

Carnegie UK revised Draft Online Safety Bill – Nov 2021

Disclaimer

Carnegie UK present a revised draft of the Online Safety Bill. In amending the Bill, we have sought to demonstrate what is possible to strengthen and simplify a complex draft. We have not been able yet to chase through every single cross reference as numbering has shifted and sections deleted. We tried to catch the more significant ones but apologise for any errors and would welcome feedback.

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Make provisions for and in connection with the regulation by OFCOM to improve the safety of United Kingdom citizens who use the internet, with superior safety for children and having due regard to free speech and democratic debate while preserving the freedoms of the press.

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

OVERVIEW AND KEY DEFINITIONS

1 Overview of Act

- (1) This Act contains provision about the regulation by OFCOM of certain internet services ("regulated services") principally through the imposition of a duty of care on regulated services.
- (2) Sections 2 and 3 contain key definitions, including the definition of a regulated service.
- (3) Part 2 imposes duties of care on providers of regulated services and requires OFCOM to issue codes of practice relating to those duties.
- (4) Part 3 imposes further duties on providers of regulated services.
- (5) Part 4 is about OFCOM's powers and duties in relation to regulated services.
- (6) Part 5 is about appeals and complaints relating to regulated services.
- (7) Part 6 is about the Secretary of State's functions in relation to regulated services.
- (8) Part 7 makes general and final provision, and includes an index of terms defined in this Act (see section 138).

1A Objectives of the online safety bill

- (1) The Online Safety Objectives are-
 - (a) The adequate protection of citizens from harm arising from the operation of regulated services through the imposition of a duty of care on providers of such services to take appropriate and reasonable steps to ensure that those services are safe by design and in the operation of their systems and processes
 - (b) A higher level of protection for children
 - (c) the preservation of public health, safety and the national security of the United

Kingdom

- (d) The safeguarding of freedom of expression and the right to respect for private and family life, home and correspondence.

1B General duties of OFCOM under section 3 of the Communications Act

- (1) Section 3 of the Communications Act (general duties of OFCOM) is amended in accordance with subsections (2) to (8).
- (2) In subsection (2), after paragraph (f) insert –
“(g) the exercise of its online safety functions to attain the Online Safety Objectives”
- (3) In subsection (4)(c), at the beginning insert “(subject to subsection (5A))”.
- (4) After subsection (4) insert –
“(4A) In performing their duties under subsection (1) in relation to matters to which subsection (2)(g) is relevant, OFCOM must have regard to such of the following as appear to them to be relevant in the circumstances –
- (a) the risk of harm to citizens arising from (in the case of user-to-user services) content present on such services or (in the case of search services) content that may be encountered in or via search results;
- (b) the need for a higher level of protection for children than for adults;
- (Zb) the need to maintain an appropriate balance between
- (i) freedom of expression and the right to respect for private and family life, home and correspondence; and
- (ii) the need to protect freedom of the media;
- (c) the need for it to be clear to providers of regulated services how they may comply with their duties under Chapter 2, 3 or 4 of Part 2 of the Online Safety Act 2021 (duties of care) taking account of the Safer Systems and Processes Principles in section [30];
- (d) the need to exercise their functions so as to secure that providers of regulated services may comply with such duties by taking steps which are proportionate to
- (i) the kind, size or capacity of the provider in question, and
- (ii) the level of risk of harm presented by the service in question, and the severity of the potential harm;
- (e) the desirability of promoting the use by providers of regulated services of technologies designed to reduce the risk of harm arising to citizens from (in the case of user-to-user services) content present on such services or (in the case of search services) content that may be encountered in or via search results;
- (f) the extent to which providers of regulated services demonstrate, in a way that is transparent and accountable, that they are complying with their duties under Chapter 2, 3 or 4 of Part 2 of the Online Safety Act 2021 (as the case may be).

2 Meaning of “user-to-user service” and “search service”

- (1) In this Act “user-to-user service” means an internet service by means of which content that is generated by a user of the service, or uploaded to or shared on the service by a user of the service, may be encountered by another user, or other users, of the service.
- (2) In subsection (1) the reference to content that may be encountered by another user, or other users, of a service includes content that is capable of being shared with such a user or users by operation of a functionality of the service that allows the sharing of content.
- (3) For the purposes of subsection (1) it does not matter what proportion of content present on a service is content described in that subsection.
- (4) For the meaning of “content” and “encounter”, see section 137.
- (5) In this Act “search service” means an internet service that –
 - (a) is, or includes, a search engine (see section 134), and
 - (b) is not a user-to-user service.
- (6) For the purposes of this Act, a dissociable part of a user-to-user service, or a dissociable part of a search service, is to be regarded as not forming part of the service if the conditions in paragraph 4(2) of Schedule 1 (internal business services) are satisfied in relation to that part.

3 Meaning of “regulated service”

- (1) This section applies for the purposes of this Act.
- (2) “Regulated service” means –
 - (a) a regulated user-to-user service, or
 - (b) a regulated search service.
- (3) A “regulated user-to-user service” means a user-to-user service that –
 - (a) has links with the United Kingdom (see subsections (5) and (6)), and
 - (b) is not exempt (see subsection (7)).
- (4) A “regulated search service” means a search service that –
 - (a) has links with the United Kingdom (see subsections (5) and (6)), and
 - (b) is not exempt (see subsection (7)).
- (5) A user-to-user service or a search service “has links with the United Kingdom” if –
 - (a) the service has a significant number of United Kingdom users, or
 - (b) United Kingdom users form one of the target markets for the service (or the only target market).
- (6) A user-to-user service or a search service also “has links with the United Kingdom” if –
 - (a) the service is capable of being used in the United Kingdom by individuals, and
 - (b) there are reasonable grounds to believe that there is a material risk of significant harm to individuals in the United Kingdom arising from –
 - (i) in the case of a user-to-user service, content present on the service;

- (ii) in the case of a search service, content that may be encountered in or via search results.
- (7) A user-to-user service or a search service is exempt if it is a service of a description that is exempt as provided for by Schedule 1.
 - (8) If the condition in subsection (10) is satisfied, the Secretary of State may by regulations repeal any of the following –
 - (a) paragraph 3 of Schedule 1 (services offering only one-to-one live aural communications);
 - (b) paragraph 5 of that Schedule (limited functionality services);
 - (c) any provision of that Schedule added in exercise of the power in subsection (8).
 - (9) The condition is that the Secretary of State considers that it is appropriate to repeal the provision in question because of the risk of harm to individuals in the United Kingdom presented by a service of the description in question.
 - (10) The Secretary of State may also by regulations amend any provision of Schedule 1 referred to in subsection (8).

3A Definition of harm

- (1) “harm” means any of –
 - (a) physical, psychological, or economic harm experienced by an individual;
 - (b) harm to public safety, public health and national security;
 - (c) harm to relations between those who share a protected characteristic within the meaning of the Equality Act 2010 (or a subset of that characteristic) and those who do not; and
 - (d) harm to democratic debate or to the integrity and probity of the electoral process.

PART 2

PROVIDERS OF REGULATED SERVICES: DUTIES OF CARE

CHAPTER 1

INTRODUCTION

4 Overview of Part 2

- (1) This Part imposes duties of care on providers of regulated services and requires OFCOM to issue codes of practice relating to those duties.
- (2) Chapter 2 imposes duties of care on providers of regulated user-to-user services.
- (3) Chapter 3 imposes duties of care on providers of regulated search services.
- (4) Chapter 4 imposes duties on providers of regulated services to assess whether a service is likely to be accessed by children.
- (5) Chapter 5 requires OFCOM to issue codes of practice relating to particular duties and explains what effects the codes of practice have.
- (6) Chapter 6 is about the interpretation of this Part, and it includes definitions of the following key terms –
 - “illegal content” (see section 41),

“content that is harmful to children” (see section 45), and
 “content that is harmful to adults” (see section 46).

4A Foundation Duty

- (1) It shall be the duty of any provider of any regulated service to take appropriate steps as are reasonable to prevent and to mitigate reasonably foreseeable harms arising through the operation of its service based on the findings of the risk assessment taking particular account of priority harms in Schedule [3A].
- (2) It shall be the duty of the provider of every regulated service to carry out an assessment about access by children as set out in s 26.
- (3) It shall be the duty of the provider of every regulated service to carry out a risk assessment in accordance with section [4C] paying proper regard to guidance prepared by OFCOM under section 62 and the risk profiles developed under section 61 to systematically and comprehensively understand the harms likely to arise from the operation of the regulated service, including from its characteristics, the harms’ severity and likelihood, and as often as may be appropriate revise that risk assessment including when required to do so by OFCOM.
- (4) It shall be the duty of the provider of every regulated service to carry out an impact assessment of the regulated service on the right to freedom of expression and the right to respect for private and family life, home and correspondence, taking into account any guidance from OFCOM, and to publish that assessment.
- (5) It shall be the duty of the provider of every regulated service to comply with the duties about reporting and redress set out in section [4E].
- (6) It shall be the duty of the provider of every regulated service to comply with each of the record-keeping and review duties.

4B Risk Assessment duties

- (1) The duty to carry out a risk assessment under [section 4A(3)] includes the obligations to
 - (a) carry out a risk assessment at a time set out in section [4C],
 - (b) to keep a risk assessment up to date, including when OFCOM make any significant change to a risk profile that relates to services of the kind in question, and
 - (c) to carry out a further risk assessment before making any significant change to any aspect of the design or operation of a service.
- (2) Where a risk assessment in relation to a service that is likely to be accessed by children identifies the presence of non-designated content that is harmful to children, the provider of that service is under a duty to notify OFCOM of
 - (a) the kinds of such content identified, and
 - (b) the incidence of those kinds of content on the service.

- (3) Where a risk assessment is carried out and identifies the presence of content that is harmful to adults, other than priority content that is harmful to adults, a duty to notify OFCOM of -
- (a) the kinds of such content identified, and
 - (b) the incidence of those kinds of content on the service.
- (4) When undertaking a risk assessment the following are relevant factors to consider and where appropriate to identify, assess and understand, taking into account the risk profile that relates to the services of that kind -
- (a) the user base, including, where the service is likely to be accessed by children, the number of users who are children in different age groups;
 - (b) the level of risk of individuals who are users of the service encountering the following by means of the service -
 - (i) terrorism content,
 - (ii) CSEA content,
 - (iii) priority illegal content,
 - (iv) other illegal content, and
 - (v) content that is harmful to adults,
 - (vi) other harms,
 taking into account (in particular) software, systems and processes used by the service, and how easily, quickly and widely content may be disseminated by means of the service;
 - (c) the level of risk of harm to individuals presented by illegal or harmful content of different descriptions, and where relevant giving separate consideration to children in different age groups;
 - (d) where the service is likely to be accessed by children, the level of risk of children who are users of the service encountering any of the following by means of the service -
 - (i) each kind of priority content that is harmful to children (with each kind separately assessed),
 - (ii) each kind of priority content that is harmful to children (with each kind separately assessed), and
 - (iii) non-designated content that is harmful to children;
 - (iv) giving separate consideration to children in different age groups, and taking into account (in particular) algorithms used by the service and how easily, quickly and widely content may be disseminated by means of the service;
 - (e) harm to children presented by different descriptions of content that is harmful to children, giving separate consideration to children in different age groups;
 - (f) the level of risk of functionalities of the service facilitating the presence or dissemination of illegal content, identifying and assessing those functionalities that present higher levels of risk;
 - (g) where the service is likely to be accessed by children, the level of risk of functionalities of the service facilitating the presence or dissemination of content that is harmful to children, identifying those functionalities that present higher levels of risk, including functionalities -
 - (i) enabling adults to search for other users of the service (including children), and
 - (ii) enabling adults to contact other users (including children) by means of the service;

- (h) the different ways in which the service functions or is used, and the impact that has on the level of risk of harm, whether caused by illegal content or not, that might be suffered by individuals;
 - (i) the nature, and severity, of the harm that might be suffered by individuals from the matters identified in accordance with paragraphs (b) to (h), and where the service is likely to be accessed by children, the harm that might be suffered by children giving separate consideration to children in different age groups;
 - (j) how the design and operation of the service (including the business model, governance and other systems and processes) may reduce or increase the risks identified, with the risks to children, where relevant, in different age groups considered separately; and
 - (k) the extent to which and the means by which the service may be used in conjunction with other services so as to give rise to the risk of harm, especially harm to children.
 - (l) the differential impact on users of different kinds of any of the functionalities
 - (m) other such matters that OFCOM might include in its guidance and risk profiles.
- (5) A risk assessment must at the least include a clear statement as to how the risk assessment was carried out, including the assumptions on which it proceeded, a risk mitigation strategy and the process for understanding the extent to which the risk mitigation strategy has been successful.
- (6) The duty to carry out a risk assessment includes the obligation to send OFCOM a copy of the risk assessment and the risk mitigation strategy as soon as possible after the risk assessment's completion.

4C Timing of risk assessment

- (1) In the case of a regulated service which is in operation immediately before the relevant day, a risk assessment must be carried out within the period of three months beginning with that day, unless extra time is allowed by agreement with OFCOM.
- (2) In the case of a regulated service which begins operating on or after the relevant day, a risk assessment must be carried out before United Kingdom users are able to access the service.
- (3) In the case of a relevant service which, having previously not been a regulated service, becomes a regulated service, a risk assessment must be carried out—
 - (a) before United Kingdom users are able to access the service, or
 - (b) if such users were already able to access the service, as soon as reasonably practicable after the service becomes a regulated service.
- (4) In this section “the relevant day” means—
 - (a) if OFCOM's report of their risk assessment under section 61 and OFCOM's guidance about risk assessments under section 62 are first published on the same day, that day, or
 - (b) if that report and that guidance are first published on different days, the later of those days.
- (5) In this section “risk assessment” means a risk assessment under section [4B].

4D Terms of Service

- (1) It shall be the duty of every service provider to specify clearly in a publicly

available statement details of the provider's terms of service or, as the case may be, policies and procedures that are designed to protect users from any of the priority harms relevant to the service and any other harms identified in the risk assessment.

- (2) It shall be the duty of the service provider to enforce any such terms of service or policies and procedures effectively and consistently.

4E Reporting and Redress

- (1) The duties about reporting and redress are the duties set out in this section.
- (2) A duty to operate a service using systems and processes that allow users and affected persons to easily report content of the following kinds—
- (a) content which they consider to be illegal content;
 - (b) content, present on a part of a service that it is possible for children to access, which they consider to be content that is harmful to children;
 - (c) content which they consider to be content that is harmful to adults.
- (3) A duty to operate a complaints procedure in relation to a service that—
- (a) allows for complaints of the kinds mentioned in subsection (4) to be made,
 - (b) provides for appropriate action to be taken by the provider of the service in response to such complaints, and
 - (c) is easy to access, easy to use (including by children) and transparent.
- (4) The kinds of complaints are—
- (a) complaints by users and affected persons about content of the following kinds—
 - (i) content present on a service which they consider to be illegal content;
 - (ii) content, present on a part of a service that it is possible for children to access, which they consider to be content that is harmful to children;
 - (iii) content present on a service which they consider to be content that is harmful to adults;
 - (b) complaints by users and affected persons if they consider that—
 - (i) the provider is not complying with a Chapter 2 safety duty that applies in relation to the service;
 - (ii) the provider is not complying with the duty set out in section 12(2)
 - (iii) the provider is not complying with any of the duties set out in section 12(3) to (5);
 - (iv) the provider is not complying with any of the duties set out in section 13 or 14;
 - (c) complaints by a user who has generated, uploaded or shared content on a service if the provider—
 - (i) takes down that content because the provider considers that it is illegal content;
 - (ii) takes down that content or restricts access to it because the provider considers that it is content that is harmful to children;
 - (iii) takes down that content or restricts access to it because the provider considers that it is content that is harmful to adults; and
 - (d) complaints by a user if the provider has given a warning to the user, suspended or banned the user from using the service, or in any other way restricted the user's ability to use the service, as a result of content

generated, uploaded or shared by the user which the provider considers to be –

- (i) illegal content;
 - (ii) content that is harmful to children;
 - (iii) content that is harmful to adults.
- (5) A duty to make the policies and procedures that govern the handling and resolution of complaints as mentioned in subsection (4) publicly available and easily accessible (including to children).
- (6) Section 26(3) (access by children to a service) applies for the purposes of Subsections (2)(b) and 4(a)(ii) as it applies for the purposes of an assessment under section 26.
- (7) In this section “affected person” means a person, other than a user of the service in question, who is in the United Kingdom and who is –
- (a) the subject of the content,
 - (b) a member of a class or group of people with a certain characteristic (or combination of characteristics) targeted by the content,
 - (c) a parent of, or other adult with responsibility for, a child who is a user of the service or is the subject of the content, or
 - (d) an adult providing assistance in using the service to another adult who requires such assistance, where that other adult is a user of the service or is the subject of the content.

4F Record-keeping and review duties

- (1) The “record-keeping and review duties” are the duties set out in this section.
- (2) A duty to make and keep a written record of every risk assessment carried out under [4A(3)].
- (3) A duty to make and keep a written record of any steps taken to comply with a relevant duty other than steps which –
- (e) are described in a code of practice and recommended for the purposes of compliance with the duty in question, and
 - (f) apply in relation to the provider and the service in question.
- (4) A duty to review compliance with the relevant duties in relation to a service –
- (a) regularly, and
 - (b) as soon as reasonably practicable after making any significant change to any aspect of the design or operation of the service.
- (5) Where OFCOM consider it to be appropriate, OFCOM may, in relation to a particular regulated service, exempt the provider of that service from –
- (a) the duty set out in subsection (2)
 - (b) the duty set out in subsection (3), or
 - (c) the duties set out in subsections (2) and (3).
- (6) OFCOM must publish details of any exemption under subsection (5)
- (7) In this section –
- “code of practice” means a code of practice published under section 34:
 - “relevant duties” means –
- (aa) Chapter 1 duties
 - (a) the Chapter 2 safety duties,
 - (b) the duties set out in section 13 (content of democratic importance),
 - (c) the duties set out in section 14 (journalistic content).

CHAPTER 2

PROVIDERS OF USER-TO-USER SERVICES: DUTIES OF CARE

User-to-user services: duties of care

5 **Providers of user-to-user services: duties of care**

(1) Without prejudice to the generality of the foregoing all providers of regulated user-to-user services must comply with the following duties in relation to each such service each of the illegal content duties (see section 9),

(2) Additional duties apply to providers of particular kinds of regulated user-to-user services, as follows.

(3) All providers of regulated user-to-user services that are likely to be accessed by children must comply with each of the duties to protect children's online safety (see section 10).

(4) All providers of services the risk profile of which identifies that the service presents risks to democratic debate must comply with each of the duties to protect content of democratic importance (see section 13) in relation to each such service

(5) All providers of services the risk profile of which identifies that the service presents risks to news plurality and distribution must comply with each of the duties to protect journalistic content (see section 14) in relation to each such service.

6 **Duties of care: supplementary**

A duty set out in this Chapter which must be complied with in relation to a user-to-user service extends only to—

- (a) the design and operation of the service in the United Kingdom, or
- (b) in the case of a duty that is expressed to apply in relation to users of a service, the design and operation of the service as it affects United Kingdom users of the service.

7 **DELETED**

8 **DELETED**

9 **Safety duties about illegal content**

(1) The "illegal content duties" in relation to user-to-user services are the duties set out in this section.

(2) A duty, in relation to a service, to take proportionate steps to mitigate and effectively manage the risks of harm to individuals, as identified in the most recent illegal content risk assessment of the service.

(3) A duty to operate a service using proportionate systems and processes designed to—

- (a) minimise the presence of priority illegal content;
- (b) minimise the length of time for which priority illegal content is present;

- (c) minimise the dissemination of priority illegal content;
 - (d) where the provider is alerted by a person to the presence of any illegal content, or becomes aware of it in any other way, swiftly take down such content.
- (4) A duty to specify in the terms of service how individuals are to be protected from illegal content, addressing each paragraph of subsection (3).
 - (5) A duty to ensure that—
 - (a) the terms of service referred to in subsection (4) are clear and accessible, and
 - (b) those terms of service are applied consistently.
 - (6) In determining whether a step, system or process is proportionate for the purposes of this section, the following must be taken into account—
 - (a) all the findings of the most recent illegal content risk assessment (including as to levels of risk and as to nature, and severity, of potential harm to individuals), and
 - (b) the size and capacity of the provider of a service.
 - (7) In this section “illegal content risk assessment” has the meaning given by section 7(8).
 - (8) See also, in relation to duties under this section, section 12(2) (duties about rights to freedom of expression and privacy).

10 Safety duties for services likely to be accessed by children

- (1) The “duties to protect children’s online safety” in relation to user-to-user services are the duties set out in this section.
- (2) A duty, in relation to a service, to take proportionate steps to—
 - (a) mitigate and effectively manage the risks of harm to children in different age groups, as identified in the most recent children’s risk assessment of the service, and
 - (b) mitigate the impact of harm arising to children in different age groups from content that is harmful to children present on the service.
- (3) A duty to operate a service using proportionate systems and processes designed to—
 - (a) prevent children of any age from encountering, by means of the service, primary priority content that is harmful to children;
 - (b) protect children in age groups judged to be at risk of harm from other content that is harmful to children (or from a particular kind of such content) from encountering it by means of the service.
- (4) A duty to specify in the terms of service—

- (a) how children of any age are to be prevented from encountering primary priority content that is harmful to children (with each kind of primary priority content separately covered);
 - (b) how children in age groups judged to be at risk of harm from priority content that is harmful to children (or from a particular kind of such content) are to be protected from encountering it, where they are not prevented from doing so (with each kind of priority content separately covered);
 - (c) how children in age groups judged to be at risk of harm from non-designated content that is harmful to children (or from a particular kind of such content) are to be protected from encountering it, where they are not prevented from doing so.
- (5) A duty to ensure that –
- (a) the terms of service referred to in subsection (4) are clear and accessible, and
 - (b) those terms of service are applied consistently.
- (6) In determining whether a step, system or process is proportionate for the purposes of this section, the following must be taken into account –
- (a) all the findings of the most recent children’s risk assessment (including as to levels of risk and as to nature, and severity, of potential harm to children), and
 - (b) the size and capacity of the provider of a service.
- (7) So far as a duty in this section relates to non-designated content that is harmful to children, the duty is to be taken to extend only to addressing risks of harm from the kinds of such content that have been identified in the most recent children’s risk assessment (if any have been identified).
- (8) References in subsections (3)(b) and (4)(b) and (c) to children in age groups judged to be at risk of harm from content that is harmful to children are references to children in age groups judged to be at risk of such harm as assessed by the provider of a service in the most recent children’s risk assessment of the service.
- (9) The duties in this section extend only to such parts of a service as it is possible for children to access.
Section 26(3) applies for the purposes of this subsection as it applies for the purposes of an assessment under section 26.
- (10) In this section “children’s risk assessment” has the meaning given by section 7(9).
- (11) See also, in relation to duties under this section, section 12(2) (duties about rights to freedom of expression and privacy).

11 DELETED

12 DELETED

13 Duties to protect content of democratic importance

- (1) The “duties to protect content of democratic importance” in relation to user-to-user services are the duties set out in this section.
- (2) A duty to operate a service using appropriate and proportionate systems and processes designed, taking into account the protection of democracy risk profile produced by OFCOM under section [61A], to ensure that the importance of the free expression of content

- of democratic importance is taken into account when making decisions about—
- (a) how to treat such content (especially decisions about whether to take it down or restrict users' access to it), and
 - (b) whether to take action against a user generating, uploading or sharing such content.
- (3) A duty to take reasonable steps to ensure that the systems and processes mentioned in subsection (2) apply in the same way to a diversity of political opinion.
 - (4) A duty to specify in the terms of service the policies and processes that are designed to take account of the principle mentioned in subsection (2), including, in particular, how that principle is applied to decisions mentioned in that subsection.
 - (5) A duty to ensure that—
 - (a) the terms of service referred to in subsection (4) are clear, expressed in age appropriate language, and easily accessible, and
 - (b) those terms of service are applied consistently.
 - (6) For the purposes of this section content is “content of democratic importance”, in relation to a user-to-user service, if—
 - (a) the content is—
 - (i) news publisher content in relation to that service, or
 - (ii) regulated content in relation to that service; and
 - (b) the content is or appears to be specifically intended to contribute to democratic political debate in the United Kingdom or a part or area of the United Kingdom.
 - (7) In this section, the reference to “taking action” against a user is to giving a warning to a user, or suspending or banning a user from using a service, or in any way restricting a user's ability to use a service.
 - (8) For the meaning of “news publisher content” and “regulated content”, see section 39.

14 Duties to protect journalistic content

- (1) The “duties to protect journalistic content” in relation to user-to-user services are the duties set out in this section.
- (2) A duty to operate a service using appropriate and proportionate systems and processes designed, taking into account the news plurality risk profile produced by OFCOM under section [61B], to ensure that the importance of the free expression of journalistic content is taken into account when making decisions about—
 - (a) how to treat such content (especially decisions about whether to take it down or restrict users' access to it), and
 - (b) whether to take action against a user generating, uploading or sharing such content.
- (3) A duty, in relation to a decision by a provider to take down content or to restrict access to it, to make a dedicated and expedited complaints procedure available to a person who considers the content to be journalistic content and who is—
 - (a) the user who generated, uploaded or shared the content on the service, or
 - (b) the creator of the content (see subsection (11)).

- (4) A duty to make a dedicated and expedited complaints procedure available to users of a service in relation to a decision by the provider of the service to take action against a user because of content generated, uploaded or shared by the user which the user considers to be journalistic content.
- (5) A duty to take reasonable steps bearing in mind the news plurality risk profile relevant to the service to ensure that –
- (a) if a complaint about a decision mentioned in subsection (3) is upheld, the content is swiftly reinstated on the service;
 - (b) if a complaint about a decision mentioned in subsection (4) is upheld, the action against the user is swiftly reversed.
- (6) A duty to specify in the terms of service –
- (a) by what methods content present on the service is to be identified as journalistic content;
 - (b) how the importance of the free expression of journalistic content is to be taken into account when making decisions mentioned in subsection (2);
 - (c) the policies and processes for handling complaints in relation to content which is, or is considered to be, journalistic content.
- (7) A duty to ensure that –
- (a) the terms of service referred to in subsection (6) are clear, expressed in age appropriate language, and easily accessible, and
 - (b) those terms of service are applied consistently.
- (8) For the purposes of this section content is “journalistic content”, in relation to a user-to-user service, if –
- (a) the content is –
 - (i) news publisher content in relation to that service, or
 - (ii) regulated content in relation to that service;
 - (b) the content is generated for the purposes of journalism; and
 - (c) the content is UK-linked.
- (9) For the purposes of this section content is “UK-linked” if –
- (a) United Kingdom users of the service form one of the target markets for the content (or the only target market), or
 - (b) the content is or is likely to be of interest to a significant number of United Kingdom users.
- (10) In this section references to “taking action” against a user are to giving a warning to a user, or suspending or banning a user from using a service, or in any way restricting a user’s ability to use a service.
- (11) In this section the reference to a person who is the “creator” of content is a reference to any of the following –
- (a) in the case of news publisher content, the recognised news publisher in question;
 - (b) an individual who –
 - (i) created the content, and
 - (ii) is in the United Kingdom;
 - (c) an entity which –
 - (i) created the content, and
 - (ii) is incorporated or formed under the law of any part of the United Kingdom.
- (12) For the meaning of “news publisher content”, “regulated content” and “recognised news publisher”, see sections 39 and 40.

15 Moved forward to foundation duty

16 Moved forward to foundation duty

CHAPTER 3

PROVIDERS OF SEARCH SERVICES: DUTIES OF CARE

Search services: duties of care

17 Providers of search services: duties of care

- (1) Without prejudice to the foregoing all providers of regulated search services must comply with each of the illegal content duties (see section 21),
- (2) In addition, all providers of regulated search services that are likely to be accessed by children must comply with each of the duties to protect children's online safety (see section 22)

18 Duties of care: supplementary

- (1) A duty set out in this Chapter which must be complied with in relation to a search service extends only to—
 - (a) the design and operation of the service in the United Kingdom, or
 - (b) in the case of a duty that is expressed to apply in relation to users of a service, the design and operation of the service as it affects United Kingdom users of the service.
- (2) A duty set out in this Chapter which must be complied with in relation to a search service does not extend to—
 - (a) content present on the website of a recognised news publisher (see section 40), or
 - (b) content, that may be encountered via search results, that—
 - (i) reproduces in full an article or written item that was originally published by a recognised news publisher (and is not a screenshot or photograph of that article or item or of part of it),
 - (ii) is a recording of an item originally broadcast by a recognised news publisher (and is not an excerpt of such a recording), or
 - (iii) is a link to a full article or written item originally published by a recognised news publisher, or to a full recording of an item originally broadcast by a recognised news publisher.
- (3) Where duties in this Chapter must be complied with in relation to a search engine forming part of a user-to-user service (see section 5(6)), the references in subsections (1) and (2) to a search service are to be read as references to the search engine.

