

## Online Safety Bill - Amendments to strengthen the Online Safety Bill "Triple Shield"

**A number of Online Safety Bill amendments, supported by Carnegie UK and many other organisations, have been tabled for Lords Committee stage with cross-party support. Taken together, these will significantly strengthen the regime for adults following the Government's decision to remove the adult safety duties at Commons Report stage.** This note brings briefing on these amendments together for ease of access and explains how, taken as a package, they will work. Speaking notes for Committee stage debates are available on request.

### Background

Government changes to the Online Safety Bill at Commons recommittal stage, as a result of high-profile and sustained campaigning about the so-called "legal but harmful" issue in the second half of last year, led to the removal of the adult safety duties from the Bill. Significantly, the risk assessment obligation associated with these duties also disappeared. This is despite the [Government's own polling](#), in July last year, indicating that 84% of adults were "concerned about seeing harmful content - such as racism, misogyny, homophobia and content that encourages self-harm" and 68% wanted social media companies to do more.

The Government brought in a "Triple Shield", comprising: the existing duties on platforms to **remove illegal content**, plus new **terms of service duties** (which essentially mean that companies must enforce their ToS consistently, acting on harmful content that is included while ensuring that content that is not listed is not taken down) and **user empowerment duties** (allowing users to protect themselves from specified harmful content).

The Government in the Commons took a conscious decision to weaken the protection of adults, which is their prerogative, but the replacement scheme requires tightening up to work properly.

- There are crude performance criteria for the new duties, but unlike other duties there is no mechanism in the Bill to make companies assess whether the new measures are working nor whether the way the duties are being carried out is in accordance with the criteria set out in the Bill or impinge upon freedom of expression.
- There is **no minimum standard for companies' ToS**.
- The user empowerment tools will be **off by default**.
- There is **no future-proofing** of the regime, whether undertaken by OFCOM or the Government.

While it is true that companies' existing enforcement of their Terms of Service is patchy at best and the Bill will – in theory – provide a route for some improvement in this regard, there is nothing within the new Triple Shield to stop the dilution of those existing ToS by companies seeking to avoid enforcement action. Diluted ToS will mean even greater pressure being placed on adult users – a burden that does not fall evenly - more vulnerable adults will be at greater risk of harm from, for example, self-harm material, racist and misogynistic abuse, targeted and persistent trolling. Vulnerable adults or those with deteriorating mental health

will be asked to try to limit their own exposure to harm, rather than benefitting from a risk-based set of measures that would improve the overall environment for all users. **Without any risk assessment related to the duties, or forward-looking mechanism to assess emerging threats, the Secretary of State, OFCOM and users will have no idea where, when or how the regime needs to be modified as a result.** The systemic and design-based proposals in amendments by Noble Peers and Lords Spiritual will not impact the rights to freedom of speech of other users but will go some way to reducing the risk that other users – particularly minoritised groups – are silenced and/or driven offline.

**We strongly urge Peers to support the following amendments to address these weaknesses and provide further detail below.**

- **44 & 158: Introduce a risk assessment requirement for both the terms of service and user empowerment duties** (Bishop of Oxford, clauses 12 and 66)
- **154: Set minimum standards for terms of service reflecting the content covered by the user empowerment duties** (Lord Stevenson, clause 65 – this applies to search as well as user-to-user services)
- **36 & 37: User empowerment tools to be on by default** (Lord Clement-Jones, clause 12)
- **195, 239 & 263: Introduce a future-proofing risk assessment requirement for Ofcom** (Bishop of Oxford, clauses 89 and 159)
- **97 & 304: Introduce a code of practice on violence against women and girls** (Baroness Morgan, clause 36)

### **Strengthening the terms of service and user empowerment duties**

The requirement for a risk assessment of the extent of harm experienced by adults on platforms was included in the previous adult safety duties. The Government has not provided an adequate justification as to why this has been removed and should be challenged to explain in detail why the risk assessment was a threat to free speech. Without a risk assessment to inform the scope of the regime it can't really be said to be a risk management regime. It is a step back to old-fashioned, detailed rule-making, a structure that we know tends to fail and emphasises content and take down over more systemic approaches that seek to tackle the providers' role in creating and exacerbating problems online.

Depriving people of basic information about the nature of harms on a service undermines their ability to protect themselves and manage their own risk, but the approach that the Government is now taking in respect of harm to adults expects adults to manage their risk. "Bad" providers can remain in denial about the extent of harms to adults. OFCOM can only have a narrow view of harms to adults with no formalised early warning system of new harms emerging that are not listed in new clause 12. We support the **insertion of a requirement for risk assessments for both the terms of service (clause 66) and user empowerment duties** below and a **forward-looking risk assessment to capture emerging harms (clause 89 and 159)**. In addition, we support two substantive sets of amendments to these duties, detailed below.

#### **Terms of service duties**

The second part of the Government's "Triple Shield" comprises new Terms of Service duties, requiring companies to enforce their terms of service consistently, acting on harmful content included while ensuring that content not listed is not taken down. It also provides for service providers to describe to customers how they can sue for breach of contract in terms of service.

The Bill currently assumes that companies already have – and will preserve – robust terms of service. Without minimum terms of service, there is nothing in the Bill to prevent companies, in responding to the new regulatory requirements, either producing ToS that are overly complicated and “lawyered”, or, conversely, stripping out existing protections to avoid enforcement action if they fail to enforce them. Transparency is reduced by dropping the requirement for ToS to address issues raised in (the now dropped) adults risk assessment – this limits people ability to make an informed choice.

There are a number of important amendments laid by Lord Stevenson that will strengthen these duties to ensure there is **a minimum standard for platforms’ terms of service** – namely that they are “adequate and appropriate”, as defined in OFCOM’s guidance, and by ensuring terms of service cover the “third shield” list of harmful content that the Government has included in the user empowerment tools. Specifically, these include:

- **Amendment numbers: 16, 12, 70-72, 75, 79-81, 197** - bringing “terms of service” into the scope of what’s included in the definition of “platform governance” and therefore covered by duties relating to the “design and operation of a service”; and changing references to “a publicly available statement” in the OSB to “terms of service” (clauses 8, 10, 22, 23, 24, 25, 89)
- **Amendment number 154**: introducing a statutory requirement around platforms’ terms of service, ensuring they are “adequate and appropriate” in the context of the services offered and linking the requirement to the content listed in the user empowerment duties (clause 64)
- **Amendment numbers 159 & 160**: broadening the requirement for OFCOM to produce guidance on the minimum standards for terms of service to include all services, including search services, covered by Part 3 of the Bill and ensure its guidance outlines how a platform’s terms of service would be considered “adequate and appropriate” (clause 66)
- **Amendment number 158**: introducing the requirement for platforms to carry out a “suitable and sufficient” risk assessment of their terms of service (clause 66)
- **Amendment number 174**: broadening the transparency requirements around user-to-user services’ terms of service, ensuring information can be sought on the scope of these terms and not just their application. (Schedule 8)

*Detailed amendments: terms of service*

| <b>No.</b>          | <b>Clause</b> | <b>Tabled by</b> | <b>Detail</b>   |
|---------------------|---------------|------------------|---|
| <a href="#">16</a>  | 8             | Lord Stevenson   | <i>Amend cl 8(5)(h): insert "Terms of Service," after "governance" page 7 line 16</i>   |
| <a href="#">21</a>  | 10            | Lord Stevenson   | <i>Amend cl 10(6)(h): insert "Terms of Service," after "governance" page 9 line 44</i>  |
|                     | 22            | Lord Stevenson   | <i>Amend cl 22(5)(d): insert "Terms of Service," after "governance" page 24 line 31</i>   |
| <a href="#">70</a>  | 23            | Lord Stevenson   | <i>Page 25, line 22, leave out "a publicly available statement" and insert "terms of service"</i>   |
| <a href="#">71</a>  |               |                  | <i>Page 25, line 26, leave out "a publicly available statement" and insert "terms of service"</i>   |
| <a href="#">72</a>  |               |                  | <i>Page 25, line 30, leave out "publicly available statement" and insert "terms of service"</i>   |
| <a href="#">75</a>  | 24            | Lord Stevenson   | <i>Amend cl 24: Insert "terms of service," after "governance," page 26, line 38,</i>  |
| <a href="#">79</a>  | 25            | Lord Stevenson   | <i>Page 27, line 32, leave out "a publicly available statement" and insert "terms of service"</i>   |
| <a href="#">80</a>  |               |                  | <i>Page 27, line 41, leave out "a publicly available statement" and insert "terms of service"</i>   |
| <a href="#">81</a>  |               |                  | <i>Page 27, line 45, leave out "publicly available statement" and insert "terms of service"</i>   |
| <a href="#">154</a> | 64            | Lord Stevenson   | <i>Before clause 64: Insert the following new Clause— "Requirement on regulated services to maintain appropriate terms of service (1) A provider of a regulated Part 3 service must provide adequate and appropriate terms of service in respect of its service. (2) A provider of a Part 3 service must include in its terms of service provisions covering the matters listed in section 12."</i>   |
| <a href="#">158</a> | 66            | Bishop of Oxford | <i>After clause 65, insert new clause – "<b>Provider assessment of duties under sections 64 and 65</b> (1) Providers of Category 1 services must carry out a suitable and sufficient assessment of the extent to which they have carried out the duties under sections 64 and 65 ensuring that assessment reflects any material changes to terms of service. (2) An assessment under subsection (1) must be sent to OFCOM every six months after the commencement of this Chapter."</i> |
| <a href="#">159</a> | 66            | Lord Stevenson   | <i>Amend cl 66 (1) replace "Category 1" with "Part 3"</i>   |
| <a href="#">160</a> | 66            | Lord Stevenson   | <i>After "sections" insert "(Requirement on regulated services to maintain appropriate terms of service)," Page 61, line 11,</i>  |
| <a href="#">174</a> | Sch 8         | Lord Stevenson   | <i>Amend Schedule 8, Part 1, point 4:<br/>Page 206, line 19, after first "The" insert "scope and"<br/>Page 207, line 30, leave out paragraph 21 and insert— "21 The scope and application of the terms of service."</i>   |
| <a href="#">197</a> | 89            | Lord Stevenson   | <i>Amend cl 89(11) insert ", Terms of Service" after "governance", p 79, line 41</i>  |
| <a href="#">218</a> | 119           | Lord Stevenson   | <i>Amend cl 119(2) insert "section 63A" in column 1 and "Adequate and appropriate Terms of Service" in column two after line 25 on page 102</i>   |
| <a href="#">302</a> | 207           | Lord Stevenson   | <i>Amend 207(1), delete "user-to-user" and replace with "Part 3"; p 171 line 30</i>   |

## User empowerment duties

In addition to supporting the amendment to provide for a reinsertion of a risk assessment to ensure that the user empowerment duties in clause 12 are functioning as they should be ([amendment number 44: Bishop of Oxford](#)), we strongly agree with amendments 36 and 37, tabled by Lord Clement Jones, that these **user empowerment tools should be “on” by default.**

In a number of cases, people at a point of crisis (suicidal thoughts, eating disorders, etc) might not be able to turn the tools on due to their affected mental state. For others, default on saves them from having to engage with content to utilise tools in the first instance. Given that a rational adult should be able to find the tools to use them either way (on or off), they should be able to turn them off just as easily – if not more so – than on. The existence of harms arising from mental states tips the balance in favour of turning the tool on by default.

### Detailed amendments: user empowerment duties

| No                 | Clause | Tabled by          | Detail  |
|--------------------|--------|--------------------|---|
| <a href="#">36</a> | 12     | Lord Clement Jones | Clause 12, page 12, line 19, <i>leave out “made available to” and insert “in operation for”</i>   |
| <a href="#">37</a> | 12     | Lord Clement Jones | Clause 12, page 12, line 23, <i>leave out “take advantage of” and insert “disapply”</i>   |
| <a href="#">44</a> | 12     | Bishop of Oxford   | Page 13, line 32, at end insert— <i>“(16) Services to which these duties apply must make a suitable and sufficient assessment of the extent to which they have carried out the duties in this section including in each assessment material changes from the previous assessment such as new or removed user empowerment features. (17) An assessment under subsection (16) must be carried out and sent to OFCOM every six months after the commencement of this Chapter.”</i> |

## “Future-proofing” risk assessment: clause 89, clause 147 and clause 159

The OSB gives the Secretary of State an obligation to review the operation of the regime (cl 159(3)) to consider how effective it is at “minimising the harm to individuals in the UK presented by content on regulated services”. However, this goes beyond the scope of OFCOM’s risk assessment duties, with novel issues therefore unsupported by OFCOM’s research; it also stops short of examining harms from how the services operate and does not require the Secretary of State to consult OFCOM in her review.

Moreover, as noted above, the risk assessment that underpinned the adult safety duties has been removed, to the detriment of collecting vital forward-looking information that would support analysis of both companies’ operations and inform user choice. OFCOM can only have a narrow view of harms to adults with no formalised early warning system of new harms emerging that are not listed in new Cl 12. The removal of a forward-looking risk assessment would sadly facilitate a “trickle-down” effect where harms to adults that could become harms to children are not assessed and then become a problem for children.

**OFCOM should be given a specific duty to perform a horizon scan for all harms to advise the Secretary of State and Parliament.** This would not affect the current scope of the regime nor would it require companies to carry out their own risk assessment. In addition, a constraint on the Secretary of State with regard to the scope of the review set out in clause 159 should be removed to ensure that a future review of the OSB regime by the SoS makes a broad assessment of the harms arising from regulated services, not just regulated content on them. This allows proper consideration of risk management and whether the regime needs expanding or contracting.

### Detailed amendments

| No                  | Clause | Tabled by        | Detail   |
|---------------------|--------|------------------|--|
| <a href="#">195</a> | 89     | Bishop of Oxford | Page 79, line 4, at end insert— “(d) the risk of future harm to individuals in the United Kingdom from the operation of Part 3 services; (e) the risk of future harm to individuals in the United Kingdom from the regulatory regime being insufficiently future-proofed. (1A) Risk assessments under paragraph (1)(e) must identify areas where the regulatory regime is not future-proofed and the risks arising from these areas.”  |
| <a href="#">239</a> | 147    | Bishop of Oxford | After clause 147, insert the following new clause: <b>Future management of risk</b> (1) OFCOM must produce a report on trends in risk of harm to individuals in the United Kingdom presented by regulated services, as well as approaches to minimising any such risk. (2) The report may recommend amendments to the regime to keep it up to date by bringing new types of harm into scope, or to remove existing areas from scope where risks are no longer evident, where OFCOM consider it would be prudent to amend. (3) The report may make reference to any reports by OFCOM under section 56 (regulations under section 54: OFCOM review and report).” |
| <a href="#">263</a> | 159    | Bishop of Oxford | Page 137, line 4, leave out “content on”<br><br>Page 137, line 32, at end insert— “(6A) In carrying out the review, the Secretary of State must take into account any report published by OFCOM under section (Future management of risk).”  |

## **Violence against women and girls code of practice: clause 36 and clause 207**

Women and girls are not named in the Bill as a distinct group which receive disproportionate levels of violence and abuse. The Bill identifies a number of areas where codes of practice are required but, despite the distinctive position of women and girls, VAWG is not one of these areas. We support the amendment tabled by Baroness Morgan, and co-signed by Baroness Kidron, the Lord Bishop of Gloucester and Lord Knight, to insert a VAWG Code of Practice into the Bill (clause 36). (Detailed briefing on this amendment is available separately.)

The Bill implicitly assumes that there is no interconnection between the different safety duties. This is not the case in relation to VAWG. By relying entirely on criminal offences – existing and forthcoming – to protect women and girls, the Bill will do little to address the wider environment in which violence and abuse against them is perpetrated and facilitated. The user empowerment tools do not incentivise services to address the levels of content that might be harmful to women and girls on their platform or the way in which the design of their service is facilitating or encouraging its spread, putting the onus on individual users to protect themselves. Moreover, this does not prevent millions of others from similar backgrounds from being exposed to it.

The recent rise of Andrew Tate underlines the dangerous and toxic threats women and girls face online. The Government's **decision to remove the adult safety duties from the Bill makes the introduction of the code even more vital.**

### *Detailed amendments*

| <b>No</b>           | <b>Clause</b> | <b>Tabled by</b> | <b>Detail</b>   |
|---------------------|---------------|------------------|---|
| <a href="#">97</a>  | 36            | Baroness Morgan  | <i>Page 36, line 42, at end insert "including a code of practice describing measures for the purpose of compliance with the relevant duties so far as relating to violence against women and girls."</i>  |
| <a href="#">304</a> | 207           | Baroness Morgan  | <i>Page 171, line 35, at end insert— "'violence against women and girls" has the same meaning as "violence against women" in Article 3 of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence ("the Istanbul Convention")."</i> |

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