

ONLINE SAFETY BILL [HL]

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Online Safety Bill [HL] as introduced in the House of Lords on 10th June 2014. They have been prepared by Baroness Howe of Idlicote in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require an explanation or comment none is given.

BACKGROUND

1. The objective of this Bill is to reduce the ability for children and young people to access inappropriate material online and through video on-demand.
2. Part 1 of the Bill takes a three pronged approach to extending online safety measures:
 - Internet Service Providers (ISPs) and mobile phone operators (MPOs) would by default provide an Internet service without access to adult content, with adult subscribers able to opt-in to receive such material;
 - Electronic device manufacturers would provide a means of filtering Internet content at the time of purchase; and
 - ISPs/MPOs would make available information about online safety and schools would educate parents about online safety.
3. Part 2 of the Bill addresses the protections for on-demand programme services:
 - Within the UK, requiring access controls for programmes that are equivalent to an “18” rating or greater; and
 - In relation to soft and hard-core pornography provided from websites based overseas, providing the Authority for Television on Demand ATVOD the power to direct credit card companies to cease transactions if the services are not provided with suitable age verification.

COMMENTARY

Clause 1: Duty to provide a service that excludes adult content

4. *Subsection (1)* requires all ISPs to provide an Internet service that excludes adult content, unless a subscriber opts-in and meets the criteria set out in *subsection (3)*. The Bill aims to block “adult content” at the network level – that is the material coming into a home or to a phone unless a subscriber specifically unblocks that content.
5. *Subsection (2)* requires all MPOs who provide an Internet service as part of their telephone service to exclude adult content from that service, unless a subscriber opts in and meets the criteria set out in *subsection (3)*. It would standardise the way MPOs deal with customers accessing adult content.
6. Adult content is defined in clause 6 as containing “harmful and offensive material from which persons under the age of eighteen are protected” where:
 - “harmful and offensive materials” has the same meaning as in section 3 of the Communications Act 2003;
 - “material from which persons under the age of eighteen are protected” means material specified in the Ofcom standards under section 319(2)(a) of the Communications Act 2003.
7. *Subsection (3)* sets out the three conditions whereby a subscriber may receive adult content as part of their Internet service. They must “opt-in” to receive adult content, be 18 or over; and have their age verified by the service provider’s age verification scheme, which meets the standards set in section 2 on age verification schemes before a subscriber can access adult content. “Opts-in” is defined in *subsection (5)*.
8. *Subsection (4)* prevents ISPs and MPOs from being sued should material be accessible or not accessible on the basis of actions taken to comply with section 1, as long as they were following the standards and code set out in clause 2 and acting in good faith.
9. *Subsection (6)* makes clear that the ISPs can implement additional filtering levels on top of the requirement to offer an internet service without adult content.

Clause 2: Role of Ofcom

10. Clause 2 gives Ofcom a new responsibility to set standards in this area of media consumption. *Subsection (1)* requires Ofcom to set standards on filtering of adult content and age verification schemes and any other filtering schemes that are operated by ISPs or MPOs. The standards should be reviewed and revised from time to time.

11. *Subsection (2)* requires the standards set under *subsection (1)* to be set out in one or more codes of practice.
12. *Subsection (3)* requires a draft code of standards to be published.
13. *Subsection (4)* requires there to be a consultation on the draft code with relevant people/organisations.
14. *Subsection (5)* requires Ofcom to establish a process for handling and resolution of complaints regarding the standards in this section.
15. *Subsection (6)* requires Ofcom to prepare a report to the Secretary of State about the operation of this Act every three years and at the direction of the Secretary of State.
16. *Subsection (7)* allows Ofcom to delegate the functions in this section to another corporate body either in whole or in part.
17. *Subsection (8)* sets out brief criteria for who can be a designated body.

Clause 3: Duty to provide a means of filtering content

18. Clause 3 requires manufacturers of electronic devices that are capable of internet access to provide a means of filtering content at the time of purchase at an age appropriate level, so that parents are able to choose which material they wish to exclude.
19. The requirement does not anticipate on-going support from the manufacturer after purchase, nor does it set out how the filtering must take place: each type of device can be different.

Clause 4: Duty to provide information about online safety

20. Clause 4 requires ISPs and MPOs to provide prominent, easily accessible and clear information about online safety to customers at the time of the purchase of a service and to make such information available for the duration of the service, e.g. it could contain information for parents about safe use of social networking sites.

Clause 5: Duty to educate parents about online safety

21. Clause 5 sets out a duty of the Secretary of State for Education to provide means of educating parents of children under the age of 18 about three areas:
 - a. the opt-in arrangements under section 1 to ensure that children do not access adult content (*paragraph a*);

- b. other options for online safety for electronic devices, such as filters (*paragraph b*);
- c. protecting child from other online behaviours that could be a safety risk, such as bullying and sexual grooming (*paragraph c*).

Clause 6: Interpretation of Part 1

22. Clause 6 sets out the interpretation of phrases in Part 1 the Bill.

Clause 7: Age verification scheme

23. Clause 7 amends section 368E(2) of the Communications Act 2003, as introduced by the Audiovisual Media Services Regulations 2009, implementing the Audiovisual Media Services Directive 2009. Section 368E(2) currently says that an on-demand programme service that contains any material which might “seriously impair the physical, mental or moral development of a child” must be made available so that a child will not see or hear it.
24. This clause extends this provision in two ways:
- a. stating that the system of access controls must include an age verification scheme; and
 - b. requiring the access controls to apply to an on-demand programme service which contains harmful and offensive material from which persons under the age of eighteen are to be protected, i.e. to material equivalent to “18” category material.

Clause 8: Prevention of payments

25. Clause 8 introduces a new power into the Communication Act 2003 to allow the appropriate regulatory authority¹ (in this case ATVOD, The Authority for Television on Demand) to direct a financial institution to prevent payments to a body which does not prevent access to material that comes under section 368(2) of the Communications Act 2003. The model is based on how the law deals with terrorist financing and money laundering in Schedule 7 of the Counter-Terrorism Act 2008. It allows ATVOD to give a direction regardless of where the company is operating.

Clause 9: Extent, commencement and short title

26. Clause 9 sets out that the Act will come into force six months after Royal Assent and apply across the UK, in the same way as the Communications Act 2003 and the Digital Economy Act 2010. The Act would extend to England, Wales, Scotland and Northern Ireland.

¹ This is the term used 368B of the Communications Act 2003.

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[HL Bill 16]*

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