

ONLINE SAFETY BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

What these notes do

- 1 These Explanatory Notes relate to the Lords Amendments to the Online Safety Bill as brought from the House of Lords on 7 September 2023.
- 2 These Explanatory Notes have been prepared by the Department for Science, Innovation and Technology in order to assist the reader of the Bill and the Lords amendments, and to help inform debate on the Lords amendments. They do not form part of the Bill and have not been endorsed by Parliament.
- 3 These Explanatory Notes, like the Lords amendments themselves, refer to HL Bill 87, the Bill as first printed for the Lords.
- 4 These Explanatory Notes need to be read in conjunction with the Lords amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Lords amendments.
- 5 Lords Amendments 1 to 16, 18, 19, 21, 23 to 80, 82 to 147, 149 to 181, 183 to 320, 322 to 331, 333 to 390, and 392 to 424 were tabled in the name of the Minister.
- 6 Lords Amendments 17, 20, 22, 81, and 182 were tabled by Baroness Kidron, and were opposed by the Government.
- 7 Lords Amendment 148 was tabled by Baroness Merron, and was opposed by the Government.
- 8 Lords Amendments 321 and 332 were tabled by Baroness Fraser, and were supported by the Government.
- 9 Lords Amendment 391 was tabled by Baroness Morgan, and was opposed by the Government.
- 10 In the following Commentary, an asterisk(*) appears in the heading of any paragraph that deals with a non-Government amendment.

Table of Contents

What these notes do	1
Commentary on Lords amendments	15
Lords Amendments to Part 1: Introduction	15
Lords Amendments before Clause 1	15
Lords Amendment 1	15
Lords Amendments to Part 2: Key Definitions	16
Lords Amendments to Part 3: Providers of Regulated User-to-User Services and Regulated Search Services: Duties of Care	16
Lords Amendments to Clause 5: Overview of Part 3	16
Lords Amendment 2	16
Lords Amendments to Clause 6: Providers of User-to-User services: duties of care	16
Lords Amendments 3, 4, 5, 6, 9, 10, 11	16
Lords Amendment 7	17
Lords Amendment 8	17
Lords Amendments to Clause 8: Illegal content risk assessment duties	17
Lords Amendment 12	17
Lords Amendments to Clause 9: Safety duties about illegal content	17
Lords Amendment 13, 14, 15	17
Lords Amendments to Clause 10: Children’s risk assessment duties	17
Lords Amendment 16	17
Lords Amendment 17*	17
Lords Amendment 18	17
Lords Amendments to Clause 11: Safety duties protecting children	18
Lords Amendment 19	18
Lords Amendment 20*	18
Lords Amendment 21	18
Lords Amendment 22*	18
Lords Amendment 23	18
Lords Amendment 24	19
Lords Amendment 25	19

These Explanatory Notes relate to the Lords Amendments to the Online Safety Bill as brought from the House of Lords on 7 September 2023 (Bill 362).

Lords Amendments 26, 27, 28, 29, 30, 32, 33, and 34	19
Lords Amendment 31	19
Lords Amendments after Clause 11	19
Lords Amendment 35	19
Lords Amendments to Clause 12: User empowerment duties	19
Lords Amendments 36	19
Lords Amendments 37	19
Lords Amendments 38	20
Lords Amendments 39	20
Lords Amendment 40	20
Lords Amendments 41, 43, 45, 47, 48 and 50	20
Lords Amendments 42	20
Lords Amendments 44	20
Lords Amendment 46	21
Lords Amendments 49	21
Lords Amendments to Clause 13: Duties to protect content of democratic importance	21
Lords Amendment 51	21
Lords Amendments to Clause 14: Duties to protect news publisher content	21
Lords Amendments 52, 54 and 55	21
Lords Amendment 53	21
Lords Amendments to Clause 15: Duties to protect journalistic content	22
Lords Amendment 56	22
Lords Amendments to Clause 16: Duty about content reporting	22
Lords Amendment 57	22
Lords Amendments to Clause 17: Duties about complaints procedures	22
Lords Amendment 58	22
Lords Amendment 59	22
Lords Amendments to Clause 19: Record-keeping and review duties	22
Lords Amendment 60 to 63, and 65	22
Lords Amendments 64	23
Lords Amendment 66	23

These Explanatory Notes relate to the Lords Amendments to the Online Safety Bill as brought from the House of Lords on 7 September 2023 (Bill 362).

Lords Amendments to Clause 20: Providers of search services: duties of care	23
Lords Amendment 67 to 74	23
Lords Amendments to Clause 22: Illegal content risk assessment duties	23
Lords Amendment 75	23
Lords Amendments to Clause 23: Safety duties about illegal content	24
Lords Amendment 76 to 78	24
Lords Amendments to Clause 24: Children’s risk assessment duties	24
Lords Amendment 79	24
Lords Amendments to Clause 25: Safety duties protecting children	24
Lords Amendments 83 to 87 and 89 to 91	24
Lords Amendments 80 and 82	24
Lords Amendment 81*	24
Lords Amendment 88	24
Lords Amendments to Clause 27: Duty about complaints procedures	25
Lords Amendment 92	25
Lords Amendments to Clause 29: Record-keeping and Review Duties	25
Lords Amendment 93 to 97	25
Lords Amendment 98	25
Lords Amendments to Clause 30: Children's access assessments and Clause 31: Duties about children’s access assessments	25
Lords Amendment 99 and 100	25
Lords Amendments to Clause 36: Codes of practice about duties	25
Lords Amendment 101	25
Lords Amendments to Clause 38: Procedure for issuing codes of practice	26
Lords Amendment 102	26
Lords Amendments 103 to 105	26
Lords Amendments to Clause 39: Secretary of State's powers of direction	26
Lords Amendment 106 to 109, and 113	26
Lords Amendments 110 to 112 and 114	26
Lords Amendments to Clause 40: Procedure for issuing codes of practice following direction under section 39	27
Lords Amendments 115 and 116	27

These Explanatory Notes relate to the Lords Amendments to the Online Safety Bill as brought from the House of Lords on 7 September 2023 (Bill 362).

Lords Amendments to Clause 47: OFCOM's guidance about certain duties in Part 3	27
Lords Amendment 118	27
Lords Amendments 117 and 119	27
Lords Amendments to Clause 48: content that is harmful to children and user empowerment	27
Lords Amendments 120	27
Lords Amendments after Clause 48	27
Lords Amendment 121	27
Lords Amendments to Clause 49: "Regulated user-generated content", "user-generated content", and "news publisher content"	28
Lords Amendments 122 to 124	28
Lords Amendment 125	28
Lords Amendment 126	28
Lords Amendment 127	28
Lords Amendments to Clause 50: "Recognised news publisher"	28
Lords Amendment 128 and 129	28
Lords Amendments to Clause 51: "Search content", "search results" etc	29
Lords Amendment 130	29
Lords Amendments to Clause 52: Restricting users' access to content	29
Lords Amendments 131 and 132	29
Lords Amendments to Clause 54: "Content that is harmful to children" etc	29
Lords Amendment 133 to 140	29
Lords Amendments after Clause 54	30
Lords Amendment 141	30
Lords Amendment 142	30
Lords Amendments to Clause 55: Regulations under section 54	30
Lords Amendment 143	30
Lords Amendments to Clause 56: Regulations under section 54: OFCOM's review and report	30
Lords Amendment 144 to 147	30
Lords Amendments after Clause 56	31

Lords Amendment 148*	31
Lords Amendments to Part 4: Other Duties of Providers of Regulated User-to-User Services and Regulated Search Services	32
Lords Amendments to Clause 60: Regulations about reports to the NCA	32
Lords Amendment 149 and 150	32
Lords Amendments to Clause 65: Further duties about terms of service	32
Lords Amendment 151	32
Lords Amendments to Clause 67: Interpretation of this Chapter	32
Lords Amendment 152	32
Lords Amendments after Clause 67	32
Lords Amendment 153	32
Lords Amendment 154	32
Lords Amendments to Part 5: Duties of Providers of Regulated Services: Certain Pornographic Content	33
Lords Amendments to Clause 70: "Pornographic content", "provider pornographic content", "regulated provider pornographic content"	33
Lords Amendment 155	33
Lords Amendment 156 and 159	33
Lords Amendments 157 and 158	33
Lords Amendments to Clause 72: Duties about regulated provider pornographic content	33
Lords Amendment 160	33
Lords Amendments 161 to 163	33
Lords Amendment 164	34
Lords Amendments to Clause 73: OFCOM's guidance about duties set out in section 72	34
Lords Amendment 165	34
Lords Amendment 166	34
Lords Amendments to Part 6: Duties of Providers of Regulated Services: Fees	35
Lords Amendments to Clause 74: Duty to notify OFCOM	35
Lords Amendment 167	35
Lords Amendment 168	35
Lords Amendment 169	35

These Explanatory Notes relate to the Lords Amendments to the Online Safety Bill as brought from the House of Lords on 7 September 2023 (Bill 362).

Lords Amendment 170	35
Lords Amendments to Clause 76: OFCOM's statement about "qualifying worldwide revenue" etc	35
Lords Amendment 171	35
Lords Amendments to Clause 77: Threshold figure	35
Lords Amendment 172	35
Lords Amendment 173, 174, 175, and Amendment 177	36
Lords Amendments to Clause 79: OFCOM's fees statements	36
Lords Amendment 178 and 179	36
Lords Amendments to Clause 80: Recovery of OFCOM's initial costs	36
Lords Amendment 181	36
Lords Amendments to Part 7: OFCOM's Powers and Duties in Relation to Regulated Services	37
Lords Amendments to Clause 82: General duties of OFCOM under section 3 of the Communications Act	37
Lords Amendment 182*	37
Lords Amendment 183 and 184	37
Lords Amendments to Clause 85: Meaning of threshold conditions etc	37
Lords Amendment 185	37
Lords Amendments to Clause 88: List of emerging Category 1 services	37
Lords Amendment 186	37
Lords Amendments to Clause 91: Power to require information	37
Lords Amendment 187	37
Lords Amendment 188	37
Lords Amendments 189 and 194	37
Lords Amendment 190	38
Lords Amendment 191	38
Lords Amendment 192 and 193	38
Lords Amendments after Clause 91	38
Lords Amendment 195	38
Lords Amendments to Clause 92: Information notices	38

These Explanatory Notes relate to the Lords Amendments to the Online Safety Bill as brought from the House of Lords on 7 September 2023 (Bill 362).

Lords Amendment 196	38
Lords Amendment 198	39
Lords Amendments to Clause 94: Reports by skilled persons	39
Lords Amendments 199 to 201	39
Lords Amendment 202	39
Lords Amendment 203	39
Lords Amendments after Clause 97	39
Lords Amendment 204	39
Lords Amendments to Clause 104: Disclosure of information	39
Lords Amendment 205	39
Lords Amendments to Clause 106: Provision of information to the Secretary of State	39
Lords Amendment 206 and 207	39
Lords Amendments to Clause 109:	40
Lords Amendment 208 and 209	40
Lords Amendment 210	40
Lords Amendments to Clause 110: Notices to deal with terrorism content or CSEA content	40
Lords Amendment 211	40
Lords Amendment 212	40
Lords Amendments after Clause 110	40
Lords Amendment 213	40
Lords Amendments to Clause 111: Warning notices	40
Lords Amendment 214 and 215	40
Lords Amendments to Clause 112: Matters relevant to a decision to give notice under section 110(1)	40
Lords Amendment 216	40
Lords Amendment 217 to 219	40
Lords Amendments to Clause 114: Review and further notice under section 110(1)	41
Lords Amendment 220	41

Lords Amendments to Clause 119: Requirements enforceable by OFCOM against providers of regulated services	41
Lords Amendment 221	41
Lords Amendment 222	41
Lords Amendments to Clause 121: Confirmation decisions: requirements to take steps	41
Lords Amendment 224	41
Lords Amendments 225 and 226	41
Lords Amendment 223	41
Lords Amendments to Clause 124: Confirmation decisions: proactive technology	42
Lords Amendment 227 and 228	42
Lords Amendments after Clause 125	42
Lords Amendment 229	42
Lords Amendments to Clause 139: Advisory committee on disinformation and misinformation	42
Lords Amendment 230	42
Lords Amendments after Clause 143	42
Lords Amendment 231	42
Lords Amendments after Clause 145	42
Lords Amendment 232	42
Lords Amendments after Clause 145	43
Lords Amendment 233	43
Lords Amendments to Clause 146: OFCOM's Reports about researchers' access to data	43
Lords Amendments 234 to 236	43
Lords Amendments after Clause 146	43
Lords Amendment 237	43
Lords Amendments to Clause 147: OFCOM's Reports	43
Lords Amendments 238 to 240	43
Lords Amendments after Clause 147	43
Lords Amendment 241	43
Lords Amendments after Clause 147	44

These Explanatory Notes relate to the Lords Amendments to the Online Safety Bill as brought from the House of Lords on 7 September 2023 (Bill 362).

Lords Amendment 242	44
Lords Amendments to Part 9: Secretary of State's Functions in Relation to Regulated Services	45
Lords Amendments to Clause 156: Directions in special circumstances	45
Lords Amendment 243	45
Lords Amendments to Clause 159: Review	45
Lords Amendment 244	45
Lords Amendments to Part 10: Communications Offences	46
Lords Amendments to Clause 160: False communications offence	46
Lords Amendment 245	46
Lords Amendments to Clause 162: Threatening communications offence	46
Lords Amendment 248 and 249	46
Lords Amendment 246 and 247	46
Lords Amendments to Clause 164: Offences of sending or showing flashing images electronically	46
Lords Amendment 250	46
Lords Amendments after Clause 164	46
Lords Amendment 251	46
Lords Amendments to Clause 165: Extra-territorial application and jurisdiction	48
Lords Amendment 252 to 258	48
Lords Amendments to Clause 166: Liability of corporate officers	48
Lords Amendments 259 to 261	48
Lords Amendments to Clause 167: Sending etc photograph or film of genitals	48
Lords Amendment 262	48
Lords Amendments after Clause 167	49
Lords Amendment 263	49
Section 66B: Sharing or threatening to share intimate photograph or film	49
Section 66C: Sharing or threatening to share intimate photograph or film: exemptions	50
66D: Sharing or threatening to share intimate photograph or film: interpretation	51
Lords Amendments to Clause 168: Repeals in connection with offences under sections 162 and 164	52

These Explanatory Notes relate to the Lords Amendments to the Online Safety Bill as brought from the House of Lords on 7 September 2023 (Bill 362).

