

Digital Economy Bill

AMENDMENTS
TO BE MOVED
ON REPORT

[Supplementary to the Revised Marshalled List]

Clause 15

LORD ASHTON OF HYDE

Page 18, line 11, leave out subsection (2)

Page 18, line 16, at end insert—

- “(2A) The Secretary of State may make regulations specifying, for the purposes of this Part, circumstances in which material is or is not to be regarded as made available on a commercial basis.
- (2B) The regulations may, among other things, prescribe circumstances in which material made available free of charge is, or is not, to be regarded as made available on a commercial basis.
- (2C) Regulations under subsection (2A) may provide for circumstances to be treated as existing where it is reasonable to assume that they exist.”

Page 18, line 17, leave out subsection (3)

Page 18, line 36, at end insert—

- “() Regulations under subsection (2A) may make different provision for different purposes.
- () Regulations under subsection (2A) are to be made by statutory instrument.
- () A statutory instrument containing regulations under subsection (2A) is subject to annulment in pursuance of a resolution of either House of Parliament.
- () But a statutory instrument containing the first regulations under that subsection may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”

Clause 17

BARONESS JONES OF WHITCHURCH
LORD STEVENSON OF BALMACARA

Page 19, line 47, leave out “may” and insert “must”

Page 19, line 47, leave out “any person, or any”

LORD ASHTON OF HYDE

Page 19, line 48, leave out “this Part” and insert “–

- (a) all of the functions of the age-verification regulator under this Part, or
- (b) any of those functions specified in the notice by which the designation is made.

() Different persons may be designated for the purposes of different functions.”

Page 20, line 8, leave out from “that” to the end of line 9 and insert “–

- (a) arrangements will be maintained by the age-verification regulator for appeals to which subsection (4A) applies, and
- (b) any person hearing an appeal under those arrangements will be sufficiently independent of the age-verification regulator.

(4A) This subsection applies to appeals – ”

BARONESS JONES OF WHITCHURCH
LORD STEVENSON OF BALMACARA

Page 20, line 27, at end insert –

- “(8) In designating two or more persons under subsection (1), the Secretary of State must specify that the same persons may not carry out functions under the sections specified in subsection (9), and the functions specified in subsection (10).
- (9) The functions specified in this subsection are the steps taken by the age verification regulator to identify that a person is –
 - (a) contravening section 15(1);
 - (b) making prohibited material available on the internet to persons in the United Kingdom.
- (10) The functions specified in this subsection are the enforcement powers under sections 20 to 23.
- (11) The person or persons carrying out the age verification functions under subsection (9) must notify the person or persons carrying out the enforcement functions under subsection (10) of an identification under subsection (9), to enable that person or persons to take the necessary enforcement action.
- (12) Appeals procedures must be carried out by a body that is fully independent of the regulator responsible for the functions set out in subsection (9).”

Clause 18

LORD ASHTON OF HYDE

Page 20, line 29, leave out subsection (1) and insert –

- “(1) Where the Secretary of State proposes to make a designation under section 17 , the Secretary of State must lay before both Houses of Parliament –
- (a) particulars of that proposed designation, and
 - (b) a statement of the reasons why the Secretary of State is satisfied about the matters mentioned in section 17(4).”

Page 20, line 35, at end insert –

- “(3A) But subsection (3B) applies, instead of subsections (2) and (3), where the proposed designation would be –
- (a) the first to be made under section 17 , or
 - (b) the first to be made under that section for the purposes of a particular function.
- (3B) The Secretary of State may not make the designation unless it has been approved by a resolution of each House of Parliament.”

Page 20, line 36, leave out “subsection (3) is” and insert “subsections (3) and (3A) are”

Clause 21

LORD ASHTON OF HYDE

Page 23, line 24, at end insert –

- “() The Secretary of State must lay before both Houses of Parliament the guidelines, and any revised guidelines, published under this section.”

Clause 22

LORD ASHTON OF HYDE

Page 24, line 39, leave out subsection (7)

Clause 23

LORD ASHTON OF HYDE

Page 25, line 22, leave out “mentioned in section 17(4)(d)” and insert “to which section 17(4A)(d) applies”

Page 26, line 22, leave out “mentioned in section 17(4)(e)” and insert “to which section 17(4A)(e) applies”

