

Online Safety Bill [HL]

CONTENTS

PART 1

INTERNET SERVICES AND MOBILE PHONES

- 1 Duty to provide a service that excludes adult content
- 2 Role of OFCOM
- 3 Delegation of OFCOM's functions to an appropriate authority
- 4 Duty to provide information about online safety
- 5 Duty to provide means of filtering online content
- 6 Duty to educate parents about online safety
- 7 Interpretation of this Part

PART 2

ON-DEMAND PROGRAMME SERVICES

- 8 Age verification scheme

PART 3

LICENSING OF PORNOGRAPHIC SERVICES

- 9 Definition of a pornographic service
- 10 Authority to license pornographic services
- 11 Offence to provide an unlicensed service
- 12 Prevention of payments

PART 4

EXTENT, COMMENCEMENT AND SHORT TITLE

- 13 Extent, commencement and short title

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B I L L

TO

Make provision about the promotion of online safety; to require internet service providers and mobile phone operators to provide an internet service that excludes adult-only content; to require information to be provided about online safety by internet service providers and mobile phone operators; to make provision for parents to be educated about online safety; to make provision for the regulation of harmful material through on-demand programme services; to introduce licensing of pornographic services; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

INTERNET SERVICES AND MOBILE PHONES

1 Duty to provide a service that excludes adult content

- (1) This section applies to—
- (a) internet service providers who supply an internet access service to subscribers; 5
 - (b) mobile phone operators who provide a phone service to subscribers which includes an internet access service;
 - (c) mobile phone operators who supply an internet access service to domestic subscribers; 10
 - (d) any other category of provider or operator designated by the Secretary of State by regulations in accordance with subsection (6).
- (2) For the purposes of subsection (1), “subscribers” includes—
- (a) domestic subscribers; 15
 - (b) schools; and

- (c) organisations that allow a person to use an internet access service in a public place.
For the purposes of the conditions in subsections (3) and (4), if the subscriber is a school or organisation, a responsible person within the school or organisation shall be regarded as the subscriber. 5
- (3) A provider or operator to whom subsection (1) applies must provide to subscribers an internet access service which excludes adult-only content unless all of the conditions listed in subsection (4) have been fulfilled.
- (4) The conditions are –
- (a) the subscriber “opts-in” to subscribe to a service that includes online adult-only content; 10
 - (b) the subscriber is aged 18 or over; and
 - (c) the provider or operator of the service has an age verification scheme which meets the standards set under section 2, and which has been used to confirm that the subscriber is aged 18 or over before a user is able to access adult-only content online. 15
- (5) It shall be a defence to any claims, whether civil or criminal, for a provider or operator to whom subsection (1) applies to prove that at the relevant time they were –
- (a) following the standards and code set out in section 2; and 20
 - (b) acting in good faith.
- (6) For the purposes of subsection (1)(d), for a provider or operator to be designated by the Secretary of State –
- (a) the provider or operator must be providing a service that includes online adult-only content; and 25
 - (b) the service must not be provided using an internet service provider or mobile phone operator to whom subsection (1)(a), (1)(b) or (1)(c) applies.
- (7) Nothing in this section prevents any providers or operators to whom subsection (1) applies from providing additional levels of filtering of content. 30
- (8) Regulations made under subsection (1) are to be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- 2 Role of OFCOM**
- (1) It shall be the duty of OFCOM to set, and from time to time to review and revise, standards for – 35
- (a) the filtering of online adult-only content in line with the standards set out in section 319 of the Communications Act 2003 (OFCOM’s standards code);
 - (b) the age verification schemes to be used under section 1 of this Act before a subscriber is able to access adult-only content online; 40
 - (c) the filtering of content by age or subject category by providers or operators to whom subsection (1) applies.
- (2) The standards set by OFCOM under this section must be contained in one or more codes. 45

- (3) Before setting standards under subsection (1), OFCOM must publish, in such manner as they think fit, a draft of the proposed code or codes containing those standards.
- (4) After publishing the draft code or codes and before setting the standards, OFCOM must consult relevant persons and organisations. 5
- (5) It shall be the duty of OFCOM to establish procedures for the handling and resolution in a timely manner of complaints about the observance of standards set under this section.
- (6) OFCOM must prepare a report for the Secretary of State about the operation of Parts 1, 2 and 3 of this Act – 10
 - (a) every three years from the day on which this Act is passed; and
 - (b) at the direction of the Secretary of State.

