

# ONLINE SAFETY BILL [HL]

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Online Safety Bill [HL] as introduced in the House of Lords on 28 May 2015 (HL Bill 8).

- These Explanatory Notes 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.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill. So where a provision of the Bill does not seem to require any explanation or comment, the Notes simply say in relation to it that the provision is self-explanatory.

## Background

- 1 The objective of this Bill is to provide parents with tools to help them keep their children safer online and reduce the ability of 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 achieving its objective:
  - Internet Service Providers (ISPs) and Mobile Phone Operators (MPOs) who supply domestic customers with an internet connection would be required to ask subscribers whether they wish to receive adult content;
  - ISPs and MPOs would be required to make available information about online safety; and
  - the Government would be under a duty to provide parents with information about online safety.
- 3 Part 2 of the Bill seeks to strengthen the protections for on-demand programme services within the UK by requiring access controls for programmes that are equivalent to an "18" rating or greater.
- 4 Part 3 of the Bill would introduce a licensing scheme for foreign pornographic websites and give the Licensing Authority the power to block payments to companies running such websites if they are not licensed.

## Commentary

### Clause 1: Duty to provide a service that protects children from adult content

- 5 The objective of Clause 1 is to ensure that any internet service provided to domestic subscribers is subject to regulations which ensure that subscribers over the age of 18 actively choose adult content.
- 6 *Subsection (1)* defines to whom this section 1 applies: namely to all ISPs who provide an Internet service to subscribers; to MPOs who supply either a phone service that includes internet access or mobile broadband; and to any other type of supplier as designated by the Secretary of State.
- 7 *Subsection (2)* defines what is meant by a subscriber. The definition of subscriber in the Bill covers domestic subscribers, schools and organisations that allow a person access to the internet in a public place (i.e. using public Wi-Fi). This subsection also sets out that if the subscriber is a school or organisation a responsible person shall fulfil the conditions in subsections (3) and (4).
- 8 *Subsection (3)* requires those providers to whom subsection (1) applies to require each subscriber to confirm whether they wish to subscribe to an internet service that includes adult content; and to provide a service that excludes adult content unless a subscriber indicates they want to receive adult content and meets the conditions in subsection (4).
- 9 Adult content is defined in Clause 5 as containing "offensive and harmful material from which persons under the age of 18 are protected". In section 5
  - "offensive and harmful material" has the same meaning as in section 3 of the Communications Act 2003; and

- “material from which persons under the age of 18 are protected” means material specified in the standards set by Ofcom pursuant to section 2 of this Bill.
- 10 *Subsection (4)* sets out the two conditions referred to in subsection (3). The subscriber must be 18 or over; and have their age verified by the service provider’s age verification scheme before accessing adult content. The scheme must meet the standards set in section 2 on age verification schemes before a subscriber can access adult content.
  - 11 *Subsection (5)* provides ISPs and MPOs with a defence to civil and criminal claims should material be accessed by the wrong person as long, as they were following the standards and code set out in Clause 2 and acting in good faith.
  - 12 *Subsection (6)* makes clear that the ISPs and MPOs can implement additional filtering levels on top of the requirement to offer an internet service without adult content.
  - 13 *Subsection (7)* sets out that the regulation under subsection (1) shall be subject to negative resolution.

## Clause 2: Role of Ofcom

- 14 Clause 2 gives Ofcom a new responsibility to set standards in this area. 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. Clause 2 provides that the standards should be reviewed and revised from time to time.
- 15 *Subsection (2)* requires the standards set under subsection (1) to be set out in one or more codes of practice.
- 16 *Subsection (3)* requires a draft code of standards to be published.
- 17 *Subsection (4)* requires there to be a consultation on the draft code with relevant people/organisations.
- 18 *Subsection (5)* requires Ofcom to establish a process for the handling and resolution of complaints about observance of the standards in this section.
- 19 *Subsection (6)* requires Ofcom to prepare a report to the Secretary of State about the operation of this Bill every three years and at the direction of the Secretary of State.
- 20 *Subsection (7)* allows Ofcom to delegate the functions in this section to another corporate body either in whole or in part.
- 21 *Subsection (8)* sets out criteria for which entities can be a designated body for the purposes of subsection (7).

