

OSB HL Bill 151 (amended in Committee): Secretary of State (SoS) roles

The OSB grants myriad powers to the Secretary of State (SoS) throughout the Bill which lead to the unjustified intrusion of the SoS (from whichever party is in power) in decisions that are about the regulation of speech; and unnecessary levels of interference and threats to the independence of Ofcom that arise from the powers of direction to Ofcom on its day-to-day matters.

This table lists all the powers granted to the SoS in the OSB (the clauses refer to the [version of the Bill amended in the Committee stage of the HL](#) in June 2023). Many of them are minor and/or necessary in a regulatory regime such as this; a couple – listed at the top – are significant and should be deleted – see our Lords Report stage briefing for more detail; others would benefit from further probing and potential amendment at Report. All are included here for completeness. Where amendments were tabled at Commons Report stage, these are referenced.

Provision	Content/purpose summary
Cl. 39(1)	<p><u>SoS powers of direction:</u></p> <p>SoS power to direct OFCOM to modify a draft of a Code of Practice (CoP) to reflect <i>public policy</i> OR re: CSEA and terrorism for reasons of <i>national security or public safety</i></p>
Cls. 39(2)-(3) and Cls. 39(7)-(9)	<p>Note powers of repeat direction under cl. 39(2)-(3) and further directions under cl. 39(7) but with limitations, i.e., reasons must be given (national security or public safety) and must lay before Parliament modified draft(s).</p>
Cl. 39(10)	<p>See also power under cl. 39(10) to remove/obscure info. in OFCOM's review statement (cl. 42(3)(b)) subject to OFCOM's agreement</p> <p>The Government has tabled amendments (134-138) to this clause.</p>
Cl. 158(1) & (6)	<p><u>Directions in special circumstances (public health/safety or security):</u></p> <p>SoS power to direct OFCOM where the SoS has 'reasonable grounds for believing' that there is a threat to public health or safety, or national security but SoS must publish reasons</p>
Cl. 158(2)	<p>This includes directing OFCOM to:</p>
Cl. 158(3)-(5)	<ol style="list-style-type: none"> a. prioritise action to respond to a specific threat when exercising its media literacy functions; b. require specified regulated service providers (or providers of regulated services generally) to publicly report on what steps they are taking to respond to that threat
Cl. 158(7)	<p>SoS power to vary/revoke such direction</p>

	This clause should be deleted.
Cl. 159(1) & (3)	<p><u>SoS guidance:</u></p> <p>SoS power to give guidance to OFCOM re:</p> <ul style="list-style-type: none"> a. OFCOM's exercise of its functions under the OSB; b. OFCOM's functions and general powers under s. 1(3) CA 2003; c. OFCOM's functions under s. 11 CA 2003 (media literacy). <p>but must first consult OFCOM before issuing/revising/replacing such guidance.</p> <p>Note some other elements of oversight: minimum frequency under cl. 159(4), present to Parliament under cl. 159(6) but no timings; publish the guidance under cl. 159 (7) and annual reporting on SoS functions under cl. 160 (amendment to s. 390(2) of the CA 2003)</p> <p>This clause should be deleted.</p>
Other powers – in sequential order	
Cl. 36(6)	<p><u>CoP about duties:</u></p> <p>SoS must be consulted by OFCOM when preparing a cl. 36 draft CoP/amendments to it</p>
Cl. 38(1) Cl. 38(2)	<p><u>Procedures for issuing CoP:</u></p> <p>OFCOM CoP draft (under cl. 36) to be submitted to the SoS</p> <p>SoS to lay the draft before Parliament, unless they intend to exercise the power of direction under cl. 39(1) above</p>
Cl. 42(2) Cl. 42(3)(b) Cl. 42(6)	<p><u>Review of CoP:</u></p> <p>SoS can require OFCOM to review a terrorism or CSEA CoP if necessary for reasons of <i>national security</i> or <i>public safety</i></p> <p>SoS to receive statement by OFCOM explaining reasons why the regulator considers changes to the CoP are not required</p> <p>SoS can make representations to OFCOM about the desirability of removing/obscuring info. in the OFCOM review statement (for reasons of national security, public safety, or government external affairs)</p> <p>Sir Jeremy Wright and the DCMS Select Committee both tabled amendments at Commons Report to remove all or part of this clause (then clause 41); see amendments 13 and 45 respectively.</p>
	<u>Minor amendments of CoP:</u>