19 Moved forward

20 Moved forward

Safety duties

21 Safety duties about illegal content

- (1) The “illegal content duties” in relation to search services are the duties set out in this section.
- (2) A duty, in relation to a service, to take proportionate steps to mitigate and effectively manage the risks of harm to individuals, as identified in the most recent illegal content risk assessment of the service.
- (3) A duty to operate a service using proportionate systems and processes designed to minimise the risk of individuals encountering the following in or via search results –
 - (a) priority illegal content;
 - (b) other illegal content that the provider knows about (having been alerted to it by another person or become aware of it in any other way).
- (4) A duty to specify clearly in a publicly available statement details of policies and procedures designed to protect individuals from illegal content.
- (5) A duty to apply the policies and procedures mentioned in that statement consistently.
- (6) In determining whether a step, system or process is proportionate for the purposes of this section, the following must be taken into account –
 - (a) all the findings of the most recent illegal content risk assessment (including as to levels of risk and as to nature, and severity, of potential harm to individuals), and
 - (b) the size and capacity of the provider of a service.
- (7) In this section “illegal content risk assessment” has the meaning given by section 19(3).
- (8) See also, in relation to duties under this section, section 23(2) (duty about rights to freedom of expression and privacy).

22 Safety duties for services likely to be accessed by children

- (1) The “duties to protect children’s online safety” in relation to search services are the duties set out in this section.
- (2) A duty, in relation to a service, to take proportionate steps to –
 - (a) mitigate and effectively manage the risks of harm to children in different age groups, as identified in the most recent children’s risk assessment of the service, and
 - (b) mitigate the impact of harm arising to children in different age groups from content that is harmful to children encountered in or via search results of the service.
- (3) A duty to operate a service using proportionate systems and processes designed to –
 - (a) minimise the risk of children of any age encountering primary priority content that is harmful to children in or via search results;
 - (b) minimise the risk of children in age groups judged to be at risk of harm from other content that is harmful to children (or from a particular kind of such content) encountering it in or via search results.
- (4) A duty to specify clearly in a publicly available statement details of policies and procedures designed to protect children from –
 - (a) primary priority content that is harmful to children (with each kind of primary priority content separately covered),

- (b) priority content that is harmful to children (with each kind of priority content separately covered), and
 - (c) non-designated content that is harmful to children.
- (5) In determining whether a step, system or process is proportionate for the purposes of this section, the following must be taken into account –
- (a) all the findings of the most recent children’s risk assessment (including as to levels of risk and as to nature, and severity, of potential harm to children), and
 - (b) the size and capacity of the provider of a service.
- (6) So far as a duty in this section relates to non-designated content that is harmful to children, the duty is to be taken to extend only to addressing risks of harm from the kinds of such content that have been identified in the most recent children’s risk assessment (if any have been identified).
- (7) The reference in subsection (3)(b) to children in age groups judged to be at risk of harm from content that is harmful to children is a reference to children in age groups judged to be at risk of such harm as assessed by the provider of a service in the most recent children’s risk assessment of the service.
- (8) The duties in this section extend only to such parts of a service as it is possible for children to access.
Section 26(3) applies for the purposes of this subsection as it applies for the purposes of an assessment under section 26.
- (9) In this section “children’s risk assessment” has the meaning given by section 19(4).
- (10) See also, in relation to duties under this section, section 23(2) (duty about rights to freedom of expression and privacy).

23 DELETE

24 Moved forward

25 Moved forward

CHAPTER 4

ASSESSMENT ABOUT ACCESS BY CHILDREN

26 Assessment about access by children

- (1) A provider of a regulated service must, at a time set out in section 27, carry out an assessment –
- (a) to determine whether it is possible for children to access the service or any part of the service, and
 - (b) if it is possible for children to access the service or any part of the service, to determine whether the child user condition is met in relation to the service or any part of the service.
- (2) If a provider provides more than one regulated service, an assessment under subsection (1) must be carried out for each service separately.
- (3) A provider is only entitled to conclude that it is not possible for children to access a service, or a part of it, if there are systems or processes in place that

achieve the result that children are not normally able to access the service or that part of it.

- (4) The “child user condition” is met in relation to a service, or a part of a service, if—
 - (a) there are a significant number of children who are users of the service or of that part of it, or
 - (b) the service, or that part of it, is of a kind likely to attract a significant number of users who are children.
- (5) For the purposes of this Part, a service is to be treated as “likely to be accessed by children” if the provider’s assessment of the service concludes that—
 - (a) it is possible for children to access the service or any part of it, and
 - (b) the child user condition is met in relation to—
 - (i) the service, or
 - (ii) a part of the service that it is possible for children to access.
- (6) If a service is not treated as “likely to be accessed by children” for the purposes of this Part, the provider must carry out a further assessment under this section—
 - (a) before making any significant change to any aspect of the design or operation of the service,
 - (b) in response to evidence about reduced effectiveness of any systems or processes that are in place as mentioned in subsection (3), or
 - (c) in response to evidence about a significant increase in the number of children using the service.
- (7) A provider must keep written records of every assessment under this section.
- (8) If a provider fails to carry out an assessment of a service as required by this section, that service is to be treated as “likely to be accessed by children” for the purposes of this Part until such time as the provider carries out an assessment.
- (9) For the purposes of subsection (4)—
 - (a) the reference to a “significant” number includes a reference to a number which is significant in proportion to the total number of United Kingdom users of a service or (as the case may be) a part of a service;
 - (b) whether the test in paragraph (a) of that subsection is met is to be based on evidence about who actually uses a service, rather than who the intended users of the service are.
- (10) In this section references to children are to children in the United Kingdom.

27 Timing of assessment under section 26

- (1) In the case of a regulated service which is in operation immediately before the day on which OFCOM first publish guidance under section 28, an assessment must be carried out within the period of three months beginning with that day, unless extra time is allowed by agreement with OFCOM.
- (2) In the case of a regulated service which begins operating on or after the day referred to in subsection (1), an assessment must be carried out before United Kingdom users are able to access the service.

- (3) In the case of a user-to-user service or search service which, having previously not been a regulated service, becomes a regulated service, an assessment must be carried out—
 - (a) before United Kingdom users are able to access the service, or
 - (b) if such users were already able to access the service, as soon as reasonably practicable after the service becomes a regulated service.
- (4) In this section “assessment” means an assessment under section 26(1).
- (5) In its application to a service not yet accessed by United Kingdom users, section 26 is to be read with the necessary modifications.

28 OFCOM’s guidance about assessments under section 26

- (1) OFCOM must prepare guidance for providers of regulated services to assist them in complying with their duties to carry out assessments under section 26.
- (2) OFCOM must publish the guidance (and any revised or replacement guidance).

CHAPTER 5

CODES OF PRACTICE

29 Codes of practice about duties

- (1) OFCOM must prepare a code of practice for providers of regulated services describing recommended steps for the purposes of compliance with duties set out in section 9 or 21 (safety duties about illegal content) so far as relating to terrorism content.
- (2) OFCOM must prepare a code of practice for providers of regulated services describing recommended steps for the purposes of compliance with duties set out in section 9 or 21 (safety duties about illegal content) so far as relating to CSEA content.
- (3) OFCOM must prepare one or more codes of practice for providers of regulated services describing recommended steps for the purposes of compliance with the relevant duties (except to the extent that steps for the purposes of compliance with such duties are described in a code of practice prepared under subsection (1) or (2)).
- (4) Where a code of practice under this section is in force, OFCOM may—
 - (a) prepare amendments of the code of practice;
 - (b) prepare a code of practice under subsection (1), (2) or (3) as a replacement for a code of practice previously prepared under the subsection in question;
 - (c) withdraw the code of practice.
- (5) Before preparing a code of practice or amendments under this section, OFCOM must consult—
 - (a) the Secretary of State,
 - (b) persons who appear to OFCOM to represent providers of regulated services,

- (a) persons who appear to OFCOM to represent the interests of United Kingdom users of regulated services,
 - (b) persons who appear to OFCOM to represent the interests of children (generally or with particular reference to online safety matters),
 - (c) persons who appear to OFCOM to represent the interests of persons who have suffered harm as a result of encountering content online,
 - (d) persons whom OFCOM consider to have relevant expertise in equality issues and human rights, in particular –
 - (i) the right to freedom of expression set out in Article 10 of the Convention, and
 - (ii) the right to respect for a person’s private and family life, home and correspondence set out in Article 8 of the Convention,
 - (e) persons whom OFCOM consider to have expertise in public health, science or medicine that is relevant to online safety matters,
 - (f) persons whom OFCOM consider to have expertise in innovation, or emerging technology, that is relevant to online safety matters, and
 - (g) such other persons as OFCOM consider appropriate.
- (6) Before preparing a code of practice or amendments to which this subsection applies, OFCOM must also consult persons whom OFCOM consider to have expertise in the enforcement of the criminal law and the protection of national security that is relevant to online safety matters.
- (7) Subsection (6) applies to –
- (a) a code of practice under subsection (1) and amendments of such a code,
 - (b) a code of practice under subsection (2) and amendments of such a code,
 - (c) a code of practice under subsection (3) that describes recommended steps for the purposes of compliance with duties set out in section 9 or 21 (safety duties about illegal content), and
 - (d) amendments of a code of practice under subsection (3), if and to the extent that those amendments relate to steps recommended for the purposes of compliance with duties set out in section 9 or 21.
- (8) Subsections (5) and (6) are subject to section 35 (minor amendments of code of practice).
- (9) In this section “the relevant duties” means –
- (aa) the Duties in Sections 4A-4F
 - (a) the Chapter 2 safety duties,
 - (b) the Chapter 3 safety duties,
 - (c) the duties set out in section 13 (content of democratic importance),
 - (d) the duties set out in section 14 (journalistic content), and
 - (e) the duties set out in sections 15 and 24 (reporting and redress).

30 Safer Systems and Processes Principles

- (1) OFCOM must ensure that steps described in the codes of practice prepared under section 29 are compatible with pursuit of the online safety objectives.
- (2) The online safety objectives for regulated user-to-user services are –
 - (a) to design and operate a service in such a way that –
 - (i) the systems and processes for regulatory compliance and risk management are effective and proportionate to the size and nature of the service,

- (ii) the systems and processes are appropriate to deal with the number of users of the service and its user base,
 - (iii) United Kingdom users (including children) are made aware of, and can understand, the terms of service,
 - (iv) there are adequate systems and processes to support United Kingdom users,
 - (v) the service provides a higher standard of protection for children than for adults,
 - (vi) the different needs of children at different ages are taken into account,
 - (vii) there are adequate controls over access to the service by adults, and
 - (viii) there are adequate controls over access to, and use of, the service by children, taking into account use of the service by, and impact on, children in different age groups; and
- (b) to design and assess the service with a view to protecting United Kingdom users from harm, including with regard to –
- (i) algorithms used by the service,
 - (ii) functionalities of the service, and
 - (iii) other features relating to the operation of the service.
- (3) The online safety objectives for regulated search services are –
- (a) to design and operate a service in such a way that –
 - (i) the systems and processes for regulatory compliance and risk management are effective and proportionate to the size and nature of the service,
 - (ii) the systems and processes are appropriate to deal with the number of users of the service and its user base,
 - (iii) United Kingdom users (including children) are made aware of, and can understand, the publicly available statement referred to in sections 21 and 22,
 - (iv) there are adequate systems and processes to support United Kingdom users,
 - (v) the service provides a higher standard of protection for children than for adults, and
 - (vi) the different needs of children at different ages are taken into account;
 - (b) to assess use of the service by, and impact on, children in different age groups; and
 - (c) to design and assess the search engine with a view to protecting United Kingdom users from harm, including with regard to –
 - (i) algorithms used by the search engine,
 - (ii) functionalities relating to searches (such as a predictive search functionality), and
 - (iii) the indexing, organisation and presentation of search results.
- (4) In the case of a regulated user-to-user service that includes a search engine, the online safety objectives set out in subsection (3) apply in relation to the search engine (and accordingly references in that subsection to a search service are to be read as references to the search engine).

- (5) The Secretary of State may by regulations amend subsection (2) or (3) so as to vary the online safety objectives for regulated user-to-user services or regulated search services.
- (6) If regulations are made amending the online safety objectives, OFCOM must, as soon as reasonably practicable afterwards, consider whether a review of the codes of practice published under section 34 is required and, if OFCOM consider that it is required, carry out a review to assess whether any amendments are needed to reflect the revised objectives.
- (7) See section 36(8) and (9) for further provision about the online safety objectives.

31 Further provision about codes of practice

- (1) In preparing a code of practice or amendments under section 29, OFCOM must –
 - (a) consider the appropriateness of provisions of the code of practice to different kinds and sizes of regulated services and to providers of differing kinds, sizes and capacities;
 - (b) have regard to the following principles –
 - (i) the principle that providers of regulated services must be able to understand which provisions of the code of practice apply in relation to a particular service they provide;
 - (ii) the principle that the steps described in the code of practice must be sufficiently clear, and at a sufficiently detailed level, that providers understand what those steps entail in practice;
 - (iii) the principle that the steps described in the code of practice must be proportionate and feasible, recognising that steps that are proportionate or feasible for providers of a certain kind, size or capacity may not be proportionate or feasible for providers of a different kind, size or capacity;
 - (iv) the principle that the steps described in the code of practice that apply in relation to regulated services of various kinds and sizes must be proportionate to OFCOM's assessment (under section 61) of the risk of harm presented by services of that kind or size.
- (2) A code of practice under section 29 may –
 - (a) make different provision with regard to –
 - (i) regulated user-to-user services, and
 - (ii) regulated search services;
 - (b) make different provision with regard to regulated user-to-user services of different kinds or regulated search services of different kinds; and
 - (c) otherwise differentiate between regulated services, and between providers of regulated services, in such manner as OFCOM consider appropriate.
- (3) A code of practice under section 29 may apply in relation to a person who provides a regulated service from outside the United Kingdom.
- (4) Steps described in a code of practice under section 29 may relate only to the design or operation of a regulated service –
 - (a) in the United Kingdom, or
 - (b) as it affects United Kingdom users of the service.

- (5) Steps described in a code of practice under section 29 which are recommended for the purposes of compliance with any of the relevant duties must be designed in the light of the principles mentioned in subsection (6) and (where appropriate) incorporate safeguards for the protection of the matters mentioned in the principles.
- (6) The principles are –
 - (a) the importance of protecting the right of users and (in the case of search services) interested persons to freedom of expression within the law, and
 - (b) the importance of protecting users from unwarranted infringements of privacy.
- (7) In this section “the relevant duties” has the meaning given by section 29(9).

32 Approval of codes of practice

- (1) OFCOM must submit a code of practice prepared under section 29 to the Secretary of State.
- (2) Unless the Secretary of State intends to give a direction to OFCOM under section 33(1) in relation to the code of practice, the Secretary of State must, as soon as reasonably practicable, lay the code of practice before Parliament.
- (3) If, within the 40-day period, either House of Parliament resolves not to approve the code of practice –
 - (a) OFCOM must not issue the code of practice, and
 - (b) OFCOM must prepare another version of the code of practice.
- (4) If no such resolution is made within that period –
 - (a) OFCOM must issue the code of practice, and
 - (b) the code of practice comes into force at the end of the period of 21 days beginning with the day on which it is issued.
- (5) In this section, “the 40-day period” means –
 - (a) if the code of practice is laid before both Houses of Parliament on the same day, the period of 40 days beginning with that day, or
 - (b) if the code of practice is laid before the Houses of Parliament on different days, the period of 40 days beginning with the later of those days.
- (6) In calculating the 40-day period, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses of Parliament are adjourned for more than 4 days.
- (7) This section applies in relation to amendments of a code of practice prepared under section 29 (see subsection (4)(a) of that section) as it applies in relation to a code of practice prepared under that section.
- (8) This section is subject to section 35 (minor amendments of codes of practice).

33 DELETED

34 Publication and review of codes of practice

- (1) OFCOM must publish each code of practice issued under section 32(4)(a) within the period of three days beginning with the day on which it is issued.
- (2) Where amendments of a code of practice are issued under that provision, OFCOM must publish the amended code of practice within the period of three

- days beginning with the day on which the amendments are issued.
- (3) Where a code of practice is withdrawn, OFCOM must publish a notice to that effect.
 - (4) Publication under this section must be in any manner that OFCOM consider appropriate.
 - (5) OFCOM must keep under review each code of practice published under this section.
 - (6) The Secretary of State may at any time require OFCOM to review a code of practice prepared under section 29(1) or (2).

35 Minor amendments of codes of practice

- (1) This section applies if—
 - (a) OFCOM propose to prepare amendments of a code of practice under section 29, and
 - (b) OFCOM consider that the minor nature of the amendments means that—
 - (i) consultation is unnecessary, and
 - (ii) the amendments (once prepared) should not be required to be laid before Parliament.
- (2) OFCOM must notify the Secretary of State of OFCOM's proposed amendments.
- (3) If the Secretary of State agrees with OFCOM that it is appropriate—
 - (a) the consultation requirements set out in section 29(5) and (6) do not apply in relation to the proposed amendments, and
 - (b) section 32 does not apply to the amendments, once prepared.
- (4) If the Secretary of State agrees with OFCOM as mentioned in subsection (3), OFCOM may prepare and issue the amendments of the code of practice.
- (5) Amendments of a code of practice issued under this section come into force at the end of the period of 21 days beginning with the day on which the amendments are issued.
- (6) Section 34(2) applies in relation to amendments of a code of practice issued under this section as it applies in relation to amendments of a code of practice issued under section 32.

36 Relationship between duties and codes of practice

- (1) A provider of a regulated user-to-user service is to be treated as complying with a duty set out in section 4A (foundation duty), section 4E (reporting duties), section 10 (safety duties for services likely to be accessed by children), section 13 (content of democratic importance), section 14 (journalistic content) and if the provider takes the steps described in a code of practice which are recommended for the purposes of compliance with the duty in question (so far as the steps are relevant to the provider and the service in question).
- (2) A provider of a regulated user-to-user service is to be treated as complying with a duty set out in section 9 (safety duties about illegal content) if—
 - (a) the provider takes the steps described in a code of practice which are recommended for the purposes of compliance with the duty in question (so far as the steps are relevant to the provider and the service in question), and
 - (b) OFCOM are satisfied that—
 - (i) terrorism content is not prevalent, and is not persistently

- present, on the service, and
- (ii) CSEA content is not prevalent, and is not persistently present, on the service.
- (3) A provider of a regulated search service is to be treated as complying with a duty set out in section 4A (foundation duty), section 4E (reporting duties), 22 (safety duties for services likely to be accessed by children) if the provider takes the steps described in a code of practice which are recommended for the purposes of compliance with the duty in question (so far as the steps are relevant to the provider and the service in question).
- (4) A provider of a regulated search service is to be treated as complying with a duty set out in section 21 (safety duties about illegal content) if –
- (a) the provider takes the steps described in a code of practice which are recommended for the purposes of compliance with the duty in question (so far as the steps are relevant to the provider and the service in question), and
 - (b) OFCOM are satisfied that –
 - (i) terrorism content is not prevalent, and is not persistently present, in search results of the service, and
 - (ii) CSEA content is not prevalent, and is not persistently present, in search results of the service.
- (5) A provider of a regulated user-to-user service is to be treated as complying with the duty set out in section 12(2) (duty about freedom of expression and privacy) if the provider takes such of the steps described in a code of practice which are recommended for the purposes of compliance with a Chapter 2 safety duty (so far as the steps are relevant to the provider and the service in question) as incorporate safeguards for –
- (a) the protection of users’ right to freedom of expression within the law, or
 - (b) the protection of users from unwarranted infringements of privacy.
- (6) A provider of a regulated search service is to be treated as complying with the duty set out in section 23(2) (duty about freedom of expression and privacy) if the provider takes such of the steps described in a code of practice which are recommended for the purposes of compliance with a Chapter 3 safety duty (so far as the steps are relevant to the provider and the service in question) as incorporate safeguards for –
- (a) the protection of the rights of users and interested persons to freedom of expression within the law, or
 - (b) the Safer Systems and Processes Principles (so far as they are relevant to the service and the duty in question),
 - (c) the risk profile relevant to the service, and
 - (d) the protection of users from unwarranted infringements of privacy.
- (7) A failure by a provider of a regulated service to act in accordance with a provision of a code of practice does not of itself make the provider liable to legal proceedings in a court or tribunal.
- (8) A provider of a regulated service may seek to comply with a relevant duty by action other than that specified in a code of practice provided that the actions taken are at least as effective, in the view of OFCOM, as those specified in the code.
- (9) A provider of a regulated service who seeks to comply with a relevant duty by acting otherwise than by taking a step described in a code of practice which is recommended for the purposes of compliance with the duty must have regard to the following –
- (a) the online safety objectives in section [1A], and

- (b) the importance of the following (where relevant) –
 - (i) protecting the right of users and (in the case of search services) interested persons to freedom of expression within the law, and
 - (ii) protecting users from unwarranted infringements of privacy.
- (10) A provider of a regulated service who seeks to comply with a relevant duty by acting otherwise than by taking a step described in a code of practice which is recommended for the purposes of compliance with the duty must explain how the steps taken or proposed are as (or more) effective in achieving the Online Safety Objectives and the relevant duty than the steps recommended.
- (11) When assessing whether a provider of a regulated service is compliant with a relevant duty where the provider has acted otherwise than by taking a step described in a code of practice which is recommended for the purposes of compliance with the duty, OFCOM must consider the extent to which the alternative steps taken by the provider –
 - (a) achieve the online safety objectives in section [1A], and
 - (b) the Safer Systems and Processes Principles (so far as they are relevant to the service and the duty in question),
 - (c) the risk profile relevant to the service, and
 - (d) (where appropriate) incorporate safeguards for the protection of the matters mentioned in subsection (9)(b).
- (12) Where a provider has provided a sufficient explanation under section [36(10)] it will be deemed to comply with the relevant duty unless OFCOM, taking into account the matters in section [36(11)] determines that the explanation under section [36(9)] or the alternative actions under section [36(8)] are inadequate.
- (13) In subsections (3), (4) and (6), references to a provider of a regulated search service include references to a provider of a regulated user-to-user service that includes a search engine (see section 5(6)).
- (14) In this section –
 - “code of practice” means a code of practice published under section 34;
 - “online safety objectives” means the objectives set out in section 30(2) or (3) (as the case may be), as amended from time to time;
 - “relevant duties” means –
 - (aa) the Chapter 1 Foundation duties
 - (a) the Chapter 2 safety duties,
 - (b) the Chapter 3 safety duties,
 - (c) the duties set out in section 13 (content of democratic importance),
 - (d) the duties set out in section 14 (journalistic content), and
 - (e) the duties set out in sections 15 and 24 (reporting and redress).

37 Effect of codes of practice

- (1) A code of practice is admissible in evidence in legal proceedings.
- (2) In any proceedings in a court or tribunal, the court or tribunal must take into account a provision of a code of practice in determining a question arising in the proceedings if –
 - (a) the question relates to a time when the provision was in force, and
 - (b) the provision appears to the court or tribunal to be relevant to the question.
- (3) OFCOM must take into account a provision of a code of practice in determining a question arising in connection with their exercise of any relevant function if –
 - (a) the question relates to a time when the provision was in force, and

- (b) the provision appears to OFCOM to be relevant to the question.
- (4) In this section –
 - “code of practice” means a code of practice published under section 34;
 - “relevant functions” means OFCOM’s functions under –
 - (a) Chapter 4 of Part 4 (use of technology),
 - (b) Chapter 5 of Part 4 (information),
 - (c) Chapter 6 of Part 4 (enforcement), and
 - (d) Chapter 2 of Part 5 (super-complaints).

38 Duties and the first codes of practice

- (1) A duty mentioned in subsection (2) applies to providers of regulated services from the day on which a code of practice prepared under section 29(3) that is the first code of practice relating to that duty comes into force.
- (2) The duties referred to in subsection (1) are –
 - (aa) the Chapter 1 foundation duties,
 - (a) the Chapter 2 safety duties,
 - (b) the Chapter 3 safety duties,
 - (c) the duties set out in section 13 (content of democratic importance),
 - (d) the duties set out in section 14 (journalistic content), and
 - (e) the duties set out in sections 15 and 24 (reporting and redress).
- (3) For the purposes of subsection (1) a code of practice is the first code of practice relating to a duty if –
 - (a) it describes recommended steps for the purposes of compliance with that duty, and
 - (b) it is the first code of practice prepared under section 29(3) that describes steps for those purposes.
- (4) The duties set out in sections 9 and 21 (safety duties about illegal content), so far as relating to terrorism content, apply to providers of regulated services from the day on which the first code of practice prepared under section 29(1) comes into force.
- (5) The duties set out in sections 9 and 21, so far as relating to CSEA content, apply to providers of regulated services from the day on which the first code of practice prepared under section 29(2) comes into force.
- (6) In the case of the duties set out in sections 9 and 21, subsection (1) is subject to subsections (4) and (5).
- (7) In relation to the provider of a particular regulated service, references in this section to duties applying to providers of regulated services are to such duties as apply in relation to that service in accordance with provision made by sections 5 and 17.

CHAPTER 6

INTERPRETATION OF PART 2

39 Meaning of “regulated content”, “user-generated content” and “news publisher content”

- (1) This section applies for the purposes of this Part.
- (2) “Regulated content”, in relation to a regulated user-to-user service, means user-generated content, except—
 - (a) emails,
 - (b) SMS messages,
 - (c) MMS messages,
 - (d) comments and reviews on provider content (see subsection (5)),
 - (e) one-to-one live aural communications (see subsection (6)), and
 - (f) news publisher content (see subsection (8)).
- (3) “User-generated content”, in relation to a user-to-user service, means content—
 - (a) that is—
 - (i) generated by a user of the service, or
 - (ii) uploaded to or shared on the service by a user of the service, and
 - (b) that may be encountered by another user, or other users, of the service by means of the service.
- (4) For the purposes of subsection (3)—
 - (a) the reference to content generated, uploaded or shared by a user includes content generated, uploaded or shared by means of software or an automated tool applied by the user;
 - (b) a bot is to be regarded as a user of a service if—
 - (i) the bot’s functions include interacting with user-generated content, and
 - (ii) the bot is not operated by or on behalf of the provider of the service.
- (5) “Comments and reviews on provider content”, in relation to a user-to-user service, means content present on the service consisting of comments on, or reviews of, content produced and published on the service by the provider of the service or by a person acting on behalf of the provider (together with any further comments on such comments or reviews).
- (6) “One-to-one live aural communications”, in relation to a user-to-user service, means content consisting of communications made in real time between users of the service by means of the service, if (and only if)—
 - (a) the communications consist solely of speech or other sounds conveyed between two users,
 - (b) the communications do not include, and are not accompanied by, any written message, video or other visual image, and
 - (c) the content is not a recording of such communications.
- (7) “News publisher content”, in relation to a regulated user-to-user service, means any content present on the service that is within subsection (9) or (10).
- (8) Content is within this subsection if it was generated directly on the service by a user of the service that is a recognised news publisher.
- (9) Content is within this subsection if—

- (a) the content was uploaded to or shared on the service by a user of the service, and
 - (b) the content either –
 - (i) reproduces in full an article or written item that was originally published by a recognised news publisher (and is not a screenshot or photograph of that article or item or of part of it),
 - (ii) is a recording of an item originally broadcast by a recognised news publisher (and is not an excerpt of such a recording), or
 - (iii) is a link to a full article or written item originally published by a recognised news publisher, or to a full recording of an item originally broadcast by a recognised news publisher.
- (10) For the meaning of “recognised news publisher”, see section 40.
- (11) The Secretary of State may by regulations repeal subsections (2)(d) and (5) if the Secretary of State considers that it is appropriate to do so because of the risk of harm to individuals in the United Kingdom presented by comments and reviews on provider content.
- (12) The Secretary of State may by regulations repeal subsections (2)(e) and (6) if the Secretary of State considers that it is appropriate to do so because of the risk of harm to individuals in the United Kingdom presented by one-to-one live aural communications.
- (13) In this section –
- “MMS message” means a Multimedia Messaging Service message (that may include images, sounds and short videos) that may be sent between telephone numbers allocated in accordance with a national or international numbering plan;
 - “SMS message” means a Short Message Service text message composed principally of letters or numbers that may be sent between telephone numbers allocated in accordance with a national or international numbering plan.