## Clause 3: Duty to provide information about online safety

- 22 Clause 3 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 – for example, it could contain information for parents about safe use of social networking sites.

## Clause 4: Duty to educate parents about online safety

- 23 Clause 4 sets out a duty of the Secretary of State to provide means of educating parents of children under the age of 18 in three areas:
  - the exclusion of adult content from an internet access service under section 1 to protect children (paragraph a);

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

### Clause 5: Interpretation of Part 1

24 Clause 5 sets out the interpretation of words and phrases in Part 1 the Bill.

### Clause 6: Age verification scheme

25 Clause 6 amends section 368E of the Communications Act 2003,<sup>1</sup> in two ways:

- a. by stating that the system of access controls must include an age verification scheme; and
- b. by 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. material that would be classified as equivalent to “R18” as well as “R18” by the British Board of Film Classification (BBFC).

26 *Paragraph a* requires that “specially restricted material” (anything classified as “R18” or likely to be) should be available using an age verification to determine that the person who is purchasing or otherwise accessing the material is not under the age of 18.

27 *Paragraph b* adds another criteria to the list of “specially restricted material” so that it includes material that would be classified “R18”.

28 *Paragraph c* adds a definition of an age verification scheme to section 386E.

### Clause 7: Definition of a foreign pornographic service

29 Clause 7 defines a foreign pornographic service for the purposes of Part 3 of the Bill as a service that supplies prohibited and specially restricted material, terms used in the Audiovisual Media Services Regulations 2014. The other conditions are that the provider of the service is not based in another EU country under the jurisdiction of the Audiovisual Media Services Directive; that the service is an online service; and that the service can be received in the UK.

### Clause 8: Authority to license a foreign pornographic service

30 *Subsection (1)* sets out that the Secretary of State shall designate a body to be the licensing authority to licence foreign pornographic services and gives the Secretary of State the ability to set fees, set other licensing conditions and allows the authority to revoke a licence.

31 *Subsection (2)* states that the licensing authority shall have as its objective preventing children from accessing pornography, as defined in section 7.

32 *Subsection (3)* requires an application for a licence to be made in the manner determined by the licensing authority.

33 *Subsection (4)* allows the licensing authority to collect a fee for an application for a licence if a licence fee is required with the tariff determined by the Secretary of State.

34 *Subsection (5)* allows the Secretary of State to set different fees for different circumstances.

35 *Subsection (6)* requires there to be an age verification scheme in place for material which falls

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1 Amended by The Audiovisual Media Services Regulations 2014

within a licence to determine that a person purchasing or otherwise obtaining access to the material is not under the age of 18.

- 36 *Subsection (7)* allows the Secretary of State to set out additional licensing conditions.
- 37 *Subsection (8)* excludes licensing conditions other than those set by subsections (6) and (7).
- 38 *Subsection (9)* allows the licensing authority to decline or revoke a licence if the service is in breach of a condition set out in subsections (6) or (7).
- 39 *Subsection (10)* sets out the time limits for a licence.
- 40 *Subsection (11)* requires the Secretary of State to ensure there are appropriate appeal mechanisms in place for a person that has been refused a licence or had their licence revoked.
- 41 *Subsection (12)* defines age verification scheme.
- 42 *Subsection (13)* sets out that the regulation under subsection (1) shall be subject to negative resolution.

### Clause 9: Offence to provide an unlicensed service

- 43 Clause 9 makes it an offence to provide an unlicensed foreign pornographic website and sets out that the penalty for committing such an offence is six months in prison or £5,000 fine.

### Clause 10: Prevention of payments

- 44 Clause 10 allows the appropriate licensing authority to direct a financial institution to prevent payments to a body if the body is providing a foreign pornographic service which is not licensed. The model is based on how the law deals with terrorist financing and money laundering in Schedule 7 of the Counter-Terrorism Act 2008.

### Clause 11: Extent, commencement and short title extent

- 45 Clause 11 sets out that the Bill extends to England, Wales, Scotland and Northern Ireland in the same way as the Communications Act 2003 and the Digital Economy Act 2010, and will come into force six months after it has passed.



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