobile phone application as well as those accessed via an internet web browser.

Clause 183: "Search engine"

712. This clause sets out the meaning of "search engine". This is relevant to the definition of "search service" in clause 2(4),

which is an internet service that is, or includes, a search engine.

713. Subsection (1)(a) defines a search engine as including services or functionalities which allow a user to search some websites or databases, as well as services which allow a user to hypothetically search *all* websites or databases. This differentiation ensures that search engines and vertical search engines are both included. A vertical search engine is a search engine that is only focused on a specific topic or a genre of content, such as a search engine that only indexes academic articles. Subsection (1)(b) clarifies that the definition does not include services where a user can only search one website or database, thereby ensuring that websites which only have a search tool internal to the website are not considered search services.

714. Subsection (2) makes clear that for a service to be a combined service it is necessary for the entity which would be defined as the provider in relation to the user-to-user part of the service to be the same as the entity which would be defined as the

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provider in relation to the search engine (although a single entity may be the provider of more than one service).

Clause 184: “Proactive technology”

715. Proactive technology may be used by regulated service providers to comply with their duties about illegal content, content which is harmful to children and fraudulent advertising. As explained in relation to those duties, the service provider must specify in their terms of service or publicly available statement if they use proactive technology. OFCOM may recommend the use of proactive technology in the codes of practice related to these duties (see Schedule 4, paragraph 12), and may also impose confirmation decisions requiring the use of proactive technology (see clause 116). Both actions by OFCOM are subject to certain constraints included in Schedule 4 and clause 116.

716. This clause provides a definition of proactive technology. Proactive technology consists of three types of technology for the purposes of this legislation, content

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moderation, user profiling and behaviour identification. The clause gives limited examples of the types of technologies that regulated services will use, and makes clear that this will in some cases include artificial intelligence and machine learning technologies.

717. Content moderation technology includes technology such as keyword matching or image classification, which will involve, for instance, automatically analysing user-generated content across a user-to-user service for the purposes of assessing if this is illegal content. The service provider can then decide what action is required in respect of that content to comply with its safety duties about illegal content (clause 9). Accredited technology required in relation to the detection of terrorism content or CSEA content (see clause 103) is also an example of content moderation technology. Technology which reviews content which has been flagged by a user report does not fall within this category.

718. User profiling technology refers to tools which build a profile of the user, assessing characteristics, so that the service provider can limit their access to harmful content if necessary. The provision notes that this will involve the analysis of content and user data, or relevant metadata of content and user data, which means this includes looking at a number of factors, such as what they post and view online, and could include data the service provider has from a partner site, for example. This doesn't include technology that checks data (such as ID) provided by the user to verify age.

719. Behaviour identification technology is a category of technology which assesses harmful behaviour online, including criminal activity. This also concerns the analysis of content and user data, or relevant metadata of content and user data. The provision clarifies that this does not mean investigations conducted by service providers into specific users, where technology is used in response to concerns identified by another person (or

another automated tool).

720. Subsection (9) defines user data, which is a category of data which these tools will analyse in addition to content and metadata. It specifies that this will include personal data, as well as data that the service provider will create about user activity, or obtain from partner services.

Clause 185: Content communicated “publicly” or “privately”

721. This clause provides information to assist OFCOM in its decision making on whether content is communicated publicly or privately for the purposes of exercising its powers under the Bill.

722. Subsection (1) sets out that OFCOM must consider the factors listed in this clause when making decisions on whether content is communicated publicly or privately under clauses 103 and 116 and under schedule 4.

723. Subsection (2) sets out the factors that OFCOM must consider in their decision

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making.

724. Subsection (3) sets out the factors that OFCOM should not consider as being restrictions on users accessing a service.

Clause 186: “Functionality”

725. This clause sets out the meaning of the term ‘functionality’.

Clause 187: “Harm” etc

726. This clause defines harm as physical or psychological harm. This could include physical injuries, serious anxiety and fear; longer-term conditions such as depression and stress; and medically recognised mental illnesses, both short-term and permanent.

727. It provides that harm can arise from the harmful nature of content, for example from grossly offensive, abusive or discriminatory content. It can also arise from the dissemination of content that is not by its nature harmful, for example the malicious sharing of personal information, or the way in which content is disseminated, for example

one or many people repeatedly sending content to an individual.

728. It also makes provision to include indirect harm, where someone harms themselves or another person as a result of content.