3 Delegation of OFCOM’s functions to an appropriate authority

- (1) OFCOM may designate any body corporate to be, to the extent provided by the designation, the appropriate authority for the purposes of setting standards under section 2. 15
- (2) To the extent that no body is designated for a purpose under section 2, OFCOM is the appropriate authority for that purpose.
- (3) Where a body is designated for a purpose under section 2, OFCOM may act as the appropriate authority for that purpose concurrently with or in place of that body. 20
- (4) OFCOM may provide a designated body with assistance in connection with any of the functions of that body under section 2.
- (5) A designation may in particular – 25
 - (a) provide for a body to be the appropriate authority to carry out the duties of OFCOM under section 2 in whole or in part;
 - (b) provide that a function of the appropriate authority is exercisable by the designated body –
 - (i) to such extent as may be specified;
 - (ii) either generally or in such circumstances as may be specified; 30
and
 - (iii) either unconditionally or subject to such conditions as may be specified.
- (6) The conditions that may be specified pursuant to subsection (5)(b)(iii) include a condition to the effect that a function may, generally or in specified circumstances, be exercised by the body only with the agreement of OFCOM. 35
- (7) A designation has effect for such period as may be specified and may be revoked by OFCOM at any time.
- (8) OFCOM must publish any designation in such manner as it considers appropriate for bringing it to the attention of persons who, in OFCOM’s opinion, are likely to be affected by it. 40
- (9) OFCOM may not designate a body unless, as respects that designation, they are satisfied that the body –
 - (a) is a fit and proper body to be so designated;

-
- (b) has consented to being so designated;
- (c) has access to financial resources that are adequate to ensure the effective performance of its functions as the appropriate authority;
- (d) is sufficiently independent of providers or operators to whom section 1(1) applies; and 5
- (e) will, in performing any function to which the designation relates, have regard in all cases –
- (i) to the principles under which the activities should be transparent, accountable, proportionate and consistent; and
- (ii) to such of the matters mentioned in section 3(4) of the Communications Act 2003 as appear to the body to be relevant in the circumstances. 10
- (10) Subject to any enactment or rule of law restricting the disclosure or use of information by OFCOM or by a designated body –
- (a) a designated body may supply information to another designated body for use by that other body in connection with any of its functions as the appropriate authority; 15
- (b) a designated body may supply information to OFCOM for use by OFCOM in connection with any of its functions under this Part;
- (c) OFCOM may supply information to a designated body for use by that body in connection with any of its functions as the appropriate authority. 20
- (11) In carrying out its functions as the appropriate authority, a designated body may carry out, commission or support (financially or otherwise) research.
- (12) In this section – 25
- “designation” means a designation under this section and cognate expressions are to be construed accordingly;
- “specified” means specified in a designation.
- 4 Duty to provide information about online safety**
- A provider or operator to whom section 1(1) applies must provide prominent, easily accessible and clear information about online safety to customers at the time the service is purchased and make such information available for the duration of the service. 30
- 5 Duty to provide means of filtering online content**
- Manufacturers of electronic devices must provide customers with a means of filtering content from an internet access service at an age-appropriate level at the time the device is purchased. 35
- 6 Duty to educate parents about online safety**
- The Secretary of State must provide means of educating parents of children under the age of 18 about – 40
- (a) the exclusion of adult-only content from an internet access service under section 1 to protect children;
- (b) additional online safety measures for electronic devices including, but not restricted to, age-appropriate filters; and

- (c) protecting their child from online behaviour that could be a safety risk including, but not restricted to, bullying and sexual grooming.