Lords Amendment 264 and 265	52
Lords Amendments after Clause 168	53
Lords Amendment 266	53
Lords Amendments to Clause 169: Consequential amendments	53
Lords Amendment 267 to 269	53
Lords Amendments to Part 11: Supplementary and General	54
Lords Amendments to Clause 170: Providers' judgements about illegal content judgements	54
Lords Amendment 270	54
Lords Amendments to Clause 171: OFCOM's guidance about illegal content judgements	54
Lords Amendment 271	54
Lords Amendments after Clause 171	54
Lords Amendment 272	54
Lords Amendments to Clause 173: Individuals providing regulated services: liability	54
Lords Amendment 273	54
Lords Amendments to Clause 176: Information offences: supplementary	54
Lords Amendment 274 and 275	54
Lords Amendments after Clause 176	55
Lords Amendment 276	55
Lords Amendments to Clause 180: Extra-territorial application	55
Lords Amendment 277	55
Lords Amendment 278	55
Lords Amendments to Clause 181: Offences: extra-territorial application and jurisdiction	55
Lords Amendment 279	55
Lords Amendment 280	55
Lords Amendment 281	55
Lords Amendments to Clause 188: Repeals: Digital Economy Act 2017	55
Lords Amendment 282	55
Lords Amendments after Clause 190	56
Lords Amendment 283	56

These Explanatory Notes relate to the Lords Amendments to the Online Safety Bill as brought from the House of Lords on 7 September 2023 (Bill 362).

Lords Amendment 284	56
Lords Amendments after Clause 190	56
Lords Amendment 285	56
Lords Amendments after Clause 191	56
Lords Amendment 286	56
Lords Amendments to Clause 196: Regulations: general	57
Lords Amendment 287 and 288	57
Lords Amendments to Clause 197: Parliamentary procedure for regulations	57
Lords Amendment 289	57
Lords Amendment 290	57
Lords Amendment 291	57
Lords Amendment 292	57
Lords Amendment 293 and 294	57
Lords Amendment 295	58
Lords Amendment 296	58
Lords Amendment 297	58
Lords Amendment 298	58
Lords Amendments to Part 12: Interpretation and Final Provisions	59
Lords Amendments to Clause 198: "Provider" of internet service	59
Lords Amendment 299	59
Lords Amendments after Clause 201	59
Lords Amendment 300	59
Lords Amendments to Clause 202: "Proactive technology"	59
Lords Amendments 301, 302, 303, 304, 308, 309 and 310	59
Lords Amendments 305, 306 and 307	60
Lords Amendments to Clause 203: Content communicated "publicly" or "privately"	60
Lords Amendment 311	60
Lords Amendments to Clause 205: "Harm" etc	60
Lords Amendment 312, 313 and 315	60
Lords Amendment 314	60

These Explanatory Notes relate to the Lords Amendments to the Online Safety Bill as brought from the House of Lords on 7 September 2023 (Bill 362).

Lords Amendments to Clause 206: "Online safety functions" and "online safety matters"	61
Lords Amendment 316	61
Lords Amendment 317 and 318	61
Lords Amendments to Clause 207: Interpretation: general	61
Lords Amendment 319	61
Lords Amendments 320 and 327	61
Lords Amendment 321*	61
Lords Amendment 322	61
Lords Amendment 323 and 328	61
Lords Amendment 324	62
Lords Amendment 325 and 326	62
Lords Amendments to Clause 208: Index of defined terms	62
Lords Amendment 329 and 330	62
Lords Amendment 331	62
Lords Amendment 332*	62
Lords Amendments 333 and 334	62
Lords Amendments 335 and 336	62
Lords Amendments to Clause 210: Extent	62
Lords Amendment 340	62
Lords Amendments 337] to 341	62
Lords Amendment 342 and 343	63
Lords Amendment 344 to 346	63
Lords Amendments to Clause 211: Commencement and transitional provisions	63
Lords Amendment 347 to 349	63
Lords Amendments to Schedule 1: Exempt User-to-User and Search Services	64
Lords Amendment 350	64
Lords Amendments to Schedule 3: Timing of Providers' Assessment	65
Lords Amendment 351	65
Lords Amendments 352 to 370	65

These Explanatory Notes relate to the Lords Amendments to the Online Safety Bill as brought from the House of Lords on 7 September 2023 (Bill 362).

Lords Amendments to Schedule 4: Codes of Practice under Section 36: Principles, Objectives, Content	66
Lords Amendment 371	66
Lords Amendment 372	66
Lords Amendment 373	66
Lords Amendments to Schedule 7: Priority Offences	67
Lords Amendment 374	67
Lords Amendment 375	67
Lords Amendment 376	67
Lords Amendment 377	67
Lords Amendments to Schedule 8: Transparency Report by Providers of Category 1 Services, Category 2A Services and Category 2B Services	68
Lords Amendments 378 to 389	68
Lords Amendments to Schedule 10: Recovery of OFCOM's Initial Costs	69
Lords Amendment 390	69
Lords Amendments to Schedule 11: Categories of Regulated User-to-User Services and Regulated Search Services: Regulations	70
Lords Amendment 391*	70
Lords Amendments to Schedule 12: OFCOM's Powers of Entry, Inspection and Audit	71
Lords Amendment 392 to 398	71
Lords Amendments to Schedule 13: Penalties Imposed by OFCOM under Chapter 6 of Part 7	72
Lords Amendment 399 and 400	72
Lords Amendments to Schedule 14: Amendments Consequential on Offences in Part 10 of this Act	73
Lords Amendments 401 to 419	73
Lords Amendments to Schedule 17: Video Sharing Platform Services: Transitional Provision etc	75
Lords Amendment 420 and 421	75
Lords Amendment 422	75
Lords Amendment 423 and 424	75
Financial Effects of Lords Amendments	76

These Explanatory Notes relate to the Lords Amendments to the Online Safety Bill as brought from the House of Lords on 7 September 2023 (Bill 362).

These Explanatory Notes relate to the Lords Amendments to the Online Safety Bill as brought from the House of Lords on 7 September 2023 (Bill 362).

Commentary on Lords amendments

Lords Amendments to Part 1: Introduction

Lords Amendments before Clause 1

Lords Amendment 1

- 11 This amendment would add an introductory clause at the start of the Bill, providing an overarching statement about the general purpose of the new regulatory framework and the main aims and objectives of the duties imposed on in-scope providers. It also makes clear that the Bill gives OFCOM new powers and functions as the regulator overseeing the new regulatory framework.
- 12 This clause would not itself impose any new duties on providers, OFCOM, or others.

Lords Amendments to Part 2: Key Definitions

Lords Amendments to Part 3: Providers of Regulated User-to-User Services and Regulated Search Services: Duties of Care

Lords Amendments to Clause 5: Overview of Part 3

Lords Amendment 2

- 13 This amendment is consequential to Lords Amendments 141 and 142 which set out the categories of ‘primary priority’ and ‘priority’ content that is harmful to children. This will ensure the new clauses are correctly signposted in the overview of Part 3.

Lords Amendments to Clause 6: Providers of User-to-User services: duties of care

Lords Amendments 3, 4, 5, 6, 9, 10, 11

- 14 These amendments are the first in a series of linked amendments to various parts of the Bill. They would require providers of Category 1 services to summarise the findings of their latest illegal content risk assessments, and children’s risk assessments, in their terms of service, in accordance with Amendments 15 and 25. Providers of Category 2A search services would also be required to summarise the findings of their illegal content and activity, and child safety risk assessments, in a publicly available statement, in accordance with amendments 78 and 82. Providers of Category 1 services and 2A search services would be required to send these risk assessments in full to OFCOM, as per Amendments 65 and 97.
- 15 Amendment 3 would be consequential to Lords Amendment 15, which would place a duty on Category 1 services to summarise in their terms of service the findings of their latest risk assessment regarding illegal content and activity.
- 16 Amendment 4 would be consequential to Lords amendment 64, which would place a duty on Category 1 services to supply records of risk assessments to OFCOM.
- 17 Amendment 5 would be consequential to Lords Amendment 25, which would place a duty on providers of Category 1 services to summarise the findings of their latest children’s risk assessment in their terms of service.
- 18 Amendment 6 would ensure that the duty to summarise illegal and child safety risk assessments, set out in Amendments 15 and 25, only applies to providers of Category 1 services.
- 19 Amendments 9, 10 and 11 are technical and consequential amendments which would ensure that the duties to summarise risk assessments in a publicly available statement and supply records of risk assessments to OFCOM are also imposed on providers of combined services

that are Category 2A search services.

Lords Amendment 7

- 20 This amendment would ensure that the duties in relation to assessments related to adult user empowerment content which would be created by Lords Amendment 35 are imposed on providers of Category 1 services.

Lords Amendment 8

- 21 This amendment would ensure that the duties in relation to keeping records of assessments related to adult user empowerment content which will be made through Lords Amendment 64 are imposed on providers of Category 1 services.

Lords Amendments to Clause 8: Illegal content risk assessment duties

Lords Amendment 12

- 22 Amendment 12 would insert a signpost to the duty on Category 1 services to supply records of risk assessments to OFCOM which would be created by Lords Amendment 65.

Lords Amendments to Clause 9: Safety duties about illegal content

Lords Amendment 13, 14, 15

- 23 Amendment 15 would place a duty on providers of Category 1 services to summarise the findings of their latest illegal content risk assessment in their terms of service. Lords Amendments 13 and 14 are technical and clarificatory amendments that would be needed as a consequence of the imposition of this new duty.

Lords Amendments to Clause 10: Children's risk assessment duties

Lords Amendment 16

- 24 This amendment would insert a reference to the new assessment duties in relation to adult user empowerment content which would be imposed on providers of Category 1 services by Lords Amendment 35.

Lords Amendment 17*

- 25 This amendment would add to the existing requirements in the children's risk assessment duties. Prior to this amendment, the Bill required providers of user-to-user services to assess the risk of children encountering content that is harmful to children on their service - including harmful behaviour and activity - and the impact that service design, features and functionalities have on the level of risk of harm to children.
- 26 This amendment would require service providers to consider whether a feature or functionality in itself is harmful to children without any content, and then assess how likely children were to encounter such a feature or functionality on the service.

Lords Amendment 18

- 27 This amendment would signpost the new duty created by Lords Amendment 65, which

would require Category 1 services to supply records of their illegal and child safety risk assessments to OFCOM.

Lords Amendments to Clause 11: Safety duties protecting children

Lords Amendment 19

- 28 This amendment makes clear that the providers' duty to summarise children's risk assessments in their terms of service, as per Lords Amendment 25, is imposed on Category 1 services only.

Lords Amendment 20*

- 29 This amendment would add to the existing requirements in the child safety duties. Prior to the amendment, the Bill required user-to-user service providers to mitigate the impact of harm to children from content that is harmful to children, and mitigate and manage other risks of harm arising from the design and operation of a service that were identified in the service's most recent children's risk assessment. The new amendment follows on from Lords Amendment 17 and would require service providers to also mitigate the impact to children in different age groups from harms presented by the features, functionalities and behaviours on the service separately from any risks identified in the risk assessment.

Lords Amendment 21

- 30 This amendment is a minor consequential amendment to Lords Amendment 23. This amendment would remove the existing example of using age verification to prevent children accessing 'primary priority' content, in the light of the new duties in Lords Amendment 23, which would require providers to use age verification or age estimation in certain circumstances.

Lords Amendment 22*

- 31 This amendment would add to the existing duties in clause 11(3). These duties require services to prevent children of all ages from encountering 'primary priority' content that is harmful to children, and protect children in age groups judged to be at risk from encountering 'priority' content that is harmful to children. This amendment would require service providers to protect children in age groups judged to be at risk from encountering features, functionalities or behaviours on the service, in the absence of content.

Lords Amendment 23

- 32 This amendment would require user-to-user service providers to use age verification or age estimation (or both) to prevent children from encountering identified 'primary priority' content that is harmful to children on their service. This duty would apply unless the terms of service indicate that that kind of content is prohibited. Where the requirement does apply, the age verification or age estimation used must be highly effective at correctly determining whether or not a particular user is a child. Age verification and age estimation would be defined in the clause inserted by Lords Amendment 270 as follows: "Age verification" means any measure designed to verify the exact age of users of a regulated service; "Age estimation" means any measure designed to estimate the age or age-range of users of a regulated service.

These Explanatory Notes relate to the Lords Amendments to the Online Safety Bill as brought from the House of Lords on 7 September 2023 (Bill 362).

Lords Amendment 24

- 33 This amendment would change the reference to age assurance in clause 11(4) to age verification or age estimation to be consistent with Lords Amendment 23. The amendment would also clarify that age verification or age estimation may be used to comply with duties under clause 11(2) or (3), in circumstances where no duty to use age verification or age estimation applies.

Lords Amendment 25

- 34 This amendment would require Category 1 services to summarise the findings of their latest children’s risk assessment in their terms of service. The limitation to Category 1 services would be achieved by Lords Amendment 6.

Lords Amendments 26, 27, 28, 29, 30, 32, 33, and 34

- 35 Lords Amendment 34 would split clause 11 (Safety duties protecting children) into two new clauses. The first clause would consist of safety duties to protect children online, and the second part would consist of the interpretation of those safety duties. Lords Amendments 26, 27, 29, 30, 32 and 33 are consequential on Lords Amendment 34.

Lords Amendment 31

- 36 This amendment would mean that a provider can only conclude that children cannot access a service, or part of a service, if age verification or age estimation is used on the service with the result that children are not normally able to access it. If children are not normally able to access a service then the safety duties protecting children set out at clause 11 do not apply.

Lords Amendments after Clause 11

Lords Amendment 35

- 37 This amendment would require providers of Category 1 services to carry out and keep up to date assessments in relation to content covered by their user empowerment duties under clause 12.

Lords Amendments to Clause 12: User empowerment duties

Lords Amendments 36

- 38 This amendment is a technical drafting change which would insert the term “control features” in subsection (4) of clause 12, defining it as the features that providers must offer in compliance with 12(2).

Lords Amendments 37

- 39 This amendment would impose a new duty on providers of Category 1 services to proactively ask all registered adult users whether they wish to opt in or opt out of any features offered in compliance with the duty in subsection (2) of clause 12 at the first possible opportunity. Providers would be required to ask users until a choice is made, at which point a user would not be asked again.

40 Under this amendment, should platforms offer users a range of features to comply with their duty in subsection (2), users would get a choice about each feature offered to them. For example, if a provider offered users one feature which reduced the likelihood that they see certain categories of content and another which alerted them to the nature of it, they would get separate choices about whether they want these features to be applied.

Lords Amendments 38

41 This amendment is a technical drafting change to subsection (5), which would substitute the defined phrase “control features” for the definition currently featured there.

Lords Amendments 39

42 Lords Amendment 39 relates to Amendment 35 which would create a new duty on providers to carry out assessments in relation to content covered by their user empowerment duties on their service. This amendment would require Category 1 providers to summarise the findings of their latest content assessment in their terms of service.

Lords Amendment 40

43 Lords Amendment 40 would add ‘effectively’ to clause 12(7), to bring it in line with subsection (3), which relates to the user-empowerment content duties. The amendment would require systems and processes put in place by Category 1 services to fulfil the non-verified users duties in subsections (7)(a) and 7(b) to be effective in fulfilling these duties. This would mean that if a user decided to use tools relating to non-verified users, these tools must be effective in preventing non-verified users from interacting with content that a user generates. The tools would also need to be effective in reducing the likelihood of a user encountering content that non-verified users have generated.

Lords Amendments 41, 43, 45, 47, 48 and 50

44 Lords Amendment 50 would split the user empowerment clause into two clauses - the duties and interpretation - in order to make it more readable once amended.