40 Meaning of “recognised news publisher”

- (1) In this Part, “recognised news publisher” means any of the following entities –
- (a) the British Broadcasting Corporation,
 - (b) Sianel Pedwar Cymru,
 - (c) the holder of a licence under the Broadcasting Act 1990 or 1996 who publishes news-related material in connection with the broadcasting activities authorised under the licence, and
 - (d) any other entity which –
 - (i) meets all of the conditions in subsection (2), and
 - (ii) is not an excluded entity (see subsection (3)).
- (2) The conditions referred to in subsection (1)(d)(i) are that the entity –
- (a) has as its principal purpose the publication of news-related material, and such material –
 - (i) is created by different persons, and
 - (ii) is subject to editorial control,
 - (b) publishes such material in the course of a business (whether or not carried on with a view to profit),
 - (c) is subject to a standards code,

- (d) has policies and procedures for handling and resolving complaints,
 - (e) has a registered office or other business address in the United Kingdom,
 - (f) is the person with legal responsibility for material published by it in the United Kingdom, and
 - (g) publishes –
 - (i) the entity’s name, the address mentioned in paragraph (e) and the entity’s registered number (if any), and
 - (ii) the name and address of any person who controls the entity (including, where such a person is an entity, the address of that person’s registered or principal office and that person’s registered number (if any)).
- (3) An “excluded entity” is an entity –
- (a) which is a proscribed organisation under the Terrorism Act 2000 (see section 3 of that Act), or
 - (b) the purpose of which is to support a proscribed organisation under that Act.
- (4) For the purposes of subsection (2) –
- (a) news-related material is “subject to editorial control” if there is a person (whether or not the publisher of the material) who has editorial or equivalent responsibility for the material, including responsibility for how it is presented and the decision to publish it;
 - (b) “control” has the same meaning as it has in the Broadcasting Act 1990 by virtue of section 202 of that Act.
- (5) In this section –
- “news-related material” means material consisting of –
- (a) news or information about current affairs,
 - (b) opinion about matters relating to the news or current affairs, or
 - (c) gossip about celebrities, other public figures or other persons in the news;
- “publish” means publish by any means (including by broadcasting), and references to a publisher and publication are to be construed accordingly;
- “standards code” means –
- (a) a code of standards that regulates the conduct of publishers, that is published by an independent regulator, or
 - (b) a code of standards that regulates the conduct of the entity in question, that is published by the entity itself.

41 Meaning of “illegal content” etc

- (1) This section applies for the purposes of this Part.
- (2) “Illegal content” means –
 - (a) in relation to a regulated user-to-user service, content –
 - (i) that is regulated content in relation to that service, and
 - (ii) that amounts to a relevant offence;
 - (b) in relation to a regulated search service, content that amounts to a relevant offence.

- (3) For the purposes of this section, content consisting of certain words, images, speech or sounds amounts to a relevant offence if the provider of the service has reasonable grounds to believe that –
- (a) the use of the words, images, speech or sounds amounts to a relevant offence,⁵
 - (b) the use of the words, images, speech or sounds, when taken together with other regulated content present on the service, amounts to a relevant offence, or
 - (c) the dissemination of the content constitutes a relevant offence.
- (4) “Relevant offence” means –
- (a) a terrorism offence (see section 42),
 - (b) a CSEA offence (see section 43),
 - (c) a priority offence (see section 43A),
 - (d) an offence that is specified in, or is of a description specified in, regulations made by the Secretary of State (see section 44), or
 - (e) an offence, not within paragraph (a), (b) (c) or (d), of which the victim or intended victim is an individual (or individuals).
- (5) Illegal content –
- (a) is “terrorism content” if the relevant offence is a terrorism offence;
 - (b) is “CSEA content” if the relevant offence is a CSEA offence;
 - (c) is “priority illegal content” if the relevant offence is a priority offence or if it is an offence that is specified in, or is of a description specified in, regulations under subsection (4)(e).
- (6) An offence is not to be regarded as a relevant offence within subsection (4)(d) if the offence concerns –
- (a) the infringement of intellectual property rights,
 - (b) the safety or quality of goods (as opposed to what kind of goods they are), or
 - (c) the performance of a service by a person not qualified to perform it.
- (7) For the purposes of determining whether content amounts to an offence (or to an offence of a particular description), no account is to be taken of whether or not anything done in relation to the content takes place in any part of the United Kingdom.
- (8) In relation to a regulated user-to-user service, the terms “illegal content”, “terrorism content”, “CSEA content” and “priority illegal content” are to be taken to include material which, if it were present on the service, would be content within the definition in question (and this section is to be read with such modifications as may be necessary for that purpose).
- (9) In this section “offence” means an offence under the law of any part of the United Kingdom.

42 Offences relating to terrorism

- (1) In this Part “terrorism offence” means an offence specified in Schedule 2.
- (2) The Secretary of State may by regulations amend Schedule 2.

43 Offences relating to child sexual exploitation and abuse

- (1) In this Part “CSEA offence” means an offence specified in Schedule 3.

- (2) The Secretary of State may by regulations amend Part 1 or 3 of Schedule 3.
- (3) The Scottish Ministers may by regulations amend Part 2 of Schedule 3.

43A Priority Offences

- (1) In this Part “priority offence” means an offence specified in Schedule 3A.

44 DELETE

45 Meaning of “content that is harmful to children” etc

- (1) This section applies for the purposes of this Part.
- (2) “Content that is harmful to children”, in relation to a regulated service, means content that is –
 - (a) (in the case of a user-to-user service) regulated content in relation to that service, and
 - (b) either -
 - (i) of a description designated in regulations made by the Secretary of State as primary priority content that is harmful to children (see section 47),
 - (ii) of a description designated in such regulations as priority content that is harmful to children, or
 - (iii) within subsection (3) or (5).
- (3) Content is within this subsection if the provider of the service has reasonable grounds to believe that the nature of the content is such that there is a material risk of the content having, or indirectly having, a significant adverse physical or psychological impact on a child of ordinary sensibilities (“C”).
- (4) For the purposes of subsection (3), in the case of content which may reasonably be assumed to particularly affect people with a certain characteristic (or combination of characteristics), or to particularly affect a certain group of people, the provider is to assume that C possesses that characteristic (or combination of characteristics), or is a member of that group (as the case may be).
- (5) Content is within this subsection if the provider of the service has reasonable grounds to believe that there is a material risk of the fact of the content’s dissemination having a significant adverse physical or psychological impact on a child of ordinary sensibilities (“C”), taking into account (in particular) –
 - (a) how many users may be assumed to encounter the content by means of the service, and
 - (b) how easily, quickly and widely content may be disseminated by means of the service.
- (6) For the purposes of subsections (3) and (5), the provider is to assess impact on C by reference to children across the age-range, and the content is to be regarded as within subsection (3) or (5) (as the case may be) if the provider has reasonable grounds to believe that there is a material risk of impact as mentioned in the relevant subsection on a child of any particular age.
- (7) Where the provider has knowledge, relevant to the content, about a particular child at whom content is directed, or who is the subject of it, subsections (3) and (5) are to be read as if the reference to a child of ordinary sensibilities were a reference to that particular child, taking into account any of the following things that are known to or inferred by the provider –
 - (a) that child’s characteristics;

- (b) that child's membership of a certain group of people.
- (8) The reference in subsection (3) to a risk of content "indirectly" having a significant adverse physical or psychological impact on a child is a reference to a risk of either of the following –
- (a) content causing an individual to do or say things to a targeted child that would have a significant adverse physical or psychological impact on such a child;
 - (b) content causing a child to act in a way that –
 - (i) has a significant adverse physical or psychological impact on that child, or
 - (ii) increases the likelihood of such an impact on that child.
- (9) For the purposes of this section –
- (a) illegal content (see section 41) is not to be regarded as within subsection (3) or (5), and
 - (b) content is not to be regarded as within subsection (3) or (5) if the risk of physical or psychological impact flows from –
 - (i) the content's potential financial impact,
 - (ii) the safety or quality of goods featured in the content, or
 - (iii) the way in which a service featured in the content may be performed (for example, in the case of the performance of a service by a person not qualified to perform it).
- (10) In this Part –
- “non-designated content that is harmful to children” means content that is harmful to children but that is not –
- (a) primary priority content that is harmful to children, or
 - (b) priority content that is harmful to children;
- “primary priority content that is harmful to children” means content of a description designated as such in regulations under subsection (2)(b);
- “priority content that is harmful to children” means content of a description designated as such in regulations under subsection (2)(b).
- (11) In relation to a regulated user-to-user service, the terms “content that is harmful to children”, “primary priority content that is harmful to children”, “priority content that is harmful to children” and “non-designated content that is harmful to children” are to be taken to include material which, if it were present on the service, would be content within the definition in question (and this section is to be read with such modifications as may be necessary for that purpose).
- (12) In this section “targeted child”, in relation to content, means a child –
- (a) who is the subject of the content, or
 - (b) who is a member of a class or group of people with a certain characteristic (or combination of characteristics) targeted by the content.

46 Meaning of “content that is harmful to adults” etc

- (1) This section applies for the purposes of this Part.
- (2) “Content that is harmful to adults”, means content that is –
 - (a) Regulated content in relation to that service, and
 - (b) either –
 - (i) of a kind listed in Schedule [3A]
 - (ii) of a description designated as harmful in regulations made by the Secretary of State, or
 - (iii) within subsection (3) or (5)

- (iv) content that is otherwise harmful than within the meaning of cl 3(A) and not trivial nor mere offence
- (3) Content is within this subsection if the provider of the service has reasonable grounds to believe that the nature of the content is such that there is a material risk of the content having, or indirectly having, a significant adverse physical or psychological impact on an adult of ordinary sensibilities ("A").
 - (5) For the purposes of subsection (3), in the case of content which may reasonably be assumed to particularly affect people with a certain characteristic (or combination of characteristics), or to particularly affect a certain group of people, the provider is to assume that A possesses that characteristic (or combination of characteristics), or is a member of that group (as the case may be). Content is within this subsection if the provider of the service has reasonable grounds to believe that there is a material risk of the fact of the content's dissemination having a significant adverse physical or psychological impact on an adult of ordinary sensibilities, taking into account (in particular) –
 - (a) how many users may be assumed to encounter the content by means of the service, and
 - (b) how easily, quickly and widely content may be disseminated by means of the service.
 - (6) Where the provider has knowledge, relevant to the content, about a particular adult at whom content is directed, or who is the subject of it, subsections (3) and (5) are to be read as if the reference to an adult of ordinary sensibilities were a reference to that particular adult, taking into account any of the following things that are known to or inferred by the provider –
 - (a) that adult's characteristics;
 - (b) that adult's membership of a certain group of people.
 - (7) The reference in subsection (3) to a risk of content "indirectly" having a significant adverse physical or psychological impact on an adult is a reference to a risk of either of the following –
 - (a) content causing an individual to do or say things to a targeted adult that would have a significant adverse physical or psychological impact on such an adult;
 - (b) content causing an adult to act in a way that –
 - (i) has a significant adverse physical or psychological impact on that adult, or
 - (ii) increases the likelihood of such an impact on that adult.
 - (8) For the purposes of this section –
 - (a) illegal content (see section 41) is not to be regarded as within subsection (3) or (5), and
 - (b) content is not to be regarded as within subsection (3) or (5) if the risk of physical or psychological impact flows from –
 - (i) the content's potential financial impact,
 - (ii) the safety or quality of goods featured in the content, or
 - (iii) the way in which a service featured in the content may be performed (for example, in the case of the performance of a service by a person not qualified to perform it).
 - (9) "Priority content that is harmful to adults" means content of a description designated as such in regulations under subsection (2)(b).
 - (10) In relation to a Category 1 service, the terms "content that is harmful to adults" and "priority content that is harmful to adults" are to be taken to include material which, if it were present on the service, would be content within the definition in question (and this section is to be read with such modifications as may be necessary for that purpose).

- (11) In this section “targeted adult”, in relation to content, means an adult—
- (a) who is the subject of the content, or
 - (b) who is a member of a class or group of people with a certain characteristic (or combination of characteristics) targeted by the content.

47 Regulations under sections 45 and 46

- (1) In this section “regulations” means regulations under section 41, 45 or 46. 5
- (2) The Secretary of State must consult OFCOM before making regulations.
- (3) OFCOM must regularly carry out reviews of—
- (a) the prevalence on regulated services of harmful content or behaviour with each kind of harm separately assessed
 - (b) the level of risk of harm being caused to individuals in the United Kingdom by the presence of such content or behaviour with each kind of harm separately assessed, and
 - (c) the severity of that threat in each case.
- (3A) Content of certain words, images, speech or sounds amounts to an offence or to an offence of a particular description if there are reasonable grounds to believe that—
- (a) the use of the words, images, speech or sounds amounts to the offence or to an offence of that description,
 - (b) the use of the words, images, speech or sounds, when taken together with other regulated content present on regulated services, amounts to the offence or to an offence of that description, or
 - (c) the dissemination of the content constitutes the offence or an offence of that description.
- (3B) For the purposes of determining whether content amounts to an offence (or to an offence of a particular description), no account is to be taken of whether or not anything done in relation to the content takes place in any part of the United Kingdom.
- (4) OFCOM must prepare and publish a report on the outcome of each review, including a recommendation as to content or behaviour to be specified under section 41, 45 or 46.
- (5) The Secretary of State may not specify a description of offence in regulations under section 41 if offences of that description are offences within subsection (5).
- (6) in consequence of those conclusions, OFCOM’s recommendations in relation to the exercise of the Secretary of State’s power to make regulations. The reports must be published not more than three years apart.
- (7) The first report must be published before the end of the period of three years beginning with the day on which the first statutory instrument containing regulations is made.
- (8) On completion of each report, OFCOM must, as soon as reasonably practicable—
- (a) send it to the Secretary of State, and
 - (b) publish it in such manner as OFCOM consider appropriate for bringing it to the attention of persons who, in their opinion, are likely to be affected by it.

- (9) The reference to the prevalence of content of a particular kind is to be read, in relation to search services, as a reference to the prevalence of content of that kind presented to users by operation of the search engine in response to search requests made by them.
- (a) The Secretary of State may not specify an offence in regulations under section 41 if the offence concerns –
- (i) the infringement of intellectual property rights,
 - (ii) the safety or quality of goods (as opposed to what kind of goods they are), or
 - (iii) the performance of a service by a person not qualified to perform it.
- (b) The Secretary of State may not specify a description of offence in regulations under section 41 if offences of that description are offences within subsection (5).

48 Meaning of “Chapter 1 Foundation duty”, “Chapter 2 safety duty” and “Chapter 3 safety duty”

- (1a) In this Part “Chapter 1 Foundation duty” means any of the duties set out in clauses 4A-F
- (1) In this Part “Chapter 2 safety duty” means any of the duties set out in –
- (a) section 9 (safety duties about illegal content),
 - (b) section 10 (safety duties for services likely to be accessed by children),
- or
- (c) section 11 (safety duties protecting adults).
- (2) In this Part “Chapter 3 safety duty” means any of the duties set out in –
- (a) section 21 (safety duties about illegal content), or
 - (b) section 22 (safety duties for services likely to be accessed by children).

PART 3

OTHER DUTIES OF SERVICE PROVIDERS

CHAPTER 1

TRANSPARENCY REPORTS

49 Transparency reports by service providers

- (1) A provider of a relevant service must, in relation to each relevant service provided, produce an annual report under this section (a “transparency report”), which must –
 - (a) contain information of a kind described by OFCOM in a notice given to the provider,
 - (b) be in the format specified in the notice,
 - (c) be submitted to OFCOM by the date specified in the notice, and
 - (d) be published in the manner and by the date specified in the notice.
- (2) A provider must ensure that the information provided in a transparency report is –
 - (a) complete, and
 - (b) accurate in all material respects.
- (3) A “relevant service” is a service of a kind in respect of which OFCOM in the risk profiles produced under section 61 has determined it appropriate for transparency reports to be produced. –
- (4) a Category 2B service (see section 59(6)(c)). OFCOM may only describe information of the following kinds in a notice under subsection (1) –
 - (a) information about the incidence of illegal content, content that is harmful to children and content that is harmful to adults on a user-to-user service or in search results (as the case may be), and about how many users are assumed to have encountered this by means of the service;
 - (b) information about how such content is disseminated by means of a service;
 - (c) information about –
 - (i) in the case of a user-to-user service, how the terms of service are applied;
 - (ii) in the case of a search service, how the statements of policies and procedures mentioned in sections 21(4) and 22(4) are applied;
 - (d) information about the systems and processes for users to report –
 - (i) in the case of a user-to-user service, content present on the service which is considered to be illegal content, content that is harmful to children or content that is harmful to adults, or other content which is considered to breach the terms of service;

- (ii) in the case of a search service, content encountered in or via search results which is considered to be illegal content or content that is harmful to children, or other content which is considered to breach any statements of policies or procedures relating to the service which have been made publicly available by the provider of the service;
 - (e) information about systems and processes which a provider uses to deal with illegal content, content that is harmful to children and content that is harmful to adults, including systems and processes for identifying such content, and –
 - (i) in the case of a user-to-user service, taking down such content;
 - (ii) in the case of a search service, minimising the risk of illegal content or content that is harmful to children being encountered in or via search results;
 - (f) information about functionalities to help users manage risks relating to content that is harmful to children and content that is harmful to adults;
 - (g) information about steps that a provider is taking to comply with any duty set out in Part 2 (including in particular steps that are described in a code of practice under section 29);
 - (h) information about ways in which a provider co-operates with government, regulatory or other public sector bodies in the United Kingdom, in particular those involved in the enforcement of the criminal law;
 - (i) information about systems and processes by which a provider assesses the risk of harm to individuals from the presence of illegal content, content that is harmful to children or content that is harmful to adults on a user-to-user service or in search results (as the case may be) –
 - (i) when a service is initially being designed or developed,
 - (ii) when any further development or update to a service is being considered, and
 - (iii) while a service is in operation;
 - (j) information about systems and processes a provider has in place –
 - (i) to direct users of a service to information about how they can protect themselves from harm in relation to illegal content, content that is harmful to children and content that is harmful to adults, and
 - (ii) to counteract or provide support to users of a service in relation to illegal content, content that is harmful to children or content that is harmful to adults present on a user-to-user service or encountered in or via search results (as the case may be);
 - (k) information about steps that a provider is taking to provide a higher standard of protection for children than for adults;
 - (l) information about steps that a provider is taking to improve the media literacy of users of a service, and an evaluation of the effectiveness of such steps;
 - (m) information about any other steps that a provider is taking which relate to online safety matters.
 - (n) any other matters OFCOM determines is appropriate in the light of the Online Safety Objectives.
- (5) When determining which information to require in a notice under subsection (1) in relation to a particular service, OFCOM must take into account –
- (a) the kinds of content in relation to which the provider of the service has duties under Chapter 1, 2 or 3 of Part 2 (as the case may be);

- (b) the capacity of the provider of the service to produce information;
 - (c) the kind of service it is;
 - (d) the functionalities of the service;
 - (e) the number of users of the service;
 - (f) the proportion of users of the service who are children.
- (6) The Secretary of State may by regulations amend subsection (1) so as to change the frequency with which a transparency report must be produced.
- (7) The Secretary of State may by regulations –
- (a) amend subsection (4) so as to add further descriptions of information, or to vary or omit descriptions of information, and
 - (b) amend subsection (5) in connection with any such amendment.
- (8) The Secretary of State must consult OFCOM before making regulations under subsection (6) or (7).
- (9) In this section –
- “content that is harmful to adults” has the meaning given by section 46;
 - “content that is harmful to children” has the meaning given by section 45;
 - “illegal content” has the meaning given by section 41;
 - “users” means United Kingdom users (see section 122).

50 Transparency reports: guidance

- (1) OFCOM must prepare guidance on the following matters –
- (a) how OFCOM will determine which descriptions of information in section 49(4) they will require a transparency report under that section relating to a particular kind of relevant service, or a relevant service provided by a particular kind of provider, to contain, including –
 - (i) the principles that OFCOM will apply in relation to each of the factors mentioned in section 49(5), and
 - (ii) the steps that OFCOM will take to engage with providers of relevant services before requiring descriptions of information in a notice under section 49(1) in relation to a relevant service provided by them;
 - (b) how information from transparency reports produced by providers of relevant services under section 49 will be used to produce OFCOM’s transparency reports (see section 100); and
 - (c) any other matter that OFCOM consider to be relevant to the production and publication of transparency reports under section 49 or 100.
- (2) Before preparing guidance under this section (including revised or replacement guidance), OFCOM must consult such of the following as they consider appropriate –
- (a) providers of regulated user-to-user services, and of regulated search services,
 - (b) persons who appear to OFCOM to represent such providers,
 - (c) persons whom OFCOM consider to have expertise in equality issues and human rights, in particular –
 - (i) the right to freedom of expression set out in Article 10 of the Convention, and

- (ii) the right to respect for a person's private and family life, home and correspondence set out in Article 8 of the Convention,
 - (d) persons who appear to OFCOM to represent the interests of children,
 - (e) persons who appear to OFCOM to represent the interests of those with protected characteristics (within the meaning of Part 2 of the Equality Act 2010),
 - (f) persons whom OFCOM consider to have expertise in online safety matters, and
 - (g) persons whom OFCOM consider to have expertise, relevant to online safety matters, in the enforcement of the criminal law and the protection of national security,
- and OFCOM must also consult any other person whom OFCOM consider appropriate.
- (3) OFCOM must publish the guidance (and any revised or replacement guidance).
 - (4) In exercising their functions under section 49 or 100, OFCOM must have regard to the guidance for the time being in force under this section.
 - (5) In this section, "relevant service" has the same meaning as in section 49 (see subsection (3) of that section).

CHAPTER 2

FEES

51 Duty to notify OFCOM

- (1) A provider of a regulated service must notify OFCOM in relation to a charging year which is –
 - (a) the first fee-paying year in relation to that provider, or
 - (b) any charging year after the first fee-paying year where –
 - (i) the previous charging year was not a fee-paying year in relation to the provider, and the charging year in question is a fee-paying year in relation to the provider, or
 - (ii) the previous charging year was a fee-paying year in relation to the provider, and the charging year in question is not a fee-paying year in relation to the provider.
- (2) A "fee-paying year", in relation to a provider, means a charging year where both of the following conditions apply –
 - (a) the provider's qualifying worldwide revenue for the qualifying period that relates to that charging year is equal to or greater than the threshold figure for the time being published in accordance with section 53, and
 - (b) the provider is not exempt (see subsection (5)).
- (3) A notification under subsection (1) in relation to a charging year must include details of all regulated services provided by the provider, and where it is a notification under subsection (1)(a) or (b)(i), it must also include –
 - (a) details of the provider's qualifying worldwide revenue for the qualifying period that relates to that charging year, and

- (b) any supporting evidence, documents or other information specified by OFCOM in a statement of principles as mentioned in section 55(1).
- (4) A notification under subsection (1) must be provided to OFCOM by the time specified by OFCOM in a statement of principles as mentioned in section 55(1).
- (5) OFCOM may provide that particular descriptions of providers of regulated services are exempt for the purposes of this section and section 52 where –
 - (a) OFCOM consider that an exemption for such providers is appropriate, and
 - (b) the Secretary of State approves the exemption.
- (6) OFCOM may revoke such an exemption where they consider that it is no longer appropriate and the Secretary of State approves the revocation.
- (7) OFCOM must publish details of any exemption for the time being approved under subsection (5).
- (8) In this section, “qualifying worldwide revenue” and “qualifying period” have the meaning given to them by regulations made by the Secretary of State.
- (9) The Secretary of State must consult OFCOM before making regulations under subsection (8).
- (10) For the purposes of this section and section 52, the “provider” of a regulated service, in relation to a charging year, includes a person who is the provider of the service for part of that year.
- (11) In this section –
 - “charging year” means any period of 12 months beginning with 1 April, except such a period that falls before the initial charging year;
 - “initial charging year” means the period of 12 months beginning with 1 April specified by OFCOM in a notice published for the purposes of this section and section 53.

52 Duty to pay fees

- (1) OFCOM may require a provider of a regulated service to pay a fee in respect of a charging year which is a fee-paying year.
- (2) Where OFCOM require a provider of a regulated service to pay a fee in respect of a charging year, the fee is to be equal to the amount produced by a computation –
 - (a) made by reference to –
 - (i) the provider’s qualifying worldwide revenue for the qualifying period relating to that charging year, and
 - (ii) any other factors that OFCOM consider appropriate, and
 - (b) made in the manner that OFCOM consider appropriate.
- (3) For the purposes of this section and section 51 –
 - (a) the amount of a provider’s qualifying worldwide revenue for a qualifying period, or
 - (b) the amount of a fee to be paid to OFCOM, or of an instalment of such a fee,

is, in the event of a disagreement between the provider and OFCOM, the amount determined by OFCOM.

- (4) When determining fees payable under this section, OFCOM must do so in accordance with a statement of principles as mentioned in section 55(1).
- (5) Where a person is the provider of a regulated service for part of a charging year only, OFCOM may refund all or part of a fee paid to OFCOM under this section by that provider in respect of that year.
- (6) In this section, the following expressions have the same meaning as in section 51 –
 - “charging year”;
 - “fee-paying year”;
 - “qualifying period”;
 - “qualifying worldwide revenue”.

53 Threshold figure

- (1) OFCOM must determine the figure that they consider appropriate to be the threshold figure for the purposes of sections 51 and 52 (“OFCOM’s proposed figure”).
- (2) OFCOM must notify the Secretary of State of OFCOM’s proposed figure.
- (3) If the Secretary of State approves OFCOM’s proposed figure –
 - (a) the Secretary of State must notify OFCOM of this, and
 - (b) OFCOM must publish this figure as the threshold figure.
- (4) If the Secretary of State does not approve OFCOM’s proposed figure –
 - (a) the Secretary of State must notify OFCOM of this,
 - (b) the Secretary of State must determine the figure that the Secretary of State considers appropriate to be the threshold figure for the purposes of sections 51 and 52, and
 - (c) the Secretary of State must publish that figure as the threshold figure.
- (5) OFCOM must keep the threshold figure under review, and where OFCOM consider that this figure should be amended, subsections (1) to (4) apply again.
- (6) The first threshold figure must be published before the start of the initial charging year.
- (7) In this section, “initial charging year” has the same meaning as in section 51.

54 Secretary of State’s guidance

- (1) The Secretary of State must issue guidance to OFCOM –
 - (a) about the principles to be included in a statement of principles that OFCOM propose to apply in determining fees payable under section 52 (see section 55), and
 - (b) setting out principles to be considered when determining the threshold figure under section 53.
- (2) The Secretary of State must consult OFCOM before issuing, revising or replacing the guidance.
- (3) The guidance may not be revised or replaced more frequently than once every three years unless –

- (a) the guidance needs to be corrected because of an amendment, repeal or modification of any provision of this Chapter, or
 - (b) the revision or replacement is by agreement between the Secretary of State and OFCOM.
- (4) The Secretary of State must lay the guidance (including revised or replacement guidance) before Parliament.
 - (5) The Secretary of State must publish the guidance (and any revised or replacement guidance).
 - (6) OFCOM must have regard to the guidance when exercising functions under this Chapter.

55 Fees statements by OFCOM

- (1) OFCOM may not require a provider of a regulated service to pay a fee under section 52 unless there is in force a statement of the principles that OFCOM propose to apply in determining fees payable under that section.
- (2) Those principles must be such as appear to OFCOM to be likely to secure, on the basis of such estimates of the likely costs as it is practicable for them to make—
 - (a) that on a year by year basis, the aggregate amount of the fees payable to OFCOM under section 52 is sufficient to meet, but does not exceed, the annual cost to OFCOM of the exercise of their online safety functions;
 - (b) that the amount of any fee required under section 52 is justifiable and proportionate having regard to the provider who will be required to pay it and the functions in respect of which it is imposed;
 - (c) that the relationship between meeting the cost of the exercise of those functions and the amounts of the fees is transparent.
- (3) A statement of principles mentioned in subsection (1) must include details relating to the computation model used to calculate fees payable under section 52, including details of factors mentioned in subsection (2)(a)(ii) of that section (if any).
- (4) Before making or revising such a statement of principles, OFCOM must consult such of the persons who, in OFCOM's opinion, are likely to be affected by those principles as they think fit.
- (5) The way in which such a statement of principles must be made or may be revised is by the publication of the statement or revised statement in such manner as OFCOM consider appropriate for bringing it to the attention of persons who, in their opinion, are likely to be affected by it.
- (6) As soon as reasonably practicable after the end of each charging year, OFCOM must publish a statement setting out, in respect of that year—
 - (a) the aggregate amounts of the fees payable under section 52 for that year that have been received by OFCOM,
 - (b) the aggregate amounts of the fees payable under that section for that year that remain outstanding and are likely to be paid or recovered, and
 - (c) the cost to OFCOM of the exercise of their online safety functions.
- (7) Any deficit or surplus shown (after applying this subsection for all previous years) by a statement under subsection (6) must be carried forward and taken

into account in determining what is required to satisfy the requirement imposed by virtue of subsection (2)(a) in relation to the following year.

- (8) For the purposes of this section –
- (a) OFCOM's costs of the exercise of their online safety functions during a charging year include the costs of preparations for the exercise of their online safety functions incurred during that year; and
 - (b) OFCOM's costs of preparations for the exercise of their online safety functions incurred after the day on which this section comes into force but before the charging year in which those functions were first exercised are to be treated as if they were incurred during that year.
- (9) In this section, "charging year" has the same meaning as in section 51.