Clause 188: “Online safety functions” and “online safety matters”

729. This clause sets out the meaning of “online safety functions” and “online safety matters”.

Clause 189: Interpretation: general

730. This clause sets out the meanings of various terms used in the Bill.

Clause 190: Index of defined terms

731. This clause lists those provisions which define or explain terms used in the Bill.

Final provisions

Clause 191: Financial provisions

732. This clause sets out the financial provisions for the Bill .

Clause 192: Extent

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733. This clause provides that the Bill extends to England and Wales, Scotland and Northern Ireland, subject to the subsections set out in sections 2-7. Further details are included in the extent section of these notes.

Clause 193: Commencement and transitional provision

734. This clause explains when the different provisions of the Bill will come into force.

Clause 194: Short title

735. This clause establishes the short title of this legislation, when enacted, as the Online Safety Act [2022].

Commencement

736. Clause 193 provides for the commencement of the provisions in this Bill.
737. Subsection 1 sets out the provisions that will come into force on the day the Bill receives royal assent.
738. Subsection 2 sets out that the remaining provisions of the Bill will come into force on a day set out in regulations by the Secretary of State, and subsection 3 sets out that different days may be appointed for different purposes.
739. Subsection 4 sets out that the Secretary of State may by regulations make transitional or saving provisions in connection with the coming into force of any provision of this Bill.
740. Subsection 6 sets out that any power to make regulations under this section is exercisable by statutory instrument.

Financial implications of the Bill

741. The Bill includes powers to allow OFCOM to charge fees to industry in order to allow them to become cost neutral to the exchequer. Operating costs incurred by OFCOM in carrying out their functions as Online Harms regulator will be met by proportionate fees charged to industry. Further details of the costs and benefits of provisions are set out in the impact assessment published alongside the Bill.

Parliamentary approval for financial costs or for charges imposed

742. A money resolution is required where a Bill gives rise to, or creates powers that could be used so as to give rise to, new charges on the public revenue (broadly speaking, new public expenditure). This Bill requires a money resolution because the Bill confers new functions on OFCOM (see, for example, OFCOM's duties to carry out risk assessments under clause 83, or OFCOM's enforcement functions in Chapter 6 of Part 7), which will entail a significant increase in OFCOM's costs (which could potentially lead to increased expenditure under the Office of Communications Act 2002), and the Secretary of State will incur significant costs in implementing the Bill. The Bill is also likely to lead to increased expenditure under the Crime and Courts Act 2013 in relation to the National Crime Agency's functions in relation to reports about child sexual exploitation and abuse content: see Chapter 2 of Part 4 of the Bill.

743. This Bill also requires a ways and means resolution. Generally, a ways and means

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resolution is required where a Bill creates or confers power to create new charges on the people (broadly speaking, new taxation or similar charges). The Bill requires a ways and means resolution because it contains a power to charge fees to certain providers of internet services to cover the costs of OFCOM's new regulatory functions (see Part 6 of the Bill), and because the way that the fees will be charged means that some providers will be paying more than the costs attributable to them. The Bill also requires a paying-in resolution (which is included as a limb of the ways and means resolution) because it provides for penalties to be paid into the Consolidated Fund of the United Kingdom (see paragraph 8 of Schedule 12 to the Bill).

Compatibility with the European Convention on Human Rights

744. The government considers that the Bill is compatible with the European Convention on Human Rights. Accordingly, a statement under section 19(1)(a) of the Human Rights Act 1998 will be made to this effect.

745. Issues arising as to the compatibility of the Bill with the Convention rights are dealt with in a separate memorandum. This will be published separately on gov.uk on 17 March 2022.

Related documents

746. The following documents are relevant to the Bill:

- Online Harms White Paper and Consultation
- Online Harms White Paper Initial Government Response
- Online Harms White Paper Full Government Response
- Draft Online Safety Bill
- Law Commission report
- Joint Committee report on the Draft Online Safety Bill
- Digital, Culture, Media and Sport Committee report
- Petitions Committee report on Online Abuse
- Online Safety Bill
- Impact assessment
- Delegated powers memorandum
- Government response to the Joint Committee report

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Annex A – Glossary

<p>Category 1 services</p>	<p>User-to-user services which meet the Category 1 threshold conditions and are included in the relevant OFCOM register. The providers of these services are subject to additional duties in relation to content that is harmful to adults, content of democratic importance and journalistic content; additional reporting and redress duties; additional user empowerment duties; and additional duties with regard to protecting users' freedom of expression and privacy rights. Providers of Category 1 services are also under a duty to produce annual transparency reports.</p>
<p>Category 2A services</p>	<p>Search services which meet the Category 2A threshold conditions and are included in the relevant OFCOM register. The providers of these services are under a duty to</p>

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	produce annual transparency reports.
Category 2B services	User-to-user services which meet the Category 2B threshold conditions and are included in the relevant OFCOM register. The providers of these services are under a duty to produce annual transparency reports.
Code of Practice	A code of practice issued by OFCOM outlines the recommended steps to be taken by providers of services in complying with their duties.
Provider	The entity which has control over who may use a service.
Service	This may refer to a user-to-user service (an internet service which allows user-generated content to be uploaded or shared by a user), a search service (an internet service which includes a search engine

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	which allows multiple websites to be searched), or an internet service (a service made available by means of the internet).
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Annex B - Territorial extent and application in the United Kingdom

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Part 1: Introduction							
Clause 1	Yes	Yes	No	Yes	N/A	Yes	N/A
Part 2: Key Definitions							
Clause 2	Yes	Yes	No	Yes	No	Yes	No
	Yes	Yes	No	Yes	No	Yes	No
	Yes	Yes	No	Yes	No	Yes	No

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Clause 3							
Clause 4							
Part 3: Providers of regulated user-to-user services and regulated search services: duties of care							
<i>Chapter 1: Introduction</i>							
Clause 5	Yes	Yes	No	Yes	No	Yes	No
<i>Chapter 2: Providers of user-to-user services: duties of care</i>							
Clauses 6 – 20	Yes	Yes	No	Yes	No	Yes	No
<i>Chapter 3: Providers of search services: duties of care</i>							
Clauses 21 – 30	Yes	Yes	No	Yes	No	Yes	No
<i>Chapter 4: Children’s access assessments</i>							

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Clauses 31 – 33	Yes	Yes	No	Yes	No	Yes	No
<i>Chapter 5: Duties about fraudulent advertising</i>							
Clauses 34 – 36	Yes	Yes	No	Yes	No	Yes	No
<i>Chapter 6: Codes of practice and guidance</i>							
Clauses 37 – 48	Yes	Yes	No	Yes	No	Yes	No
<i>Chapter 7: Interpretation of Part 3</i>							
Clauses 49 – 56	Yes	Yes	No	Yes	No	Yes	No
Part 4: Other duties of providers of regulated user-to-user services and regulated search services							
<i>Chapter 1: Providers of category 1 services: user identity verification</i>							

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Clauses 57 – 58	Yes	Yes	No	Yes	No	Yes	No
<i>Chapter 2: Reporting child sexual exploitation and abuse content</i>							
Clauses 59 – 63	Yes	Yes	No	Yes	No	Yes	No
<i>Chapter 3: Transparency reporting</i>							
Clauses 64 – 65	Yes	Yes	No	Yes	No	Yes	No
Part 5: Duties of providers of regulated services: certain pornographic content							
Clauses 66 – 69	Yes	Yes	No	Yes	No	Yes	No
Part 6: Duties of providers of all regulated services: fees							
Clauses 70 – 76	Yes	Yes	No	Yes	No	Yes	No

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Part 7: OFCOM's powers and duties in relation to regulated services							
<i>Chapter 1: General duties</i>							
Clauses 77 – 79	Yes	Yes	No	Yes	No	Yes	No
<i>Chapter 2: Register of categories of regulated user-to-user services and regulated search services</i>							
Clauses 80 – 82	Yes	Yes	No	Yes	No	Yes	No
<i>Chapter 3: Risk assessments of regulated user-to-user services and regulated search services</i>							
Clauses 83 – 84	Yes	Yes	No	Yes	No	Yes	No
<i>Chapter 4: Information</i>							
Clauses 85 – 102	Yes	Yes	No	Yes	No	Yes	No

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Chapter 5: Regulated user-to-user services and regulated search services: notices to deal with terrorism content and CSEA content

Clauses 103 - 109	Yes	Yes	No	Yes	No	Yes	No
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Chapter 6: Enforcement powers

Clauses 110 - 129	Yes	Yes	No	Yes	No	Yes	No
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Chapter 7: Committees, research and reports

Clauses 130 - 137	Yes	Yes	No	Yes	No	Yes	No
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Part 8: Appeals and super-complaints

Chapter 1: Appeals

Clauses	Yes	Yes	No	Yes	No	Yes	No
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138 - 139							
<i>Chapter 2: Super-complaints</i>							
Clauses 140 - 142	Yes	Yes	No	Yes	No	Yes	No
Part 9: Secretary of State's functions in relation to regulated services							
Clauses 143 - 149	Yes	Yes	No	Yes	No	Yes	No
Part 10: Communications offences							
Clauses 150 - 155	Yes	Yes	No	No	No	No	No
Clause 156	Yes	Yes	No	No	No	No	No

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Clause 157(1)	Yes	Yes	No	No	No	Yes	No
	Yes	Yes	No	Yes	No	Yes	No
Clause 157(2)							
Clause 158							
Part 11: Supplementary and general							
Clauses 159 – 171	Yes	Yes	No	Yes	No	Yes	No
	Yes	Yes	No	No	No	No	No
Clause 172(1) to (3)	No	No	No	Yes	No	No	No

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Clause 172(4) to (6)	No	No	No	No	No	Yes	No
	Yes	Yes	No	Yes	No	Yes	No
Clause 172(7) to (9)	Yes	Yes	No	Yes	No	Yes	No
Clause 173 - 174							
Clause 175 - 179							

Part 12: Interpretation and final provisions

Clause 180 - 194	Yes	Yes	No	Yes	No	Yes	No
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Schedules							
Schedule 1: Exempt user-to-user and search services							
Part 1	Yes	Yes	No	Yes	No	Yes	No
Part 2	Yes	Yes	No	Yes	Yes	Yes	Yes
Part 3	Yes	Yes	No	Yes	Yes	Yes	Yes
Schedule 2: User-to-user services and search services that include regulated provider pornographic content							
	Yes	Yes	No	Yes	No	Yes	No
Schedule 3: Timing of providers' assessments							
Parts 1-3	Yes	Yes	No	Yes	No	Yes	No
Schedule 4: Codes of practice under section 37: principles, objectives and content							
	Yes	Yes	No	Yes	No	Yes	No
Schedule 5: Terrorism offences							
	Yes	Yes	No	Yes	No	Yes	No
Schedule 6: Child sexual exploitation and abuse offences							

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Part 1	Yes	Yes	No	No	No	Yes	No
Part 2	No	No	No	Yes	No	No	N/A
Schedule 7: Priority offences							
	Yes	Yes	No	Yes	No	Yes	No
Schedule 8: Transparency reports by providers of Category 1 services, Category 2A services and Category 2B services							
Parts 1-3	Yes	Yes	No	Yes	No	Yes	No
Schedule 9: Certain internet services not subject to duties relating to regulated provider pornographic content							
	Yes	Yes	No	Yes	No	Yes	No
Schedule 10: Categories of regulated user-to-user services and regulated search services: regulations							
	Yes	Yes	No	Yes	No	Yes	No
Schedule 11: OFCOM's powers of entry, inspection and audit							
	Yes	Yes	No	Yes	No	Yes	No

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Schedule 12: Penalties imposed by OFCOM under Chapter 6 of Part 7							
	Yes	Yes	No	Yes	No	Yes	No
Schedule 13: Amendments consequential on offences in Part 10 of this Act							
Parts 1-2	Yes	Yes	No	Yes	No	Yes	No
Schedule 14: Liability of parent entities etc							
	Yes	Yes	No	Yes	No	Yes	No

Subject matter and legislative competence of devolved legislatures

747. Most of the provisions of the Bill extend to the whole of the United Kingdom and are reserved under the internet services reservation. The offences under Part 10 (communications offences) extend to England and Wales only. Clauses 184(3) - (7) set out other exceptions as to the extent of the Bill.

748. There is a convention that Westminster will not normally legislate with regard to

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matters that are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned. There are several provisions that extend to the whole of the United Kingdom and require legislative consent from the Devolved Administrations. These provisions are:

- a. The list of educational institutions exempted from the Bill: Clause 170(3) gives the devolved administrations the power to amend the list of exempt educational institutions in their relevant nations (Schedule 1). As this involves the conferral of a power on Devolved Administration Ministers, this is subject to the granting of legislative consent motions in each nation.
- b. The list of child sexual exploitation and abuse (CSEA) offences: Clause 171(2) under the Bill, the Scottish Government will have the power to amend the list of CSEA offences in Scotland named in the legislation (Schedule 5). As this involves

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the conferral of a power on Devolved Administration Ministers, this is subject to the granting of a legislative consent motion in Scotland.

ONLINE SAFETY BILL

EXPLANATORY NOTES

These Explanatory Notes relate to the Online Safety Bill as introduced on 17 March 2022 (Bill 285).

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