45 Lords Amendments 41, 43, 45, and 47 to 48 are consequential on Lords Amendment 73.

Lords Amendments 42

46 This amendment relates to Lords Amendment 35 which would create a new duty on Category 1 providers to carry out assessments in relation to content covered by the user empowerment duties on their service. Lords Amendment 42 would make it clear that the findings of the most recent user empowerment content assessment are a relevant factor for the purposes of determining what it is proportionate for a provider to do to comply with the duty to offer their users user empowerment tools.

Lords Amendments 44

47 This amendment would make it clear that the new duty on providers to offer registered users a choice about whether to use the user empowerment content features applies to existing as well as new users.

Lords Amendment 46

- 48 Lords Amendment 46 would specify that a “non-verified user”, as defined in clause 12(13), refers to individuals, and includes users outside of the United Kingdom. This would ensure that, if a user decided that they no longer wished to interact with users who have not verified their identities, they would be able to filter out non-verified users regardless of whether those users are based in or outside the UK.

Lords Amendments 49

- 49 This amendment would insert a new subsection into clause 12 to make it clear that the duties under clause 18 about privacy and freedom of expression are relevant to the user empowerment duties. This is a signposting amendment which would have no additional impact on providers, to whom the duties under clause 18 already apply.

Lords Amendments to Clause 13: Duties to protect content of democratic importance

Lords Amendment 51

- 50 Clause 13 of the Bill imposes duties on Category 1 providers to implement “proportionate systems and processes” to protect content of democratic importance. This amendment would clarify that the size and capacity of the provider is relevant in determining what is “proportionate” for the purposes of this duty.

Lords Amendments to Clause 14: Duties to protect news publisher content

Lords Amendments 52, 54 and 55

- 51 Lords Amendment 55 would provide a revised definition of what “taking action” means in relation to the duties to protect news publisher content. This would specify the circumstances in which a provider of a Category 1 service is required to offer a news publisher an appeal before “taking action” in relation to their content. It would make clear that the duty to offer the news publisher an appeal arises when a provider wishes to take down news publisher content, add warning labels to it (other than warning labels normally encountered only by child users), or take any other action on the grounds that it is content of a kind which the service’s terms of service indicate is not tolerated on the service, or tolerated but liable to be treated in a way which makes users less likely to encounter it. The duty would not therefore apply in relation to other actions such as routine content curation.
- 52 Amendments 52 and 54 are technical amendments consequential to Amendment 55.

Lords Amendment 53

- 53 Clause 171 sets out OFCOM’s duty to produce guidance about illegal content judgements (‘illegal content guidance’). Clause 14 contains a provision which states that the illegal content guidance should cover judgements about whether news publisher content amounts to a relevant offence. This amendment (as well as Amendment 271) would move that provision to clause 171, with the result that clause 171 would then set out all of the matters that OFCOM needs to cover in their illegal content guidance.

Lords Amendments to Clause 15: Duties to protect journalistic content

Lords Amendment 56

- 54 Clause 15 of the Bill imposes duties on Category 1 providers to implement “proportionate systems and processes” to protect journalistic content. This amendment would clarify that the size and capacity of the provider is relevant in determining what is “proportionate” for the purposes of this duty.

Lords Amendments to Clause 16: Duty about content reporting

Lords Amendment 57

- 55 This amendment would mean that a provider can only conclude that children cannot access a service, or part of a service, if age verification or age estimation is used on the service, with the result that children are not normally able to access it. The duty to report content that is harmful to children only applies to parts of a service that children are able to access (see clause 16(4)).

Lords Amendments to Clause 17: Duties about complaints procedures

Lords Amendment 58

- 56 This amendment would insert a reference to clause 11(2), as the duty in that provision can also be complied with by using age verification or age estimation. This amendment would therefore ensure that complaints can be made by a user who is unable to access content because measures used to comply with a duty set out in clause 11(2) have resulted in an incorrect assessment of the user’s age. Such complaints can already be made in relation to the duty in clause 11(3).

Lords Amendment 59

- 57 This amendment would mean that for the purposes of clause 17(5)(a) a provider can only conclude that children cannot access a service, or part of a service, if age verification or age estimation is used on the service, with the result that children are not normally able to access it. If a child cannot access a service or part of a service there is no duty on a provider to provide a complaints procedure in relation to content that is harmful to children.

Lords Amendments to Clause 19: Record-keeping and review duties

Lords Amendment 60 to 63, and 65

- 58 Lords Amendments 60 and 61 would ensure that the duty to supply records of risk assessments to OFCOM, as per Lords Amendment 65, would be imposed only on providers of Category 1 services. This mirrors Lords Amendment 97 which would require providers of Category 2A services to send records of risk assessments to OFCOM.
- 59 Lords Amendments 62 and 63 would clarify that providers of Category 1 services must keep full records of their illegal content and children’s risk assessments.

- 60 Lords Amendment 65 would require providers of Category 1 services to supply copies of their records of risk assessments to OFCOM.

Lords Amendments 64

- 61 This amendment relates to Lords Amendment 35 which would create a new duty on Category 1 providers to carry out assessments in relation to content covered by their user empowerment duties on their service. Amendment 64 would require these providers to keep full records of these assessments.

Lords Amendment 66

- 62 Providers of regulated user-to-user services have a duty to regularly review their compliance with relevant duties. This amendment would extend that duty to include a regular review of compliance with the new duties inserted by Lords Amendment 153.

Lords Amendments to Clause 20: Providers of search services: duties of care

Lords Amendment 67 to 74

- 63 Lords Amendments 67, 68 and 73 are consequential on Lords Amendment 78 and would ensure that the duty to summarise illegal content risk assessments in a publicly available statement which would be created by that amendment would only be imposed on providers of Category 2A services. This mirrors Lords Amendment 15 which would require Category 1 services to summarise illegal content risk assessments in their terms of service.
- 64 Lords Amendment 69 is consequential on Lords Amendment 97 and would ensure that the duty to supply records of risk assessments to OFCOM which would be created by that amendment would only be imposed on providers of Category 2A services.
- 65 Lords Amendments 70 and 71 are technical amendments consequential to the other changes which would be made by Lords Amendments to clause 20.
- 66 Lords Amendment 72 is consequential on Lords Amendments 80 and 82 to clause 25, which would create a new duty to summarise children’s risk assessments in a publicly available statement that would only be imposed on providers of Category 2A services.
- 67 Amendment 74 would insert a signpost to clause 86, which sets out the meaning of “Category 2A service”.

Lords Amendments to Clause 22: Illegal content risk assessment duties

Lords Amendment 75

- 68 This amendment would insert a signpost to the new duty on providers of Category 2A services to supply records of risk assessments to OFCOM, which would be created by Lords Amendment 97.

Lords Amendments to Clause 23: Safety duties about illegal content

Lords Amendment 76 to 78

- 69 Lords Amendment 78 would require providers of Category 2A services to summarise the findings of their latest illegal content risk assessment in a publicly available statement. The limitation of this duty to Category 2A services is achieved by Amendment 73.
- 70 Lords Amendments 76 and 77 are technical and clarificatory amendments consequential on Lords Amendment 78.

Lords Amendments to Clause 24: Children’s risk assessment duties

Lords Amendment 79

- 71 This amendment would insert a signpost to the duty about Category 2A services supplying records of risk assessments to OFCOM, as would be introduced by Lords Amendment 97.

Lords Amendments to Clause 25: Safety duties protecting children

Lords Amendments 83 to 87 and 89 to 91

- 72 Lords Amendment 91 would split clause 25 into two new clauses. The first clause would consist of safety duties to protect children online, and the second clause would consist of the interpretation of those duties. Lords Amendments 83, 84, 86, 89 and 90 are consequential on Lords Amendment 91.

Lords Amendments 80 and 82

- 73 Lords Amendment 80 would provide clarification that the duty to summarise children’s risk assessments in a publicly available statement, as per Lords Amendment 82, is imposed only on providers of Category 2A services. This mirrors Lords Amendment 25, which would require providers of Category 1 services to summarise children’s risk assessments in their terms of service.
- 74 Lords Amendment 82 would require providers of Category 2A services to summarise the findings of their latest children’s risk assessment in a publicly available statement. The limitation to Category 2A services is achieved by Lords Amendment 73.

Lords Amendment 81*

- 75 This amendment would add to the existing duties on search services. At present, search service providers must mitigate the risk of harm to children in different age groups as identified in the service’s most recent children’s risk assessment, and mitigate the risk of harm to children presented by search content that is harmful to children. This includes an assessment of the risk of functionalities on the service facilitating children encountering such content. This new amendment would require search service providers to also mitigate the impact of harm which is not based on search content from search functions that expose children to features, functionalities and behaviours.

Lords Amendment 88

- 76 This amendment would mean that a provider can only conclude that children cannot access a

service, or part of a service, if age verification or age estimation is used on the service, with the result that children are not normally able to access it. The safety duties protecting children set out in clause 25 only apply to parts of a service which it is possible for children to access (see clause 25(13)).

Lords Amendments to Clause 27: Duty about complaints procedures

Lords Amendment 92

77 This amendment would insert a reference to clause 25(2), as the duty in that provision can also be complied with by using age verification or age estimation. This amendment therefore ensures that complaints can be made by a user who is unable to access content because measures used to comply with a duty set out in clause 25(2) have resulted in an incorrect assessment of the user's age. Such complaints can already be made in relation to the duty in clause 25(3).

Lords Amendments to Clause 29: Record-keeping and Review Duties

Lords Amendment 93 to 97

78 Lords Amendments 93 and 94 would clarify that the duty to supply records of risk assessments to OFCOM, as per Lords Amendment 97, is imposed only on providers of Category 2A services. This mirrors Lords Amendment 65, which would require providers of Category 1 services to supply records of risk assessments to OFCOM.

79 Lords Amendments 95 and 96 would clarify that providers of Category 2A services must keep full records of their illegal content and children's risk assessments.

80 Lords Amendment 97 would require providers of Category 2A services to supply copies of their records of risk assessments to OFCOM. The limitation to Category 2A services is achieved by Lords Amendment 73.

Lords Amendment 98

81 Providers of regulated search services have a duty to regularly review their compliance with relevant duties. This amendment would extend that duty to include a regular review of compliance with the new duties inserted by Lords Amendment 153.

Lords Amendments to Clause 30: Children's access assessments and Clause 31: Duties about children's access assessments

Lords Amendment 99 and 100

82 These amendments would mean that a provider can only conclude that children cannot access a service, or part of a service, if age verification or age estimation is used on the service with the result that children are not normally able to access it.

Lords Amendments to Clause 36: Codes of practice about duties

Lords Amendment 101

83 This amendment would provide that in preparing a draft code of practice or amendments to a

code of practice, OFCOM must consult the Children’s Commissioner, the Victims’ Commissioner, and the Domestic Abuse Commissioner.

Lords Amendments to Clause 38: Procedure for issuing codes of practice

Lords Amendment 102

- 84 This amendment would make a consequential change to clause 38, to ensure that amendments to clause 39 are reflected in the requirement for the Secretary of State to lay a draft code before Parliament.

Lords Amendments 103 to 105

- 85 These amendments would place a requirement on OFCOM to submit first drafts of certain codes of practice to the Secretary of State within a period of 18 months, beginning on the day the Act is passed. OFCOM would be able to extend this period by up to 12 months by publishing a statement. Such a statement may only be made once.

Lords Amendments to Clause 39: Secretary of State's powers of direction

Lords Amendment 106 to 109, and 113

- 86 These amendments would make changes to the power for the Secretary of State’s oversight for codes of practice. They would replace “reasons of public policy” with a list of defined reasons a direction could be made, comprising: compliance with an international obligation of the UK, national security, public safety, public health, or relations with the government of a country outside the UK.
- 87 The amendments would also add that — unless issuing a direction on a code of practice relating to terrorism or CSEA, or issuing a direction for the reason of compliance with an international obligation of the UK — the reasons for making the direction must be exceptional.

Lords Amendments 110 to 112 and 114

- 88 These amendments would require the Secretary of State to publish and lay in Parliament a direction made under clause 39, unless the Secretary of State considers that to do so would be against the interests of national security, public safety or relations with the government of a country outside the United Kingdom. The amendments would also require OFCOM to publish a document they submit to the Secretary of State in response to such a direction, setting out the details of the direction and how the draft has been revised in response to the direction. If the Secretary of State considers that the reasons above apply, the document will not contain details of the direction.
- 89 If the Secretary of State did not lay the direction in Parliament for any of these reasons, the amendments would require them to instead lay a statement in Parliament setting out that a direction had been given, the kind of code it relates to, and the reason for not publishing it.

Lords Amendments to Clause 40: Procedure for issuing codes of practice following direction under section 39

Lords Amendments 115 and 116

- 90 These amendments would make consequential changes to clause 40, to ensure that the amendments to clause 39 are reflected in the procedure for issuing a code of practice.

Lords Amendments to Clause 47: OFCOM's guidance about certain duties in Part 3

Lords Amendment 118

- 91 This amendment would ensure that OFCOM would not need to produce guidance for providers of Category 1 and 2A services about their duty to supply records of risk assessments to OFCOM.

Lords Amendments 117 and 119

- 92 Lords Amendments 117 and 119 relate to Lords Amendment 35, which would create a new duty on providers of Category 1 services to carry out assessments in relation to content on their service covered by their user empowerment duties. Lords Amendment 117 would require OFCOM to produce guidance to assist providers of Category 1 services in carrying out these assessments, while Lords Amendment 119 would require OFCOM to consult the Information Commissioner before producing this guidance.

Lords Amendments to Clause 48: content that is harmful to children and user empowerment

Lords Amendments 120

- 93 This amendment would reflect the amendments which would be made to clause 12. In order to make that clause more readable, it would be split into two clauses - the duties and interpretation. This amendment would be consequential to Lords Amendment 73.

Lords Amendments after Clause 48

Lords Amendment 121

- 94 This amendment would introduce a new clause that would require OFCOM to produce and publish guidance on how Part 3 service providers can reduce the risk of harm from content and activity that disproportionately affects women and girls on their services. This guidance would cover content and activity relevant to user-to-user and search services' duties under Part 3 and Part 4 of the Bill, such as the illegal content duties, child safety duties, the provisions regarding complaints and reporting, user empowerment duties and the duties regarding terms of service.
- 95 OFCOM would have a duty to consult with the Victim's Commissioner and Domestic Abuse Commissioner before producing and whilst amending the guidance, as well any other persons it considers appropriate.

96 OFCOM would have discretion about what it puts into the guidance, but it is likely it would summarise the relevant measures set out in the various codes of practice in one place, and potentially add in additional illustrations of best practice. This would ensure providers could easily consider the measures to protect women and girls in a holistic way.

97 OFCOM would have a duty to publish this guidance.

Lords Amendments to Clause 49: "Regulated user-generated content", "user-generated content", and "news publisher content"

Lords Amendments 122 to 124

98 These amendments would make it clear that automated tools (like bots) may be regarded as a user for the purposes of the definition of "user-generated content" in subsection (3), under certain circumstances. They would clarify that the references to "bot" in subsection (4) includes other automated tools.