PART 4

OFCOM'S POWERS AND DUTIES IN RELATION TO REGULATED SERVICES

CHAPTER 1

GENERAL DUTIES

56 General duties of OFCOM under section 3 of the Communications Act

- (1) Section 3 of the Communications Act (general duties of OFCOM) is further amended in accordance with subsections (1) to (4)
- (2) After subsection (5) insert –

“(5A) Subsection (4)(c) does not apply in relation to the carrying out of any of OFCOM's online safety functions.”
- (3) After subsection (6) insert –

“(6ZA) Where it appears to OFCOM, in relation to the carrying out of any of their online safety functions, that any of their general duties conflict with their duty under section 24, priority must be given to their duty under that section.”
- (4) In subsection (14), at the appropriate place insert –

““online safety functions” has the meaning given by section 136 of the Online Safety Act 2021, except that it does not include OFCOM's general duties;”.
- (5) After subsection (14) insert –

“(15) In this section the following terms have the same meaning as in the Online Safety Act 2021 –

 - “content” (see section 137 of that Act);
 - “harm” (see section 137 of that Act);
 - “provider”, in relation to a regulated service (see section 116 of that Act);
 - “regulated service” (see section 3 of that Act);
 - “search results” and “via search results” (see section 134 of that Act);
 - “search service” (see section 2 of that Act);
 - “user-to-user service” (see section 2 of that Act).”
- (6) In section 6 of the Communications Act (duties to review regulatory burdens) –
 - (a) in subsection (2), after “this section” insert “(except their online safety functions)”, and
 - (b) after subsection (10) insert –

“(11) In this section “online safety functions” has the same meaning as in section 3.”

57 Duties of OFCOM in relation to strategic priorities

- (1) This section applies where a statement has been designated under section 109(1) (Secretary of State’s statement of strategic priorities).
- (2) OFCOM must have regard to the statement when carrying out their online safety functions. 5
- (3) OFCOM must within the period of 40 days beginning with the day on which the statement is designated, or such longer period as the Secretary of State may allow –
 - (a) explain in writing what they propose to do in consequence of the statement, and 10
 - (b) publish a copy of that explanation in such manner as OFCOM consider appropriate.
- (4) OFCOM must, as soon as practicable after the end of –
 - (a) the period of 12 months beginning with the day on which the first statement is designated under section 109(1), and 15
 - (b) every subsequent period of 12 months, publish a review of what they have done during the period in question in consequence of the statement.

58 Duty to carry out impact assessments

- (1) Section 7 of the Communications Act (duty to carry out impact assessments) is amended as follows. 20
- (2) In subsection (2), at the beginning insert “Subject to subsection (2A),”.
- (3) After subsection (2) insert –

“(2A) A proposal to do any of the following is important for the purposes of this section – 25

 - (a) to prepare a code of practice under section 29 of the Online Safety Act 2021;
 - (b) to prepare amendments of such a code of practice; or
 - (c) to prepare a code of practice as a replacement for such a code of practice.” 30
- (4) After subsection (4) insert –

“(4A) An assessment under subsection (3)(a) that relates to a proposal mentioned in subsection (2A) must include an assessment of the likely impact of implementing the proposal on small businesses and micro businesses. 35

(4B) An assessment under subsection (3)(a) that relates to a proposal to do anything else for the purposes of, or in connection with, the carrying out of OFCOM’s online safety functions (within the meaning of section 136 of the Online Safety Act 2021), must, so far as the proposal relates to such functions, include an assessment of the likely impact of implementing the proposal on small businesses and micro businesses.” 40

CHAPTER 2

REGISTER OF CATEGORIES OF SERVICES

59 OFCOM's duty to maintain register

- (1) OFCOM shall maintain a register of the services determined by OFCOM to be either –
 - (a) a service presenting a risk to democratic debate, or
 - (b) services presenting risk to news plurality and distribution.

60 DELETE**CHAPTER 3**

RISK ASSESSMENTS

61 Risk assessments by OFCOM

- (1) OFCOM must carry out a risk assessment to identify, assess and understand the risks of harm presented by regulated services.
- (2) In carrying out S(61) risk assessments OFCOM should have regard to the Online Safety Objectives in S(1A).
- (3) The risk assessment must, amongst other things –
 - (a) assess the levels of risk of harm presented by regulated services of different kinds, including by giving separate consideration to –
 - (i) the risk of harm to individuals in the United Kingdom presented by illegal content,
 - (ii) the risk of harm to children in the United Kingdom, in different age groups, presented by content that is harmful to children, and
 - (iii) the risk of harm to adults in the United Kingdom presented by content that is harmful to adults;
 - (iv) the risk of harm presented by the characteristics of the service.
 - (b) identify characteristics of different kinds of regulated services that are relevant to such risks of harm, including the risk posed by anonymity and assess the impact of those kinds of characteristics on such risks.
- (4) When carrying out the risk assessment and developing the risk profiles OFCOM must take into account the likely impact of the characteristics on freedom of expression and on the right to respect for private and family life home and correspondence, and identify this impact in the risk profiles it develops.
- (5) In the risk profile for each kind of service, OFCOM must indicate whether it is appropriate or not for the obligations in clause 49 (transparency reports) to apply to services of that kind.
- (6) As soon as reasonably practicable after the finalisation of a risk profile, OFCOM must publish it.
- (7) OFCOM must develop risk profiles for different kinds of regulated services, categorising the services as OFCOM consider appropriate, taking into account –

- (a) the characteristics of the services, and
 - (b) the risk levels and other matters identified in the risk assessment.
- (8) As soon as reasonably practicable after completing a risk assessment, OFCOM must publish a report on the findings.
- (9) OFCOM must ensure that the risk assessment and individual risk profiles are kept up to date.
- (10) In this section –
- “content that is harmful to adults” has the meaning given by section 46;
 - “content that is harmful to children” has the meaning given by section 45;
 - “illegal content” has the meaning given by section 41.

61A Services presenting risks to democratic debate

- (1) OFCOM must carry out a protection of democracy risk assessment to identify, assess and in particular to understand the significance of regulated services of different kinds on democratic debate in the United Kingdom and determine whether, in relation to a particular type of regulated service, it would be appropriate that the duties under section 13 should apply.
- (2) The risk assessment must assess the levels of risk of any harm and identify characteristics of different kinds of regulated services to which OFCOM has determined that the duties in section 13 should apply that are relevant to such risks of harm, and assess the impact of those kinds of characteristics on such risks.
- (3) OFCOM must develop risk profiles for different kinds of regulated services, based on the news plurality risk assessment, categorising the services as OFCOM consider appropriate, taking into account –
- (a) the characteristics of the services, and
 - (b) the risk levels and other matters identified in the risk assessment.
- (4) As soon as reasonably practicable after completing a risk assessment, OFCOM must publish a report on the findings.
- (5) As soon as reasonably practicable after the finalisation of a risk profile under s[61A(3)], OFCOM must publish it.

61B Services presenting risks to News Plurality and Distribution

- (1) OFCOM must carry out a news plurality risk assessment to identify, assess and understand the impact of regulated services of different kinds on the distribution of journalistic content and to the availability of a wide range of journalistic content and determine whether, in relation to a particular type of regulated service, it would be appropriate that the duties under section 14 should apply.
- (2) When carrying out the news plurality risk assessment under section [61B], OFCOM should consult in a timely manner the Competition and Markets Authority.
- (3) The risk assessment must assess the levels of risk of such harm and identify characteristics of different kinds of regulated services to which OFCOM has determined that the duties in section 14 should apply that are relevant to such risks of harm, and assess the impact of those kinds of characteristics on

such risks.

- (4) OFCOM must develop risk profiles for different kinds of regulated services, based on the news plurality risk assessment, categorising the services as OFCOM consider appropriate, taking into account -
 - (a) the characteristics of the services, and
 - (b) the risk levels and other matters identified in the risk assessment.
- (5) As soon as reasonably practicable after completing a risk assessment, OFCOM must publish a report on the findings.
- (6) As soon as reasonably practicable after the finalisation of a risk profile under s [61B(3)], OFCOM must publish it.

62 OFCOM's guidance about risk assessments

- (1) As soon as reasonably practicable after OFCOM have completed their first risk assessment under section 61, OFCOM must prepare guidance for providers of regulated services to assist them in complying with their duties to carry out risk assessments under section [4A(3)] and a freedom expression and privacy impact assessment under section [4A(4)].
- (2) The guidance must include the risk profiles prepared under section 61 (see subsection (3) of that section) and section [61A] (see subsection (3) of that section).
- (3) OFCOM must keep the guidance up to date.
- (4) OFCOM must publish the guidance (and any revised or replacement guidance).

CHAPTER 4

USE OF TECHNOLOGY IN RELATION TO TERRORISM CONTENT AND CHILD SEXUAL EXPLOITATION AND ABUSE CONTENT

63 Use of technology warning notice

- (1) OFCOM may, in accordance with this section, give a notice (a "use of technology warning notice") to a provider of a regulated service stating that OFCOM intend to give the provider a use of technology notice under –
 - (a) in the case of a user-to-user service, section 64;
 - (b) in the case of a search service, section 65.
- (2) OFCOM may give a use of technology warning notice relating to a regulated user-to-user service to the provider of the service if they consider that there are reasonable grounds for believing that the provider is failing to comply with the duty in section 9 (safety duties about illegal content), so far as relating to terrorism content or CSEA content (or both those kinds of content), based on evidence demonstrating –
 - (a) the prevalence, and
 - (b) the persistent presence,
 of terrorism content or CSEA content or both (as the case may be) on the service in question.

- (3) OFCOM may give a use of technology warning notice relating to a regulated search service to the provider of the service if they consider that there are reasonable grounds for believing that the provider is failing to comply with the duty in section 21 (safety duties about illegal content), so far as relating to terrorism content or CSEA content (or both those kinds of content), based on evidence demonstrating –
- (a) the prevalence, and
 - (b) the persistent presence,
- of terrorism content or CSEA content or both (as the case may be) in search results of the service in question.
- (4) A use of technology warning notice given to a provider must –
- (a) give OFCOM's reasons for their opinion that the provider is failing to comply with the duty referred to in subsection (2) or (3) (as the case may be),
 - (b) contain details of the technology that OFCOM are considering requiring the provider to use,
 - (c) specify whether the technology is to be required in relation to terrorism content or CSEA content (or both),
 - (d) specify any other requirements that OFCOM are considering imposing (see section 64(6) and (7) or section 65(6) and (7)), and
 - (e) specify the period for which OFCOM are considering imposing the requirements (see section 66(2)).
- (5) A use of technology warning notice given to a provider must –
- (a) state that the provider may make written representations (with any supporting evidence) about the matters contained in the notice, and
 - (b) specify the period within which such representations may be made.
- (6) A use of technology warning notice may be given in respect of any period during which the failure to comply with the duty referred to in subsection (2) or (3) has continued, and must specify that period.

64 Use of technology notice: user-to-user service

- (1) This section applies if –
- (a) a use of technology warning notice under section 63 relating to a particular regulated user-to-user service has been given to the provider of that service, and
 - (b) the period allowed for representations has expired.
- (2) If, after considering any representations and evidence, OFCOM decide not to give a use of technology notice to the provider, they must inform the provider of that fact.
- (3) If the conditions mentioned in subsection (5) are met, OFCOM may give the provider a use of technology notice under this section.
- (4) A use of technology notice under this section is a notice relating to a regulated user-to-user service requiring the provider of the service to do either or both of the following –
- (a) use accredited technology to identify public terrorism content present on the service and to swiftly take down that content (either by means of the technology alone or by means of the technology together with the

- use of human moderators to review terrorism content identified by the technology);
- (b) use accredited technology to identify CSEA content present on any part of the service (public or private), and to swiftly take down that content (either by means of the technology alone or by means of the technology together with the use of human moderators to review CSEA content identified by the technology).
- (5) The conditions which must be met in relation to the service are as follows—
- (a) OFCOM have evidence demonstrating—
- (i) the prevalence, and
- (ii) the persistent presence, of terrorism content or CSEA content or both (as the case may be) on the service,
- (b) OFCOM are satisfied that no less intrusive step than the use of the technology to be specified in the notice is likely to achieve the necessary reduction in terrorism content or CSEA content present on the service, and
- (c) OFCOM are satisfied that giving the notice is a proportionate means of addressing the problem of terrorism content or CSEA content present on the service.
- (6) If a provider is already using accredited technology in relation to the service in question, a use of technology notice under this section may require the provider to use it more effectively (specifying the ways in which that must be done).
- (7) A use of technology notice under this section may also require a provider to operate an effective complaints procedure allowing for United Kingdom users to challenge the take down of content which they have generated, uploaded or shared on the service.
- (8) For the purposes of subsection (4)(a) terrorism content is “public” if it is generated, uploaded or shared on the service in question publicly, and a use of 30 technology notice relating to terrorism content must identify the content, or parts of the service that include content, that OFCOM reasonably consider meets that description in the case of that service.
- (9) OFCOM may vary or revoke a use of technology notice under this section by a further notice under this section.

65 Use of technology notice: search service

- (1) This section applies if—
- (a) a use of technology warning notice under section 63 relating to a particular regulated search service has been given to the provider of that service, and
- (b) the period allowed for representations has expired.
- (2) If, after considering any representations and evidence, OFCOM decide not to give a use of technology notice to the provider, they must inform the provider of that fact.
- (3) If the conditions mentioned in subsection (5) are met, OFCOM may give the provider a use of technology notice under this section.

- (4) A use of technology notice under this section is a notice relating to a regulated search service requiring the provider of the service to do either or both of the following –
- (a) use accredited technology to identify terrorism content in search results and to swiftly take steps that result in that content no longer appearing in search results (either by means of the technology alone or by means of the technology together with the use of human moderators to review terrorism content identified by the technology);
 - (b) use accredited technology to identify CSEA content in search results and to swiftly take steps that result in that content no longer appearing in search results (either by means of the technology alone or by means of the technology together with the use of human moderators to review CSEA content identified by the technology).
- (5) The conditions which must be met in relation to the service are as follows –
- (a) OFCOM have evidence demonstrating –
 - (i) the prevalence, and
 - (ii) the persistent presence,
 of terrorism content or CSEA content or both (as the case may be) in search results of the service,
 - (b) OFCOM are satisfied that no less intrusive step than the use of the technology to be specified in the notice is likely to achieve the necessary reduction in terrorism content or CSEA content in search results of the service, and
 - (c) OFCOM are satisfied that giving the notice is a proportionate means of addressing the problem of terrorism content or CSEA content in search results of the service.
- (6) If a provider is already using accredited technology in relation to the service in question, a use of technology notice under this section may require the provider to use it more effectively (specifying the ways in which that must be done).
- (7) A use of technology notice under this section may also require a provider to operate an effective complaints procedure allowing for an interested person to challenge steps taken by the provider that have resulted in content relating to that interested person no longer appearing in search results.
- (8) OFCOM may vary or revoke a use of technology notice under this section by a further notice under this section.

66 Use of technology notices: supplementary

- (1) A use of technology notice must –
- (a) give OFCOM's reasons for their decision to give the notice,
 - (b) contain details of the requirements imposed by the notice,
 - (c) contain details of the technology to be used,
 - (d) specify the day by which the notice must be complied with, and the period for which it is to have effect,
 - (e) contain details of the rights of appeal under section 105,
 - (f) contain information about when OFCOM intend to review the notice (see section 67), and

- (g) contain information about the consequences of not complying with the notice (including information about the further kinds of enforcement action that it would be open to OFCOM to take).
- (2) A use of technology notice may impose requirements for a period of up to 36 months beginning with the day specified in the notice as the day by which the notice must be complied with.
- (3) A use of technology notice may impose requirements only in relation to the operation of a regulated service –
 - (a) in the United Kingdom, or
 - (b) as it affects United Kingdom users of the service.
- (4) For the purposes of sections 64 and 65, technology is “accredited” if it is accredited (by OFCOM or another person appointed by OFCOM) as meeting minimum standards of accuracy in the detection of terrorism content or CSEA content (as the case may be).
- (5) Those minimum standards of accuracy must be such standards as are for the time being approved and published by the Secretary of State, following advice from OFCOM.
- (6) In this section “use of technology notice” means a use of technology notice under section 64 or 65.

67 Further use of technology notice

- (1) This section applies where OFCOM have given a provider of a regulated service a use of technology notice under section 64 or 65.
- (2) If, at any time during the period for which the notice has effect –
 - (a) there are reasonable grounds for believing that the provider is failing to comply with the notice, and
 - (b) the conditions for giving a use of technology notice, as set out in section 64(5) or 65(5) (whichever applies), are still met in relation to the service in question,
 OFCOM may revoke the notice and give the provider a further use of technology notice under this section.
- (3) Except where the use of technology notice is revoked under subsection (2), OFCOM must, before the end of the period for which the notice has effect, carry out a review of the use of the specified technology by the provider in relation to the service in question.
- (4) The review must consider –
 - (a) the extent to which the specified technology has been used, and
 - (b) the effectiveness of its use.
- (5) Following the review, and after consultation with the provider, OFCOM may give the provider a further use of technology notice under this section if OFCOM reasonably consider that there is a significant risk that, without the continued use of accredited technology, terrorism content or CSEA content (or both) will be prevalent, and persistently present –
 - (a) in the case of a user-to-user service, on the service;
 - (b) in the case of a search service, in search results of the service.
- (6) If a further use of technology notice is given, subsections (2) to (5) apply again.

- (7) A further use of technology notice may require the use of different accredited technology from an earlier use of technology notice.
- (8) Subsections (4) and (6) to (9) of section 64, and section 66, apply in relation to a further use of technology notice under this section relating to a user-to-user service as they apply in relation to a use of technology notice under section 64.
- (9) Subsections (4) and (6) to (8) of section 65, and section 66, apply in relation to a further use of technology notice under this section relating to a search service as they apply in relation to a use of technology notice under section 65.
- (10) In this section “specified” means specified in a use of technology notice under section 64 or 65 (as the case may be).

68 Guidance about requiring use of technology

- (1) OFCOM must prepare guidance for providers of regulated services about how OFCOM propose to exercise their functions under this Chapter.
- (2) OFCOM must keep the guidance under review.
- (3) OFCOM must publish the guidance (and any revised or replacement guidance).
- (4) In exercising their functions under this Chapter, or deciding whether to exercise them, OFCOM must have regard to the guidance for the time being in force under this section.

69 Annual report about use of technology

- (1) OFCOM must prepare and publish an annual report about—
 - (a) the exercise of their functions under this Chapter, and
 - (b) technology which meets, or is in the process of development so as to meet, minimum standards of accuracy (see subsections (4) and (5) of section 66) for the purposes of this Chapter.
- (2) OFCOM must send a copy of the report to the Secretary of State who must lay the copy before Parliament.
- (3) For further provision about reports under this section, see section 102.

CHAPTER 5

INFORMATION

*Information power***70 Power to require information**

- (1) OFCOM may by notice (an “information notice”) require a person within subsection (3) to provide them with any information that they require for the purpose of exercising, or deciding whether to exercise, any of their online safety functions.
- (2) The power in subsection (1) may only be exercised to require a person within subsection (3) to provide information which OFCOM believe that person has or is able to generate or obtain.
- (3) The persons within this subsection are –
 - (a) a provider of a user-to-user service or a search service,
 - (b) a person who provides an ancillary service (within the meaning of section 91) in relation to a regulated service (see subsections (11) and (12) of that section),
 - (c) a person who provides an access facility (within the meaning of section 93) in relation to a regulated service (see subsections (10) and (11) of that section), and
 - (d) any other person who OFCOM believe has, or is able to generate or obtain, information required by them as mentioned in subsection (1).
- (4) The information that may be required by OFCOM under subsection (1) includes, in particular, information that they require for any one or more of the 15 following purposes –
 - (a) the purpose of assessing compliance by a provider of a regulated service with –
 - (i) any duty or requirement set out in Chapter 1, 2, 3 or 4 of Part 2, or
 - (ii) any requirement relating to transparency reporting (see section 49(1) and (2));
 - (b) the purpose of assessing compliance by a provider of a regulated service with a requirement under section 51 (duty to notify OFCOM in relation to the charging of fees);
 - (c) the purpose of determining OFCOM’s proposed figure as mentioned in section 53 (threshold figure for the purposes of charging fees) or assessing whether the threshold figure remains appropriate;
 - (d) the purpose of ascertaining the amount of a person’s qualifying worldwide revenue for the purposes of –
 - (i) section 52 (duty to pay fees), or
 - (ii) section 85 or 86 (amount of penalties);
 - (e) the purpose of assessing compliance with any requirements imposed on a person by a confirmation decision;
 - (f) the purpose of dealing with complaints made to OFCOM under section 106 (super-complaints);
 - (g) the purpose of preparing a code of practice under section 29;
 - (h) the purpose of preparing guidance in relation to online safety matters;
 - (i) the purpose of carrying out research, or preparing a report, in relation to online safety matters;
 - (j) the purpose of complying with OFCOM’s duty under section 11 of the Communications Act, so far as relating to regulated services (duty to promote media literacy).
- (5) See also section 71 (power to include a requirement to name a senior manager).

- (6) The information required may include information held in any form (including in electronic form).
- (7) Where OFCOM require documents to be produced, OFCOM may –
 - (a) take copies of or extracts from any document so produced,
 - (b) request any person producing a document to give an explanation of it, and
 - (c) where that person is an entity, request any person who is an officer of the entity to give such an explanation.
- (8) An information notice must –
 - (a) specify or describe the information to be provided,
 - (b) specify why OFCOM require the information,
 - (c) specify where it must be provided,
 - (d) specify the form and manner in which it must be provided, and
 - (e) contain information about the consequences of not complying with the notice (including information about the kinds of enforcement action that it would be open to OFCOM to take).
- (9) An information notice must specify when the information must be provided (which may be by a specified date, within a specified period, or at specified intervals).
- (10) A person to whom an information notice is given has a duty –
 - (a) to provide the information in accordance with the requirements of the notice, and
 - (b) to ensure that the information provided is accurate in all material respects.
- (11) OFCOM may cancel an information notice by notice to the person to whom it was given.
- (12) The power in subsection (1) does not include power to require the provision of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality of communications) could be maintained in legal proceedings.
- (13) In this section “provider of a regulated service” includes a person who was at any time a provider of a regulated service but who has ceased to be a provider of such a service.
- (14) In this section –

“information” includes documents, and any reference to providing information includes a reference to producing a document;

“officer”, in relation to an entity, includes a director, a manager, a secretary or, where the affairs of the entity are managed by its members, a member.
- (15) In relation to information recorded otherwise than in legible form, references in this section to producing a document are to producing a copy of the information in legible form.

71 Requirement to name a senior manager

- (1) This section applies where –

- (a) OFCOM give a provider of a regulated service an information notice, and
 - (b) the provider is an entity.
- (2) OFCOM may include in the information notice a requirement that the provider must name, in their response to the notice, an individual who the provider considers to be a senior manager of the entity.
- (3) If OFCOM impose a requirement to name an individual, the information notice must –
- (a) require the provider to inform such an individual, and
 - (b) include information about the consequences for such an individual of the entity's failure to comply with the requirements of the notice (see section 73).
- (4) For the purposes of this section an individual is a "senior manager" of an entity if the individual plays a significant role in –
- (a) the making of decisions about how the entity's relevant activities are to be managed or organised, or
 - (b) the actual managing or organising of the entity's relevant activities.
- (5) An entity's "relevant activities" means activities relating to the entity's compliance with the regulatory requirements imposed by this Act in connection with the regulated service to which the information notice in question relates.

Information offences

72 Offences in connection with information notices

- (1) An offence under this section may be committed only by a person who –
- (a) is given an information notice in relation to a regulated service, and
 - (b) is the provider of that service,
- and references to "person" are to such a person.
- (2) A person commits an offence if the person fails to comply with a requirement of an information notice.
- (3) It is a defence for a person charged with the offence in subsection (2) to show that –
- (a) it was not reasonably practicable to comply with the requirements of the information notice at the time required by the notice, but
 - (b) the person has subsequently taken all reasonable steps to comply with those requirements.
- (4) A person commits an offence if, in response to an information notice –
- (a) the person provides or publishes information or produces a document,
 - (b) the information or document is false in a material respect, and
 - (c) at the time the person provides, publishes or produces it, the person knows that it is false in a material respect or is reckless as to whether it is false in a material respect.
- (5) A person commits an offence if, in response to an information notice, the person –

- (a) provides or publishes information or produces a document which is encrypted such that it is not possible for OFCOM to understand it, and
 - (b) the person's intention was to prevent OFCOM from understanding the information or document.
- (6) A person who commits an offence under this section is liable –
- (a) on summary conviction in England and Wales, to a fine;
 - (b) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum;
 - (c) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both).

73 Senior managers' liability: information offences

- (1) In this section "an individual named as a senior manager of an entity" means an individual who, as required by an information notice, is named as a senior manager of an entity in a response to that notice (see section 71).
- (2) An individual named as a senior manager of an entity commits an offence if –
 - (a) the entity commits an offence under section 72(2) (failure to comply with information notice), and
 - (b) the individual has failed to take all reasonable steps to prevent that offence being committed.
- (3) It is a defence for an individual charged with an offence under subsection (2) to show that the individual was not a senior manager within the meaning of section 71 for the duration of the period –
 - (a) beginning with the date on which the information notice in question was given, and
 - (b) ending with the last day of the period of four weeks beginning with the date by which the information notice must be complied with.
- (4) An individual named as a senior manager of an entity commits an offence if –
 - (a) the entity commits an offence under section 72(4) (false information), and
 - (b) the individual has failed to take all reasonable steps to prevent that offence being committed.
- (5) An individual named as a senior manager of an entity commits an offence if –
 - (a) the entity commits an offence under section 72(5) (encrypted information), and
 - (b) the individual has failed to take all reasonable steps to prevent that offence being committed.
- (6) It is a defence for an individual charged with an offence under subsection (4) or (5) to show that the individual was not a senior manager within the meaning of section 71 at the time at which the act constituting the offence occurred.
- (7) It is a defence for an individual charged with an offence under subsection (2), (4) or (5) to show that the individual had no knowledge of being named as a senior manager in a response to the information notice in question.
- (8) An individual who commits an offence under this section is liable –
 - (a) on summary conviction in England and Wales, to a fine;

- (b) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum;
- (c) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both).

Skilled persons' reports

74 Reports by skilled persons

- (1) OFCOM may exercise the powers in this section where OFCOM reasonably consider that it is necessary to do so for either or both of the following purposes –
 - (a) assisting OFCOM in identifying and assessing a failure, or possible failure, by a provider of a regulated service to comply with a relevant requirement, or
 - (b) developing OFCOM's understanding of –
 - (i) the nature and level of risk of a provider of a regulated service failing to comply with a relevant requirement, and
 - (ii) ways to mitigate such a risk.
- (2) But the powers in this section may be exercised for a purpose mentioned in subsection (1)(b) only where OFCOM reasonably consider that the provider in question may be at risk of failing to comply with a relevant requirement.
- (3) OFCOM may appoint a skilled person to provide OFCOM with a report about matters relevant to the purpose for which the powers under this section are exercised ("the relevant matters"), and, where OFCOM make such an appointment, they must notify the provider about the appointment and the relevant matters to be explored in the report.
- (4) Alternatively, OFCOM may give a notice to the provider –
 - (a) requiring the provider to appoint a skilled person to provide OFCOM with a report in such form as may be specified in the notice, and
 - (b) specifying the relevant matters to be explored in the report.
- (5) References in this section to a skilled person are to a person –
 - (a) appearing to OFCOM to have the skills necessary to prepare a report about the relevant matters, and
 - (b) where the appointment is to be made by the provider, nominated or approved by OFCOM.
- (6) The provider of the service is liable for the payment, directly to the skilled person, of the skilled person's remuneration and expenses relating to the preparation of the report.
- (7) Section 87(2) to (4) apply in relation to an amount due to a skilled person under subsection (6) of this section as they apply in relation to a penalty as defined in section 87.
- (8) It is the duty of –
 - (a) the provider of the service ("P"),
 - (b) any person who works for (or used to work for) P, or is providing (or used to provide) services to P related to the relevant matters, and
 - (c) other providers of internet services,

to give the skilled person all such assistance as the skilled person may reasonably require to prepare the report.