Cl. 43(2)-(4)	SoS must be notified by OFCOM of proposed minor CoP amendments and SoS to agree
Cl. 54(2)-(3)	<p><u>Content harmful to children:</u></p> <p>SoS to specify in regs. primary priority content harmful to children and priority content harmful to children but note:</p> <ul style="list-style-type: none"> a. limitations under cl. 55(1) and cl. 55(2); b. oversight under cl. 55(4): SoS must consult OFCOM and under cl. 56; OFCOM must review regs. and publish report (SoS must receive copy)
Cls. 60(1)-(3)	<p><u>Regs. about NCA reports:</u></p> <p>SoS power to make regs re: reports to NCA (see cl. 59 requirement to report CSEA to NCA) but must first consult NCA, OFCOM and other persons the SoS considers appropriate</p>
Cl. 68(12)	<p><u>Transparency reports about certain Part 3 services:</u></p> <p>SoS power to amend frequency of transparency reporting process but cl. 68(13) requires that SoS first consults OFCOM</p>
Cl. 73(3)-(4)	<p><u>OFCOM guidance on duties about reg. provider porn. content:</u></p> <p>SoS must be consulted before such guidance is produced (incl. revised or replacement guidance) and notified where minor revisions are proposed.</p>
Cl. 74(3)(b) & 74(11)	<p><u>Duty to notify OFCOM:</u></p> <p>SoS power to make regs. describing types of supporting evidence, documents, and other info. required for notification under cl. 74(1) but must consult OFCOM first</p>
Cl. 74(6)(b)	SoS approval required for OFCOM to create exemption re: notification and fees (cl. 75)
Cl. 74(7)	SoS approval required for OFCOM to revoke such an exemption
Cl. 76(4)	<p><u>OFCOM statement re: qualifying worldwide revenue:</u></p> <p>SoS to be consulted before OFCOM produces such a statement (incl. revised or replacement statement)</p>
Cl. 76(7)	SoS must receive copy of the statement (incl. revised or replacement) and lay before Parliament
Cl. 7(2) & 77(4)	<p><u>Setting of threshold figure:</u></p> <p>SoS power to set (and keep under review) appropriate threshold figure for cl. 74 (notification) and cl. 75 (fees) after having taken</p>

Cl. 77(5)	<p>advice from OFCOM to inform the setting of such threshold; see cl. 77(3) for procedure (publication and laying before Parliament)</p> <p>SoS may request OFCOM to conduct a consultation if the SoS considers it appropriate to revise the threshold figure.</p>
Cl. 78(1)-(2)	<p><u>SoS guidance on principles re: cl. 75 payable fees:</u></p> <p>SoS to issue guidance to OFCOM in determining fees payable but must first consult OFCOM before issuing/ revising/ replacing it; note time limitation for revising/ replacing guidance in cl. 78 (3)</p>
Cl. 78(4)-(5)	<p>SoS to lay guidance (and related revisions) before Parliament and publish said guidance (incl. revised/ replacement)</p>
Cl. 83(3)	<p>SoS power to extend period within which OFCOM must respond to SoS statement of strategic priorities re: online safety matters under cl. 155(1)</p>
Cl. 104(2)	<p><u>Collab. and info. sharing with overseas regulators:</u></p> <p>SoS power to specify in regs. overseas regulators in relation to which OFCOM's ability to co-operate etc. applies</p>
Cl. 107(3)	<p>Amendment to s. 24B of the CA 2003 (formulation of policy): provision of info. to the SoS</p>
Cl. 114(13)	<p>SoS power to set out minimum accuracy standards for detecting terrorism and/or CSEA content but following advice from OFCOM</p>
Cl. 117(2)	<p>SoS to receive copy of OFCOM's annual report and lay it before Parliament</p>
Cl. 133(10)	<p><u>Service restriction orders (business disruption measures):</u></p> <p>SoS to be informed by OFCOM after a service restriction order has been made</p>
Cl. 135(8)	<p><u>Access restriction orders (business disruption measures):</u></p> <p>SoS to be informed by OFCOM after an access restriction order has been made</p>
Cl. 140(4)(a)	<p><u>OFCOM guidance about enforcement action:</u></p> <p>SoS to be consulted before OFCOM produces guidance (incl. revised/ replacement guidance) about how it will use its enforcement powers</p> <p>Labour tabled an amendment (23) to this clause (then cl 130) at Commons Report stage to remove the SoS from the list of consultees.</p>