Lords Amendment 125

99 This amendment would replace the term "description" with "kind", to ensure consistency of language across the Bill when referring to kinds of content.

Lords Amendment 126

100 This amendment would clarify what counts as "provider content" for the purpose of the exemption in clause 49(6). That provision, together with clause 49(2)(e), exempts comments or reviews on provider content from the definition of "regulated user-generated content". Lords Amendment 126 would clarify that content published on a service by means of an automated tool or algorithm (such as a generative artificial intelligence bot) made available on the service by the provider, would qualify as provider content.

Lords Amendment 127

101 This amendment would revise the definition of "news publisher content" to make clear that all video or audio content published by recognised news publishers, as well as all content broadcast by them, qualifies as "news publisher content" in relation to a regulated user-to-user service. This amendment would therefore ensure that such content is exempt from the Bill's safety duties when generated on, uploaded to or shared on in-scope user-to-user services. This includes video or audio content shared in the original format as well as any versions of that content clipped or edited by the recognised news publisher itself. The amendment would also clarify that the news publisher content protections: (i) will not extend to video and audio content that is clipped or edited by anyone other than the relevant recognised news publisher; and (ii) will apply to links to any article or item published by recognised news publishers as well as to links to their published or broadcast video and their audio content.

Lords Amendments to Clause 50: "Recognised news publisher"

Lords Amendment 128 and 129

102 These amendments would ensure that any entity which is a "sanctioned entity" designated

for the purposes of sanctions regulations will not qualify as a “recognised news publisher”, with the result that the Bill’s protections which relate to “news publisher content” will not apply to content it publishes or broadcasts. Lords Amendment 129 would insert a definition of “sanctioned entity”, which covers entities designated by the Secretary of State or HM Treasury under a power contained in regulations made under section 1 of the Sanctions and Anti-Money Laundering Act 2018, as well as entities designated under such regulations as persons named by or under United Nations Security Resolutions.

Lords Amendments to Clause 51: "Search content", "search results" etc

Lords Amendment 130

103 This amendment would reflect the changes made to the definition of “news publisher content” in clause 49 by Lords Amendment 127 to ensure that all such content will be exempted from the definition of “search content” in clause 51(2). This would bring online content which has been published but not first broadcast by the recognised news publisher within the ambit of this exemption.

Lords Amendments to Clause 52: Restricting users' access to content

Lords Amendments 131 and 132

104 Clause 52 defines what ‘restricting users’ access to content’ means in Part 3 of the Bill. This provides that such restrictions include cases where the effect of a measure taken or used by a provider is that a user cannot access content without taking a prior step such as clicking through a warning screen, or where content is temporarily hidden. Lords Amendments 131 and 132 would ensure that any restrictions on a user’s access to content resulting from the user voluntarily activating any feature of a service (such as activating user empowerment tools) do not count as a provider ‘restricting access’ to content under clause 52.

Lords Amendments to Clause 54: "Content that is harmful to children” etc

Lords Amendment 133 to 140

105 These amendments are consequential to Lords Amendments 141 and 142.

106 Amendment 134 would omit powers to make regulations that designate ‘primary priority’ and ‘priority’ content that is harmful to children in secondary legislation. These powers are no longer necessary as a result of Lords Amendments 141 and 142 which designate these kinds of content on the face of the Bill. The powers to amend these categories of content are now set out in Lords Amendment 286.

107 Amendment 138 would remove the provision that illegal content must not be regarded as content that is harmful to children.

108 Amendments 133, 137 and 139 are technical amendments supporting the new clauses. Lords Amendments 135, 136 and 140 would ensure the new clauses designating ‘primary priority’ and ‘priority’ content that is harmful to children are correctly signposted in the Bill.

Lords Amendments after Clause 54

Lords Amendment 141

109 This amendment would introduce a new clause that describes four categories of content which count as ‘primary priority’ content that is harmful to children for the purposes of Part 3 of the Bill. These are: pornographic content; and content that encourages, promotes, or provides instructions for either self harm; eating disorders; or suicide. Service providers would have to put in place proportionate systems and processes that prevent children of all ages from encountering these categories of content.

Lords Amendment 142

110 This amendment would introduce a new clause that describes six categories of content which count as priority content harmful to children for the purposes of Part 3 of the Bill. These categories of content are: bullying content; content that is abusive or incites hate on the basis of race, religion, disability, sex, sexual orientation, or gender reassignment; content which depicts serious violence or injury against a person or animal; content which encourages serious violence; content which encourages dangerous stunts and challenges; and content which encourages the ingestion, inhalation or exposure to harmful substances.

111 Subsections (10), (11) and (12) would define the meanings of terms used in the description of priority content harmful to children.

Lords Amendments to Clause 55: Regulations under section 54

Lords Amendment 143

112 This amendment would remove clause 55, which sets the conditions needed for the Secretary of State to make regulations under clause 54 and designate content as ‘primary priority’ or ‘priority’ content that is harmful to children. This is because Lords Amendments 141 and 142 would add the categories of ‘primary priority’ and ‘priority’ content that is harmful to children to the Bill.

Lords Amendments to Clause 56: Regulations under section 54: OFCOM’s review and report

Lords Amendment 144 to 147

113 Amendments 144 to 146 would remove references to regulations that are no longer necessary, as under Amendments 141 and 142 the categories of ‘primary priority’ and ‘priority’ content that are harmful to children would be set on the face of the Bill and not designated in secondary legislation. Amendments 146 and 147 would update the requirements on OFCOM to produce a report reviewing the incidence and severity of content that is harmful to children on regulated user to user and search services. As a result of Amendment 146 the Ofcom report must include advice on whether the clauses added by 141 and 142 should be changed. As a result of Amendment 147, OFCOM would be required to publish the first report within three years of Royal Assent, instead of three years of the first statutory instrument being made.

Lords Amendments after Clause 56

Lords Amendment 148*

114 This amendment would insert a new clause that would require the Secretary of State to conduct a review, six months after the Bill reaches Royal Assent, of offences under the Animal Welfare Act 2006 and the Communications Act 2003. This review would determine whether there are existing offences within these Acts that could be used to prosecute encouraging or assisting an act of animal torture, or sharing content related to animal torture, on a regulated service.

115 If such offences are identified, this amendment would require the Secretary of State to via regulation include these offences in Schedule 7 of the Bill as “priority offences”.

Lords Amendments to Part 4: Other Duties of Providers of Regulated User-to-User Services and Regulated Search Services

Lords Amendments to Clause 60: Regulations about reports to the NCA

Lords Amendment 149 and 150

116 These amendments would provide that regulations about reports made to the NCA may require a provider to retain data associated with a report sent to the NCA and impose restrictions or requirements in relation to the retention of the data.

Lords Amendments to Clause 65: Further duties about terms of service

Lords Amendment 151

117 This amendment would extend the duty on providers of Category 1 services to operate proportionate systems and processes designed to ensure that relevant terms of service are applied properly so as to cover a wider range of ways in which a term of service might indicate that a certain kind of content is not allowed on the service.

Lords Amendments to Clause 67: Interpretation of this Chapter

Lords Amendment 152

118 This amendment would make a change to the definition of “relevant content” which applies for the purposes of the provisions relating to terms of service in Chapter 3 of Part 4 of the Bill. The effect of the change is that Category 1 providers’ duties, to enforce their own terms of service consistently (etc), will apply to any terms which set out that a certain kind of user-generated content is prohibited - irrespective of the action that the provider sets out it will take in relation to that content. Under the previous wording, these duties would only have applied where the provider’s term of service stated that the provider would “take down” that kind of user-generated content and not, for example, moderate content before it appeared on the service.

Lords Amendments after Clause 67

Lords Amendment 153

119 This amendment would insert a new clause that would impose several new duties on providers of Category 1, 2A and 2B services about disclosing information to the parents of deceased child users, and providing details about it in the terms of service or a publicly available statement.

Lords Amendment 154

120 This amendment would insert a new clause that would introduce a new duty on OFCOM to produce and publish guidance to assist providers of Category 1, 2A and 2B services in complying with the new duties introduced by Lords Amendment 153.

Lords Amendments to Part 5: Duties of Providers of Regulated Services: Certain Pornographic Content

Lords Amendments to Clause 70: "Pornographic content", "provider pornographic content", "regulated provider pornographic content"

Lords Amendment 155

121 This amendment would remove the definition of “pornographic content” from clause 70 as a consequence of Amendment 323, which would add that definition to the general interpretation clause of the Bill.

Lords Amendment 156 and 159

122 These amendments would clarify what counts as “provider pornographic content” for the purposes of Part 5 of the Bill. Lords Amendment 156 would make clear that pornographic content published or displayed on a Part 5 service is provider pornographic content either where software, an automated tool or algorithm is applied by the provider or where an automated tool or algorithm, such as a generative artificial intelligence bot, is made available on the service by a provider. Lords Amendment 159 would make clear that pornographic content generated on a service in response to a user’s prompt by means of an automated tool or algorithm, such as a generative artificial intelligence bot, counts as pornographic content even if it is only visible or audible to one user, including if this is only for a limited time.

Lords Amendments 157 and 158

123 These amendments would clarify the exemption from the Part 5 duties for content that consists only of text. Such content would not count as regulated provider pornographic content under the Part 5 duties.

Lords Amendments to Clause 72: Duties about regulated provider pornographic content

Lords Amendment 160

124 This amendment would require providers of services in scope of Part 5 to use age verification or age estimation (or both) to prevent children from encountering regulated provider pornographic content. The age verification or age estimation used would have to be highly effective at correctly determining whether or not a particular user is a child. Age verification and age estimation would be defined in a new clause - see Amendment 300.

Lords Amendments 161 to 163

125 These amendments relate to the duty on providers to make and keep a written record about how they are complying with their duties. Lords Amendment 151 is a technical change as a result of Lords Amendment 160. Lords Amendment 162 would require providers to keep a written record about the age verification or age estimation measures they use to comply with the duty in clause 72(2) (see Lords Amendment 160). Lords Amendment 163 would require providers to have regard to protecting UK users’ privacy when deciding on the kinds of age

verification or age estimation to be used and how they should be used.

Lords Amendment 164

126 This amendment would add a new duty requiring Part 5 providers to make publicly available a summary of the age verification or age estimation measures they are using, and how they are using these measures, to meet the duty in Lords Amendment 160 to ensure that children are not normally able to encounter provider pornographic content on their service.

Lords Amendments to Clause 73: OFCOM's guidance about duties set out in section 72

Lords Amendment 165

127 This amendment would require OFCOM to give examples in guidance for providers of the kinds and uses of age verification and age estimation that are, or are not, highly effective in correctly determining whether or not a user is a child.

Lords Amendment 166

128 This amendment would set out principles governing the use of age verification or age estimation with regards to their duty in clause 72(2) that OFCOM may elaborate on in guidance for providers .

Lords Amendments to Part 6: Duties of Providers of Regulated Services: Fees

Lords Amendments to Clause 74: Duty to notify OFCOM

Lords Amendment 167

129 This amendment would omit a reference to notification regulations made by the Secretary of State. The content of the notification regulations, which detail the supporting evidence which must accompany providers' notifications for the purposes of the fee regime, would now be set out in regulations made by OFCOM (see the substitute clause 76, as introduced by Amendment 171).

Lords Amendment 168

130 This amendment would signpost to new clause 76, as inserted by Amendment 171, which would confer power on OFCOM to make regulations about the meaning of qualifying worldwide revenue and the qualifying period for the fee setting purposes.

Lords Amendment 169

131 This amendment would be consequential to Amendment 172 which outlines that the threshold figure is to be specified in regulations made by the Secretary of State, rather than via published statement.

Lords Amendment 170

132 This amendment would omit the provision that the Secretary of State must consult OFCOM when drafting notification regulations for the fee regime. This provision would no longer be required because of new clause 76, as inserted by Amendment 171, which would require OFCOM to draft the notification regulations rather than the Secretary of State.

Lords Amendments to Clause 76: OFCOM's statement about "qualifying worldwide revenue" etc

Lords Amendment 171

133 This amendment would substitute clause 76 and would require OFCOM to draft regulations, subject to the affirmative procedure, defining qualifying worldwide revenue and qualifying period rather than setting this out in a published statement. These regulations could (among other things) provide that revenue arising to certain entities within the same group as a provider of a regulated service is to be brought into account when determining qualifying worldwide revenue. The amendment would also enable OFCOM to draft notification regulations detailing the information industry must provide OFCOM for fee setting purposes.

Lords Amendments to Clause 77: Threshold figure

Lords Amendment 172

134 This amendment would require that the threshold figure be defined in regulations, subject to the negative procedure, made by the Secretary of State rather than via published statement.

Lords Amendment 173, 174, 175, and Amendment 177

135 These amendments would be consequential to Amendment 172.

Lords Amendment 176

136 This amendment would require that regulations specifying a threshold figure, as per Amendment 172, must be in force at least 9 months before the first charging year for which that figure applies.

Lords Amendments to Clause 79: OFCOM's fees statements

Lords Amendment 178 and 179

137 These amendments would be consequential to Amendment 171 and Amendment 172 respectively.

Lords Amendment 180

138 This amendment would omit a provision about recouping OFCOM's preparatory costs via fees under Part 6 of the Bill, and allow OFCOM to recoup all preparatory costs incurred before the fee regime is in operation via the charging of additional fees under Schedule 10.

Lords Amendments to Clause 80: Recovery of OFCOM's initial costs

Lords Amendment 181

139 This amendment would be to the clause introducing Schedule 10 (recovery of OFCOM's initial costs). The amendment reflects the change to Schedule 10 inserted by Amendment 390.

Lords Amendments to Part 7: OFCOM's Powers and Duties in Relation to Regulated Services

Lords Amendments to Clause 82: General duties of OFCOM under section 3 of the Communications Act

Lords Amendment 182*

140 Clause 82 amends OFCOM's general duties under section 3 of the Communications Act 2003. This amendment would change the list of matters to which OFCOM must have regard when performing their duties under section 3(1) of the Communications Act by removing the reference to content.

Lords Amendment 183 and 184

141 These amendments would reference the new Chapter introduced by Amendment 153 in clause 82 which is about OFCOM's general duties, so that OFCOM would be required to have regard to the need for providers of regulated services to be clear about how they can comply and demonstrate compliance with the new duties in Amendment 153, as part of its general duties.

Lords Amendments to Clause 85: Meaning of threshold conditions etc

Lords Amendment 185

142 This amendment would clarify that a service meets the Category 1 threshold conditions if the service meets them in a way that is set out in regulations under Schedule 11.

Lords Amendments to Clause 88: List of emerging Category 1 services

Lords Amendment 186

143 This amendment would clarify that services which are already Category 1 services or meet the conditions to be a Category 1 service, do not need to be assessed by OFCOM under clause 88.

Lords Amendments to Clause 91: Power to require information

Lords Amendment 187

144 This technical amendment would remove the reference to an "information notice" within OFCOM's power to require information, as the new power which would be introduced after clause 91 (by Amendment 195) concerning OFCOM's power to obtain information in connection with an investigation into the death of a child allows OFCOM to issue a notice which is also a form of information notice.