- (9) In this section “relevant requirement” means –
- (a) a duty under section 7 or 19 (risk assessment duties),
 - (b) a duty under section 9 or 21 (safety duties about illegal content), 5
 - (c) a duty under section 10 or 22 (safety duties for services likely to be accessed by children),
 - (d) a duty under section 11 (safety duties protecting adults),
 - (e) a duty under section 15 or 24 (reporting and redress duties),
 - (f) a duty under section 16 or 25 (record-keeping and review duties), 10
 - (g) a requirement under section 49(1) or (2) (transparency reports),
 - (h) a requirement under section 51 to notify OFCOM in connection with the charging of fees (see subsections (1), (3) and (4) of that section), and
 - (i) a requirement imposed by a use of technology notice under section 64, 65 or 67. 15

Investigations and interviews

75 Investigations by OFCOM

- (1) If OFCOM open an investigation into whether a provider of a regulated service has failed, or is failing, to comply with any relevant requirement, the provider must co-operate fully with the investigation. 20
- (2) In this section “relevant requirement” means –
- (a) a duty or requirement referred to in section 82 (except that it does not include a reference to the requirement referred to in paragraph (v) of that section), and
 - (b) a requirement imposed by a use of technology notice under section 64, 65 or 67. 25

76 Power to require interviews

- (1) The power under this section is exercisable by OFCOM for the purposes of an investigation that they are carrying out into the failure, or possible failure, of a provider of a regulated service to comply with a relevant requirement. 30
- (2) OFCOM may by notice require the provider to arrange for an individual within subsection (4) to attend an interview (in person or remotely) within a period specified in the notice and answer questions about any matter relevant to the investigation.
- (3) The notice must indicate the subject matter and purpose of the interview. 35
- (4) The following are within this subsection –
- (a) a member or officer of the provider of the regulated service,
 - (b) an employee of the provider, and
 - (c) an individual who fell within paragraph (a) or (b) at a time to which the information or explanation required by OFCOM relates. 40
- (5) Nothing in this section compels a person to disclose information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality of communications) could be maintained in legal proceedings.

- (6) In this section “relevant requirement” has the meaning given by section 74.

Powers of entry and inspection

77 Powers of entry and inspection

Schedule 5 makes provision about powers of entry and inspection.

Disclosure of information

5

78 Provision of information to the Secretary of State

- (1) Section 24B of the Communications Act (provision of information to assist in formulation of policy) is amended as follows.
- (2) In subsection (2) –
- (a) at the end of paragraph (d) omit “or”,
 - (b) at the end of paragraph (e) insert “or”, and
 - (c) after paragraph (e) insert –
- “(f) the Online Safety Act 2021,”.
- (3) After subsection (2) insert –
- “(3) But subsection (2) does not apply to information –
- (a) obtained by OFCOM –
 - (i) in the exercise of a power conferred by section 70 of the Online Safety Act 2021 for the purpose mentioned in subsection (4)(c) of that section (information in connection with the setting of a threshold figure for the purposes of charging fees), or
 - (ii) in the exercise of a power conferred by section 112(5) of that Act (information in connection with circumstances presenting a threat), and
 - (b) reasonably required by the Secretary of State.”

79 Disclosure of information

- (1) Section 393 of the Communications Act (general restrictions on disclosure of information) is amended as follows.
- (2) In subsection (1) –
- (a) at the end of paragraph (c) omit “or”,
 - (b) at the end of paragraph (d) insert “or”, and
 - (c) after paragraph (d) insert –
- “(e) the Online Safety Act 2021,”.
- (3) In subsection (2)(e), after “this Act” insert “or the Online Safety Act 2021”.
- (4) In subsection (6)(a), after “390” insert “, or under Schedule 4 to the Online Safety Act 2021”.
- (5) In subsection (6)(b), at the end insert “or the Online Safety Act 2021”.

CHAPTER 6

ENFORCEMENT POWERS

*Provisional notices and confirmation decisions***80 Provisional notice of enforcement action**

- (1) OFCOM may, in accordance with this section, give a person a notice stating that they intend to take enforcement action (a “provisional notice of enforcement action”). 5
- (2) Subject to section 81, OFCOM may give a provisional notice of enforcement action relating to a regulated service to the provider of the service if they consider that there are reasonable grounds for believing that the provider has failed, or is failing, to comply with any enforceable requirement referred to in section 82 that applies in relation to the service. 10
- (3) OFCOM may also give a provisional notice of enforcement action to a person on either of the grounds in subsection (4).
- (4) The grounds are – 15
- (a) the person has been given an information notice and OFCOM consider that there are reasonable grounds for believing that the person has failed, or is failing, to comply with either of the duties set out in section 70(10) (duties in relation to information notices), or
- (b) the person is required by a skilled person appointed under section 74 to give assistance to the skilled person, and OFCOM consider that there are reasonable grounds for believing that the person is in breach of the duty in subsection (8) of that section to give such assistance. 20
- (5) A provisional notice of enforcement action given to a person must – 25
- (a) specify the duty or requirement with which (in OFCOM’s opinion) the person has failed, or is failing, to comply,
- (b) give OFCOM’s reasons for their opinion that the person has failed, or is failing, to comply with it, and
- (c) specify what steps OFCOM consider the person needs to take in order to – 30
- (i) comply with it, or
- (ii) remedy the failure.
- (6) A provisional notice of enforcement action may also state that OFCOM propose to impose a penalty on the person, and in such a case the notice must – 35
- (a) state the reasons why OFCOM propose to impose a penalty, and
- (b) indicate the amount of the penalty that OFCOM propose to impose, including any aggravating or mitigating factors that they propose to take into account.
- (7) A provisional notice of enforcement action given to a person must – 40
- (a) state that the person may make written representations (with any supporting evidence) about the matters contained in the notice, and
- (b) specify the period within which such representations may be made.
- (8) A provisional notice of enforcement action may be given in respect of a failure to comply with more than one enforceable requirement.

- (9) Where a provisional notice of enforcement action is given in respect of a continuing failure, the notice may be given in respect of any period during which the failure has continued, and must specify that period.
- (10) Where a provisional notice of enforcement action is given to a person in respect of a failure to comply with a duty or requirement (“the first notice”), a further provisional notice of enforcement action in respect of a failure to comply with that same duty or requirement may be given to the person only –
- (a) in respect of a separate instance of the failure after the time at which the first notice was given,
 - (b) where a period was specified in the first notice in accordance with subsection (9), in respect of the continuation of the failure after the end of that period, or
 - (c) if the first notice has been withdrawn without a penalty being imposed by a confirmation decision in respect of the failure (see section 83(6)).
- (11) In this section ‘failure’ includes situations when the provider has omitted to carry out an enforceable requirement referred to in section 82 that applies in relation to the service, has only partially complied with any such enforceable requirement or has, in the opinion of OFCOM, carried out steps to comply with any such obligation without adequate care.

81 Prevalent and persistent terrorism or CSEA content

- (1) This section applies where OFCOM consider that there are reasonable grounds for believing that a person is failing to comply with the duty in section 9 or (as the case may be) 21 (safety duties about illegal content), so far as relating to terrorism content or CSEA content (or both those kinds of content), in relation to a regulated service of which that person is the provider, based on evidence demonstrating the prevalence, and persistent presence, of terrorism content or CSEA content (or both) –
- (a) in the case of a user-to-user service, on the service;
 - (b) in the case of a search service, in search results of the service.
- (2) OFCOM may not give the person a provisional notice of enforcement action if they are satisfied that the person is complying with all other enforceable requirements referred to in section 82 that apply in relation to the service.
- (3) If however OFCOM consider that there are reasonable grounds for believing that the person has failed, or is failing, to comply with any other enforceable requirement that applies in relation to the service, OFCOM may give the person a provisional notice of enforcement action in relation to that failure.
- (4) See section 63 for action that OFCOM may take where this section applies (use of technology warning notice).
- (5) In a case mentioned in subsection (3), OFCOM may give a person both a provisional notice of enforcement action and a use of technology warning notice under section 63.

82 Requirements enforceable by OFCOM against providers of regulated services

The following are the “enforceable requirements” mentioned in this Chapter –

- (a) each of the duties set out in section 7 (duties relating to risk assessments),
- (b) each of the duties set out in section 9 (safety duties about illegal content),
- (c) each of the duties set out in section 10 (safety duties for services likely to be accessed by children),
- (d) each of the duties set out in section 11 (safety duties protecting adults),

(e)	each of the duties set out in section 12 (duties about rights to freedom of expression and privacy),	
(f)	each of the duties set out in section 13 (duties to protect content of democratic importance),	
(g)	each of the duties set out in section 14 (duties to protect journalistic content),	5
(h)	each of the duties set out in section 15 (reporting and redress duties),	
(i)	each of the duties set out in section 16 (record-keeping and review duties),	
(j)	each of the duties set out in section 19 (duties to carry out risk assessments),	10
(k)	each of the duties set out in section 21 (safety duties about illegal content),	
(l)	each of the duties set out in section 22 (safety duties for services likely to be accessed by children),	15
(m)	the duty set out in section 23 (duty about rights to freedom of expression and privacy),	
(n)	each of the duties set out in section 24 (reporting and redress duties),	
(o)	each of the duties set out in section 25 (record-keeping and review duties),	20
(p)	the requirements set out in section 26(1), (6) and (7) (assessments about access by children),	
(q)	the requirements in section [36(8) and (10)] (comply or explain requirements)	
(r)	the requirements under section 49(1) and (2) (transparency reports),	
(s)	a requirement under section 51 to notify OFCOM in connection with the charging of fees (see subsections (1), (3) and (4) of that section),	25
(t)	each of the duties under section 70(10) (information notices),	
(u)	the requirement under section 74(4)(a) to appoint a skilled person to prepare a report,	
(v)	the duty under section 74(8) to give such assistance to a skilled person appointed to prepare a report as is reasonably required by the skilled person,	30
(w)	the requirement under section 75(1) to co-operate with an investigation carried out by OFCOM,	
(x)	the requirement under section 76(2) to arrange for an individual to attend an interview with OFCOM,	35
(y)	the requirements of a notice given by virtue of section 112(3) (duty to make public statement), and	
(z)	the requirements of a notice under section 112(5) (information in connection with circumstances presenting a threat).	
83	Confirmation decisions	40
(1)	This section applies if –	
(a)	a provisional notice of enforcement action has been given to a person in relation to a failure to comply with a duty or requirement (or with duties or requirements), and	
(b)	the period allowed for representations has expired.	45
	A duty or requirement to which the provisional notice of enforcement action relates is referred to in this section as a “notified requirement”.	

- (2) If, after considering any representations and evidence, OFCOM decide not to give a confirmation decision to the person, they must inform the person of that fact.
- (3) If the conditions in subsection (5) or (6) are met, OFCOM may give the person a confirmation decision. 5
- (4) A confirmation decision is a notice –
- (a) imposing requirements as described in subsection (5),
 - (b) imposing a penalty as described in subsection (6), or
 - (c) doing both those things.
- (5) If OFCOM are satisfied that the person – 10
- (a) has failed, or has been failing, to comply with a notified requirement, and
 - (b) is still failing to comply with it,
- the confirmation decision may require the person to take steps to comply with that requirement or to remedy the failure. 15
- (6) If –
- (a) the provisional notice of enforcement action states that OFCOM propose to impose a penalty, and
 - (b) OFCOM are satisfied that the person has failed, or has been failing, to comply with a notified requirement, 20
- the confirmation decision may require the person to pay to OFCOM a penalty of an amount in sterling specified in the decision.
- (7) A confirmation decision that includes requirements as described in subsection (5) must –
- (a) give OFCOM’s reasons for their decision to impose those requirements, 25
 - (b) specify any notified requirement,
 - (c) require the person to whom the notice is given to take steps specified in the confirmation decision in order to –
 - (i) comply with any notified requirement, or
 - (ii) remedy the failure to comply with any notified requirement, 30 - (d) specify the period within which those steps must be taken,
 - (e) contain details of the rights of appeal under section 105, and
 - (f) contain information about the consequences of not complying with the confirmation decision (including information about the further kinds of enforcement action that it would be open to OFCOM to take). 35
- (8) A confirmation decision that includes a requirement to pay a penalty must –
- (a) give OFCOM’s reasons for their decision to impose the penalty,
 - (b) specify any notified requirement,
 - (c) state the reasons for the amount of the penalty, including any aggravating or mitigating factors that OFCOM have taken into account, 40
 - (d) specify the period within which the penalty must be paid,
 - (e) contain details of the rights of appeal under section 105, and
 - (f) contain information about the consequences of not paying the penalty (including information about the further kinds of enforcement action that it would be open to OFCOM to take). 45
- (9) The period specified under subsection (8)(d) must be not less than 28 days beginning with the day on which the confirmation decision is given.

- (10) A confirmation decision may impose requirements as described in subsection (5) only in relation to the design or operation of a regulated service –
- (a) in the United Kingdom, or
 - (b) as it affects United Kingdom users of the service.
- (11) A confirmation decision may not impose a requirement – 5
- (a) in the case of a user-to-user service, to use technology to identify a particular kind of content present on the service with a view to taking down such content;
 - (b) in the case of a search service, to use technology to identify a particular kind of content in search results with a view to such content no longer appearing in search results. 10
- (12) A confirmation decision may impose separate penalties for failure to comply with separate notified requirements specified in the decision.
- (13) Where a provisional notice of enforcement action is given in respect of a period of continuing failure, no more than one penalty may be imposed by a confirmation decision in respect of the period of failure specified in the provisional notice of enforcement action. 15
- (14) But where a confirmation decision includes a requirement as described in subsection (5) in respect of a continuing failure, the confirmation decision may impose a penalty in respect of each day that that same failure continues after the expiry of the period specified in the confirmation decision as the period within which the requirements imposed by that decision must be complied with. 20
- 84 Compliance with certain requirements of confirmation decisions**
- (1) A person to whom a confirmation decision is given has a duty to comply with requirements included in the decision which are of a kind mentioned in section 83(5). 25
- (2) The duty under subsection (1) is enforceable in civil proceedings by OFCOM –
- (a) for an injunction,
 - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or 30
 - (c) for any other appropriate remedy or relief.
- (3) OFCOM may give a person a penalty notice under this section if they are satisfied that the person has failed to comply with requirements included in a confirmation decision which are of a kind mentioned in section 83(5). 35
- (4) A penalty notice under this section is a notice given to a person on the ground in subsection (3) requiring the person to pay to OFCOM a penalty of an amount in sterling specified in the notice.
- (5) A penalty notice under this section must – 40
- (a) give OFCOM's reasons for their decision to give the penalty notice,
 - (b) state the reasons for the amount of the penalty, including any aggravating or mitigating factors that OFCOM have taken into account,
 - (c) specify the period within which the penalty must be paid,
 - (d) contain details of the rights of appeal under section 105, and

- (e) contain information about the consequences of not paying the penalty (including information about the further kinds of enforcement action that it would be open to OFCOM to take).
- (6) The period specified under subsection (5)(c) must be not less than 28 days beginning with the day on which the penalty notice is given. 5

85 Amount of penalties

- (1) Subsections (2) to (9) apply in relation to a penalty imposed by –
 - (a) a confirmation decision (see section 83(6)), or
 - (b) a penalty notice under section 84(3).
- (2) In determining the amount of a penalty to be imposed on a person, OFCOM must, in particular, take into account – 10
 - (a) any representations made, and evidence provided, by the person;
 - (b) any steps taken by the person towards –
 - (i) complying with any duty or requirement specified in (as the case may be) – 15
 - (a) the provisional notice of enforcement action given to the person, or
 - (b) the confirmation decision given to the person, or
 - (ii) remedying the failure to comply with any such duty or requirement; and 20
 - (c) the effects of the failure (or failures) in respect of which the penalty is imposed.
- (3) A penalty must be of an amount that OFCOM consider to be –
 - (a) appropriate, and
 - (b) proportionate to the failure (or failures) in respect of which it is imposed. 25
- (4) Where a penalty is imposed on a person in respect of a regulated service provided by that person, the maximum amount of the penalty for which the person is liable is whichever is the greater of –
 - (a) £18 million, and 30
 - (b) 10% of the person’s qualifying worldwide revenue.
- (5) But if the person does not have an accounting period, the maximum amount of the penalty for which the person is liable is £18 million.
- (6) The maximum amount of a penalty for which a person not within subsection (4) is liable is £18 million. 35
- (7) For the purposes of subsection (4)(b), a person’s “qualifying worldwide revenue” is –
 - (a) the amount of the person’s qualifying worldwide revenue for the person’s most recent complete accounting period; or
 - (b) where OFCOM are deciding the amount of the penalty at a time when that person’s first accounting period has not yet ended, the amount that OFCOM estimate to be the person’s likely qualifying worldwide revenue for that period. 40
- (8) But –

- (a) if the duration of a person's most recent complete accounting period is less than a year, the amount mentioned in subsection (7)(a) or (b) is to be proportionately increased;
 - (b) if the duration of a person's most recent complete accounting period is more than a year, that amount is to be proportionately reduced. 5
- (9) For the purposes of subsection (7), the amount of a person's qualifying worldwide revenue for an accounting period is, in the event of a disagreement between the person and OFCOM, the amount determined by OFCOM.
- (10) The amount of a penalty imposed on a person by a confirmation decision may not exceed the amount of the penalty proposed in the provisional notice of enforcement action given to the person. 10
- (11) Subsections (4) to (6) also apply to determine the maximum aggregate amount of daily penalties imposed by a confirmation decision (see section 83(14)).
- (12) See also section 392 of the Communications Act (which requires OFCOM to produce guidelines about their determination of the amount of penalties that they impose). 15
- (13) In this section "accounting period" means a period in respect of which a person is required (by law or, in the case of an entity, the constitution of the entity) to prepare accounts –
 - (a) in the case of an entity, in respect of the entity, or 20
 - (b) in the case of an individual, in respect of the individual's business of providing a regulated service.
- (14) In this section "qualifying worldwide revenue" has the meaning given to it by regulations made by the Secretary of State.
- (15) The Secretary of State must consult OFCOM before making regulations under subsection (14). 25

86 Amount of penalties: group of entities

- (1) This section applies if, in accordance with section 119 or 121, two entities are jointly and severally liable for a penalty imposed by –
 - (a) a confirmation decision (see section 83(6)), or 30
 - (b) a penalty notice under section 84(3).
- (2) Subsections (3) to (5) of this section apply instead of section 85(4) to (7).
- (3) The maximum amount of the penalty is whichever is the greater of –
 - (a) £18 million, and
 - (b) 10% of the qualifying worldwide revenue of the group of entities of which the two entities are members. 35
- (4) For the purposes of subsection (3)(b), the "qualifying worldwide revenue" of a group of entities is –
 - (a) the amount of the group's qualifying worldwide revenue for the most recent complete accounting period of the entities liable for the penalty; 40
or
 - (b) where OFCOM are deciding the amount of the penalty at a time when the first accounting period of the entities liable for the penalty has not yet ended, the amount that OFCOM estimate to be the group's likely qualifying worldwide revenue for that period. 45

- (5) In a case where the accounting periods of the entities liable for the penalty are different –
- (a) the reference in subsection (4)(a) to the accounting period of the entities is to be read as a reference to the accounting period of either of the entities (at OFCOM’s discretion), and 5
 - (b) subsection (4)(b) is to apply as if –
 - (i) for “the first accounting period of the entities” there were substituted “the first accounting period of both of the entities”, and
 - (ii) for “that period” there were substituted “the accounting period of either of the entities (at OFCOM’s discretion)”. 10
- (6) Subsections (8) and (9) of section 85 are to be read with the necessary modifications in their application for the purposes of this section.
- (7) In this section, “qualifying worldwide revenue” has the same meaning as in section 85, and regulations under subsection (14) of that section may include provision dealing with the application of that term to a group of entities. 15
- (8) In this section –
- “accounting period” means a period in respect of which an entity is required (by law or the constitution of the entity) to prepare accounts;
 - “group of entities” means a parent undertaking and its subsidiary undertakings (and the reference to a member of a group of entities is to be read accordingly); 20
 - “parent undertaking” and “subsidiary undertaking” are to be read in accordance with section 1162 of the Companies Act 2006.
- (9) For the purposes of this section, section 1162 of, and Schedule 7 to, the Companies Act 2006 – 25
- (a) are to apply in relation to an entity which is not an undertaking (as defined in section 1161(1) of that Act) as they apply in relation to an undertaking, and
 - (b) are to be read with any necessary modifications if applied to an entity formed under the law of a country outside the United Kingdom. 30

87 Penalties: further provision

- (1) A penalty must be paid into the Consolidated Fund of the United Kingdom.
- (2) In England and Wales, a penalty is recoverable –
- (a) if the county court so orders, as if it were payable under an order of that court; 35
 - (b) if the High Court so orders, as if it were payable under an order of that court.
- (3) In Scotland, a penalty may be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland. 40
- (4) In Northern Ireland, a penalty is recoverable –
- (a) if a county court so orders, as if it were payable under an order of that court;
 - (b) if the High Court so orders, as if it were payable under an order of that court. 45

- (5) In this section “penalty” means a penalty imposed by –
- (a) a confirmation decision (see section 83(6)), or
 - (b) a penalty notice under section 84(3).

Non-payment of fee

88 Notice about non-payment of fee 5

- (1) OFCOM may give a notice under this section to a provider of a regulated service if –
- (a) the provider is liable to pay a fee to OFCOM under section 52 in respect of the current charging year (within the meaning of that section) or a previous charging year, and 10
 - (b) in OFCOM’s opinion, the provider has not paid the full amount of the fee that the provider is liable to pay.
- (2) The notice must –
- (a) specify the outstanding amount of the fee that OFCOM consider the provider is due to pay to them under section 52, and 15
 - (b) specify a period within which the provider must pay it.
- (3) The notice must also –
- (a) state that the provider may make written representations (with any supporting evidence) about the matters contained in the notice, and
 - (b) specify the period within which such representations may be made. 20
- (4) The notice may be given in respect of more than one liability to pay a fee under section 52.

89 Penalty notice for non-payment of fee

- (1) OFCOM may give a provider of a regulated service a penalty notice under this section if – 25
- (a) a notice under section 88 has been given to the provider specifying an outstanding amount of a fee for which the provider is liable,
 - (b) the period allowed for representations has expired, and
 - (c) OFCOM are satisfied that an amount of the fee is still due to OFCOM.
- (2) A penalty notice under this section is a notice given to a provider of a regulated service on the grounds in subsection (1) requiring the provider to pay to OFCOM a penalty of an amount in sterling specified in the notice. 30
- (3) In determining the amount of a penalty, OFCOM must, in particular, take into account –
- (a) any representations made, and evidence provided, by the provider, and 35
 - (b) any steps taken by the provider towards paying any amount of the fee due to OFCOM.
- (4) A penalty notice under this section must –
- (a) specify the amount of the fee that is (in OFCOM’s opinion) due to be paid to OFCOM, 40
 - (b) give OFCOM’s reasons for their decision to give the penalty notice,

- (c) state the reasons for the amount of the penalty, including any aggravating or mitigating factors that OFCOM have taken into account,
 - (d) specify the period within which the penalty must be paid,
 - (e) contain details of the rights of appeal under section 105, and
 - (f) contain information about the consequences of not paying the penalty (including information about the further kinds of enforcement action that it would be open to OFCOM to take). 5
- (5) The period specified under subsection (4)(d) must be not less than 28 days beginning with the day on which the penalty notice is given.
- (6) A penalty notice under this section may impose separate penalties in respect of separate liabilities specified in the penalty notice. 10
- (7) Section 85(3) to (9), (13) and (14) and sections 86 and 87 apply in relation to a penalty under this section as they apply in relation to a penalty imposed by a confirmation decision or by a penalty notice under section 84(3).
- (8) Nothing in this section affects OFCOM's power to bring proceedings (whether before or after the imposition of a penalty by a notice under this section) for the recovery of the whole or part of an amount due to OFCOM under section 52. 15
- (9) But OFCOM may not bring such proceedings unless a provider has first been notified under section 88 of the amount due to OFCOM.

Non-compliance with use of technology notice 20

90 Penalty notice for failure to comply with use of technology notice

- (1) This section applies if –
- (a) OFCOM have given a use of technology notice under section 64, 65 or 67 relating to a regulated service to the provider of that service, and
 - (b) at any time during the period for which the notice has effect, OFCOM are satisfied that the provider has failed, or is failing, to comply with the notice. 25
- (2) OFCOM may give the provider a penalty notice under this section requiring the provider to pay to OFCOM a penalty of an amount in sterling specified in the notice. 30
- (3) But OFCOM may give such a notice to the provider only after –
- (a) notifying the provider that they intend to give a penalty notice under this section, specifying the grounds for doing so and indicating the amount of the proposed penalty,
 - (b) giving the provider an opportunity to make representations, and 35
 - (c) considering –
 - (i) any representations that are made, and
 - (ii) any steps taken by the provider towards complying with the use of technology notice.
- (4) Nothing in this section is to be taken to prevent OFCOM from giving the provider a further use of technology notice under section 67, as well as giving a penalty notice under this section. 40
- (5) A penalty notice under this section must –
- (a) give OFCOM's reasons for their decision to give the penalty notice,

- (b) state the reasons for the amount of the penalty, including any aggravating or mitigating factors that OFCOM have taken into account,
 - (c) specify the period within which the penalty must be paid,
 - (d) contain details of the rights of appeal under section 105, and
 - (e) contain information about the consequences of not paying the penalty (including information about the further kinds of enforcement action that it would be open to OFCOM to take). 5
- (6) The period specified under subsection (5)(c) must be not less than 28 days beginning with the day on which the penalty notice is given.
- (7) The amount of a penalty imposed on a provider under this section may not exceed the amount of the penalty proposed in the notice given to the provider under subsection (3). 10
- (8) Section 85(3) to (9), (13) and (14) and sections 86 and 87 apply in relation to a penalty under this section as they apply in relation to a penalty imposed by a confirmation decision or by a penalty notice under section 84(3). 15

Business disruption measures

91 Service restriction orders

- (1) OFCOM may apply to the court for an order under this section (a “service restriction order”) in relation to a regulated service where OFCOM consider that – 20
- (a) the grounds in subsection (3) apply in relation to the service, or
 - (b) the grounds in subsection (4) apply in relation to the service.
- (2) A service restriction order is an order imposing requirements on one or more persons who provide an ancillary service in relation to a regulated service (see subsection (11)). 25
- (3) The grounds mentioned in subsection (1)(a) are that –
- (a) the provider of the regulated service has failed to comply with an enforceable requirement referred to in section 82 that applies in relation to the regulated service,
 - (b) the failure is continuing, and 30
 - (c) either –
 - (i) the provider has failed to comply with a requirement imposed by a confirmation decision that is of a kind mentioned in section 83(5) relating to the failure,
 - (ii) the provider has failed to pay a penalty imposed by a confirmation decision relating to the failure (and the confirmation decision did not impose any requirements mentioned in section 83(5)), 35
 - (iii) the provider would be likely to fail to comply with a confirmation decision if given, or 40
 - (iv) the circumstances of the failure or the risks of harm to individuals in the United Kingdom are such that it is appropriate to make the application without having given a provisional notice of enforcement action, without having given a confirmation decision, or (having given a confirmation 45

decision) without waiting to ascertain compliance with the decision.

- (4) The grounds mentioned in subsection (1)(b) are that –
- (a) the provider of the regulated service has failed to comply with a use of technology notice under section 64, 65 or 67 that relates to the service, and
 - (b) the failure is continuing.
- (5) An application by OFCOM for a service restriction order must –
- (a) specify the regulated service in relation to which the application is made (“the relevant service”),
 - (b) specify the provider of that service (“the non-compliant provider”),
 - (c) specify the grounds on which the application is based, and contain evidence as to such grounds,
 - (d) specify the persons on whom (in OFCOM’s opinion) the requirements of the order should be imposed,
 - (e) contain evidence as to why OFCOM consider that the persons mentioned in paragraph (d) provide an ancillary service in relation to the relevant service, and specify any such ancillary service provided,
 - (f) specify the requirements which OFCOM consider that the order should impose on such persons, and
 - (g) in the case of an application made without notice having been given to the non-compliant provider, or to the persons mentioned in paragraph (d), state why no notice has been given.
- (6) The court may make a service restriction order imposing requirements on a person in relation to the relevant service if the court is satisfied –
- (a) as to the grounds in subsection (3) or the grounds in subsection (4) (as the case may be),
 - (b) that the person provides an ancillary service in relation to the relevant service,
 - (c) that it is appropriate to make the order for the purposes of preventing harm to individuals in the United Kingdom, and the order is proportionate to the risk of such harm,
 - (d) in the case of an application made on the ground in subsection (3)(c)(iii) or (iv), that it is appropriate to make the order before a provisional notice of enforcement action or confirmation decision has been given, or before compliance with a confirmation decision has been ascertained (as the case may be), and
 - (e) if no notice of the application has been given to the non-compliant provider, or to the persons on whom requirements are being imposed, that it is appropriate to make the order without notice.
- (7) When considering whether to make a service restriction order in relation to the relevant service, and when considering what provision it should contain, the court must take into account (amongst other things) the rights and obligations of all relevant parties, including those of –
- (a) the non-compliant provider,
 - (b) the person or persons on whom the court is considering imposing the requirements, and
 - (c) United Kingdom users of the relevant service.
- (8) A service restriction order made in relation to the relevant service must –

- (a) identify the non-compliant provider,
 - (b) identify the persons on whom the requirements are imposed, and any ancillary service to which the requirements relate,
 - (c) require such persons to take the steps specified in the order, or to put in place arrangements, that have the effect of withdrawing the ancillary service to the extent that it relates to the relevant service (or part of it), or preventing the ancillary service from promoting or displaying content that relates to the relevant service (or part of it) in any way, 5
 - (d) specify the date by which the requirements in the order must be complied with, and 10
 - (e) specify the date on which the order expires, or the time period for which the order has effect.
- (9) The steps that may be specified or arrangements that may be required to be put in place –
- (a) include steps or arrangements that will or may require the termination of an agreement (whether or not made before the coming into force of this section), or the prohibition of the performance of such an agreement, and 15
 - (b) are limited, so far as that is possible, to steps or arrangements relating to the operation of the relevant service as it affects United Kingdom users. 20
- (10) OFCOM must inform the Secretary of State as soon as reasonably practicable after a service restriction order has been made.
- (11) For the purposes of this section, a service is an “ancillary service” in relation to a regulated service if the service facilitates the provision of the regulated service (or part of it), whether directly or indirectly, or displays or promotes content relating to the regulated service (or to part of it). 25
- (12) Examples of ancillary services include –
- (a) services, provided (directly or indirectly) in the course of a business, which enable funds to be transferred in relation to a regulated service, 30
 - (b) search engines which generate search results displaying or promoting content relating to a regulated service,
 - (c) user-to-user services which make content relating to a regulated service available to users, and
 - (d) services which use technology to facilitate the display of advertising on a regulated service (for example, an ad server or an ad network). 35
- (13) In this section “the court” means –
- (a) in England and Wales, the High Court or the county court,
 - (b) in Scotland, the Court of Session or a sheriff, and
 - (c) in Northern Ireland, the High Court or a county court. 40

92 Interim service restriction orders

- (1) OFCOM may apply to the court for an interim order under this section (an “interim service restriction order”) in relation to a regulated service where OFCOM consider that –
- (a) the grounds in subsection (3) apply in relation to the service, or 45
 - (b) the grounds in subsection (4) apply in relation to the service.

- (2) An interim service restriction order is an interim order imposing requirements on one or more persons who provide an ancillary service in relation to a regulated service (see subsection (9)).
- (3) The grounds mentioned in subsection (1)(a) are that—
- (a) it is likely that the provider of the regulated service is failing to comply with an enforceable requirement referred to in section 82 that applies in relation to the regulated service, and 5
 - (b) the level of risk of harm to individuals in the United Kingdom relating to the likely failure, and the nature and severity of that harm, are such that it would not be appropriate to wait to establish the failure before applying for the order. 10
- (4) The grounds mentioned in subsection (1)(b) are that—
- (a) it is likely that the provider of the regulated service is failing to comply with a use of technology notice under section 64, 65 or 67 that relates to the service, and 15
 - (b) the level of risk of harm to individuals in the United Kingdom relating to the likely failure, and the nature and severity of that harm, are such that it would not be appropriate to wait to establish the failure before applying for the order.
- (5) An application by OFCOM for an interim service restriction order must— 20
- (a) specify the regulated service in relation to which the application is made (“the relevant service”),
 - (b) specify the provider of that service (“the non-compliant provider”),
 - (c) specify the grounds on which the application is based, and contain evidence as to such grounds, 25
 - (d) specify the persons on whom (in OFCOM’s opinion) the requirements of the order should be imposed,
 - (e) contain evidence as to why OFCOM consider that the persons mentioned in paragraph (d) provide an ancillary service in relation to the relevant service, and specify any such ancillary service provided, 30
 - (f) specify the requirements which OFCOM consider that the order should impose on such persons, and
 - (g) in the case of an application made without notice having been given to the non-compliant provider, or to the persons mentioned in paragraph (d), state why no notice has been given. 35
- (6) The court may make an interim service restriction order imposing requirements on a person in relation to the relevant service if the court is satisfied—
- (a) as to the ground in subsection (3)(a) or the ground in subsection (4)(a) (as the case may be), 40
 - (b) that the person provides an ancillary service in relation to the relevant service,
 - (c) that there are prima facie grounds to suggest that an application for a service restriction order under section 91 would be successful,
 - (d) that the level of risk of harm to individuals in the United Kingdom relating to the likely failure mentioned in subsection (3)(a) or (4)(a) (whichever applies), and the nature and severity of that harm, are such that it is not appropriate to wait for the failure to be established before making the order, and 45

- (e) if no notice of the application has been given to the non-compliant provider, or to the persons on whom requirements are being imposed, that it is appropriate to make the order without notice.
- (7) An interim service restriction order ceases to have effect on the earlier of—
- (a) the date specified in the order, or the date on which the time period specified in the order expires (as the case may be), or 5
 - (b) the date on which the court makes a service restriction order under section 91 in relation to the relevant service that imposes requirements on the same persons on whom requirements are imposed by the interim order, or dismisses the application for such an order. 10
- (8) Subsections (7) to (10) of section 91 apply in relation to an interim service restriction order under this section as they apply in relation to a service restriction order under that section.
- (9) In this section, “ancillary service” and “the court” have the same meaning as in section 91 (see subsections (11), (12) and (13) of that section). 15
- 93 Access restriction orders**
- (1) OFCOM may apply to the court for an order under this section (an “access restriction order”) in relation to a regulated service where OFCOM consider that—
- (a) the grounds in section 91(3) or (4) apply in relation to the service, and 20
 - (b) either—
 - (i) a service restriction order under section 91 or an interim service restriction order under section 92 has been made in relation to the failure, and it was not sufficient to prevent significant harm arising to individuals in the United Kingdom as a result of the failure, or 25
 - (ii) the likely consequences of the failure are such that if a service restriction order or an interim service restriction order were to be made, it would be unlikely to be sufficient to prevent significant harm arising to individuals in the United Kingdom as a result of the failure, 30
 and in this paragraph, “the failure” means the failure mentioned in section 91(3)(a) or (4)(a) (as the case may be).
- (2) An access restriction order is an order imposing requirements on one or more persons who provide an access facility in relation to a regulated service (see subsection (10)). 35
- (3) An application by OFCOM for an access restriction order must—
- (a) specify the regulated service in relation to which the application is made (“the relevant service”),
 - (b) specify the provider of that service (“the non-compliant provider”), 40
 - (c) specify the grounds on which the application is based, and contain evidence as to such grounds,
 - (d) specify the persons on whom (in OFCOM’s opinion) the requirements of the order should be imposed,
 - (e) contain evidence as to why OFCOM consider that the persons mentioned in paragraph (d) provide an access facility in relation to the relevant service, and specify any such access facility provided, 45

- (f) specify the requirements which OFCOM consider that the order should impose on such persons, and
- (g) in the case of an application made without notice having been given to the non-compliant provider, or to the persons mentioned in paragraph (d), state why no notice has been given. 5
- (4) The court may make an access restriction order imposing requirements on a person in relation to the relevant service if the court is satisfied –
- (a) as to the grounds in subsection (1),
- (b) that the person provides an access facility in relation to the relevant service, 10
- (c) that it is appropriate to make the order for the purposes of preventing significant harm to individuals in the United Kingdom, and the order is proportionate to the risk of such harm,
- (d) in the case of an application made on the ground in subsection (3)(c)(iii) or (iv) of section 91 (by virtue of subsection (1)(a)), that it is appropriate 15 to make the order before a provisional notice of enforcement action or confirmation decision has been given, or before compliance with a confirmation decision has been ascertained (as the case may be), and
- (e) if no notice of the application has been given to the non-compliant provider, or to the persons on whom requirements are being imposed, 20 that it is appropriate to make the order without notice.
- (5) When considering whether to make an access restriction order in relation to the relevant service, and when considering what provision it should contain, the court must take into account (amongst other things) the rights and obligations of all relevant parties, including those of – 25
- (a) the non-compliant provider,
- (b) the person or persons on whom the court is considering imposing the requirements, and
- (c) United Kingdom users of the relevant service.
- (6) An access restriction order made in relation to the relevant service must – 30
- (a) identify the non-compliant provider,
- (b) identify the persons on whom the requirements are imposed, and any access facility to which the requirements relate,
- (c) require such persons to take the steps specified in the order, or to put in place arrangements, to withdraw, adapt or manipulate the access 35 facility in order to impede users' access (by means of that facility) to the relevant service (or to part of it),
- (d) specify the date by which the requirements in the order must be complied with, and
- (e) specify the date on which the order expires, or the time period for which the order has effect. 40
- (7) The steps that may be specified or arrangements that may be required to be put in place –
- (a) include steps or arrangements that will or may require the termination of an agreement (whether or not made before the coming into force of this section), or the prohibition of the performance of such an agreement, 45
- (b) are limited, so far as that is possible, to steps or arrangements that impede the access of United Kingdom users, and

- (c) are limited, so far as that is possible, to steps or arrangements that do not affect such users' ability to access any other internet services.
- (8) OFCOM must inform the Secretary of State as soon as reasonably practicable after an access restriction order has been made.
- (9) Where a person who provides an access facility takes steps or puts in place arrangements required by an access restriction order, OFCOM may, by notice, require that person to (where possible) notify persons in the United Kingdom who attempt to access the relevant service via that facility of the access restriction order (and where a confirmation decision has been given to the non-compliant provider, the notification must refer to that decision). 5
10
- (10) For the purposes of this section, a facility is an "access facility" in relation to a regulated service if the person who provides the facility is able to withdraw, adapt or manipulate it in such a way as to impede access (by means of that facility) to the regulated service (or to part of it) by United Kingdom users of that service. 15
- (11) Examples of access facilities include –
- (a) internet access services by means of which a regulated service is made available, and
- (b) application stores through which a mobile application for a regulated service may be downloaded or otherwise accessed. 20
- (12) In this section –
- "the court" means –
- (a) in England and Wales, the High Court or the county court,
- (b) in Scotland, the Court of Session or a sheriff, and
- (c) in Northern Ireland, the High Court or a county court; 25
- "facility" means any kind of service, infrastructure or apparatus enabling users of a regulated service to access the regulated service;
- "internet access service" means a service that provides access to virtually all (or just some) of the end points of the internet.
- 94 Interim access restriction orders** 30
- (1) OFCOM may apply to the court for an interim order under this section (an "interim access restriction order") in relation to a regulated service where OFCOM consider that –
- (a) the grounds in section 92(3) or (4) apply in relation to the service, and
- (b) either – 35
- (i) a service restriction order under section 91 or an interim service restriction order under section 92 has been made in relation to the likely failure, and it was not sufficient to prevent significant harm arising to individuals in the United Kingdom as a result of the failure, or 40
- (ii) the likely consequences of such a failure would be such that if a service restriction order or an interim service restriction order were to be made, it would be unlikely to be sufficient to prevent significant harm arising to individuals in the United Kingdom as a result of the failure, 45
- and in this section, "the likely failure" means the likely failure mentioned in section 92(3)(a) or (4)(a) (as the case may be).

- (2) An interim access restriction order is an interim order imposing requirements on one or more persons who provide an access facility in relation to a regulated service (see subsection (8)).
- (3) An application by OFCOM for an interim access restriction order must –
- (a) specify the regulated service in relation to which the application is made (“the relevant service”), 5
 - (b) specify the provider of that service (“the non-compliant provider”),
 - (c) specify the grounds on which the application is based, and contain evidence as to such grounds,
 - (d) specify the persons on whom (in OFCOM’s opinion) the requirements of the order should be imposed, 10
 - (e) contain evidence as to why OFCOM consider that the persons mentioned in paragraph (d) provide an access facility in relation to the relevant service, and specify any such access facility provided,
 - (f) specify the requirements which OFCOM consider that the order should impose on such persons, and 15
 - (g) in the case of an application made without notice having been given to the non-compliant provider, or to the persons mentioned in paragraph (d), state why no notice has been given.
- (4) The court may make an interim access restriction order imposing requirements on a person in relation to the relevant service if the court is satisfied –
- (a) that the ground in section 92(3)(a) or (4)(a) (as the case may be) applies in relation to the service,
 - (b) as to the ground in subsection (1)(b)(i) or (ii),
 - (c) that the person provides an access facility in relation to the relevant service, 25
 - (d) that there are prima facie grounds to suggest that an application for an access restriction order under section 93 would be successful,
 - (e) that the level of risk of harm to individuals in the United Kingdom relating to the likely failure, and the nature and severity of that harm, are such that it is not appropriate to wait for the failure to be established before making the order, and 30
 - (f) if no notice of the application has been given to the non-compliant provider, or to the persons on whom requirements are being imposed, that it is appropriate to make the order without notice. 35
- (5) An interim access restriction order ceases to have effect on the earlier of –
- (a) the date specified in the order, or the date on which the time period specified in the order expires (as the case may be), or
 - (b) the date on which the court makes an access restriction order under section 93 in relation to the relevant service that imposes requirements on the same persons on whom requirements are imposed by the interim order, or dismisses an application for such an order. 40
- (6) Subsections (5) to (8) of section 93 apply in relation to an interim access restriction order under this section as they apply in relation to an access restriction order under that section. 45
- (7) Where a person who provides an access facility takes steps or puts in place arrangements required by an interim access restriction order, OFCOM may, by notice, require that person to (where possible) notify persons in the United

Kingdom who attempt to access the relevant service via that facility of the interim access restriction order.

- (8) In this section, “access facility” and “the court” have the same meaning as in section 93 (see subsections (10), (11) and (12) of that section).

95	Interaction with other action by OFCOM	5
(1)	Where OFCOM apply for a business disruption order in respect of a failure by a provider of a regulated service to comply with an enforceable requirement referred to in section 82, nothing in sections 91 to 94 is to be taken to prevent OFCOM also giving the provider –	
	(a) a confirmation decision in respect of the failure, or	10
	(b) a penalty notice under section 84(3) in relation to a confirmation decision in respect of the failure.	
(2)	Where OFCOM apply for a business disruption order in respect of a failure by a provider of a regulated service to comply with a use of technology notice under section 64, 65 or 67, nothing in sections 91 to 94 is to be taken to prevent OFCOM also giving the provider a further use of technology notice under section 67.	15
(3)	In this section, a “business disruption order” means –	
	(a) a service restriction order under section 91,	
	(b) an interim service restriction order under section 92,	20
	(c) an access restriction order under section 93, or	
	(d) an interim access restriction order under section 94.	

Publication of enforcement action

96	Publication of details of enforcement action	
(1)	Subsections (2) and (3) apply where OFCOM have taken any of the following kinds of enforcement action in relation to a person –	25
	(a) given a confirmation decision;	
	(b) given a penalty notice under section 84(3);	
	(c) given a penalty notice under section 89;	
	(d) given a penalty notice under section 90.	30
(2)	OFCOM must publish details identifying the person and describing –	
	(a) the action that has been taken, and	
	(b) the failure (or failures) to which that action relates.	
(3)	But OFCOM may not publish anything that, in OFCOM’s opinion –	
	(a) is commercially sensitive, or	35
	(b) is otherwise not appropriate for publication.	
(4)	Where OFCOM have given a person a provisional notice of enforcement action but have taken no enforcement action against the person, OFCOM may publish details identifying the person and describing the reasons for the provisional notice.	40
(5)	OFCOM must notify the person concerned that information has been published under this section.	

- (6) Publication under this section may be in any manner that OFCOM consider appropriate.

Guidance

97 Guidance about enforcement action

- (1) OFCOM must prepare guidance about how OFCOM propose to exercise their functions under this Chapter. 5
- (2) The guidance must, in particular, give information about the factors that OFCOM would consider it appropriate to take into account when taking, or considering taking, enforcement action relating to a person's failure to comply with the enforceable requirements referred to in each paragraph of section 82. 10
- (3) In relation to any enforcement action by OFCOM which relates to a failure by a provider of a regulated service to comply with a relevant duty, the guidance must include provision explaining how OFCOM will take into account the impact (or possible impact) of such a failure on children.
- (4) Before preparing guidance under this section (including revised or replacement guidance), OFCOM must consult – 15
- (a) the Secretary of State, and
- (b) such other persons as OFCOM consider appropriate.
- (5) OFCOM must publish the guidance (and any revised or replacement guidance). 20
- (6) Guidelines prepared by OFCOM under section 392 of the Communications Act (amount of penalties) may, so far as relating to penalties imposed under this Chapter, be included in the same document as guidance under this section.
- (7) In exercising their functions under this Chapter, or deciding whether to exercise them, OFCOM must have regard to the guidance for the time being in force under this section. 25
- (8) In this section, a “relevant duty” means – 30
- (a) a duty under section 9 or 21 (safety duties about illegal content), or
- (b) a duty under section 10 or 22 (safety duties for services likely to be accessed by children).

CHAPTER 7

COMMITTEES, RESEARCH AND REPORTS

98 Advisory committee on disinformation and misinformation

- (1) OFCOM must, in accordance with the following provisions of this section, exercise their powers under paragraph 14 of the Schedule to the Office of Communications Act 2002 (committees of OFCOM) to establish and maintain a committee to provide the advice specified in this section. 35
- (2) The committee is to consist of –
- (a) a chairman appointed by OFCOM, and

- (b) such number of other members appointed by OFCOM as OFCOM think fit.
- (3) In appointing persons to be members of the committee, OFCOM must have regard to the desirability of ensuring that the members of the committee include— 5
- (a) persons representing the interests of United Kingdom users of regulated services,
 - (b) persons representing providers of regulated services, and
 - (c) persons with expertise in the prevention and handling of disinformation and misinformation online. 10
- (4) The function of the committee is to provide advice to OFCOM (including other committees established by OFCOM) about—
- (a) how providers of regulated services should deal with— 15
 - (i) in the case of regulated user-to-user services, disinformation and misinformation present on such services, and
 - (ii) in the case of regulated search services, disinformation and misinformation that may be encountered in or via search results;
 - (b) OFCOM’s exercise of their power under section 49 to require information of a kind mentioned in subsection (4) of that section, so far *20* as relating to disinformation and misinformation; and
 - (c) OFCOM’s exercise of their functions under section 11 of the Communications Act (duty to promote media literacy) in relation to countering disinformation and misinformation online.
- (5) The committee must publish a report within the period of 18 months after being established, and after that must publish periodic reports. 25

99 Research about users’ experiences of regulated services

- (1) Section 14 of the Communications Act (consumer research) is amended as follows.
- (2) After subsection (6A) insert— 30
- “(6B) OFCOM must make arrangements for ascertaining—
- (a) the state of public opinion from time to time concerning providers of regulated services and their manner of operating their services;
 - (b) the experiences of United Kingdom users of regulated services in relation to their use of such services; 35
 - (c) the experiences of such users of regulated services in relation to the handling of complaints made by them to providers of such services; and
 - (d) the interests and experiences of such users of regulated services in relation to matters that are incidental to or otherwise connected with their experiences of using such services. 40
- (6C) OFCOM’s report under paragraph 12 of the Schedule to the Office of Communications Act 2002 for each financial year must contain a statement by OFCOM about the research that has been carried out in that year under subsection (6B).” 45

- (3) After subsection (8) insert –

“(8A) In subsection (6B) the following terms have the same meaning as in the Online Safety Act 2021 –

“regulated service” (see section 3 of that Act);

“provider” (see section 116 of that Act);

“United Kingdom user” (see section 122 of that Act).”

5

100 OFCOM’s transparency reports

- (1) OFCOM must produce transparency reports based on information contained in the transparency reports produced by providers of regulated services under section 49. 10
- (2) OFCOM’s transparency reports must contain –
- (a) a summary of conclusions drawn from the transparency reports produced under section 49 regarding patterns or trends which OFCOM have identified in such reports,
 - (b) a summary of steps mentioned in such transparency reports which OFCOM consider to be good industry practice, and 15
 - (c) any other information from such transparency reports which OFCOM consider it appropriate to include.
- (3) OFCOM’s first transparency report must be published by the end of the period of one year beginning with the day on which the first report under section 49 is published by a provider of a regulated service (see subsection (1)(d) of that section), and OFCOM must publish a report at least once a year after that. 20
- (4) OFCOM must publish their transparency reports in such manner as they consider appropriate.
- (5) For further provision about reports under this section, see section 102. 25

101 OFCOM’s report about researchers’ access to information

- (1) OFCOM must prepare a report –
- (a) describing how, and to what extent, persons carrying out independent research into online safety matters are currently able to obtain information from providers of regulated services to inform their research, 30
 - (b) exploring the legal and other issues which currently constrain the sharing of information for such purposes, and
 - (c) assessing the extent to which greater access to information for such purposes might be achieved. 35
- (2) For the purposes of this section a person carries out “independent research” if the person carries out research on behalf of a person other than a provider of a regulated service.
- (3) In preparing the report, OFCOM must consult –
- (a) the Information Commissioner, 40
 - (b) the Centre for Data Ethics and Innovation,
 - (c) United Kingdom Research and Innovation,
 - (d) persons who appear to OFCOM to have relevant expertise,

- (e) persons who appear to OFCOM to represent providers of regulated services, and
 - (f) such other persons as OFCOM consider appropriate.
- (4) OFCOM must publish the report within the period of two years beginning with the day on which this section comes into force. 5
- (5) The publication of the report must be in such manner as OFCOM consider appropriate.
- (6) OFCOM must send a copy of the report to the Secretary of State, and the Secretary of State must lay it before Parliament.
- (7) For further provision about the report under this section, see section 102. 10
- (8) Following the publication of the report, OFCOM may prepare guidance about the matters dealt with by the report for providers of regulated services and persons carrying out independent research into online safety matters.
- (9) If OFCOM decide to prepare such guidance, they must – 15
- (a) consult persons as mentioned in subsection (3),
 - (b) publish the guidance (and any revised guidance), and
 - (c) include in each transparency report under section 100 an assessment of the effectiveness of the guidance.
- (10) Subsection (9)(a) also applies if OFCOM decide to revise guidance under this section. 20

102 Reports by OFCOM

- (1) OFCOM may from time to time produce and publish reports about online safety matters.
- (2) In publishing a report mentioned in subsection (5), OFCOM must have regard to the need to exclude from publication, so far as that is practicable, the matters which are confidential in accordance with subsections (3) and (4). 25
- (3) A matter is confidential under this subsection if –
- (a) it relates specifically to the affairs of a particular body, and
 - (b) publication of that matter would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that body. 30
- (4) A matter is confidential under this subsection if –
- (a) it relates to the private affairs of an individual, and
 - (b) publication of that matter would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that individual.
- (5) The reports referred to in subsection (2) are – 35
- (a) a report under section 69 (report about use of technology),
 - (b) a report under section 100 (transparency report),
 - (c) a report under section 101 (report about researchers' access to information), and
 - (d) a report produced under this section. 40

CHAPTER 8

MEDIA LITERACY

103 Media literacy

For section 11 of the Communications Act (duty to promote media literacy) substitute – 5

“11 Duty to promote media literacy

- (1) OFCOM must take such steps as they consider appropriate –
- (a) to improve the media literacy of members of the public, and
 - (b) in relation to material published by means of the electronic media, to encourage the development and use of technologies and systems which help to improve the media literacy of members of the public, including in particular technologies and systems which –
 - (i) indicate the nature of the material (for example, show where it is an advertisement), 10
 - (ii) indicate the reliability and accuracy of the material, and 15
 - (iii) facilitate control over what material is received.
- (2) In this section “media literacy” means –
- (a) an understanding of the nature and characteristics of material published by means of the electronic media, 20
 - (b) an awareness of the impact that such material may have (for example, the impact on the behaviour of those who receive it),
 - (c) an awareness and understanding of the processes by which such material is selected or made available for publication,
 - (d) an awareness of the available systems by which – 25
 - (i) the nature of such material may be established,
 - (ii) the reliability and accuracy of such material may be established,
 - (iii) personal information may be protected, and
 - (iv) persons to whom such material is made available may control what is received, and 30
 - (e) an awareness of the uses to which systems mentioned in paragraph (d) may be put.
- (3) In performing their duty under subsection (1)(a) OFCOM must, in particular, carry out, commission or encourage educational initiatives designed to improve the media literacy of members of the public. 35
- (4) OFCOM must prepare guidance –
- (a) about the evaluation of educational initiatives mentioned in subsection (3) by persons providing them,
 - (b) about the evaluation, by providers of regulated services, of any actions taken by them in relation to those services to improve the media literacy of members of the public, and 40
 - (c) about the evaluation, by persons developing or using technologies and systems mentioned in subsection (1)(b), of the effectiveness of those technologies and systems in improving the media literacy of members of the public. 45

- (5) OFCOM must keep the guidance under review.
- (6) OFCOM must publish the guidance (and any revised or replacement guidance).
- (7) For OFCOM’s duty to carry out research into the matters mentioned in subsection (1), see section 14(6)(a). 5
- (8) Every report under paragraph 12 of the Schedule to the Office of Communications Act 2002 (OFCOM’s annual report) for a financial year must contain a summary of the steps that OFCOM have taken under subsection (1) in that year.
- (9) In this section – 10
- (a) “provider”, in relation to a regulated service, has the same meaning as in the Online Safety Act 2021 (see section 116);
 - (b) “regulated service” has the same meaning as in the Online Safety Act 2021 (see section 3(2) of that Act); and
 - (c) references to the publication of anything by means of the electronic media are references to its being – 15
 - (i) broadcast so as to be available for reception by members of the public or of a section of the public, or
 - (ii) distributed by means of an electronic communications network to members of the public or of a section of the public.” 20

PART 5

APPEALS AND SUPER-COMPLAINTS

CHAPTER 1

APPEALS

25

105 Appeals against OFCOM notices

- (1) A person who is given a use of technology notice under section 64, 65 or 67 may appeal to the Upper Tribunal against OFCOM's decision to give the notice.
- (2) An appeal to the Upper Tribunal against OFCOM's decision to give – 30
 (a) a confirmation decision to a person, or
 (b) a penalty notice to a person,
 may be brought by any person with a sufficient interest in the decision.
- (3) An appeal under subsection (2) by a person other than the person given the confirmation decision or penalty notice in question may be brought only with the permission (or, in Northern Ireland, leave) of the Upper Tribunal. 35
- (4) The Upper Tribunal must decide the appeal by applying the same principles as would be applied –
 (a) by the High Court on an application for judicial review, or
 (b) in Scotland, on an application to the supervisory jurisdiction of the Court of Session. 40
- (5) On an appeal under this section, the Upper Tribunal may –
 (a) dismiss the appeal, or
 (b) quash the decision being challenged.
- (6) Where a decision is quashed, the Upper Tribunal must remit the decision to OFCOM for reconsideration with such directions (if any) as the Tribunal considers appropriate.
- (7) In this section "penalty notice" means a penalty notice under section 84(3), 89 or 90. 5

CHAPTER 2

SUPER-COMPLAINTS

106 Power to make super-complaints

- (1) An eligible entity may make a complaint to OFCOM that any feature of one or more regulated services, or any conduct of one or more providers of such services, or any combination of such features and such conduct is, appears to be, or presents a material risk of – 10
- (a) causing significant harm to users of the services or members of the public, or a particular group of such users or members of the public;
 - (b) significantly adversely affecting the rights to freedom of expression within the law of users of the services or members of the public, or of a particular group of such users or members of the public; 15
 - (c) causing significant unwarranted infringements of privacy, in relation to users of the services or members of the public, or a particular group of such users or members of the public; or 20
 - (d) otherwise having a significant adverse impact on users of the services or members of the public, or on a particular group of such users or members of the public.
- (2) But an eligible entity may only make a complaint under subsection (1) that relates to a single regulated service or that relates to a single provider of one or more regulated services if OFCOM consider that – 25
- (a) the complaint is of particular importance, or
 - (b) the complaint relates to impacts on a particularly large number of users of the service or members of the public.
- (3) An entity is an “eligible entity” if the entity meets criteria specified in regulations made by the Secretary of State. 30
- (4) Regulations under subsection (3) must specify as one of the criteria that the entity must be a body representing the interests of users of regulated services, or members of the public, or a particular group of such users or members of the public. 35
- (5) Before making regulations under subsection (3), the Secretary of State must consult –
- (a) OFCOM, and
 - (b) such other persons as the Secretary of State considers appropriate.
- (6) In this section – 40
- (a) “conduct” includes acts and omissions, and
 - (b) “user” means United Kingdom user (see section 122).

107 Super-complaints: procedure

- (1) The Secretary of State must make regulations containing provision about procedural matters relating to complaints under section 106.
- (2) Such regulations may, in particular, include provision about the following matters – 5
- (a) notification to OFCOM of an intention to make a complaint under section 106;
 - (b) the form and manner of such a complaint, including requirements for supporting evidence in relation to – 10
 - (i) matters mentioned in subsections (1) and (2) of section 106, and
 - (ii) criteria specified in regulations under subsection (3) of that section;
 - (c) steps that OFCOM must take in relation to such a complaint, including requirements for publication of responses;
 - (d) time limits for taking steps in relation to such a complaint (or provision about how such time limits are to be determined) including time limits in relation to the determination of – 15
 - (i) whether a complaint is a complaint that is within section 106(1), (and where applicable, within section 106(2)), and
 - (ii) whether an entity is an eligible entity (see section 106(3)). 20
- (3) Before making regulations under subsection (1), the Secretary of State must consult –
- (a) OFCOM, and
 - (b) such other persons as the Secretary of State considers appropriate.