7 Interpretation of this Part

In this Part –

- “adult-only content” means material that contains offensive and harmful material from which persons under the age of 18 are protected; 5
- “age verification scheme” is a scheme to establish the age of the subscriber;
- “electronic device” means a device that is capable of connecting to an internet access service and downloading content; 10
- “internet access service” and “internet service provider” have the same meaning as in section 124N of the Communications Act 2003 (interpretation);
- “material from which persons under the age of 18 are protected” means material specified in the OFCOM standards under section 2; 15
- “OFCOM” has the same meaning as in Part 1 of the Communications Act 2003;
- “offensive and harmful material” has the same meaning as in section 3 of the Communications Act 2003 (general duties of OFCOM);
- “online safety” means the safe and responsible use of the internet by children and young people on an electronic device; 20
- “phone service” means a service providing calls including voice, voicemail and conference and data calls, supplementary services including call forwarding and call transfer and messaging and multi-media services including short message services, enhanced media services and multi-media services; and 25
- “subscriber” means a person who receives the service under an agreement between the person and the provider or operator of the service.

PART 2

ON-DEMAND PROGRAMME SERVICES 30

8 Age verification scheme

Section 368E of the Communication Act 2003 (harmful material) is amended as follows –

- (a) in subsection (4) for “in a manner which secures that persons under the age of 18 will not normally see or hear it” substitute “using an age verification scheme to determine that the person purchasing or otherwise obtaining access to the material is not under the age of 18”; 35
- (b) in subsection (5) –
 - (i) after paragraph (a) insert –
 - “(aa) a video work in respect of which the video works authority has issued an 18 classification certificate because the content is considered pornographic;” 40
 - (ii) in paragraph (b) after the second “certificate” insert “or an 18 classification certificate because the content is considered pornographic”; 45

- (c) in subsection (7) –
- (i) before ““classification certificate”” insert ““age verification scheme” is a scheme to establish the age of the person;”;
 - (ii) before ““R18 classification certificate”” insert ““pornographic” has the same meaning as in section 63 of the Criminal Justice and Immigration Act 2008 (possession of extreme pornographic images);”.

PART 3

LICENSING OF PORNOGRAPHIC SERVICES

- 9 Definition of a pornographic service** 10
- (1) For the purposes of this Part, a service is a pornographic service if –
- (a) it includes the supply of pornographic material which is –
 - (i) prohibited material, or
 - (ii) specially restricted material;
 - (b) the pornographic material is received by the user by means of an electronic communications network; and
 - (c) the service can be received in the United Kingdom by a member of the public using standard consumer equipment.
- (2) In this section –
- “pornographic” has the same meaning as in section 63 of the Criminal Justice and Immigration Act 2008 (possession of extreme pornographic images);
 - “prohibited material” and “specially restricted material” have the same meaning as in section 368E of the Communications Act 2003 (harmful material).
- 10 Authority to license pornographic services**
- (1) The Secretary of State may by regulations designate any two separate bodies to be –
- (a) the appropriate licensing authority to license a pornographic service; and
 - (b) a second independent body to conduct appeals.
- (2) The appropriate licensing authority shall have as its objective to prevent children from accessing pornographic material as defined in section 9.
- (3) An application for a licence to provide a pornographic service –
- (a) must be made in such a manner; and
 - (b) must contain such information about the applicant, his or her business and the service he or she proposes to provide,
- as the appropriate licensing authority may determine.
- (4) The appropriate licensing authority may require an application for a licence to provide a pornographic service to be accompanied by a fee if such a fee is payable in accordance with a tariff approved by the Secretary of State.

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- (5) The Secretary of State may for the purposes of subsection (4) approve a tariff providing for different fees for different classes of pornographic services and for different circumstances.
- (6) Any licence issued by the appropriate licensing authority must require that any material which falls within this section is provided using an age verification scheme to determine that the person purchasing or otherwise obtaining access to the material is not under the age of 18. 5
- (7) The Secretary of State may by notice under this section require that any licence issued by the appropriate licensing authority must contain requirements other than that contained in subsection (6). 10
- (8) No licence issued by the appropriate licensing authority may stipulate a condition other than one required under subsection (6) or (7).
- (9) The appropriate licensing authority may –
(a) decline to issue a licence to provide a pornographic service if that service is in breach of any requirement under subsection (6) or (7); or 15
(b) revoke a licence to provide a pornographic service if that service is in breach of any requirement under subsection (6) or (7).
- (10) Unless revoked under subsection (9), a licence shall remain in force for one year or for such shorter period as the appropriate licensing authority, on the grant of the licence, may determine. 20
- (11) The Secretary of State shall not make any designation under subsection (1)(a) unless he or she is satisfied that adequate arrangements will be made by the second independent body for an appeal by any person against –
(a) a refusal by the appropriate licensing authority to issue a licence to that person; or 25
(b) a decision by the appropriate licensing authority to revoke a licence issued to that person.
- (12) In this section, “age verification scheme” means a scheme to establish the age of the person.
- (13) Regulations made under subsection (1) are to be made by statutory instrument, and a statutory instrument containing such regulations may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. 30
- 11 Offence to provide an unlicensed service**
- (1) The provider of a pornographic service commits an offence if the service is not a service licensed by the appropriate licensing authority. 35
- (2) A person guilty of an offence under this section is liable, on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale (or both).
- 12 Prevention of payments** 40
- (1) Where the appropriate licensing authority determines that a pornographic service is not a licensed service for the purposes of this Act, the appropriate licensing authority must give a direction under this section.

- (2) A direction under this section shall be given to—
- (a) a particular person operating in the financial sector,
 - (b) any description of persons operating in that sector, or
 - (c) all persons operating in that sector.
- (3) A direction under subsection (1) must require a relevant person not to enter into or continue to participate in—
- (a) a specified transaction or business relationship with a person or persons associated with the pornographic service, 5
 - (b) a specified description of transactions or business relationships with a person or persons associated with the pornographic service, or 10
 - (c) any transaction or business relationship with a person or persons associated with the pornographic service.
- (4) A relevant person who fails to comply with a requirement imposed by a direction under this section commits an offence, subject to subsection (5).
- (5) No offence is committed under subsection (4) if the relevant person took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with. 15
- (6) A person guilty of an offence under subsection (4) is liable, on summary conviction, to a fine.
- (7) Any reference in this section to a person operating in the financial sector is to a credit or financial institution that—
- (a) is a United Kingdom person, or
 - (b) is acting in the course of a business carried on by it in the United Kingdom. 20
- (8) In this section—
- “credit institution” and “financial institution” have the meanings given in paragraph 5 of Schedule 7 to the Counter-Terrorism Act 2008;
 - “relevant person”, in relation to a direction, means any of the persons to whom the direction is given under subsection (2). 25

PART 4 30

EXTENT, COMMENCEMENT AND SHORT TITLE

13 Extent, commencement and short title

- (1) This Act extends to England and Wales, Scotland and Northern Ireland.
- (2) This section comes into force on the day on which this Act is passed.
- (3) Sections 1 to 12 come into force at the end of the period of six months after the day on which this Act is passed. 35
- (4) This Act may be cited as the Online Safety Act 2016.

Online Safety Bill [HL]

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To make provision about the promotion of online safety; to require internet service providers and mobile phone operators to provide an internet service that excludes adult-only content; to require information to be provided about online safety by internet service providers and mobile phone operators; to make provision for parents to be educated about online safety; to make provision for the regulation of harmful material through on-demand programme services; to introduce licensing of pornographic services; and for connected purposes.

Baroness Howe of Idlicote

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