Lords Amendment 188

145 This amendment would make it clear that OFCOM has the power to require companies to provide information about a named individual's use of a service.

Lords Amendments 189 and 194

146 Amendment 189 would provide OFCOM with the power to require a provider of a regulated service (among others) to take steps to allow a person authorised by OFCOM to view remotely specific types of information - information demonstrating in real time the operation of a provider's systems, processes or features (including algorithms), and information generated by the performance of a test or demonstration.

147 This power would be subject to the requirements of clause 91 and clause 92, including proportionality and information notice requirements. OFCOM would be unable to interfere with the service or use this power for any purpose other than the viewing of these specific types of information. See also amendment 197 to clause 92, which makes changes so that a provider must be given at least 7 days to comply with a notice under Amendment 189.

148 Amendment 194 explains that the reference to an “authorised person” under Amendment 189 refers to a person authorised by OFCOM in writing for the purposes of exercising the power under Amendment 189, and such a person must produce evidence of their identity if requested to do so by a person in receipt of such a notice.

Lords Amendment 190

149 This amendment would have the effect that OFCOM may require information from a person for the purpose of assessing compliance with the new duties (Disclosure of information about use of service by deceased child users) on Category 1/2A/2B services introduced by Amendment 153.

Lords Amendment 191

150 This amendment clarifies that OFCOM’s powers to gather information in relation to a provider’s qualifying worldwide revenue apply for the purposes of Part 6.

Lords Amendment 192 and 193

151 These amendments would be consequential on the new clause inserted after clause 147 (Amendment 189) expanding OFCOM’s duties to promote media literacy in relation to regulated user-to-user and search services.

Lords Amendments after Clause 91

Lords Amendment 195

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

Lords Amendments to Clause 92: Information notices

Lords Amendment 196

153 This amendment would provide that a notice under the new provisions which would be inserted after clause 91 (by Amendment 195) concerning OFCOM’s power to obtain information in connection with an investigation into the death of a child, is called an “information notice.” This ensures that provisions of the Bill that relate to information notices also apply to a notice given under that clause.

Lords Amendment 197

154 Amendment 197 makes changes so that a provider must be given at least 7 days to comply with a notice under Amendment 189.

Lords Amendment 198

155 Amendment 198 would ensure that the duty to comply with an information notice covers the case where a provider is required to take steps to allow OFCOM to remotely view the service.

Lords Amendments to Clause 94: Reports by skilled persons

Lords Amendments 199 to 201

156 These amendments are consequential to the new provisions that would require OFCOM to obtain a skilled person's report before giving a provider a notice under clause 110. They would insert a signpost to this new requirement and omit unnecessary wording in clause 94.

Lords Amendment 202

157 This amendment would ensure that OFCOM are able to require a skilled person's report about a Category 1 service provider's compliance with their new duty to carry out a user empowerment content assessment.

Lords Amendment 203

158 This amendment would have the effect that OFCOM may require a skilled person's report when assessing compliance with the new duties which would be introduced by Amendment 153 regarding how providers of Category 1, 2A and 2B services disclose information about the use of the service by a deceased child.

Lords Amendments after Clause 97

Lords Amendment 204

159 This amendment would insert a new clause that would confer on OFCOM the additional powers of seizure in section 50 of the Criminal Justice and Police Act 2001, in relation to OFCOM's Schedule 12 powers of seizure under warrant. This amendment would in certain circumstances allow a person exercising this power to remove material from the premises where it is not reasonably practicable to determine if it is seizable, to determine whether they are entitled to seize it at a later point. It also would allow a person to seize material where it is not reasonably practicable to separate it from non-seizable material, for example where the seizable material is on a computer.

Lords Amendments to Clause 104: Disclosure of information

Lords Amendment 205

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

Lords Amendments to Clause 106: Provision of information to the Secretary of State

Lords Amendment 206 and 207

161 These amendments would be technical drafting changes which are necessary as the Communications Act 2003 has been amended since this Bill was introduced.

Lords Amendments to Clause 109:

Lords Amendment 208 and 209

162 These amendments would add the new clause inserted by Amendment 195 and paragraph 3(2) of Schedule 12 to the list of relevant information powers.

Lords Amendment 210

163 This amendment would pinpoint paragraph 18(1)(c) of Schedule 12 as the offence relevant to this clause rather than paragraph 18 as a whole.

Lords Amendments to Clause 110: Notices to deal with terrorism content or CSEA content

Lords Amendment 211

164 This amendment would insert a signpost to the inserted new requirement for OFCOM to obtain a skilled person's report before giving a provider a notice under clause 110.

Lords Amendment 212

165 This amendment would amend wording to clarify that the requirement in clause 110(7) refers only to a notice on a user-to-user service.

Lords Amendments after Clause 110

Lords Amendment 213

166 This amendment would insert a new clause that would require OFCOM to obtain a skilled person's report under clause 94 before giving a notice to a provider under clause 110.

Lords Amendments to Clause 111: Warning notices

Lords Amendment 214 and 215

167 These amendments would require that a warning notice given to a provider must contain a summary of the skilled person's report obtained by OFCOM under the new clause inserted by Lords Amendment 213.

Lords Amendments to Clause 112: Matters relevant to a decision to give notice under section 110(1)

Lords Amendment 216

168 This amendment would require OFCOM to consider the contents of the skilled person's report obtained as required by the new clause inserted by Lords Amendment 213, as part of OFCOM's decision about whether it is necessary and proportionate to give a notice to a provider under clause 110.

Lords Amendment 217 to 219

169 These amendments would require OFCOM to consider the impact of the use of technology on the availability of journalistic content and the protection of journalistic sources, as part of OFCOM's decision about whether it is necessary and proportionate to give a notice to a provider under clause 110.

Lords Amendments to Clause 114: Review and further notice under section 110(1)

Lords Amendment 220

170 This amendment would provide that, if OFCOM propose to issue a further notice under clause 110, it is not necessary to obtain a further skilled person's report under the new clause inserted by Lords Amendment 213.

Lords Amendments to Clause 119: Requirements enforceable by OFCOM against providers of regulated services

Lords Amendment 221

171 This amendment would ensure that OFCOM are able to use their enforcement powers in Chapter 6 of Part 7 in relation to a breach of any of the new duties inserted by Amendment 35 (Assessment duties: user empowerment).

Lords Amendment 222

172 This amendment would ensure that OFCOM are able to use their enforcement powers in Chapter 6 of Part 7 in relation to a breach of any of the new duties imposed by the new provisions introduced by Amendment 153 (Disclosure of information about use of service by deceased child users).

Lords Amendments to Clause 121: Confirmation decisions: requirements to take steps

Lords Amendment 224

173 Lords Amendment 224 is consequential on Lords Amendment 225, and would require OFCOM to specify in a confirmation decision which requirements (if any) in that notice were CSEA requirements, as defined in Amendment 225. This would provide services with clarity on whether non-compliance with a requirement is an offence.

Lords Amendments 225 and 226

174 Lords Amendment 225 would require that where a confirmation decision imposes a requirement to take steps in relation to a failure to comply with specific illegal safety duties (ie a duty under clause 9(2)(a), (2)(b) or (3)(a)) in respect of child sexual exploitation and abuse (CSEA) content or an offence under Schedule 6, OFCOM would be required to designate that requirement as a CSEA requirement. Failure to comply with a CSEA requirement would be an offence.

175 Lords Amendment 226 is consequential to Amendment 225 and provides that "CSEA content", "priority illegal content" and "priority offence" have the same meaning as in Part 3 of the Bill.

Lords Amendment 223

176 Amendment 223 is consequential to Amendment 228.

Lords Amendments to Clause 124: Confirmation decisions: proactive technology

Lords Amendment 227 and 228

177 Amendment 228 would have the effect that OFCOM may require a provider to use proactive technology in a confirmation decision, if the purpose is to deal with non-compliance with the clause 72(2) duty of preventing children from encountering provider pornographic content. Amendment 227 is consequential to Amendment 228.

Lords Amendments after Clause 125

Lords Amendment 229

178 Amendment 229 would create a new offence of failure to comply with requirements of a confirmation decision that relate to specified duties to protect children's online safety. The specified duties are those at section 11(3)(a), section 11(3)(b), section 72(2), or section 72(3).

179 A person who commits an offence under this section is liable for different penalties on summary conviction in England and Wales, Scotland and Northern Ireland, and to imprisonment for a term not exceeding 2 years or a fine (or both) on conviction on indictment.

180 It would provide that a person commits an offence if the person fails to comply, without reasonable excuse, with a CSEA requirement imposed by a confirmation decision given to the person.

Lords Amendments to Clause 139: Advisory committee on disinformation and misinformation

Lords Amendment 230

181 This amendment would be consequential to the new clause inserted after clause 147 by Lords Amendments 241, which would expand OFCOM's duties to promote media literacy in relation to regulated user-to-user and search services.

Lords Amendments after Clause 143

Lords Amendment 231

182 This amendment would insert a new clause after that would require OFCOM to produce and publish a report about the use of age assurance by providers of regulated services.

Lords Amendments after Clause 145

Lords Amendment 232

183 This amendment would require OFCOM to produce a report about the use of app stores by children, including consideration of whether children would be better protected by greater use of age assurance on app stores. OFCOM would be required to publish the report between 2 and 3 years following the commencement of the child safety duties.

Lords Amendments after Clause 145

Lords Amendment 233

184 This amendment would insert a new clause that would require OFCOM to produce a report about the content reporting and complaints procedures operated by providers of Part 3 services.

185 OFCOM's report would have to take into account the experiences of users and others in reporting content and making complaints to providers of Part 3 services. OFCOM would have to specifically advise whether they consider that regulations ought to be made placing a duty on category 1 services to offer alternative dispute resolution procedures (a power which would be conferred on the Secretary of State by Amendment 421), and would also be able make other recommendations that would deliver better outcomes in relation to reports or complaints.

Lords Amendments to Clause 146: OFCOM's Reports about researchers' access to data

Lords Amendments 234 to 236

186 Amendments 234, 235 and 236 would reduce the time for OFCOM to produce its report into researchers' access to information from two years to eighteen months, and compel OFCOM to produce guidance following the publication of the report.

Lords Amendments after Clause 146

Lords Amendment 237

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

Lords Amendments to Clause 147: OFCOM's Reports

Lords Amendments 238 to 240

188 These amendments would be consequential amendments to the Lords Amendments 231, 232 and 233, which insert new clauses and would ensure that the existing confidentiality provisions that apply to OFCOM apply to matters contained in those reports.

Lords Amendments after Clause 147

Lords Amendment 241

189 This amendment would insert a new clause that would introduce new duties that OFCOM are required to achieve in fulfilment of its current duty to promote media literacy under Section 11 of the Communications Act 2003, insofar as it relates to regulated services. The first of these new duties would require OFCOM to bring about better public awareness and understanding of ways in which they may keep themselves and others safe whilst using regulated services, with particular emphasis on six new objectives. The second duty would require OFCOM to encourage the development and use of technologies and systems that support users of regulated services to protect themselves and others online. To achieve the

new objectives, and fulfil the first duty more broadly, OFCOM would be required to pursue, commission, and encourage other organisations to pursue media literacy initiatives and arrange for research to be carried out. This amendment would also require OFCOM to publish and occasionally update a set of recommendations for how organisations delivering media literacy initiatives, including regulated services, can do so more effectively.

Lords Amendments after Clause 147

Lords Amendment 242

190 This amendment would insert a new clause that would require OFCOM to publish a media literacy strategy within one year of the Bill receiving Royal Assent. A media literacy strategy would cover a maximum of three years and before the end of this period OFCOM would be required to prepare and publish a new media literacy strategy. The strategy would state OFCOM's objectives and priorities for the period it covers. This amendment would also require OFCOM to publish a media literacy statement within its annual report, which would include a summary of the activities and initiatives delivered under section 11 of the Communications Act 2003 (as amended by Lords Amendment 241).

Lords Amendments to Part 9: Secretary of State's Functions in Relation to Regulated Services

Lords Amendments to Clause 156: Directions in special circumstances

Lords Amendment 243

191 This amendment would be consequential on the Lords Amendment 243 which would insert a new clause inserted after clause 147 (Media literacy), expanding OFCOM's duties to promote media literacy in relation to regulated user-to-user and search services.

Lords Amendments to Clause 159: Review

Lords Amendment 244

192 This amendment would insert a reference to the new Chapter inserted by Lords Amendment 153 regarding how providers of Category 1, 2A and 2B services disclose information about the use of the service by a deceased child so that it is included in the review by the Secretary of State of the regulatory framework established by this Bill.

Lords Amendments to Part 10: Communications Offences

Lords Amendments to Clause 160: False communications offence

Lords Amendment 245

193 Amendment 245 would amend clause 160 to set out the penalties for the false communications offence in Northern Ireland, given the extension of the offence to Northern Ireland, as well as England and Wales.

Lords Amendments to Clause 162: Threatening communications offence

Lords Amendment 248 and 249

194 These amendments are consequential amendments as a result of provisions extending the threatening communications offence to Northern Ireland. Amendment 249 would set out the penalties for the threatening communications offence in Northern Ireland.

Lords Amendment 246 and 247

195 These amendments would change clause 162(1)(c)(i) and clause 162(1)(c)(ii) to make it clear that the threatening communications offence captures threats where the recipient fears that someone other than the sender, rather than just the sender themselves, may carry out the threat. This would not change the scope of this offence, which, like other existing offences to do with threats, already captures threats carried out by third parties.

Lords Amendments to Clause 164: Offences of sending or showing flashing images electronically

Lords Amendment 250

196 Lords Amendment 250 would make a technical amendment about extent and the extent of the flashing images offence in clause 164 would be dealt with by amendments of clause 210.

Lords Amendments after Clause 164

Lords Amendment 251

197 Lords Amendment 251 would insert into the Bill a new offence of encouraging or assisting the serious self-harm of another person.

198 Subsection (1) would provide that a person commits an offence if they do a relevant act capable of encouraging or assisting the serious self-harm of another person; and their act was intended to encourage or assist the serious self-harm of another person. Subsection (2) would define the means of communication by which a person “does a relevant act”, which includes verbal or electronic communications, publications, and correspondence.

199 Subsection (3) would provide that “serious self-harm” means self-harm amounting to, in England and Wales and Northern Ireland, grievous bodily harm within the meaning of the Offences Against the Person Act 1861 and, in Scotland, severe injury; and includes successive acts of self-harm which cumulatively reach that threshold. Subsection (13) would provide that an “act” of self-harm in subsection (3) includes an omission. So, for example, a person who

encourages another person not to eat, not to drink or not to take required prescription medication would be captured by the offence.

200 Subsection (4) would provide that the person committing the offence need not know, or even be able to identify, the person or persons who receive the communication. So, a person who intends that a recipient or recipients of their communication will seriously harm themselves is guilty of an offence, even though he or she may never know the identity of those who receive the communication. Subsection (5) would provide that an offence is committed whether or not serious self-harm occurs.

201 Subsection (6) would provide that a person who arranges for someone else to do an act capable of encouraging or assisting the serious self-harm of another person will also be committing an offence if the other person does that act.