After Clause 24

LORD ASHTON OF HYDE

Insert the following new Clause—

“Guidance to be published by age-verification regulator

- (1) Subject to the following provisions of this section, the age-verification regulator must publish, and revise from time to time—
 - (a) guidance about the types of arrangements for making pornographic material available that the regulator will treat as complying with section 15(1); and
 - (b) guidance for the purposes of section 22(1) and (6) about the circumstances in which it will treat services provided in the course of a business as enabling or facilitating the making available of pornographic material or prohibited material.
- (2) Once the regulator has prepared a draft of guidance it proposes to publish under subsection (1)(a), it must submit the draft to the Secretary of State.
- (3) When draft guidance is submitted to the Secretary of State under subsection (2), the Secretary of State must lay that draft guidance before both Houses of Parliament.
- (4) Once the regulator has prepared a draft of guidance it proposes to publish under subsection (1)(b), it must submit the draft to the Secretary of State for approval.
- (5) When draft guidance is submitted to the Secretary of State under subsection (4), the Secretary of State may approve it either without modification or with such modifications as the Secretary of State decides should be made to it.
- (6) Once the Secretary of State has approved draft guidance under subsection (5), the Secretary of State must lay the following before both Houses of Parliament—
 - (a) the draft guidance, incorporating any modifications the Secretary of State has decided should be made to it under that subsection, and
 - (b) if the draft incorporates such modifications, a statement of the Secretary of State’s reasons for deciding that those modifications should be made.
- (7) If, within the period of 40 days beginning with the day on which draft guidance is laid before Parliament under subsection (3) or (6), either House resolves not to approve that draft guidance, the age-verification regulator must not publish guidance in the form of that draft.
- (8) If no such resolution is made within that period, the age-verification regulator must publish the guidance in the form of the draft laid before Parliament.
- (9) But subsection (11) applies, instead of subsections (7) and (8), in a case falling within subsection (10).
- (10) The cases falling within this subsection are—
 - (a) the case where draft guidance is laid before Parliament under subsection (3) and no previous guidance has been published under subsection (1)(a) by the age-verification regulator; and

After Clause 24 - continued

- (b) the case where draft guidance is laid before Parliament under subsection (6) and no previous guidance has been published under subsection (1)(b) by the age-verification regulator.
- (11) The regulator must not publish guidance in the form of the draft laid before Parliament unless the draft has been approved by a resolution of each House of Parliament.
- (12) Subsections (7) and (11) do not prevent new draft guidance from being laid before Parliament.
- (13) For the purposes of subsection (7) –
 - (a) where draft guidance is laid before each House of Parliament on different days, the later day is to be taken as the day on which it was laid before both Houses, and
 - (b) in reckoning any period of 40 days, no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.
- (14) References in this section to guidance and draft guidance include references to revised guidance and draft revised guidance.”

After Clause 25

LORD ASHTON OF HYDE

Insert the following new Clause –

“Guidance by Secretary of State to regulator

- (1) The Secretary of State may issue guidance to the age-verification regulator in relation to the exercise of the regulator’s functions, and may from time to time revise that guidance.
- (2) The guidance may cover (among other things) the following matters –
 - (a) considerations to be applied in determining –
 - (i) whether arrangements for making pornographic material available comply with section 15(1);
 - (ii) whether a person is an ancillary service provider, for the purposes of section 22;
 - (b) the approach to be taken by the regulator to the exercise of its powers to give notices under sections 20 , 22 and 23;
 - (c) the preparation and publication of guidance and reports by the regulator and the content of such guidance and reports;
 - (d) the maintenance by the regulator of arrangements meeting the requirements of section 17(4)(a) and (b).
- (3) The regulator must have regard to the guidance.
- (4) The Secretary of State must lay before both Houses of Parliament the guidance, and any revised guidance, issued under this section.”

After Clause 26

BARONESS JONES OF WHITCHURCH
LORD STEVENSON OF BALMACARA

Insert the following new Clause –

“Code of practice for commercial social media platform providers on online abuse

- (1) Within six months of the passing of this Act, the Secretary of State must publish a code of practice about the responsibilities of social media platform providers to protect children and young people from online abuse and bullying.
- (2) The Secretary of State may bring the code of practice into force by regulations made by statutory instrument.
- (3) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (3) The code of practice must include –
 - (a) the overarching duty of care of internet service providers and social media platform providers to ensure the safety of a child or young person involved in any activity or interaction for which that service provider is responsible;
 - (b) the obligation to inform the police with immediate effect if notified that posts on social media sites contravene existing legislation;
 - (c) the obligation to remove posts with immediate effect if notified that posts on social media sites contravene existing legislation;
 - (d) the obligation to have specific terms of use that prohibit cyber-bullying and provide a mechanism for complaints of cyber bullying to be received and for the offending material to be removed; and
 - (e) their responsibility to work with education professionals, parents and charities to give young people the skills to use social media safely.
- (4) Commercial social media platform providers must comply with the code of practice, once it is in force.
- (5) The Secretary of State may from time to time revise and re-publish the code of practice.
- (6) The Secretary of State may bring into force a revised and re-published code of practice by regulations made by statutory instrument.
- (7) In this section –

“commercial social media platform provider” means a person who operates on a commercial basis an internet site on which people can interact;

“cyber-bullying” means material that has the effect of seriously threatening, intimidating, harassing or humiliating children and young people.”

Clause 85

LORD ASHTON OF HYDE

Page 89, leave out lines 15 to 19 and insert –

- “(3) The steps set out in subsections (4) to (6) must be taken before regulations are made under this section.
- (4) The Secretary of State must ask the appropriate regulatory authority to consult such persons as appear to the authority likely to be affected by regulations under this section, including –
 - (a) providers of on-demand programme services, and
 - (b) representatives of people with disabilities affecting their sight or hearing or both.
- (5) The appropriate regulatory authority must inform the Secretary of State of –
 - (a) the outcome of the consultation, and
 - (b) any other matters that they think should be taken into account by the Secretary of State for the purposes of the regulations.
- (6) Where OFCOM are not the appropriate regulatory authority, the Secretary of State must consult OFCOM.
- (7) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”

Page 90, line 42, at end insert –

- “() In section 402(2)(a) (procedure for statutory instruments) after “411” insert “or regulations under section 368BC”.”

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6 March 2017