Cl. 148(5)	<p><u>OFCOM report about independent researchers' access to info:</u> SoS to receive copy of such report and lay it before Parliament</p>
Cl. 152(3) & (5)	<p><u>Power to make super-complaints:</u> SoS power to designate in regs. criteria an entity must meet to qualify as "eligible" to make super-complaints but must first consult OFCOM and other appropriate persons</p> <p>Labour tabled amendments (24 and 25) to this clause (then 141) at Commons report stage to give OFCOM the power to make the regulations.</p>
Cl. 153(1) & (3)	<p><u>Procedure for super-complaints:</u> SoS to make regs re: procedural matters about super-complaints but must first consult OFCOM and other appropriate persons</p>
Cls. 155 & 156	<p><u>Statement of strategic priorities:</u> SoS power to prepare a statement of strategic priorities re: online safety matters and publish in a manner determined by SoS (see cl. 155(5)); but frequency limitations on amendments (see cls. 155(7)-(8)), consultation (see cl. 156(2)) and draft before Parliament (see cl. 156(4)(b))</p> <p>Labour tabled a series of amendments (26-30) to this clause (then 146) at Commons Report stage.</p>
Cl. 157(1) & (2) Cl. 157(5)	<p><u>Advisory committee directions:</u> SoS can direct OFCOM to establish expert committee to advise on a specific online safety matter but must first consult OFCOM before giving/varying direction</p> <p>SoS can vary/revoke such direction</p>
Cl. 161(1) Cl. 161(7)-(8) Cl. 161(2) & (3)-(4) Cl. 161(5)	<p><u>OSB review:</u> SoS to undertake review to assess framework effectiveness SoS to publish and lay before Parliament (but no time limits) Review timing requirements set down and considerations SoS to consult OFCOM and appropriate persons in carrying out the review</p>
Cl. 195(1)	<p><u>Powers to amend OSB/Act:</u> SoS power to amend by regs. cl. 35 (fraud etc. offences) but subject to constraints:</p>

	<ul style="list-style-type: none"> a. cl. 195(2) re: criteria offences must meet before SoS includes in the cl. 35 list; and b. cl. 195(3) re: offences that cannot be added to avoid reg. duplication.
Cl. 196	SoS powers to amend/repeal provisions re: exempt content or services, i.e., regs. can exempt certain content/services from OSB scope or bring them into scope, but conditions apply
Cl. 197	SoS powers to amend the list in Part 2 of Sch. 1 re: para. 10 of Sch. 1 exemption (services provided by persons providing education or childcare) which relates to England and for the relevant Devolved Ministers to amend the list in their respective areas (note this clause includes criteria to be met before such amendments are to be made).
Cl. 198	SoS power to amend Schs. 5, 6 and 7: <ul style="list-style-type: none"> a. SoS can amend list of terrorism offences; b. SoS can amend list of CSEA offences except for those extending only to Scotland (which may be amended by the Scottish Ministers); c. SoS can amend priority offences but for reasons listed in cl. 198(4)-(5) and only if the amendment would not add an offence of a type listed in cl. 198(6).
Cl. 198(7)-(8)	The SoS must consult the Scottish Ministers or the DoJ in NI before making regs. which amend Sch. 7 (priority offences) in connection with an offence extending to Scotland or NI only.
Cl. 199	SoS power to make by regs. provisions consequential on the OSB (or regs. under the OSB), incl. powers to amend the CA 2003
Cl. 215(2)	SoS power re: commencement certain provisions in the OSB
Cl. 215(5)	SoS power to make by regs. transitional, transitory, or saving provision in connection with the commencement of any provision in the OSB

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Schedule provision	Content/purpose summary
Sch. 4, ¹ para. 7 and Cl. 38, para. 6 (a)	<p>SoS power to amend by regs. paras. 4 or 5 of Sch. 4 to vary the online safety objectives for regulated U2U services and regulated search services</p> <p>Note such regs. may make consequential amendments to para. 6 of this Sch. (re: combined services).</p>
Sch. 8, ² para. 34	<p>SoS power to add/vary/omit (by regs.) matters in Sch. 8, Part 1 (Matters about which info. may be required: U2U part of service) or Sch. 8, Part 2 (Matters about which info. may be required: search engine)</p> <p>and</p> <p>SoS power to amend (by regs.) Sch. 8, para. 33 concerning factors OFCOM must consider when determining what info. to require in a cl. 68(1) notice (for a transparency report)</p> <p>but SoS must consult OFCOM before making para. 34 regs (limitation found in para. 35).</p>
<p>Sch. 10,³ paras. 3(5) & 3(8)</p> <p>Sch. 10, paras. 4(2) and 4(4)</p> <p>Sch. 10, paras. 7(1) and 7(9)</p>	<p>SoS power to determine, after OFCOM's statement specifying the outstanding amount (i.e., portion of recoverable amount unlikely to be paid or recovered), an amount by which the latter is to be reduced; such determination is to be published in such a manner the SoS considers appropriate.</p> <p>SoS power to bring OFCOM's recovery of their initial costs process to an end by determining that the regulator is not to embark on another charging round; such determination is to be published in such a manner the SoS considers appropriate</p> <p>SoS power to make regs. they consider appropriate in re: the recovery by OFCOM of their initial costs but must first consult OFCOM,</p>

¹ Schedule 4: Codes of Practice under cl. 36: principles, objectives, content

² Schedule 8: Transparency reports by providers of Cat 1 services, Cat 2A services and Cat 2B services

³ Schedule 10: Recovery of OFCOM's initial costs

	providers listed in para. 7(9) and appropriate persons
Sch. 11, ⁴ para. 1	SoS power to make regs. specifying threshold conditions for categories of Part 3 services. i.e., <ul style="list-style-type: none"> a. Cat. 1 threshold conditions (with considerations set out in para. 1(5) of Sch. 11); b. Cat. 2A threshold conditions (with considerations set out in para. 1(6) of Sch. 11); c. Cat. 2B threshold conditions (with considerations set out in para. 1(7) of Sch. 11).
Sch. 11, para. 2	SoS to be provided by OFCOM with research-based advice (para. 2(5) of Sch. 11) and SoS must publish reasons if chooses to depart from such advice (paras. 2(8) and 2(9) of Sch. 11). SoS can give OFCOM extra time to conduct research (para. 2(10) of Sch. 11) SoS may not make para. 1 regs. (as outlined above) until OFCOM has conducted research and advised SoS (para. 2(11) of Sch. 11).
Sch. 11, para. 3(4)-(6)	SoS may request OFCOM to conduct further research but must provide reasons why this is necessary and receive OFCOM advice re: appropriateness of changes to. para. 1 regs.
Sch. 11, para. 3(8)(a)	SoS power to depart from OFCOM advice, but must publish reasons
Sch. 11, para. 3(8)(b)	SoS power to make new para. 1 regs. despite OFCOM advice against making changes but must publish reasons
Sch. 11, para. 3(9)	SoS power to decide against making new para. 1 regs. despite OFCOM advice in favour of changes but must publish reasons Labour tabled an amendment (35) to this Schedule at Commons Report stage to give OFCOM the power to make regulations.

⁴ Schedule 11: Categories of regulated U2U services and regulated search services (regs)