202 Subsection (7) would provide that a person commits an offence under subsection (1) even if the content of their communication or publication was not created by them. For example, the offence may be committed online where someone forwards another person's direct message or shares another person's post, and it will also be committed where a person publishes a physical document such as a pamphlet or booklet even if they did not write the material.

203 Subsection (8) would provide that where a communication is sent, transmitted or published by electronic means and it includes a hyperlink to other content, the reference in subsection (2)(b) to a communication includes content accessed directly via the hyperlink.

204 Subsection (9) would provide that where a person sends, gives or makes available (i.e. places somewhere for a person to find) an item on which data is stored electronically the reference to the item in subsection (2)(f) includes content accessed by means of the item to which the recipient is specifically directed by the person sending, giving or making that item available. So, for example, if someone sends a person a memory stick containing material that is intended to encourage or assist them to seriously self-harm, they will commit an offence.

205 Subsection (10) would provide that an internet service provider does not commit the offence merely for providing a means through which others can publish content that is capable of encouraging or assisting serious self-harm.

206 Subsection (11) would clarify that references to doing an act capable of encouraging or assisting the serious self-harm of another person include a reference to doing so by threatening another person or otherwise putting pressure on another person to seriously self-harm. Subsection (12) would provide that an act capable of encouraging or assisting the serious self-harm of another person includes a course of conduct.

207 Subsection (14) would provide that a person who commits the offence is liable: on summary conviction in England and Wales, to a term not exceeding the general limit in a magistrates' court or a fine (or both); on summary conviction in Scotland, to a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both); on summary conviction in Northern Ireland, to a term not exceeding six months or a fine not exceeding the statutory maximum (or both); and on conviction on indictment to a term not exceeding five years or a

fine (or both).

Lords Amendments to Clause 165: Extra-territorial application and jurisdiction

Lords Amendment 252 to 258

208 Amendments 252, 253, 254, 255, 256, 257 and 258 are consequential and technical amendments to clarify the territorial extent of the offences in Part 10 of the Bill.

209 Amendments 255 and 256 are minor and consequential amendments which would make it clear that the false and threatening communications offences apply to Northern Ireland as well as England and Wales.

210 Following the extension of the false and threatening communications offences to Northern Ireland, Lords Amendments 252 and 253 would clarify that the offences can be committed by a person outside the United Kingdom if they are an individual who is habitually resident in England and Wales or Northern Ireland, or a body incorporated or constituted under the law of England and Wales or Northern Ireland.

211 Amendment 254 and 257 would provide for the extra-territorial application of the new offence of encouraging or assisting serious self-harm to be inserted after clause 164. They would ensure that the offence of encouraging or assisting serious self-harm has extraterritorial application in certain circumstances where it is committed outside the UK. Specifically, 257 would clarify the proceedings for cases in which the offence is treated as having been committed in Scotland.

212 The territorial extent of Part 10 of the Bill is dealt with by clause 210. Amendment 258 is a technical amendment which would remove a reference to the territorial extent of the offences in Part 10, so that the extent of the offences would be dealt with by clause 210.

Lords Amendments to Clause 166: Liability of corporate officers

Lords Amendments 259 to 261

213 Lords Amendment 259 would ensure that clause 166, which provides for the criminal liability of corporate officers where the offence was committed by a body corporate with the consent or connivance of an officer of that body (or was attributable to any neglect on the part of the officer), 260 to the offence of encouraging or assisting serious self-harm. Lords Amendment 260 would ensure that clause 166 applies to the partners of Scottish Partnerships.

214 Amendment 261 would leave out subsection (3) of this clause, given that the territorial extent of clause 166 will now be dealt with by clause 210.

Lords Amendments to Clause 167: Sending etc photograph or film of genitals

Lords Amendment 262

215 Lords Amendment 262 would ensure that “photograph” and “film” for the new offences of sending a photograph or film of genitals, and the new offences of sharing or threatening to share an intimate photograph or film, includes an image which has been altered and which

appears to be a photograph or film.

Lords Amendments after Clause 167

Lords Amendment 263

216 This amendment would insert into the Bill three new offences of sharing an intimate photograph or film, and one new offence of threatening to share an intimate photograph or film by means of inserting three new sections into the Sexual Offences Act 2003.

Section 66B: Sharing or threatening to share intimate photograph or film

217 Subsection (1) would create a new offence of intentionally sharing a photograph or film which shows, or appears to show, another person (B) in an intimate state, without the consent, or a reasonable belief in the consent of that person. There is no requirement to prove the sharing was done for a particular reason. The focus on photographs and films which “shows or appears to show” would ensure that the offence is made out, not just in scenarios where the photograph or film shared is a genuine photograph or film of B, but also, for example, where the photograph or film shows someone who is said to be B and who bears a very close resemblance to B, or has been altered or manufactured so that it appears to be a genuine photograph or film of B. This would apply to all the offences in this section. Subsection (8) provides a defence where the person charged had a reasonable excuse’ for sharing the photograph or film without consent or a reasonable belief in consent. Examples of a reasonable excuse might include where it was necessary for the prevention or detection of a crime to share an intimate photo or film with a police officer.

218 Subsection (2) would create a new offence of intentionally sharing a photograph or film which shows, or appears to show, another person (B) in an intimate state, without the consent [RA1] of B, with the intent to cause alarm, distress or humiliation to B.

219 Subsection (3) would create a new offence of intentionally sharing a photograph or film which shows, or appears to show, another person (B) in an intimate state, without the consent or a reasonable belief in the consent of B, for the purpose of obtaining sexual gratification for the person doing the sharing, or another person.

220 Subsection (4) would create a new offence of threatening to share a photograph or film which shows or appears to show another person (B), and where the perpetrator intended that B or someone who knows B will fear the threat will be carried out, or was reckless as to that result. Subsections (7)(a) and (b) would provide that the threat offence could be made out even if the photograph or film does not exist, or where the photograph or film does exist, it is not in fact a photograph or film which shows or appears to show a person in an intimate state.

221 Subsection (5) would provide for the offences in subsections (1) – (4) to be subject to section 66C, which sets out a number of exemptions (not all of which would be applicable to all the offences).

222 Subsection (6)(a) would provide that, for the purposes of the offences in subsections (1) to (3)

and the exemption in 66C(3)(b), “consent” to the sharing of a photograph or film includes consent to share the photograph or film generally, and consent to the particular sharing in question.

223 Subsection 6(b) would provide that when determining whether or not a person’s belief in B’s consent was reasonable, regard must be had to all of the circumstances, including any steps that the person has taken to ascertain whether B consents.

224 Subsection (9) would provide that the offence in subsection (1) is triable only summary. The maximum penalty on conviction is imprisonment for a term not exceeding the maximum term for summary offences, which is 6 months if the offence is committed before section 281(5) of the Criminal Justice Act 2003 comes into force, or 51 weeks if committed after that time. (subsection 11). An offender may also be given an unlimited fine.

225 Subsection (10) would provide for the offences under subsections (2), (3) and (4) to be triable either way (that is, either in a magistrates’ court or on indictment by the Crown Court). If convicted in a magistrates’ court the maximum penalty on conviction is imprisonment for a term not exceeding the maximum term for summary offences, which is 6 months if the offence is committed before section 281(5) of the Criminal Justice Act 2003 comes into force, or 51 weeks if committed after that time (subsection 11). An offender may also be given an unlimited fine. On conviction on indictment the maximum penalty would be imprisonment for a term no more than 2 years.

226 Subsection (12) confers a power on a magistrates’ court or jury to find a person guilty of the offence in subsection (1) where they have been found not guilty of the more serious offences under subsections (2) and (3), for example because it has not been proven that the person shared the photograph or film for the purpose of obtaining sexual gratification[RA3] . Where this occurs in the Crown Court, the Court would have the same powers and duties when convicting a person of a subsection (1) offence by virtue of subsection (12) as the magistrates’ court would have had (Subsection 13) (for example, the maximum penalty will align with that set out in subsection (9)).

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

227 The exemption in subsection(1) would apply where the photograph or film that was shared had been taken in a place to which the public, or a section of the public, had access. This exemption would only apply where the photograph was taken in public; and B was either voluntarily in the intimate state or the defendant reasonably believed they were; and the B did not have a reasonable expectation of privacy against a photograph or film being taken.

228 Subsection (2) would provide that whether or not B had a reasonable expectation of privacy from a photograph or film being taken in public is judged by the circumstances that the person sharing the photograph or film reasonably believed to have existed at the time it was taken. The court would need to determine whether a person in those circumstances has a

reasonable expectation of privacy from a photograph or film being taken. If the court decides that a person in those circumstances has a reasonable expectation of privacy from a photograph or film being taken the exemption is not made out. If the court finds that a person in those circumstances does not have a reasonable expectation of privacy the exemption would apply and the defendant would not have committed the offence.

229 The exemption in subsection (3) would provide that where a person shares an intimate photograph or film, and that photograph or film had been previously shared in public, or the person reasonably believed that it had been, and that B had consented to the previous sharing, or the person sharing the photograph had a reasonable belief that they had consented, this is not an offence.

230 The exemption in subsection (4) would provide that where a person shares an intimate photograph or film of a child under 16 who lacks capacity to consent to the sharing (or the person sharing reasonably believes they lack capacity to consent), and it is shared for the purpose of the child's care or treatment by a healthcare professional, this is not an offence.

231 The exemption at subsection (5) would provide that where a person shares an intimate photograph or film of a child which is of a kind normally shared between family and friends, this is not an offence. It would not be necessary for the intimate photograph or film to have only been shared with family and friends, just that it was that kind of image.

232 By virtue of the exemption at subsection (6) it would not be an offence to threaten to share an intimate photograph or film unless the act of sharing the photograph or film in the circumstances conveyed by the threat would be an offence under (66B) subsections (1), (2) or (3).

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

233 Subsection (1) would provide for this section to apply for the purposes of the offences in 66B and the exemptions in 66C.

234 Subsection (2) a person would 'share' something if they, by any means, give or show it to another person, or make it available to another person. This would include electronic sharing, for example by posting a photograph or film on a website or emailing to someone. It would also include the sharing of a physical document, for example by giving a printed photograph to another person or displaying it in a place where other people would see it.

235 Subsection (3) would provide that where an internet service provider [RA1] is the means by which a photograph or film is shared, they would not be regarded as a person who has 'shares' it.

236 Subsection (4) would ensure that "photograph" and "film" have the same meaning as section 66A. Subsections (3) and (4) of that provision provide that "photograph" includes the negative as well as the positive version; and "film" means a moving image. Subsection (5) of

section 66A provides that “film” and “photograph” would also include images that are made or altered by computer graphics (or in any other way) if they appear to be a photograph or film. It will therefore include genuine photographs or films that have been altered in some way, and those that have been wholly manufactured - so called “deepfake” images. Also included within the definitions of “photograph” and “film” are copies of images which have been made or altered and which appear to be a photograph or film, and data that can be converted into such an image – for instance data stored on a hard drive or disc.

237 Subsection (5) would provide that a photograph or film shows or appears to show a person in an “intimate state” if it shows or appears to show them (a) participating or engaging in an act which a reasonable person would consider to be a sexual (for example, engaging in sexual intercourse); (b) doing a thing which a reasonable person would consider to be sexual (for example, posing in a sexually explicit way); (c) all or part of their exposed genitals, buttocks or breasts; (d) in an act of urination or defecation, or (3) carrying out an act of personal care associated with their urination, defecation or genital or anal discharge. Subsection (5) would specifically exclude photographs and film that show, or appear to show, anything that would otherwise meet this definition but that would be ordinarily seen in public (with the exception of breastfeeding) (subsection (8)).

238 Subsection (6) would provide that a person’s genitals, buttocks or breasts are still considered to be “exposed” under subsection (5)(c), if, although covered by clothing, their genitals, buttocks or breasts are visible through wet or otherwise transparent clothing (subsection (6)(a)). “Exposed” also captures a case where a person’s genitals, buttocks or breasts are covered only by underwear (subsection (6)(b)). It would also capture the case where those parts of the anatomy would be exposed but for the fact that they are obscured by something (other than clothing that the person is wearing) which provides a similar or smaller degree of coverage than underwear (subsection (6)(c)). Subsection (7) explains that the relevant part of anatomy can be “obscured” by any means (other than clothing that the person is wearing) including by part of their body, or by digital alteration (for example, if the photograph included an ‘emoji’ on the person’s breasts

Lords Amendments to Clause 168: Repeals in connection with offences under sections 162 and 164

Lords Amendment 264 and 265

239 Amendment 264 would ensure that section 127(2)(a) and (b) of the Communications Act 2003 are repealed for Northern Ireland as well as England and Wales, following the extension of the false communications offence to Northern Ireland.

240 Amendment 265 would amend the Malicious Communications (Northern Ireland) legislation in consequence of the extension of the false and threatening communications offences to Northern Ireland.

Lords Amendments after Clause 168

Lords Amendment 266

241 This amendment would insert a new clause that would repeal sections 33 to 35 of the Criminal Justice and Courts Act 2015 (disclosing or threatening to disclose private sexual photographs and films with intent to cause distress)

Lords Amendments to Clause 169: Consequential amendments

Lords Amendment 267 to 269

242 Lords Amendment 268 would provide that Part 3 of Schedule 14 also makes consequential amendments on the new clause (reference to clause 191 in the 18 July 23 Bill print) creating the offences of sharing and threatening to share intimate photographs or films.

243 Lords Amendment 269 would introduce a new Part of Schedule 14 which makes consequential amendments on the new clause (reference to clause 191 in the 18 July 23 Bill print) repealing sections 33-35 of the Criminal Justice and Courts Act 2015.

244 Lords Amendment 267 would introduce a new Part of Schedule 14 which makes consequential amendments to Amendment 251.

Lords Amendments to Part 11: Supplementary and General

Lords Amendments to Clause 170: Providers' judgements about illegal content judgements

Lords Amendment 270

245 This amendment would ensure that provisions in clause 170 which are about the approach to be taken by providers to judgements about the status of content, applies to assessments under the requirements for the user empowerment content assessment.

Lords Amendments to Clause 171: OFCOM's guidance about illegal content judgements

Lords Amendment 271

246 Clause 171 sets out OFCOM's duty to produce guidance about illegal content judgements ('illegal content guidance'). Clause 14 contains a provision which states that the illegal content guidance should cover judgements about whether news publisher content amounts to a relevant offence. This amendment (alongside Amendment 53) would move that provision to clause 171. Clause 171 would then set out all of the matters that OFCOM needs to cover in their illegal content guidance.

Lords Amendments after Clause 171

Lords Amendment 272

247 This amendment would insert a new clause that would place a requirement on OFCOM to publish certain guidance within 18 months of Royal Assent. OFCOM would be able to extend this period by up to 12 months by publishing a statement.

Lords Amendments to Clause 173: Individuals providing regulated services: liability

Lords Amendment 273

248 This amendment would insert a reference to the new Chapter inserted by Lords Amendment 153, regarding how providers of Category 1, 2A and 2B services disclose information about the use of the service by a deceased child, so that individuals may be jointly and severally liable for the duties imposed by that clause.