108 Super-complaints: guidance

- (1) OFCOM must prepare guidance about complaints under section 106, which must include – 25
- (a) guidance about the criteria specified in regulations under section 106(3),
 - (b) guidance about procedural matters relating to complaints under section 106, and 30
 - (c) guidance about any other aspect of complaints under section 106 that OFCOM consider it appropriate to include.
- (2) OFCOM must publish the guidance (and any revised or replacement guidance). 35

PART 6

SECRETARY OF STATE'S FUNCTIONS IN RELATION TO REGULATED SERVICES

*Strategic priorities***109 Statement of strategic priorities**

- (1) The Secretary of State may designate a statement for the purposes of this section if the requirements set out in section 110 (consultation and parliamentary procedure) are satisfied. The statement is a statement prepared by the Secretary of State that sets out strategic priorities of Her Majesty's Government in the United Kingdom relating to online safety matters. 40
- (2) The statement may, among other things, set out particular outcomes identified with a view to achieving the strategic priorities; it may not require OFCOM to include particular steps to be taken by providers or regulated services or action in relation to particular items of content. 5
- (3) This section does not restrict the Secretary of State's powers under any other provision of this Act or any other enactment.
- (4) A statement designated under subsection (1) must be published in such manner as the Secretary of State considers appropriate.
- (5) A statement designated under subsection (1) may be amended (including by replacing the whole or a part of the statement with new material) by a subsequent statement designated under that subsection, and this section and sections 57 and 110 apply in relation to any such subsequent statement as they apply in relation to the original statement. 10
- (6) Except as provided by subsection (8), no amendment may be made under subsection (6) within the period of five years beginning with the day on which a statement was most recently designated under subsection (1). 15
- (7) An earlier amendment may be made under subsection (6) if –
- (a) since that day –
 - (i) a Parliamentary general election has taken place, or 20
 - (ii) there has been a significant change in the policy of Her Majesty's government affecting online safety matters, or
 - (b) the Secretary of State considers that the statement, or any part of it, conflicts with any of OFCOM's general duties (within the meaning of section 3 of the Communications Act). 25

110 Consultation and parliamentary procedure

- (1) This section sets out the requirements that must be satisfied in relation to a statement before the Secretary of State may designate it under section 109.
- (2) The Secretary of State must consult –
- (a) OFCOM, and 30
 - (b) such other persons as the Secretary of State considers appropriate, on a draft of the statement.
- (3) The Secretary of State must allow OFCOM a period of at least 40 days to respond to any consultation under subsection (2)(a).
- (4) After that period has ended the Secretary of State – 35
- (a) must make any changes to the draft that appear to the Secretary of State to be necessary in view of responses to the consultation, and
 - (b) must then lay the draft before Parliament.

- (5) The Secretary of State must then wait until the end of the 40-day period and may not designate the statement if, within that period, either House of Parliament resolves not to approve it. 40
- (6) “The 40-day period” is the period of 40 days beginning with the day on which the draft is laid before Parliament (or, if it is not laid before each House on the same day, the later of the days on which it is laid).
- (7) When calculating the 40-day period, any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days is to be ignored.

Directions to OFCOM

- 111 Secretary of State directions about advisory committees** 5
- (1) The Secretary of State may give OFCOM a direction requiring OFCOM to establish a committee to provide advice to OFCOM about online safety matters of a kind specified in the direction.
- (2) The Secretary of State must consult OFCOM before giving a direction under this section. 10
- (3) A committee required to be established by a direction under this section is to consist of the following members, unless the direction specifies otherwise –
- (a) a chairman appointed by OFCOM, and
 - (b) such number of other members appointed by OFCOM as OFCOM think fit. 15
- (4) A committee required to be established by a direction under this section must, unless the direction specifies otherwise, publish a report within the period of 18 months after being established, and after that must publish periodic reports.
- (5) The Secretary of State may vary or revoke a direction given under this section.
- 112 Secretary of State directions in special circumstances** 20
- (1) The Secretary of State may give a direction to OFCOM under subsection (2) or (3) if the Secretary of State has reasonable grounds for believing that circumstances exist that present a threat –
- (a) to the health or safety of the public, or
 - (b) to national security. 25
- (2) A direction under this subsection is a direction requiring OFCOM, in exercising their media literacy functions, to give priority for a specified period to specified objectives designed to address the threat presented by the circumstances mentioned in subsection (1).
- (3) A direction under this subsection is a direction requiring OFCOM to give a public statement notice to – 30
- (a) a specified provider of a regulated service, or
 - (b) providers of regulated services generally.
- (4) A “public statement notice” is a notice requiring a provider of a regulated service to make a publicly available statement, by a date specified in the notice, about steps the provider is taking in response to the threat presented by the circumstances mentioned in subsection (1). 35
- (5) OFCOM may, by a public statement notice or a subsequent notice, require a provider of a regulated service to provide OFCOM with such information as OFCOM may require for the purpose of responding to that threat. 40

- (6) If a direction under subsection (2) or (3) is given on the ground mentioned in subsection (1)(a), the Secretary of State must publish the reasons for giving the direction.
- (7) The Secretary of State may vary or revoke a direction given under subsection (2) or (3). 5
- (8) If the Secretary of State varies or revokes a direction given under subsection (3), OFCOM may, in consequence, vary or revoke a public statement notice that they have given by virtue of the direction.
- (9) In subsection (2) “media literacy functions” means OFCOM’s functions under section 11 of the Communications Act (duty to promote media literacy), so far as functions under that section relate to regulated services. 10
- (10) In subsections (2) and (3) “specified” means specified in the direction.

Guidance

113 Secretary of State guidance

- (1) OFCOM has complete discretion in the carrying out of its functions under this act, including in—
 - (a) preparing its enforcement policy,
 - (b) exercising its enforcement functions, and(c) preparing and publishing its budget.
- (2) At the start of each period of multi-annual funding and no later than 1 April 2023, the Secretary of State must lay before Parliament, and publish, a statement setting out the multi-annual budget which they intend to provide to OFCOM.
- (3) In making or terminating appointments under section 1(3) and 1(4) Office of Communications Act 2002 the Secretary of State must obtain the consent of the DCMS select committee

Annual report

- 114 Annual report on the Secretary of State's functions** **5**
- In section 390 of the Communications Act (annual report on the Secretary of State's functions), in subsection (2), after paragraph (e) insert –
 “(f) the Online Safety Act 2021.”

Review

- 115 Review** **10**
- (1) The Secretary of State must review the operation of –
- (a) the regulatory framework provided for in this Act, and
 - (b) section 11 of the Communications Act, to the extent that that section relates to regulated services.
- (2) The review – **15**
- (a) must not be carried out before the end of the period of two years beginning with the day on which Part 2 comes into force, but
 - (b) must be carried out before the end of the period of five years beginning with that day.
- (3) The review must, in particular, consider how effective the regulatory framework provided for in this Act is at – **20**
- (a) securing that regulated services are operated using systems and processes that –
 - (i) minimise the risk of harm to individuals in the United Kingdom arising from (in the case of user-to-user services) content present on such services or (in the case of search services) content that may be encountered in or via search results, **25**
 - (ii) provide higher levels of protection for children than for adults,
 - (iii) provide transparency and accountability to users in relation to actions taken to comply with duties under Chapter 1, 2 or 3 of Part 2 (as the case may be), **30**
 - (iv) protect the right of users and (in the case of search services) interested persons to freedom of expression within the law, and
 - (v) protect users from unwarranted infringements of privacy; and
 - (b) ensuring that regulation of services is proportionate, having regard to the level of risk of harm presented by regulated services of different kinds and to the size and capacity of providers. **35**
- (4) The review must also, in particular, consider –
- (a) the effectiveness of –
 - (i) the information gathering and information sharing powers available to OFCOM, and **40**
 - (ii) the enforcement powers available to OFCOM;

- (b) whether it would be appropriate for OFCOM to be able to exercise the power in section 71 (requirement in information notice to name a senior manager), taking into account the effectiveness of OFCOM's powers to obtain information under section 70; and
 - (c) the extent to which OFCOM have had regard to the desirability of encouraging innovation by providers of regulated services. 5
- (5) In carrying out the review, the Secretary of State must consult—
 - (a) OFCOM, and
 - (b) such other persons as the Secretary of State considers appropriate.
- (6) The Secretary of State must prepare and publish a report on the outcome of the review. 10
- (7) The report must be laid before Parliament.

Carnegie UK revised draft OSB - Nov 2021

PART 7

GENERAL AND FINAL PROVISIONS

Providers of regulated services

15

116 “Provider” of user-to-user service or search service

- (1) This section applies to determine who is the “provider” of a user-to-user service or a search service for the purposes of this Act.
- (2) The provider of a user-to-user service is to be treated as being the entity that has control over who can use the service (and that entity alone). 20
- (3) Where no entity has control over who can use a user-to-user service, but an individual or individuals have control over who can use it, the provider of the service is to be treated as being that individual or those individuals.
- (4) A person who provides an access facility in relation to a user-to-user service, within the meaning of section 93, is not to be regarded as a person who has control over who can use that service for the purposes of subsections (2) and (3). 25
- (5) The provider of a search service is to be treated as being the entity that has control over the operations of the search engine (and that entity alone).
- (6) Where no entity has control over the operations of the search engine, but an individual or individuals have control over those operations, the provider of the search service is to be treated as being that individual or those individuals. 30
- (7) Where a user-to-user service or a search service is generated by a machine, the entity that controls the machine (and that entity alone) is to be treated as being the provider of the service. 35
- (8) Where no entity controls the machine, but an individual or individuals control it, the provider of the service is to be treated as being that individual or those individuals.
- (9) In this section “operations of the search engine” means operations which – 40
 - (a) enable users of a search service to make search requests, and
 - (b) generate responses to those requests.

117 Providers that are not legal persons

- (1) In this section a “relevant entity” means an entity that –
 - (a) is the provider of a regulated service, and
 - (b) is not a legal person under the law under which it is formed.
- (2) If a penalty notice is given to a relevant entity (in the name of the entity), the penalty is to be paid out of the funds of the entity. 5
- (3) If a notice under Chapter 4 (use of technology), Chapter 5 (information) or Chapter 6 (enforcement) of Part 4 is given to a relevant entity (in the name of the entity), the notice continues to have effect despite a change in the membership of the entity. 10
- (4) If a penalty notice is given jointly to two or more officers or members of a relevant entity, those individuals are jointly and severally liable to pay the penalty under it.
- (5) In subsection (4) the reference to officers or members of a relevant entity includes a reference to employees of such an entity or any other individuals associated with such an entity. 15
- (6) In this section a “penalty notice” means –
 - (a) a confirmation decision that imposes a penalty (see section 83(6)),
 - (b) a penalty notice under section 84(3),
 - (c) a penalty notice under section 89, or
 - (d) a penalty notice under section 90. 20

118 Individuals providing regulated services: liability

- (1) This section applies in relation to two or more individuals who together are the provider of a regulated service (see section 116(3), (6) and (8)).
- (2) Any duty or requirement imposed on such a provider under Chapter 1 of Part 2, Chapter 2 of Part 2 (providers of user-to-user services: duties of care), Chapter 3 of Part 2 (providers of search services: duties of care), Chapter 4 of Part 2 (assessment about access by children) or section 51 (duty to notify OFCOM), or any liability of such a provider to pay a fee under section 52, is to be taken to be imposed on, or to be a liability of, all the individuals jointly and severally.
- (3) Any notice under Chapter 4 (use of technology), Chapter 5 (information) or Chapter 6 (enforcement) of Part 4 in respect of a matter may be given –
 - (a) to only one of the individuals,
 - (b) jointly to two or more of them, or
 - (c) jointly to all of them, 35
 but a separate notice may not be given to each of the individuals in respect of the matter.
- (4) If a penalty notice is given jointly to two or more individuals, those individuals are jointly and severally liable to pay the penalty under it.
- (5) In subsection (4) a “penalty notice” means –
 - (a) a confirmation decision that imposes a penalty (see section 83(6)),
 - (b) a penalty notice under section 84(3),
 - (c) a penalty notice under section 89, or
 - (d) a penalty notice under section 90. 40

119 Liability of parent entities for failures by subsidiary entities

- (1) Subsection (2) applies if—
- (a) OFCOM are satisfied that there are grounds to give an entity (“E”) a relevant decision or notice relating to a regulated service,
 - (b) E is the provider of that service, and 5
 - (c) there is an entity which is a parent undertaking in relation to E.
- (2) The relevant decision or notice may be given—
- (a) to E alone, or
 - (b) jointly to E and to an entity which is a parent undertaking in relation to E. 10
- (3) But the decision or notice may not be given to an entity which is a parent undertaking unless that entity has been given an opportunity to make representations to OFCOM.
- (4) If a relevant decision or notice is given to entities jointly as mentioned in subsection (2)(b), those entities are jointly and severally liable to comply with the requirements, or (as the case may be) pay the penalty, imposed by the decision or notice. 15
- (5) For the purposes of this section, an entity is a “parent undertaking” in relation to E if that entity is a parent undertaking in relation to E within the meaning of section 1162 of the Companies Act 2006 by reason of meeting the condition in subsection (2)(b), (c) or (d) or (4) of that section. 20
- (6) In its application for the purposes of this section, paragraph 4 of Schedule 7 to the Companies Act 2006 is to be read as if the reference to operating and financial policies were to policies relating to compliance with the regulatory requirements imposed by this Act. 25
- (7) For the purposes of this section, section 1162 of, and Schedule 7 to, the Companies Act 2006—
- (a) are to apply in relation to an entity which is not an undertaking (as defined in section 1161(1) of that Act) as they apply in relation to an undertaking, and 30
 - (b) are to be read with any necessary modifications if applied to an entity formed under the law of a country outside the United Kingdom.
- (8) In this section, “relevant decision or notice” means—
- (a) a confirmation decision,
 - (b) a penalty notice under section 84(3), 35
 - (c) a penalty notice under section 89, or
 - (d) a penalty notice under section 90.

120 Liability of controlling individuals for failures by entities

- (1) Subsection (2) applies if—
- (a) OFCOM are satisfied that there are grounds to give an entity (“E”) a relevant decision or notice relating to a regulated service, 40
 - (b) E is the provider of that service, and
 - (c) an individual or individuals control E.
- (2) The relevant decision or notice may be given—

- (a) to E alone, or
 - (b) jointly to E and to the individual or individuals who control E.
- (3) But the decision or notice may not be given to an individual or individuals unless that individual or those individuals have been given an opportunity to make representations to OFCOM. 5
- (4) If a relevant decision or notice is given jointly to E and to an individual or individuals as mentioned in subsection (2)(b), that entity and that individual or those individuals are jointly and severally liable to comply with the requirements, or (as the case may be) pay the penalty, imposed by the decision or notice. 10
- (5) For the purposes of this section, an individual or individuals are to be taken to “control” E if that individual or those individuals would, if they were an undertaking, be a parent undertaking in relation to E within the meaning of section 1162 of the Companies Act 2006 by reason of meeting the condition in subsection (2)(b), (c) or (d) or (4)(a) of that section. 15
- (6) In its application for the purposes of this section, paragraph 4 of Schedule 7 to the Companies Act 2006 is to be read as if the reference to operating and financial policies were to policies relating to compliance with the regulatory requirements imposed by this Act.
- (7) For the purposes of this section, section 1162 of, and Schedule 7 to, the Companies Act 2006 – 20
- (a) are to apply in relation to an entity which is not an undertaking (as defined in section 1161(1) of that Act) as they apply in relation to an undertaking, and
 - (b) are to be read with any necessary modifications if applied to an entity formed under the law of a country outside the United Kingdom. 25
- (8) In this section, “relevant decision or notice” means – 30
- (a) a confirmation decision,
 - (b) a penalty notice under section 84(3),
 - (c) a penalty notice under section 89, or
 - (d) a penalty notice under section 90.
- 121 Liability of subsidiary entities for failures by parent or fellow subsidiary entities**
- (1) Subsection (2) applies if – 35
- (a) OFCOM are satisfied that there are grounds to give an entity (“E”) a relevant decision or notice relating to a regulated service,
 - (b) E is the provider of that service, and
 - (c) E is a parent undertaking in relation to another undertaking.
- (2) The relevant decision or notice may be given – 40
- (a) to E alone, or
 - (b) jointly to E and to an entity which is a subsidiary undertaking of E.
- (3) But the decision or notice may be given to an entity which is a subsidiary undertaking only if – 45
- (a) that entity’s acts or omissions contributed to the failure in respect of which the decision or notice is given, and

- (b) that entity has been given an opportunity to make representations to OFCOM.
- (4) Subsection (5) applies if –
- (a) OFCOM are satisfied that there are grounds to give an entity (“E”) a relevant decision or notice relating to a regulated service, 5
 - (b) E is the provider of that service,
 - (c) E is a subsidiary undertaking, and
 - (d) there are, in relation to E, one or more entities which are fellow subsidiary undertakings.
- (5) The relevant decision or notice may be given – 10
- (a) to E alone, or
 - (b) jointly to E and to an entity which is a fellow subsidiary undertaking.
- (6) But the decision or notice may be given to an entity which is a fellow subsidiary undertaking only if –
- (a) that entity’s acts or omissions contributed to the failure in respect of which the decision or notice is given, and 15
 - (b) that entity has been given an opportunity to make representations to OFCOM.
- (7) If a relevant decision or notice is given to entities jointly as mentioned in subsection (2)(b) or (5)(b), those entities are jointly and severally liable to comply with the requirements, or (as the case may be) pay the penalty, imposed by the decision or notice. 20
- (8) In this section –
- “fellow subsidiary undertaking” has the meaning given by section 1161(4) of the Companies Act 2006; 25
 - “parent undertaking” is to be read in accordance with section 1162 of the Companies Act 2006;
 - “relevant decision or notice” means –
 - (a) a confirmation decision,
 - (b) a penalty notice under section 84(3), 30
 - (c) a penalty notice under section 89, or
 - (d) a penalty notice under section 90; - “subsidiary undertaking” is to be read in accordance with section 1162 of the Companies Act 2006.
- (9) For the purposes of this section, sections 1161(4) and 1162 of, and Schedule 7 to, the Companies Act 2006 – 35
- (a) are to apply in relation to an entity which is not an undertaking (as defined in section 1161(1) of that Act) as they apply in relation to an undertaking, and
 - (b) are to be read with any necessary modifications if applied to an entity formed under the law of a country outside the United Kingdom. 40

Users of regulated services

122 “User” and “United Kingdom user” of service

- (1) For the purposes of this Act a user is a “United Kingdom user” of a service if –

- (a) where the user is an individual, the individual is in the United Kingdom;
 - (b) where the user is an entity, the entity is incorporated or formed under the law of any part of the United Kingdom.
- (2) For the purposes of references in this Act to a user of a service it does not matter whether a person is registered to use a service. 5
- (3) References in this Act to a user of a service do not include references to any of the following when acting in the course of the provider's business –
- (a) where the provider of the service is an individual or individuals, that individual or those individuals; 10
 - (b) where the provider is an entity, officers of the entity;
 - (c) persons who work for the provider (including as employees or volunteers);
 - (d) any other person providing a business service to the provider such as a contractor, consultant or auditor. 15
- (4) In subsection (3) "acting in the course of the provider's business" means (as the case may be) –
- (a) acting in the course of the provider's business of providing the service, or
 - (b) acting in the course of a business, trade, profession or other concern – 20
 - (i) carried on (whether or not for profit) by the provider of the service, and
 - (ii) for the purposes of which the service is provided.
- (5) In subsection (3) "officer" includes a director, manager, partner, associate, secretary or other similar officer. 25
- (6) In this section "service" (except in the term "business service") means internet service, user-to-user service or search service.

Supplementary provision about offences

123 Information offences: supplementary

- (1) Proceedings for an offence under section 72(2) may be brought in respect of a failure by a person to comply with the requirements of an information notice only if – 30
- (a) OFCOM have given the person a provisional notice of enforcement action in respect of that failure,
 - (b) OFCOM have given the person a confirmation decision in respect of that failure and the time allowed under that decision has expired without the requirements of the information notice having been complied with, 35
 - (c) OFCOM have not imposed a penalty on the person in respect of that failure, 40
 - (d) a service restriction order under section 91 has not been made in relation to a regulated service provided by the person in respect of that failure, and
 - (e) an access restriction order under section 93 has not been made in relation to a regulated service provided by the person in respect of that failure. 45

- (2) Proceedings for an offence under section 73(2) (failure by named senior manager to prevent offence under section 72(2)) may be brought only if the conditions in subsection (1) are met in respect of the offence under section 72(2).
- (3) A person on whom a penalty is imposed may not at any time be convicted of an offence under section 72 in respect of the act or omission giving rise to the penalty. 5
- (4) An individual may not at any time be convicted of an offence under section 73 in respect of a failure to prevent an offence by an entity under section 72, if a penalty is imposed on the entity in respect of the act or omission constituting the offence under section 72. 10
- (5) In this section “penalty” means a penalty imposed by –
- (a) a confirmation decision (see section 83(6)), or
 - (b) a penalty notice under section 84(3).

124 Defences 15

- (1) Subsection (2) applies where a person relies on a defence under section 72 or 73.
- (2) If evidence is adduced which is sufficient to raise an issue with respect to the defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

125 Liability of corporate officers for information offences 20

- (1) In this section a “relevant entity” means an entity that is –
- (a) the provider of a regulated service, and
 - (b) a legal person under the law under which it is formed.
- (2) If an offence under section 72 committed by a relevant entity is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer, the officer (as well as the entity) is guilty of the offence and (subject to section 123(1)) is liable to be proceeded against and punished accordingly. 25
- (3) In relation to an entity which is a body corporate, “officer” means –
- (a) a person occupying the position of a director, manager, secretary or other similar officer of the entity (by whatever name called), or 30
 - (b) a person purporting to act in any such capacity.
- (4) In relation to a partnership which is not regarded as a body corporate under the law under which it is formed, “officer” means –
- (a) a partner, or 35
 - (b) a person purporting to act as a partner.
- (5) If the affairs of an entity which is a body corporate are managed by its members, subsection (2) applies in relation to the acts and omissions of a member in connection with the functions of management as if the member were an officer of the entity. 40
- (6) In this section “body corporate” includes an entity incorporated outside the United Kingdom.

126 Application of information offences to providers that are not legal persons

- (1) In this section a “relevant entity” means an entity that –
- (a) is the provider of a regulated service, and
 - (b) is not a legal person under the law under which it is formed.
- (2) Proceedings for an offence under section 72 alleged to have been committed by a relevant entity must be brought against the entity in its own name (and not in that of any of its officers, members or partners). 5
- (3) For the purposes of such proceedings –
- (a) rules of court relating to the service of documents have effect as if the entity were a body corporate; and 10
 - (b) the following provisions apply as they apply in relation to a body corporate –
 - (i) section 33 of the Criminal Justice Act 1925 and Schedule 3 to the Magistrates’ Courts Act 1980;
 - (ii) section 18 of the Criminal Justice Act (Northern Ireland) 1945 (c. 15 (N.I.)) and Article 166 of, and Schedule 4 to, the Magistrates’ Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)). 15
- (4) A fine imposed on a relevant entity on its conviction of an offence under section 72 is to be paid out of the entity’s funds. 20
- (5) If an offence under section 72 committed by a relevant entity is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer, the officer (as well as the entity) is guilty of the offence and (subject to section 123(1)) is liable to be proceeded against and punished accordingly. 25
- (6) In relation to a partnership, “officer” means –
- (a) a partner, or
 - (b) a person purporting to act as a partner.
- (7) In relation to a relevant entity other than a partnership, “officer” means –
- (a) an officer of the entity or a person concerned in the management or control of the entity, or 30
 - (b) a person purporting to act in such a capacity.
- (8) Subsection (2) is not to be read as prejudicing any liability of an officer under subsection (5).
- Extra-territorial application* 35

127 Extra-territorial application

- (1) References in this Act to an internet service, a user-to-user service or a search service include such a service provided from outside the United Kingdom (as well as such a service provided from within the United Kingdom).
- (2) The power by notice under section 70 to require the production of documents includes a power for such a notice to require the production of documents held outside the United Kingdom. 40

- (3) The power conferred by section 76 includes a power to require the attendance for interview of an individual who is outside the United Kingdom.

128 Information offences: extra-territorial application and jurisdiction

- (1) Section 72 applies to acts done in the United Kingdom or elsewhere by a provider of a regulated service (information offences). 5
- (2) Section 73 applies to acts done in the United Kingdom or elsewhere by an individual (offences by senior managers of providers of regulated services).
- (3) Sections 125(2) and 126(5) apply to acts done in the United Kingdom or elsewhere by an individual (liability of directors etc of providers of regulated services). 10
- (4) In the case of an offence under section 72 or 73 which is committed outside the United Kingdom –
- (a) proceedings for the offence may be taken at any place in the United Kingdom, and
 - (b) the offence may for all incidental purposes be treated as having been committed at any such place. 15
- (5) In the application of subsection (4) to Scotland, any such proceedings against a person may be taken –
- (a) in any sheriff court district in which the person is apprehended or is in custody, or
 - (b) in such sheriff court district as the Lord Advocate may determine. 20
- (6) In this section –
- “act” includes a failure to act;
 - “sheriff court district” is to be construed in accordance with the Criminal Procedure (Scotland) Act 1995 (see section 307(1) of that Act). 25

Service of notices

129 Service of notices

- (1) This section applies in relation to a notice given by OFCOM to a person under –
- (a) section 49(1) (notice relating to transparency report), 30
 - (b) Chapter 4 of Part 4 (use of technology),
 - (c) Chapter 5 of Part 4 (information),
 - (d) Chapter 6 of Part 4 (enforcement powers), or
 - (e) section 112(4) or (5) (public statement notice etc).
- (2) OFCOM may give a notice to a person by – 35
- (a) handing it to the person,
 - (b) leaving it at the person’s proper address,
 - (c) sending it by post to the person at that address, or
 - (d) sending it by email to the person’s email address.
- (3) A notice to a body corporate may be given to any officer of that body. 40

- (4) A notice to a partnership may be given to a partner or a person who has the control or management of the partnership business.
- (5) A notice to an entity that is not a legal person under the law under which it is formed (other than a partnership) may be given to any member of the governing body of the entity. 5
- (6) In the case of a notice given to a person who is a provider of a regulated service, the person's proper address for the purposes of paragraphs (b) and (c) of subsection (2), and section 7 of the Interpretation Act 1978 in its application to those paragraphs, is any address (within or outside the United Kingdom) at which OFCOM believe, on reasonable grounds, that the notice will come to the attention of the person or (where the person is an entity) any director or other officer of that entity. 10
- (7) In the case of a notice given to a person other than a provider of a regulated service, a person's proper address for the purposes of paragraphs (b) and (c) of subsection (2), and section 7 of the Interpretation Act 1978 in its application to those paragraphs, is – 15
- (a) in the case of an entity, the address of the entity's registered or principal office;
 - (b) in any other case, the person's last known address.
- (8) In the case of an entity registered or carrying on business outside the United Kingdom, or with offices outside the United Kingdom, the reference in subsection (7) to its principal office includes its principal office in the United Kingdom or, if the entity has no office in the United Kingdom, any place in the United Kingdom at which OFCOM believe, on reasonable grounds, that the notice will come to the attention of any director or other officer of that entity. 20
- (9) For the purposes of subsection (2)(d), a person's email address is – 25
- (a) any email address published for the time being by that person as an address for contacting that person, or
 - (b) if there is no such published address, any email address by means of which OFCOM believe, on reasonable grounds, that the notice will come to the attention of that person or (where that person is an entity) any director or other officer of that entity. 30
- (10) A notice sent to a person by email is to be taken to have been given to that person 48 hours after it is sent.
- (11) In this section – 35
- "director" includes any person occupying the position of a director, by whatever name called;
 - "officer", in relation to an entity, includes a director, a manager, a secretary or, where the affairs of the entity are managed by its members, a member. 40

Repeals

131 DELETE*Regulations***132 Regulations**

- (1) Regulations under this Act may make different provision for different purposes and may, in particular—
- (a) make different provision with regard to— 10
 - (i) user-to-user services, and
 - (ii) search services;
 - (b) make different provision with regard to user-to-user services of different kinds;
 - (c) make different provision with regard to search services of different kinds. 15
- (2) Regulations under this Act may make supplemental, incidental, consequential, transitional or saving provision.
- (3) Any power of the Secretary of State under this Act to make regulations is exercisable by statutory instrument. 20
- (4) A statutory instrument containing (whether alone or with other provision)—
- (a) regulations under section 3(8), (9) or (11),
 - (b) regulations under section 30(5),
 - (c) regulations under section 39(12) or (13),
 - (d) regulations under section 41,
 - (e) regulations under section 43(2),
 - (f) regulations under section 45,
 - (g) regulations under section 46,
 - (h) regulations under section 85(14), or
 - (i) regulations under section 106(3),
- 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
- (5) A statutory instrument containing—
- (a) regulations under section 107
- is subject to annulment in pursuance of a resolution of either House of Parliament. 40

- (6) Regulations made by the Scottish Ministers under section 43(3) are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)).
- (7) This section does not apply to regulations under section 140 (commencement). 10

Interpretation

133 Meaning of “internet service”

- (1) In this Act “internet service” means a service that is made available by means of the internet.
- (2) For the purposes of subsection (1) a service is “made available by means of the internet” even where it is made available by means of a combination of – 15
- (a) the internet, and
 - (b) an electronic communications service.
- (3) “Electronic communications service” has the same meaning as in the Communications Act (see section 32(2) of that Act). 20

134 Meaning of terms relating to search services

- (1) This section applies for the purposes of this Act.
- (2) “Search engine” – 25
- (a) includes a service or functionality which enables a person to search some websites or databases (as well as a service or functionality which enables a person to search (in principle) all websites or databases);
 - (b) does not include a service which enables a person to search just one website or database.
- (3) “Search” means search by any means, including by input of text or images or by speech, and references to a search request are to be construed accordingly. 30
- (4) “Search results”, in relation to a search service, means content presented to a user of the service by operation of the search engine in response to a search request made by the user.
- (5) But “search results” does not include paid-for advertisements (as defined in section 39(7)). 35
- (6) References in this Act to encountering content “via search results” – 40
- (a) are to encountering content as a result of interacting with search results (for example, by clicking on them);
 - (b) do not include references to encountering content as a result of subsequent interactions with an internet service other than the search service.

- (7) “Interested person”, in relation to a search service, means a person that is responsible for a website or database capable of being searched by the search engine, provided that –
- (a) in the case of an individual, the individual is in the United Kingdom;
 - (b) in the case of an entity, the entity is incorporated or formed under the law of any part of the United Kingdom. 5
- (8) In subsections (4), (6) and (7), references to a search service include references to a user-to-user service that includes a search engine.

135 Meaning of “functionality”

- (1) In this Act “functionality”, in relation to a user-to-user service, includes any feature that enables interactions of any description between users of the service by means of the service, and includes any feature enabling a user to do anything listed in subsection (2). 10
- (2) The things are –
- (a) creating a user profile, including an anonymous or pseudonymous profile; 15
 - (b) searching within the service for user-generated content or other users of the service;
 - (c) forwarding content to, or sharing content with, other users of the service; 20
 - (d) sharing content on other internet services;
 - (e) sending direct messages to or speaking to other users of the service, or interacting with them in another way (for example by playing a game);
 - (f) expressing a view on content, including, for example, by –
 - (i) applying a “like” or “dislike” button or other button of that nature, 25
 - (ii) applying an emoji or symbol of any kind,
 - (iii) engaging in yes/no voting, or
 - (iv) rating or scoring content in any way (including giving star or numerical ratings); 30
 - (g) sharing current or historic location information with other users of the service, recording a user’s movements, or identifying which other users of the service are nearby;
 - (h) following or subscribing to particular kinds of content or particular users of the service; 35
 - (i) creating lists, collections, archives or directories of content or users of the service;
 - (j) tagging or labelling content present on the service;
 - (k) uploading content relating to goods or services;
 - (l) applying or changing settings on the service which affect the presentation of user-generated content on the service; 40
 - (m) accessing other internet services through content present on the service (for example through hyperlinks).
- (3) In this Act “functionality”, in relation to a search service, includes (in particular) a feature that enables users to search websites or databases. 45
- (4) In this section “user-generated content” has the meaning given by section 39 (see subsections (3) and (4) of that section).
- (5) In this act the “characteristics” of a service include the functionalities of the service, its user base, business model, governance and other systems and processes.

136 Meaning of “online safety functions” and “online safety matters”

- (1) In this Act references to OFCOM’s “online safety functions” –
- (a) are references to the functions that OFCOM have under the following enactments –
 - (i) this Act, 5
 - (ii) section 3 of the Communications Act (general duties), so far as duties under that section relate to a function which is an online safety function by reason of any other provision of this subsection, 10
 - (iii) section 7 of the Communications Act (duty to carry out impact assessments), so far as functions under that section relate to regulated services, 10
 - (iv) section 11 of the Communications Act (duty to promote media literacy), so far as functions under that section relate to regulated services, 15
 - (v) section 14(6)(a) of the Communications Act (research about media literacy), so far as the function under that provision relates to regulated services, 15
 - (vi) section 14(6B) of the Communications Act (research about users’ experience of regulated services); 20
 - (b) include references to OFCOM’s power to do anything appearing to them to be incidental or conducive to the carrying out of any of their functions mentioned in paragraph (a)(i), (iii), (iv), (v) or (vi) (see section 1(3) of the Communications Act).
- (2) In this Act “online safety matters” means the matters to which OFCOM’s online safety functions relate. 25

137 Interpretation

- (1) In this Act –
- “adult” means a person aged 18 or over;
 - “child” means a person under the age of 18; 30
 - “the Communications Act” means the Communications Act 2003;
 - “confirmation decision” means a confirmation decision under section 83;
 - “content” means anything communicated by means of an internet service, whether publicly or privately, including written material or messages, oral communications, photographs, videos, visual images, music and data of any description; 35
 - “the Convention” has the meaning given by section 21(1) of the Human Rights Act 1998;
 - “country” includes territory;
 - “encounter”, in relation to content, means read, view, hear or otherwise experience content; 40
 - “entity” means a body or association of persons or an organisation, regardless of whether the body, association or organisation is –
 - (a) formed under the law of any part of the United Kingdom or of a country outside the United Kingdom, or 45
 - (b) a legal person under the law under which it is formed;
 - “functions” includes powers and duties;
 - “information notice” means an information notice under section 70;
 - “likely to be accessed by children” is to be construed in accordance with section 26 (see subsections (5) and (8) of that section);
 - “notice” means notice in writing;
 - “notify” means notify in writing, and “notification” is to be construed 5

accordingly;

“online safety objective” means the objectives found in section [1A];

“person” includes (in addition to an individual and a body of persons corporate or unincorporate) any organisation or association of persons;

“provisional notice of enforcement action” means a provisional notice of enforcement action under section 80;

“priority harm” means any of the harms listed in Schedule 3 or designated in regulations made by the Secretary of State under sections 44 or 47. 10

“publicly available” means available to members of the public in the United Kingdom;

“terms of service”, in relation to a user-to-user service, means the terms and conditions for use of the service by United Kingdom users.

- (2) References in this Act to “taking down” content are to any action that results in content being removed from a user-to-user service or being permanently hidden so users of the service cannot encounter it (and related expressions are to be construed accordingly). 15
- (3) For the purposes of this Act –
- (a) any reference to the use of or access to a service, or to content present on a service, is to be taken to include use of or access to the service or content on registering or on the making of a payment or on subscription; 20
- (b) any reference to content that is made available or that may be accessed, encountered or shared, is to be taken to include content that is made available or that may be accessed, encountered or shared for a limited period of time only. 25

138 Index of defined expressions

The Table below lists provisions which define or otherwise explain terms defined for this Act or for a Part of this Act. 30

adult	section 137	
Category 1 service	section 59(6)(a)	
Category 2A service	section 59(6)(b)	
Category 2B service	section 59(6)(c)	
Chapter 2 safety duty (in Part 2)	section 48	35
Chapter 3 safety duty (in Part 2)	section 48	
child	section 137	
the Communications Act	section 137	
confirmation decision	section 137	
content	section 137	40

content that is harmful to adults (in Part 2)	section 46	
content that is harmful to children (in Part 2)	section 45	
the Convention	section 137	
country	section 137	
CSEA content (in Part 2)	section 41	5
CSEA offence (in Part 2)	section 43	
encounter	section 137	
entity	section 137	
functionality	section 135	
functions	section 137	10
harm	section 137	
illegal content (in Part 2)	section 41	
information notice	section 137	
interested person	section 134	
internet service	section 133 (see also section 127(1))	15
likely to be accessed by children	sections 26 and 137	
news publisher content (in Part 2)	section 39(8) to (10)	
non-designated content that is harmful to children (in Part 2)	section 45	20
notice	section 137	
notify	section 137	
online safety functions	section 136	
online safety matters	section 136	
person	section 137	25
primary priority content that is harmful to children (in Part 2)	section 45	
priority content that is harmful to adults (in Part 2)	section 46	
priority content that is harmful to children (in Part 2)	section 45	30
priority illegal content (in Part 2)	section 41	
provider	section 116	

provisional notice of enforcement action	section 137	
publicly available	section 137	
recognised news publisher (in Part 2)	section 40	
regulated content (in Part 2)	section 39	
regulated search service	section 3(4)	5
regulated service	section 3(2)	
regulated user-to-user service	section 3(3)	
search	section 134	
search engine	section 134	
search request	section 134	10
search results	section 134	
search service	section 2 (see also section 127(1))	
taking down (content)	section 137(2)	
terms of service	section 137	15
terrorism content (in Part 2)	section 41	
terrorism offence (in Part 2)	section 42	
United Kingdom user	section 122	
user	section 122	
user-generated content (in Part 2)	section 39(3) and (4)	20
user-to-user service	section 2 (see also section 127(1))	
via search results	section 134	

Final provisions

139 Extent 25

This Act extends to England and Wales, Scotland and Northern Ireland.

140 Commencement

- (1) The following provisions come into force on the day on which this Act is passed—
- (a) sections 1 and 2, 30
 - (b) section 3(1) to (7) and Schedule 1,
 - (c) section 4,
 - (d) section 39(1) to (11) and (14),

- (e) sections 40 and 41,
 - (f) section 42(1) and Schedule 2,
 - (g) section 43(1) and Schedule 3,
 - (h) sections 44 to 46,
 - (i) section 47(1) and (2), 5
 - (j) section 48,
 - (k) section 106(3) to (6),
 - (l) section 107,
 - (m) section 116,
 - (n) section 122, 10
 - (o) section 127(1),
 - (p) sections 132 to 135,
 - (q) sections 137 to 139,
 - (r) this section, and
 - (s) section 141. 15
- (2) The remaining provisions of this Act come into force on such day as the Secretary of State may by regulations appoint.
- (3) Different days may be appointed for different purposes.
- (4) The day appointed for the coming into force of – 20
- (a) section 71 (requirement to name a senior manager), and
 - (b) section 73 (senior managers' liability: information offences),
- may not be a day that precedes the publication of the report on the outcome of the review required by section 115 (Secretary of State's review).
- (5) The Secretary of State may by regulations make transitional or saving provision in connection with the coming into force of any provision of this Act. 25
- (6) Any power under this section to make regulations is exercisable by statutory instrument.

141 Short title

This Act may be cited as the Online Safety Act 2021.

SCHEDULES

SCHEDULE 1

Section 3

EXEMPT SERVICES

Email services

- 1 A user-to-user service is exempt if emails are the only user-generated content enabled by the service. 5

SMS and MMS services

- 2 (1) A user-to-user service is exempt if SMS messages are the only user-generated content enabled by the service.
- (2) A user-to-user service is exempt if MMS messages are the only user-generated content enabled by the service. 10
- (3) A user-to-user service is exempt if SMS messages and MMS messages are the only user-generated content enabled by the service.
- (4) "SMS message" and "MMS message" have the meaning given by section 39(14). 15

Services offering only one-to-one live aural communications

- 3 (1) A user-to-user service is exempt if one-to-one live aural communications are the only user-generated content enabled by the service.
- (2) "One-to-one live aural communications" has the meaning given by section 39(6). 20

Internal business services

- 4 (1) A user-to-user service or a search service is exempt if the conditions in subparagraph (2) are satisfied in relation to the service.
- (2) The conditions are—
- (a) the service is an internal resource or tool for a business, or for more than one business carried on by the same person, 25
- (b) the person carrying on the business (or businesses) ("P") is the provider of the service, and
- (c) the service is available only to a closed group of people comprising some or all of the following— 30
- (i) where P is an individual or individuals, that individual or those individuals,
- (ii) where P is an entity, officers of P,

- (iii) persons who work for P (including as employees or volunteers) for the purposes of any activities of the business (or any of the businesses) in question, and
 - (iv) any other persons authorised by a person within sub-paragraph (i), (ii) or (iii) to use the service for the purposes of any activities of the business (or any of the businesses) in question (for example, a contractor, consultant or auditor).
- (3) A search service is also exempt if the conditions in sub-paragraph (2) are satisfied in relation to the part of the service that is a search engine (reading references in that sub-paragraph to the service as references to the search engine). 10
- (4) In this paragraph –
- “business” includes trade, profession or other concern (whether or not carried on for profit);
 - “officer” includes a director, manager, partner, associate, secretary or other similar officer. 15

Limited functionality services

- 5 A user-to-user service is exempt if the functionalities of the service are limited, such that users are able to communicate by means of the service only in the following ways – 20
- (a) posting comments or reviews relating to content produced and published by the provider of the service (or by a person acting on behalf of the provider of the service);
 - (b) sharing such comments or reviews on a different internet service;
 - (c) expressing a view on such comments or reviews, or on content mentioned in sub-paragraph (a), by means of – 25
 - (i) applying a “like” or “dislike” button or other button of that nature,
 - (ii) applying an emoji or symbol of any kind,
 - (iii) engaging in yes/no voting, or 30
 - (iv) rating or scoring the content (or the comments or reviews) in any way (including giving star or numerical ratings).

Public bodies

- 6 (1) A user-to-user service or a search service is exempt if – 35
- (a) both of the following conditions apply in relation to the service –
 - (i) the provider of the service is a public authority within the meaning of section 6 of the Human Rights Act 1998, and
 - (ii) the service is provided in the exercise of public functions only,
 - (b) the provider of the service is Parliament, or either House of Parliament, 40
 - (c) the provider of the service is a foreign sovereign power, or
 - (d) both of the following conditions apply in relation to the service –
 - (i) the provider of the service is an entity formed under the law of a country outside the United Kingdom, which exercises functions of a public nature, and 45
 - (ii) the service is provided in the exercise of such functions only.

- (2) In this paragraph, “public function” means a function that is a function of a public nature for the purposes of the Human Rights Act 1998.

Interpretation

- 7 In this Schedule “user-generated content” has the meaning given by section 39 (see subsections (3) and (4) of that section). 5

SCHEDULE 2

Section 42

TERRORISM OFFENCES

- 1 An offence under any of the following provisions of the Terrorism Act 2000—
- (a) section 11 (membership of a proscribed organisation); 10
 - (b) section 12(1) (inviting support for a proscribed organisation);
 - (c) section 12(1A) (expressing an opinion or belief supportive of a proscribed organisation);
 - (d) section 12(2) (arranging a meeting supportive of a proscribed organisation); 15
 - (e) section 13(1A) (publishing image of uniform of proscribed organisation);
 - (f) section 15(1) (terrorist fund-raising);
 - (g) section 54(1) (providing weapons training);
 - (h) section 54(3) (inviting another to receive weapons training); 20
 - (i) section 56 (directing a terrorist organisation);
 - (j) section 58 (collection of information likely to be of use to a terrorist);
 - (k) section 58A (publishing information about members of the armed forces etc);
 - (l) sections 59 to 61 (inciting terrorism outside the United Kingdom). 25
- 2 An offence under section 113 of the Anti-terrorism, Crime and Security Act 2001 (use of noxious substances or things).
- 3 An offence under any of the following provisions of the Terrorism Act 2006—
- (a) section 1 (encouragement of terrorism); 30
 - (b) section 2 (dissemination of terrorist publications);
 - (c) section 5 (preparation of terrorist acts);
 - (d) section 6 (training for terrorism);
 - (e) section 11 (terrorist threats relating to radioactive devices etc).

Inchoate offences 35

- 4 (1) An offence of attempting or conspiring to commit an offence specified in this Schedule.
- (2) An offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting) in relation to an offence specified in this Schedule (or, in Scotland, inciting a person to commit such an offence). 40

- (3) An offence of aiding, abetting, counselling or procuring the commission of an offence specified in this Schedule (or, in Scotland, being involved art and part in the commission of such an offence).

SCHEDULE 3

Section 43

CHILD SEXUAL EXPLOITATION AND ABUSE OFFENCES

5

PART 1

ENGLAND AND WALES

- | | | |
|--------------------------|--|----|
| 1 | An offence under section 1 of the Protection of Children Act 1978 (indecent photographs of children). | |
| 2 | An offence under section 160 of the Criminal Justice Act 1988 (possession of indecent photograph of a child). | 10 |
| 3 | An offence under any of the following provisions of the Sexual Offences Act 2003 – | |
| | (a) section 8 (causing or inciting a child under 13 to engage in sexual activity); | 15 |
| | (b) section 10 (causing or inciting a child to engage in sexual activity); | |
| | (c) section 12 (causing a child to watch a sexual act); | |
| | (d) section 13 (child sex offences committed by children or young persons); | |
| | (e) section 14 (arranging or facilitating commission of a child sex offence); | 20 |
| | (f) section 15 (meeting a child following sexual grooming etc); | |
| | (g) section 15A (sexual communication with a child); | |
| | (h) section 47 (paying for sexual services of a child); | |
| | (i) section 48 (causing or inciting sexual exploitation of a child); | 25 |
| | (j) section 49 (controlling a child in relation to sexual exploitation); | |
| | (k) section 50 (arranging or facilitating sexual exploitation of a child). | |
| 4 | An offence under section 62 of the Coroners and Justice Act 2009 (possession of prohibited image of a child). | |
| 5 | An offence under section 69 of the Serious Crime Act 2015 (possession of paedophile manual). | 30 |
| <i>Inchoate offences</i> | | |
| 6 | (1) An offence of attempting or conspiring to commit an offence specified in this Part. | |
| | (2) An offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting) in relation to an offence specified in this Part. | 35 |
| | (3) An offence of aiding, abetting, counselling or procuring the commission of an offence specified in this Part. | |

PART 2

SCOTLAND

- 7 An offence under either of the following provisions of the Civic Government (Scotland) Act 1982 –
- (a) section 52 (indecent photographs etc of children); 5
 - (b) section 52A (possession of indecent photographs of children).
- 8 An offence under any of the following provisions of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 –
- (a) section 1 (meeting a child following certain preliminary contact);
 - (b) section 10 (causing or inciting provision by child of sexual services or child pornography); 10
 - (c) section 11 (controlling a child providing sexual services or involved in pornography).
- 9 An offence under any of the following provisions of the Sexual Offences (Scotland) Act 2009 – 15
- (a) section 23 (causing a young child to look at a sexual image);
 - (b) section 24 (communicating indecently with a young child etc);
 - (c) section 33 (causing an older child to look at a sexual image);
 - (d) section 34 (communicating indecently with an older child etc);
 - (e) section 54 (incitement to commit certain sexual acts outside Scotland). 20

Inchoate offences

- 10 (1) An offence of attempting or conspiring to commit an offence specified in this Part.
- (2) An offence of inciting a person to commit an offence specified in this Part. 25
- (3) An offence of aiding, abetting, counselling or procuring the commission of an offence specified in this Part, or being involved in and part in the commission of such an offence.

PART 3

NORTHERN IRELAND

- 11 An offence under Article 3 of the Protection of Children (Northern Ireland) Order 1978 (S.I. 1978/1047 (N.I. 17)) (indecent photographs of children). 30
- 12 An offence under any of the following provisions of the Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)) – 35
- (a) Article 15 (causing or inciting a child under 13 to engage in sexual activity);
 - (b) Article 17 (causing or inciting a child to engage in sexual activity);
 - (c) Article 19 (causing a child to watch a sexual act);
 - (d) Article 20 (sexual offences against children committed by children or young persons); 40
 - (e) Article 21 (arranging or facilitating commission of a sex offence against a child);

- (f) Article 22 (meeting a child following sexual grooming etc);
- (g) Article 22A (sexual communication with a child);
- (h) Article 38 (causing or inciting child prostitution or pornography);
- (i) Article 39 (controlling a child prostitute or a child involved in pornography); 5
- (j) Article 40 (arranging or facilitating child prostitution or pornography).

Inchoate offences

- 13 (1) An offence of attempting or conspiring to commit an offence specified in this Part. 10
- (2) An offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting) in relation to an offence specified in this Part.
- (3) An offence of aiding, abetting, counselling or procuring the commission of an offence specified in this Part.

SCHEDULE 3A - to be drafted

SCHEDULE 4 - Deleted

SCHEDULE 5

Section 77

POWERS OF ENTRY AND INSPECTION

10

Authorised persons

- 1 (1) OFCOM may authorise persons to –
- (a) exercise powers of entry and inspection under paragraph 2;
 - (b) apply for a warrant to be issued under paragraph 3, and execute such a warrant that has been issued. 15
- (2) “Authorised person” means –
- (a) in paragraph 2, a person authorised for the purposes mentioned in sub-paragraph (1)(a);
 - (b) in other paragraphs of this Schedule, a person authorised for the purposes mentioned in sub-paragraph (1)(b). 20
- (3) An authorisation under this paragraph must be in writing.

Power of entry and inspection without a warrant

- 2 (1) The powers conferred by this paragraph may be exercised in relation to premises only if OFCOM –
- (a) believe that the premises are being used by the provider of a regulated service in connection with the provision of a regulated service, and 25
 - (b) have given the occupier of the premises seven days’ notice that they propose to exercise the powers.
- (2) The powers conferred by this paragraph must be exercised at a reasonable hour. 30
- (3) Before exercising a power of entry under this paragraph, an authorised person must, if requested to do so by a person on the premises –
- (a) produce evidence of the authorised person’s identity, and
 - (b) outline the purpose for which the power is exercised. 35
- (4) An authorised person may –
- (a) enter the premises,
 - (b) inspect the premises,
 - (c) observe the carrying on of the regulated service by the provider,
 - (d) inspect any document or equipment found on the premises, 40

- (e) require any person on the premises to produce any document or record in the person's possession or control that the authorised person considers is relevant to the provision of the regulated service, and
 - (f) require any person on the premises to provide an explanation of any document or to state where it may be found. 5
- (5) An authorised person may take copies of, or make extracts from, any document found or produced under sub-paragraph (4).
- (6) An authorised person may exercise powers under this paragraph only if the information or document sought to be obtained as a result is required in connection with the exercise by OFCOM of their functions under this Act. 10

Conditions for issue of a warrant

- 3 (1) A justice may issue a warrant in relation to premises specified in an application only if the justice is satisfied on sworn information in writing given by an authorised person that – 15
- (a) the premises are being used by the provider of a regulated service in connection with the provision of a regulated service;
 - (b) there are reasonable grounds to suspect that –
 - (i) the provider is failing to comply, or has failed to comply, with an enforceable requirement in respect of that service, and 20
 - (ii) there are documents or records on the premises or capable of being viewed using equipment on the premises, or there is equipment on the premises, relevant to OFCOM's investigation into that failure (or possible failure); and 25
 - (c) any of the conditions in sub-paragraph (2) are satisfied.
- (2) The conditions are that –
- (a) OFCOM have given seven days' notice to the occupier of the premises demanding access to the premises and –
 - (i) access to the premises was demanded at a reasonable hour and was unreasonably refused, or 30
 - (ii) entry to the premises was granted but the occupier unreasonably refused to comply with a request by a person acting on behalf of OFCOM to be allowed to do any of the things mentioned in paragraph 5; 35
 - (b) compliance with the conditions in paragraph (a) would defeat the object of entry to the premises; or
 - (c) OFCOM require access to the premises urgently.
- (3) In this paragraph "enforceable requirement" means –
- (a) a duty or requirement referred to in section 82, except that it does not include a reference to a requirement referred to in paragraph (t), (u) or (w) of that section, and 40
 - (b) a requirement imposed by a use of technology notice given to the provider in question under section 64, 65 or 67.

Evidence of authority 45

- 4 (1) Before exercising a power of entry under a warrant –

- (a) an authorised person must, if requested to do so—
 - (i) produce evidence of the authorised person’s identity, and
 - (ii) outline the purpose for which the power is exercised;
 - (b) an authorised person must—
 - (i) produce a copy of the warrant, and 5
 - (ii) supply the occupier (if present), or any other person appearing to the authorised person to be in charge of the premises, with a copy of the warrant.
- (2) If neither the occupier nor any other person appearing to the authorised person to be in charge of the premises is present, the authorised person must leave a copy of the warrant in a prominent place on the premises. 10

Powers exercisable by warrant

- 5 A warrant must authorise an authorised person —
- (a) to enter the premises specified in the warrant,
 - (b) to search the premises, to the extent that is reasonable for the purposes of OFCOM’s investigation into whether there is, or has been, a failure referred to in paragraph 3(1)(b)(i) (“OFCOM’s investigation”), 15
 - (c) to inspect any documents, records or equipment found on the premises which may be relevant to OFCOM’s investigation, 20
 - (d) to require any person on the premises to provide any information that the authorised person thinks is or is likely to be relevant to OFCOM’s investigation, including requiring an explanation of any document or record found on the premises or capable of being viewed using equipment on the premises, 25
 - (e) to require any person on the premises to give the authorised person any other assistance that the authorised person may reasonably require,
 - (f) to require any person on the premises to produce any document or record in the person’s possession or control that the authorised person thinks is or is likely to be relevant to OFCOM’s investigation, 30
 - (g) to take copies of, or extracts from, any document or record found on the premises or produced in response to a requirement under paragraph (f),
 - (h) to require information which is stored in electronic form and is accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible (or from which it can readily be produced in a visible and legible form), 35
 - (i) to take copies of, or extracts from, anything produced in accordance with paragraph (h) that the authorised person thinks is or is likely to be relevant to OFCOM’s investigation, 40
 - (j) to seize any document or record found on the premises or produced in response to a requirement under paragraph (f), or anything produced in accordance with paragraph (h), or any equipment found on the premises, that the authorised person reasonably believes is or is likely to be relevant to OFCOM’s investigation, 45
 - (k) to open any container found on the premises that the authorised person thinks is or is likely to be relevant to OFCOM’s investigation, and

- (l) to take a photograph or video recording of anything found on the premises that the authorised person thinks is or is likely to be relevant to OFCOM's investigation.

Powers of seizure: supplementary

- 6 (1) This paragraph applies where the person executing a warrant seizes a document, record or other thing. 5
- (2) The person must, on request –
- (a) give a receipt for it, and
- (b) (in the case of a document or record) give an occupier of the premises a copy of it. 10
- (3) Sub-paragraph (2)(b) does not apply if the person executing the warrant considers that providing a copy would result in undue delay.
- (4) Anything seized may be retained for so long as is necessary in all the circumstances.

Further provision about executing warrants

- 7 Entry and search under a warrant must be at a reasonable hour, unless it appears to the person executing it that the purpose of a search would be frustrated or seriously prejudiced by entry at a reasonable hour. 15
- 8 Entry and search under a warrant must be within the period of one month starting with the date of its issue. 20
- 9 An authorised person executing a warrant may take such other persons and such equipment and materials onto the premises as appear to that person to be necessary.
- 10 A person taken on to the premises under paragraph 9 may exercise any power conferred on an authorised person by paragraph 5 if the person is in the company and under the supervision of an authorised person executing a warrant. 25
- 11 An authorised person may use reasonable force, if necessary, for the purpose of exercising a power under a warrant.
- 12 A warrant authorises entry on one occasion only. 30
- 13 If the premises are unoccupied or the occupier is temporarily absent, an authorised person executing a warrant must leave the premises as effectively secured against trespassers as that person found them.

Return of warrants

- 14 (1) Where a warrant is executed – 35
- (a) it must be returned to the appropriate person (see sub-paragraph (3)) after being executed, and
- (b) the person by whom it is executed must write on the warrant a statement of the powers that have been exercised under the warrant.
- (2) Where a warrant is not executed, it must be returned to the appropriate person within the time authorised for its execution. 40

- (3) The appropriate person is –
- (a) in the case of a warrant issued in England and Wales, the designated officer for the local justice area in which the justice of the peace was acting when issuing the warrant;
 - (b) in the case of a warrant issued in Scotland, the clerk of the justice of the peace court; 5
 - (c) in the case of a warrant issued in Northern Ireland, the clerk of petty sessions.
- (4) The appropriate person must retain a search warrant returned under subparagraph (1) or (2) until the end of the period of 12 months starting with the date of its return. 10
- (5) If during that period the occupier of premises to which the warrant relates asks to inspect it, the occupier must be allowed to do so.

Restrictions on powers under paragraphs 2 and 3

- 15 (1) This paragraph applies in relation to – 15
- (a) powers conferred by paragraph 2 (entry and inspection without warrant), and
 - (b) powers exercisable under a warrant.
- (2) Those powers are not exercisable in respect of a dwelling.
- (3) Those powers are not exercisable in relation to information or documents in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality of communications) could be maintained in legal proceedings. 20

Interpretation

- 16 In this Schedule “premises” means premises in the United Kingdom. 25
- 17 In paragraphs 4 to 15 “warrant” means a warrant issued under paragraph 3.
- 18 In paragraph 3 “justice” means –
- (a) in England and Wales, a justice of the peace;
 - (b) in Scotland, a justice of the peace;
 - (c) in Northern Ireland, a lay magistrate. 30
- 19 In the application of paragraph 3(1) to Scotland, the reference to sworn information in writing has effect as a reference to evidence on oath.
- 20 In the application of paragraph 3(1) to Northern Ireland, the reference to sworn information in writing has effect as a reference to a complaint on oath.