Lords Amendments to Clause 176: Information offences: supplementary

Lords Amendment 274 and 275

249 These amendments would be to ensure consistency of tenses in the Bill.

Lords Amendments after Clause 176

Lords Amendment 276

250 This amendment would insert a new clause that would ensure that, among other things, a person cannot be prosecuted for the new confirmation decision offence where OFCOM has imposed a financial penalty for the same conduct instead, and vice versa.

Lords Amendments to Clause 180: Extra-territorial application

Lords Amendment 277

251 This amendment would add a reference to clause 137(11) (publication by providers of details of enforcement action) so that that provision, which is about requirements enforceable in civil proceedings, would have extraterritorial application.

Lords Amendment 278

252 This amendment is consequential to Amendment 277.

Lords Amendments to Clause 181: Offences: extra-territorial application and jurisdiction

Lords Amendment 279

253 This amendment would give extra-territorial effect to the new offences of failure to comply with requirements of a confirmation decision.

Lords Amendment 280

254 This amendment would extend the extra-territorial effect of the new offences of failure to comply with requirements of a confirmation decision in the case where a corporate officer commits the offence under clause 178(2) or 179(5).

Lords Amendment 281

255 This amendment would give United Kingdom courts jurisdiction to deal with the new offences of failure to comply with requirements of a confirmation decision if it is committed elsewhere.

Lords Amendments to Clause 188: Repeals: Digital Economy Act 2017

Lords Amendment 282

256 This amendment would enable the repeal of section 119(11) of the Digital Economy Act 2017. This subsection, alongside 109(10), solely relates to the extension of Part 3 of the Digital Economy Act to the Channel Islands or the Isle of Man, and will no longer be required when Part 3 of the Digital Economy Act is repealed.

Lords Amendments after Clause 190

Lords Amendment 283

257 This amendment would insert a new clause that would allow the Secretary of State to make regulations to amend the Bill once enacted to bring app stores within its scope. The regulations may not be made until OFCOM has published their report about the use of app stores by children. The Secretary of State may make regulations imposing requirements on app stores if, having considered OFCOM's report, they consider that there is a material risk of significant harm to children either on or by means of the app store (i.e. through the apps a child accesses).

Lords Amendment 284

258 This amendment would insert a new clause that would make provisions about the purpose and contents of regulations to regulate app stores under the new clause to be inserted by Amendment 283.

Lords Amendments after Clause 190

Lords Amendment 285

259 This amendment would insert a new clause that would provide the Secretary of State with the power to make regulations to place a requirement on providers of Category 1 services to arrange for, and engage in, an out of court, impartial alternative dispute resolution procedure (ADR duty).

260 The Secretary of State would have the power to make regulations to amend the Bill in connection with the imposition on providers of Category 1 services of an ADR duty, with a non-exhaustive list of specific sections which may be amended set out at subsections (7) and (8). Regulations under this section could not be made before the publication of a statement by the Secretary of State responding to OFCOM's report about the content reporting and complaints procedures operated by providers of Part 3 services.

261 If the Secretary of State did exercise the power to make regulations making providers of Category 1 services subject to an ADR duty, they would also need to include provisions requiring OFCOM to (following consultation) produce guidance for providers of Category 1 services to assist their compliance with that duty.

Lords Amendments after Clause 191

Lords Amendment 286

262 This amendment relates to Amendments 134, 141 and 142 which describe the categories of 'primary priority' and 'priority' content that is harmful to children on the face of the Bill and remove the previous power for the Secretary of State to make regulations to amend these categories in secondary legislation. This amendment would confer a power on the Secretary of State to make regulations to amend the kinds of content that are considered as 'primary priority' and 'priority' content that is harmful to children.

263 The amendment would introduce constraints on the Secretary of State's power to amend the

categories of content. The Secretary of State would only be able to add a kind of content to the lists of ‘primary priority’ or ‘priority’ content under this power if they considered that there was a material risk of significant harm to an appreciable number of children in the United Kingdom presented by content of that kind.

264 To add a kind of content as ‘primary priority’ content that is harmful to children, the Secretary of State would also have to consider it appropriate for the duties in clauses 11(3)(a) and 25(3)(a) to apply in relation to content of that kind.

265 The Secretary of State would also be required to consult OFCOM before making regulations under these powers.

266 Subsection (4) would exclude certain types of content from the definition of “content that is harmful to children”.

Lords Amendments to Clause 196: Regulations: general

Lords Amendment 287 and 288

267 These amendments would have the effect that regulations made by OFCOM under the Bill must be made by statutory instrument and make technical provision in relation to such regulations made by OFCOM.

Lords Amendments to Clause 197: Parliamentary procedure for regulations

Lords Amendment 289

268 This amendment would provide that regulations made by OFCOM under subsection (1) of clause 76 regarding “qualifying worldwide revenue” are subject to the affirmative Parliamentary procedure.

Lords Amendment 290

269 This amendment would provide that regulations made under the new clause (Power to regulate app stores) inserted by Amendment 283 are subject to the affirmative Parliamentary procedure.

Lords Amendment 291

270 This amendment would provide that regulations made by OFCOM under paragraph 5(9) of Schedule 13 regarding “qualifying worldwide revenue” related to penalties for a group of entities are subject to the affirmative Parliamentary procedure.

Lords Amendment 292

271 This amendment would ensure that regulations to amend the categories of ‘primary priority’ and ‘priority’ content that is harmful to children, made under the new clause introduced by Amendment 286, would be subject to the affirmative procedure, except in urgent cases.

Lords Amendment 293 and 294

272 These amendments would provide that the first regulations made under paragraph 1(1) of Schedule 11 (regulations specifying Category 1 threshold conditions) are subject to the affirmative procedure. Subsequent regulations would be subject to the negative procedure.

These Explanatory Notes relate to the Lords Amendments to the Online Safety Bill as brought from the House of Lords on 7 September 2023 (Bill 362).

Lords Amendment 295

273 This amendment would provide that regulations made under the new clause which would be inserted by Amendment 285 (power to impose duty about alternative dispute resolution procedure), would be subject to the affirmative Parliamentary procedure.

Lords Amendment 296

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

Lords Amendment 297

275 This amendment would require regulations made by the Secretary of State about the threshold figure (clause 77) are subject to the negative Parliamentary procedure.

Lords Amendment 298

276 This amendment would require the Secretary of State's involvement in the Parliamentary procedure for regulations made by OFCOM regarding "qualifying worldwide revenue" under clause 77.

Lords Amendments to Part 12: Interpretation and Final Provisions

Lords Amendments to Clause 198: "Provider" of internet service

Lords Amendment 299

277 This amendment would clarify who counts as the provider of a service (other than a user-to-user or search service) hosting provider pornographic content for the purposes of the Bill. It would add a subsection to make clear that a person who controls a tool which generates content on the service, such as a generative artificial intelligence bot, is to be regarded as controlling the content generated by that tool.

Lords Amendments after Clause 201

Lords Amendment 300

278 This amendment would insert a new clause that would define age verification and age estimation, and would make it clear that self-declaration of age, unless combined with other measures, does not count as either.

279 Age verification and age estimation must be used to comply with the new duties introduced for clause 11 by Amendment 23 and for clause 72 by Amendment 160.

280 Age verification and age estimation may also be used to comply with duties under clause 11(2) or (3) in circumstances where the duty set out at Amendment 23 does not apply (see Amendment 24) and may also be used to comply with duties under clause 25(2) or (3).

281 Age verification or age estimation must also be used if a provider seeks to conclude that children cannot access a service or part of a service, meaning that a particular duty under Part 3 of the Bill would not apply (see Amendments 31 and 88 in relation to the safety duties protecting children, Amendment 57 in relation to content reporting, Amendment 59 in relation to complaints procedures, and Amendment 99 in relation to children's access assessments).

282 In all instances where age verification or age estimation is mandated or permitted for compliance with duties under the Bill, there is no requirement in the Bill for the age verification or age estimation to be carried out by the service provider itself. Hence the service provider might decide to contract out age verification or age estimation to a third party.

Lords Amendments to Clause 202: "Proactive technology"

Lords Amendments 301, 302, 303, 304, 308, 309 and 310

283 Amendment 301 would rename "content moderation technology" as "content identification technology" as that term is more accurate. Amendments 302, 304, and 308 to 310 are consequential to this amendment.

284 Amendment 303 would revise the definition of "content identification technology" so that the

restrictions in the Bill on OFCOM recommending or requiring the use of proactive technology apply to content identification technology operating on any kind of content.

Lords Amendments 305, 306 and 307

285 Amendment 305 is a technical amendment that would ensure consistency of language in the Bill when referring to age verification and age estimation, following the new definitions that would be introduced by Amendment 300.

286 Amendments 306 and 307 would ensure that OFCOM can recommend or require the use of proactive technology in relation to Part 5 providers, where necessary and proportionate. Amendment 306 would have the effect that provider pornographic content counts as “relevant content” for the purposes of defining “proactive technology”, and Amendment 307 would ensure that the definition of user data within this clause includes data created by providers of all regulated services, including providers subject to the Part 5 pornography duties.

Lords Amendments to Clause 203: Content communicated “publicly” or “privately”

Lords Amendment 311

287 This amendment would require OFCOM to particularly consider how easily content may be shared with users of another service when deciding if content is communicated publicly or privately.

Lords Amendments to Clause 205: “Harm” etc

Lords Amendment 312, 313 and 315

288 Amendment 313 would make it clear that references to harm in relation to content include instances where harm occurs because the user repeatedly encounters content. This would capture instances in which harm occurs due to repeated exposure to one kind of content, or a combination of different kinds of content.

289 The amendment would also specify that content may have been repeatedly encountered as a result of one or more users sending such content to an individual, or as a result of algorithms and other functionalities on a service repeatedly sending content to a user.

290 Amendments 312 and 315 are technical amendments that are consequential to Amendment 313.

Lords Amendment 314

291 This amendment would make it clear that references to the risk of harm in relation to functionalities include instances in which multiple functionalities combine in a way that increases the level of risk of harm. This would capture, for example, instances where a service may have messaging, live streaming and payment functionalities, which when combined could increase the risk of harm to children.

Lords Amendments to Clause 206: "Online safety functions" and "online safety matters"

Lords Amendment 316

292 This amendment would ensure that the term “online safety functions” includes OFCOM’s functions under section 11A of the Communications Act 2003 (inserted by the new clause inserted after clause 147) regarding OFCOM’s media literacy strategy (as well as OFCOM’s functions under section 11 of that Act).

Lords Amendment 317 and 318

293 These amendments would make clear that OFCOM’s online safety functions include the new duty of complying with a coroner’s notice or, in Scotland, a request from the procurator fiscal, in connection with the use of a regulated service by a person who has died.

Lords Amendments to Clause 207: Interpretation: general

Lords Amendment 319

294 This amendment would remove a definition of “age assurance” from clause 207 as that term would be defined separately where used (see Amendment 300).

Lords Amendments 320 and 327

295 Amendment 320 would clarify that the definition of an automated tool includes a “bot”.

Lords Amendment 327 revises an interpretative provision relating to the borderline between provider content and user-generated content. The provision is revised to ensure consistent wording about automated tools and algorithms made available by a provider (such as a generative artificial intelligence bot).

Lords Amendment 321*

296 This amendment would make clear that when the term “freedom of expression” is used in the Bill (apart from the in exempted sections) it refers to the right to receive and impart ideas, opinion and information in Article 10(1) of the European Convention on Human Rights (ECHR).

Lords Amendment 322

297 This amendment would revise the definition of “information notice” so that it includes a notice under the new clause inserted by Lords Amendment 195 concerning OFCOM’s power to obtain information in connection with an investigation into the death of a child.

Lords Amendment 323 and 328

298 Amendment 323 would add a definition of pornographic content to the general interpretation clause of the Bill. This would ensure that there is a consistent definition of pornographic content across the whole Bill.

299 Amendment 328 is consequential to Amendment 323. It would remove wording which signposted to where the definition of pornographic content was previously located in the Bill.

Lords Amendment 324

300 This amendment would add a provision into the interpretation clause, to make clear that the references to people with ‘a certain characteristic’ throughout the Bill are to be read as including people with a combination of characteristics .

Lords Amendment 325 and 326

301 These amendments would ensure consistency of language when referring to kinds of content in the Bill by changing ‘description’ to ‘kind’ in two places in clause 207.

Lords Amendments to Clause 208: Index of defined terms

Lords Amendment 329 and 330

302 Amendment 329 would remove the entry for “age assurance” in the index of defined terms (as that term would be defined separately where used). Amendment 330 would add definitions of “age estimation” and “age verification” to the same index.

Lords Amendment 331

303 This amendment would add a definition of “automated tool” to the index of defined terms, which makes clear that an automated tool includes a bot.

Lords Amendment 332*

304 This amendment would add “freedom of expression” to the index of defined terms. This is because Amendment 321 would create a definition of the term in the interpretation clause.

Lords Amendments 333 and 334

305 These amendments would update the entry for “pornographic content” in the index of defined terms. This would be consequential to Amendment 323, which would insert the definition into the interpretation clause so that it applies for the purpose of the whole Bill.

Lords Amendments 335 and 336

306 These amendments would update the entries for “primary priority content that is harmful to children” and “priority content that is harmful to children” in the index of defined terms. This would be consequential to Amendments 141 and 142 which insert new clauses on each term.

Lords Amendments to Clause 210: Extent

Lords Amendment 340

307 This amendment would ensure the new offences of sharing or threatening to share intimate photograph or film (reference to clause 191 in the 18 July 23 Bill print) extend to England and Wales only.

Lords Amendments 337] to 341

308 Amendment 337 would amend subsection (1) of clause 210. In doing so, it would avoid any implication that the power inserted by the extent clause giving power to extend provisions of

the Bill to the Bailiwick of Guernsey and the Isle of Man, and related provisions, are limited in extent to the United Kingdom.

309 Amendment 338 would remove subsection (2) of the extent clause. In doing so, it would remove the reference that the communications offences in clauses 160-166 and 168(1) only extend to England and Wales.

310 Amendment 339 would change the extent of the communications offences' territorial application. The amendment would specify that the provisions in clauses 160 to 164 and 168(1) apply to England, Wales and Northern Ireland.

311 Amendment 341 would amend the extent clause so that the amendments of Northern Ireland legislation in clause 168 extend to Northern Ireland only.

Lords Amendment 342 and 343

312 These amendments would add a power so that His Majesty may, by Order in Council, extend any of the provisions of the Bill, or any amendments or repeals of provisions in the Communications Act 2003 made by this Bill, to Guernsey or the Isle of Man.

Lords Amendment 344 to 346

313 These amendments would enable the extension of legislation amended by this Bill to the Bailiwick of Guernsey, but not the Bailiwick Jersey. This applies to:

- a. Section 338 of the Criminal Justice Act 2003,
- b. Section 60(6) of the Modern Slavery Act 2015, and
- c. Section 415(1) of the Sentencing Act 2020.

Lords Amendments to Clause 211: Commencement and transitional provisions

Lords Amendment 347 to 349

314 These amendments would specify the list of clauses which would come into force on the day on which the Act is passed.

Lords Amendments to Schedule 1: Exempt User-to-User and Search Services

Lords Amendment 350

315 This amendment would clarify what counts as “provider content” for the purposes of the exemption in paragraph 4 of Schedule 1 (which provides that limited functionality services are exempt from Part 3 of the Bill). This would ensure consistency in the references to automated tools and algorithms made available by a provider across the Bill. It would make clear that user-to-user services which allow no user-generated content other than comments and reviews on content generated by provider-controlled artificial intelligence services or bots are exempt in the same way as services which allow only comments and reviews on other provider content.

Lords Amendments to Schedule 3: Timing of Providers' Assessment

Lords Amendment 351

316 This amendment relates to the new clause inserted by Amendment 35 which details a service's assessment for user empowerment content. This amendment would insert the details on the timings of the first user empowerment content test into Schedule 3.

Lords Amendments 352 to 370

317 These amendments would provide for the timing of the first assessments under the new clause inserted by Lords Amendment 35, which would oblige Category 1 providers to carry out an assessment relating to the user empowerment duties. The amendments would provide that the first assessment must be completed within three months of OFCOM publishing its guidance on these requirements.

Lords Amendments to Schedule 4: Codes of Practice under Section 36: Principles, Objectives, Content

Lords Amendment 371

318 This amendment would insert provisions which relate to OFCOM's recommendation of age assurance in codes of practice for the purposes of Part 3 of the Bill. It would include relevant principles that OFCOM must have regard to when recommending the use of age assurance, and would make it clear that OFCOM must recommend highly effective age verification or age estimation in connection with the duty in clause 11(3)(a) (preventing children from encountering primary priority content that is harmful to children). Amongst other matters, OFCOM must have regard to relevant standards set out in the latest version of the code of practice under section 123 of the Data Protection Act 2018 (age appropriate design code). The Information Commissioner's Office oversees the enforcement of data protection law in the UK and is responsible for the Age Appropriate Design Code.

Lords Amendment 372

319 This amendment is a minor drafting change to omit an unnecessary word.

Lords Amendment 373

320 This amendment would ensure that age assurance technologies are not covered by the principles which OFCOM must have regard to when recommending a proactive technology under the Bill, because age assurance technologies are now covered by the principles introduced by Amendment 371.

Lords Amendments to Schedule 7: Priority Offences

Lords Amendment 374

321 Content amounting to offences listed in Schedule 7, and their associated inchoate offences as listed in paragraph 38, would be a “priority offence” under the regime, requiring regulated services to take proactive, preventative action to identify and minimise users’ exposure to such illegal content.

322 This amendment would add the offence under section 76 of the Serious Crime Act 2015 (controlling or coercive behaviour in an intimate or family relationship) to the list of priority offences in Schedule 7.

Lords Amendment 375

323 This amendment would add the offences under section 24(A1), (B1), (C1) or (D1) (illegal entry and similar offences) of the Illegal Immigration Act 1971 to the list of priority offences in Schedule 7.

Lords Amendment 376

324 This amendment would add the following human trafficking offences to the list of priority offences in Schedule 7: an offence under section 2 of the Modern Slavery Act 2015 (human trafficking), an offence under section 1 of the Human Trafficking and Exploitation (Scotland) Act 2015 (asp 12) (human trafficking) and an offence under section 2 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c. 2 (N.I.)) (human trafficking).

Lords Amendment 377

325 This amendment would add the offence under section 13 of the National Security Act 2023 (foreign interference) to the list of priority offences under Schedule 7.

Lords Amendments to Schedule 8: Transparency Report by Providers of Category 1 Services, Category 2A Services and Category 2B Services

Lords Amendments 378 to 389

- 326 These amendments would expand the types of information that OFCOM can require providers of Category 1, 2A and 2B services to publish in their transparency reports.
- 327 Amendments 378 to 380 would allow OFCOM to require relevant providers to report on the incidence, dissemination, and number of users encountering content to which clause 12(2) applies.
- 328 Amendments 381 and 384 would allow OFCOM to require relevant providers to report on the formulation, development and scope (as well as the application) of terms of service (for providers of user-to-user services) and public statements of policies and procedures (for providers of search engines).
- 329 Amendments 382 and 385 would allow OFCOM to require relevant providers to report on the design and operation of algorithms which affect the display, promotion, restriction or recommendation of illegal search content or search content that is harmful to children.
- 330 Amendments 383 and 386 would allow OFCOM to require providers of user-to-user and search services to include information in providers' transparency reports about the measures they have taken to comply with the new duties inserted after clause 67, regarding the disclosure of information about the use of the service by deceased child users.
- 331 Amendment 387 would require OFCOM, in considering which information to require from a provider in a transparency report, to consider whether the provider is subject to the new duties introduced by Amendment 153.
- 332 Amendment 388 would amend the definition of "relevant content" which applies for the purposes of transparency reporting to cover a wider range of ways in which a term of service might indicate that a certain kind of content is not allowed on the service.
- 333 Amendment 389 is a technical amendment which would make it clear that the reference to users' access to content being restricted in the transparency reporting Schedule has the meaning given to it in Part 3 of the Bill.

Lords Amendments to Schedule 10: Recovery of OFCOM's Initial Costs

Lords Amendment 390

334 This amendment would enable OFCOM to charge additional fees to recover all online safety costs incurred before the fee regime is in operation, as opposed to only preparatory costs incurred before the commencement of clause 79.

Lords Amendments to Schedule 11: Categories of Regulated User-to-User Services and Regulated Search Services: Regulations

Lords Amendment 391*

335 This amendment would amend the rule which states that the regulations made under this paragraph must specify that a service must meet at least one specified condition about the number of users and at least one specified condition about functionality in order for a service to be designated as Category 1 or 2B. The amendment would change this rule so that the Secretary of State would be able to make regulations specifying that a service would be designated as a Category 1 or 2B service if it met one or more conditions relating to either functionality or number of users.

Lords Amendments to Schedule 12: OFCOM's Powers of Entry, Inspection and Audit

Lords Amendment 392 to 398

336 Amendment 392 would ensure that, during an inspection of a service, OFCOM had the power to observe a test or demonstration of which notice has been given. Amendment 393 is a consequential technical amendment.

337 Amendments 394 to 395 concern OFCOM giving advance notice to a provider that they will want to observe a test or demonstration during an inspection.

338 397 would make it clear that the powers of OFCOM during an audit of a service extend to using equipment on the premises to view real time information showing the operation of the service or the performance of a test or demonstration, if specified in advance in the audit notice.

339 398 is a technical drafting change which would remove a redundant paragraph from the Bill.

Lords Amendments to Schedule 13: Penalties Imposed by OFCOM under Chapter 6 of Part 7

Lords Amendment 399 and 400

340 These amendments would provide a power for OFCOM to make regulations setting out what is meant in paragraph 5 of Schedule 13 by references to the “qualifying worldwide revenue” of a group of entities. They would also provide that regulations under the new clause 76 (Amendment 171) about “qualifying worldwide revenue” for the purposes of Part 6 of the Bill (fees) also apply for the purposes of financial penalties under paragraph 4 of Schedule 13.

Lords Amendments to Schedule 14: Amendments Consequential on Offences in Part 10 of this Act

Lords Amendments 401 to 419

- 341 Amendment 401 would clarify that changes to the Sexual Offences Act 2003 made by paragraph 2 of Schedule 14 to the Bill relate to England and Wales only.
- 342 Amendment 402 concerns offences relevant to the making of certain orders under the Sexual Offences Act 2003. Given that the false and threatening communication offences in clause 160 and 162 would now extend to Northern Ireland, this amendment would update the references in Schedule 5 to the Sexual Offences Act that relate to Northern Ireland.
- 343 Lords Amendment 403 would make a minor change to the description of the flashing images offence so that the description is more accurate.
- 344 Lords Amendment 404 is consequential on Amendment 251.
- 345 Lords Amendment 405 is a technical amendment that would ensure that the amendments made under Schedule 14 to Schedule 1 to the Children and Young Persons Act 1933 are inserted in the correct part of that Act.
- 346 Lords Amendment 406 would add a reference to the new offences of sharing and threatening to share an intimate photograph or film (reference to clause 191 in the 18 July 23 Bill print) to Schedule 1 to the Children and Young Persons Act 1933 (offences to which certain provisions of that Act apply).
- 347 Lords Amendment 407 would add a reference to certain of the new offences of sharing or threatening to share an intimate photograph or film (reference to clause 191 in the 18 July 23 Bill print) to section 65A (2) of the Police and Criminal Evidence Act 1984 meaning of “qualifying offence” for the purposes of Part 5 of that Act).
- 348 Lords Amendment 408 would apply the provisions of the Sexual Offences Act 1992 to the person shown, or who appears to be shown in an intimate photograph or film where a threat to share the photograph or film was made to someone else.
- 349 Lords Amendment 409 would provide that the definition of “sexual” in section 78 of the Sexual Offences Act 2003 does not apply to the new offences of sharing and threatening to share an intimate photograph or film (reference to clause 191 in the 18 July 23 Bill print) on account of a separate definition applying to those offences.
- 350 Lords Amendment 410 would add a reference to certain of the new offences of sharing an intimate photograph or film to section 136A(3A) of the Sexual Offences Act 2003 (offences specified as child sex offences for the purposes of Part 2A of that Act when committed against a person under 18).
- 351 Lords Amendment 411 would add a reference to the new offence of sharing an intimate photograph or film for the purpose of obtaining sexual gratification (reference to clause 191 in the 18 July 23 Bill print) to Schedule 3 to the Sexual Offences Act 2003 (offences to which certain

provisions of that Act apply).

352 Lords Amendment 412 would add a reference to certain of the new offences of sharing an intimate photograph or film (reference to clause 191 in the 18 July 23 Bill print) to Schedule 15 to the Criminal Justice Act 2003 (specified sexual offences for the purposes of section 325 of that Act).

353 Lords Amendment 413 would add a reference to certain of the new offences of sharing an intimate photograph or film (reference to clause 191 in the 18 July 23 Bill print) to Schedule 34A to the Criminal Justice Act 2003 (child sex offences for the purposes of section 327A of that Act).

354 Lords Amendment 414 would have the effect of inserting the necessary wording into the descriptor in paragraph 10 of Schedule 34A to the Criminal Justice Act 2003 to make reference to the new offences of sharing an intimate photograph or film (reference to clause 191 in the 18 July 23 Bill print). This amendment is consequential on Lords Amendment 413.

355 Lords Amendment 415 would add a reference to certain of the new offences of sharing an intimate photograph or film (reference to clause 191 in the 18 July 23 Bill print) to section 116 of the Anti-social Behaviour, Crime and Policing Act 2014 (conduct constituting offence amounting to “child sexual exploitation” when committed against a person under 18 for the purposes of that section).

356 Lords Amendment 416 is consequential on Lords Amendment 415.

357 Lords Amendment 24 would add a reference to certain of the new offences of sharing an intimate photograph or film (reference to clause 191 in the 18 July 23 Bill print) to paragraph 33 of Schedule 4 to the Modern Slavery Act 2015 (offences to which the defence in section 45 does not apply).

358 Lords Amendment 418 would add a reference to certain of the new offences of sharing an intimate photograph or film (reference to clause 191 in the 18 July 23 Bill print) to Part 2 of Schedule 18 to the Sentencing Act 2020 (specified sexual offences for the purposes of section 306 of that Act).

359 Lords Amendment 419 would insert a new Part into Schedule 14 which makes amendments that are consequential on the new clause repealing sections 33 to 35 of the Criminal Justice and Courts Act 2015.

Lords Amendments to Schedule 17: Video Sharing Platform Services: Transitional Provision etc

Lords Amendment 420 and 421

360 These amendments would ensure that, during the transitional period when video-sharing platform services continue to be regulated by Part 4B of the Communications Act 2003, providers of such services are not exempt from the new duties inserted by Amendment 35, namely the user empowerment content assessment and record of risk assessments.

Lords Amendment 422

361 This amendment would ensure that the new duties introduced by Amendment 153 are added to the list of duties in Schedule 17 that video-sharing platforms services will not be required to comply with during the transitional period, while they are still being regulated under Part 4B of the Communications Act 2003.

Lords Amendment 423 and 424

362 These amendments would make a technical drafting change to the wording in parts of Schedule 17, related to the new clause inserted by Amendment 35 (Assessment duties: user empowerment).

Financial Effects of Lords Amendments

- 363 A number of Lords amendments would have consequences for OFCOM's operational costs by expanding both the breadth of the duties of the regulated providers that OFCOM are to regulate and OFCOM's own responsibilities under the Bill.
- 364 Until OFCOM can begin charging industry fees so that the costs of the Online Safety framework are met through annual charges to industry, the "initial costs" will be funded by the retention of Wireless Telegraphy receipts which are paid to OFCOM under the Wireless Telegraphy Act 2006. Amendments 180, 181 and 390 would ensure that OFCOM can recoup all "initial costs" i.e. costs incurred before the main fees regime under Part 6 of the Bill is in operation via additional fees charged to industry over a number of years.
- 365 Amendment 171 would have financial implications, in that it allows OFCOM to make regulations which (among other things) can provide that revenue arising to certain entities in the same group as a provider of a regulated service can be brought into account for the purposes of the fee regime. The entity which meets the definition of a 'provider' may not always be the entity which accrues the revenue related to the regulated service and, therefore, this amendment ensures OFCOM is able to take such revenue into account.
- 366 Amendment 400 would have financial implications, in that it allows OFCOM to make regulations setting out what is meant in paragraph 5 of Schedule 13 by references to the qualifying worldwide revenue of a group of entities.
- 367 Amendment 317 is expected to have significant consequences on OFCOM's costs. It is a duty to respond to requests and notices from coroners and procurators fiscal in connection with an investigation, inquiry or inquest into a person's death.
- 368 Otherwise, there are new requirements on OFCOM to produce and publish guidance on: how Part 3 service providers can reduce the risk of harm from content and activity that disproportionately affects women and girls on their services; assisting providers of Category 1, 2A and 2B services in complying with the new duties on disclosing information to the parents of deceased child users; assisting providers of Category 1 services in carrying out assessments in relation to content on their service covered by their user empowerment duties; researchers' access to information. Further additional responsibilities on Ofcom include: a duty to publish final illegal content and children's codes by a particular date; duties to report about use of age assurance, about use of app stores by children and about reporting and complaints procedures; and new duties that OFCOM are required to achieve in fulfilment of its current duty to promote media literacy under Section 11 of the Communications Act 2003, insofar as it relates to regulated services.
- 369 No further financial resolution is considered necessary in relation to any amendment made in the Lords.

ONLINE SAFETY BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

These Explanatory Notes relate to the Lords Amendments to the Online Safety Bill as brought from the House of Lords on 7 September 2023 (Bill 362).

Ordered by the House of Commons to be printed, 7 September 2023

© Parliamentary copyright 2023

This publication may be reproduced under the terms of the Open Parliament Licence which is published at www.parliament.uk/site-information/copyright

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS