

Online Safety Bill: amendments to reduce Secretary of State powers and protect Ofcom's independence

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. This note brings briefing on these amendments together for ease of access and explains how they will work. Speaking notes for Committee debates are available on request.

Background

There are two interlinked issues that arise from the myriad powers granted to the Secretary of State throughout the Bill:

- The unjustified intrusion of the Secretary of State (from whichever party is in power) in decisions that are about the regulation of speech (**amendment 119**)
- The unnecessary levels of interference and threats to the independence of Ofcom that arise from the powers of direction to Ofcom on its day-to-day matters.

Sir Jeremy Wright, the DCMS Select Committee, and Alex Davies Jones for Labour front bench both put down amendments at Commons Report to improve the situation but these were rejected by the Government. The topic was discussed extensively at Lords Second Reading and the Lords Communications and Digital Committee, following their hearing with (then-)DCMS Ministers in January, [wrote to Michelle Donelan](#) to request the Bill be amended. This call – specifically to remove or amend clause 39 – has since been echoed by the [Delegated Powers and Regulatory Reform Committee](#) and concerns noted by the [Constitution Committee](#). (See annex A for relevant extracts.)

The Government – [in its WMS of 7/7/22](#) and in subsequent Parliamentary debates (see [Lords Communications and Digital Committee Hearing](#) and [Lords Second Reading Debate](#), extracts in Annex A) - has indicated a concession is coming on clause 39 (previously clause 40) in the Lords. We advise that this should be resisted as the Government has still not demonstrated that the new wording it proposes will address the risk of unjustified interference in the regime. We set out more on this below.

The Secretary of State's powers in the Bill

There are extensive powers given to the Secretary of State in the Online Safety Bill. In addition to the problematic powers discussed below, the Secretary of State, for example, can:

- to specify in regulations the primary priority content harmful to children and priority content harmful to children (clause 54)
- amend the duties on fraudulent advertising (clause 191)

- change the exemptions to the regime (clause 192)
- amend list of terrorism offences, CSEA offences and priority offences (Clause 194)

A full table of these powers is attached for reference in the annex to this briefing.

Threats to Ofcom's independence

- The Secretary of State should not be able to give OFCOM direction. OFCOM's independence in day-to-day decision making is paramount to preserving freedom of expression.
- Independence of media regulators is the norm in developed democracies and the UK has signed many international statements in this vein, including as recently as April 2022 at the Council of Europe (*'media and communication governance should be independent and impartial to avoid undue influence on policy making, discriminatory treatment and preferential treatment of powerful groups, including those with significant political or economic power'*).
- The Bill has introduced powers for the Secretary of State to direct OFCOM on internet safety codes, codes which give put the regime into practice for companies – these powers should be removed. After all, in broadcasting regulation OFCOM is trusted to make powerful programme codes with no interference from the Secretary of State.
- The Secretary of State also takes powers to give tactical guidance to OFCOM on the 'exercise of their functions' (cl 157, previously cl 148) as well as guidance on strategic priorities (cl 153, previously cl 144): the tactical guidance should be removed.
- The Bill also provides for certain purposes emergency-like powers (cl 156) in the Bill but which are not limited to emergency circumstances and which would allow the Secretary of State to direct OFCOM and even target individual companies – the ability to direct should be removed to preserve OFCOM's independence.
- The Secretary of State can also give directions to OFCOM to set up an advisory committee "to provide them with advice about online safety matters of a kind specified in the direction" (cl 155).

Amendments

119: Clause 39 Secretary of State's powers of direction

Clause 39(1)(a) gives the Secretary of State power to direct OFCOM to make specific changes to some of OFCOM's draft codes of practice if s/he '*believes that...modifications are required...for reasons of public policy*'. The codes are the fulcrum of the regulatory regime and this is a significant interference in OFCOM's independence.

Ofcom itself has noted that the 'reasons of public policy' power to direct might weaken the regime. If OFCOM has undertaken a logical process, rooted in evidence to arrive at a draft code then it is hard to see how a 'reasons of public policy' based direction is not irrational. This then creates a vulnerability to legal challenge. **This clause should be removed.**

We also have concerns that the same clause gives the Secretary of State powers to direct OFCOM on national security or public safety grounds, the Terrorism and CSEA codes of practice. The government has not demonstrated why it needs a power to direct. In the broadcasting regime, there are no equivalent powers and the Secretary of State was able to resolve the case of Russia Today on national security grounds with public correspondence between the Secretary of State and OFCOM.

The Secretary of State can use the cl 39 powers to direct OFCOM continuously in a form of ping pong before laying a code – this signals a willingness of government to wear OFCOM down and impose the government's view on the regulator. It seems to be preparing the ground for an irrational or highly disputed request.

Potential Government Concession

In her WMS of 7/7/22, the then Secretary of State signalled that an amendment would be coming in the Lords to address the concerns raised about this clause. The WMS states:

We recognise the concerns raised that the Bill allows too great a degree of executive control. These have focused in particular on the power for the Secretary of State to require Ofcom to modify a draft of a code of practice for reasons of public policy. We remain committed to ensuring that Ofcom maintains its regulatory independence, which is vital to the success of the framework. With this in mind, we have built a number of safeguards into the use of the Secretary of State's powers, to ensure they are consistent with our intention of having an independent regulator, and are only used in limited circumstances with appropriate scrutiny.

We will make two substantive changes to this power: firstly, we will make it clear that this power would only be used 'in exceptional circumstances'; and secondly, we will replace the 'public policy' wording with a more clearly defined list of reasons for which the Secretary of State could issue a direction. This list will comprise national security, public safety, public health, the UK's international relations and obligations, economic policy and burden to business.

At Report stage on 12th July, the then Bill Minister (Damian Collins) responded to the concerns raised by Wright, the DCMS Select Committee and Davies-Jones about clause 39:

[..] This applies only to the period when the codes of practice are being agreed, before they are laid before Parliament. This is not a general provision. I think sometimes there has been a sense that the Secretary of State can at any time pick up the phone to Ofcom and have it amend the codes. Once the codes are approved by the House they are fixed. The codes do not relate to the duties. The duties are set out in the legislation. This is just the guidance that is given to companies on how they comply. There may well be circumstances in which the Secretary of State might look at those draft codes and say, "Actually, we think Ofcom has given the tech companies too easy a ride here. We expected the legislation to push them further." Therefore it is understandable that in the draft form the Secretary of State might wish to have the power to raise that question, and not dictate to Ofcom but ask it to come back with amendments.

I take on board the spirit of what Members have said and the interest that the Select Committee has shown. I am happy to continue that dialogue, and obviously the Government will take forward the issues that they set out in the letter that was sent

*round last week to Members, showing how we seek to bring in that definition.
(Column 218)*

At the most recent hearing of the Lords Communications and Digital Committee, the current Bill Minister (Paul Scully) said:

We are going to make it clear in the legislation in your House that this power would be used only in exceptional circumstances. We are going to replace that public policy wording with a more clearly defined list of reasons for which the Secretary of State could make a direction. It might be public health; it might be national security. There will be very specific areas in which Ofcom may not have, or inevitably in those situations would not have, the right level of information to be able to make such judgments. Ofcom's independence and expertise are obviously of the utmost importance to the success of the regime, but, because of the very broad nature of online harms, there will be subjects that may go beyond its remit as a regulator.

Eight months on from its initial signalling, the Government has not yet provided the draft of its proposed amendment and definitions. We do not believe it will go far enough. We therefore support Lord Stevenson's amendments to clause 39, which would remove the ability of the Secretary of State to direct OFCOM to modify a draft of a code of conduct for reasons of public policy and replace it with the ability for the Secretary of State to write to OFCOM in public with non-binding observations on codes and for OFCOM to have regard to such letters.

This is the conventional approach to UK government/regulator relationships. The government's ability to write letters should not be infinite. **Codes issued after such correspondence should be approved by the House using the affirmative procedure (clause 40).**

Amendment

No	Clause	Tabled by	Detail
119	39	Lord Stevenson	<i>Page 39, line 9, leave out sub-paragraph (a).</i>
119	39	Lord Stevenson	<i>Leave out Clause 39 and insert the following new Clause— "Secretary of State's observations on OFCOM codes of practice (1) The Secretary of State may write to OFCOM with observations on codes that OFCOM is preparing. (2) The Secretary of State must publish any letter under subsection (1) within one week of the letter being sent. (3) OFCOM must have due regard to the contents of letters from the Secretary of State but those contents do not amount to a direction. (4) When OFCOM submits a code of practice to the Secretary of State, OFCOM must publish a description of how it has had due regard to any letter under subsection (1)."</i>

257: Clause 157 Secretary of State's Guidance

The Secretary of State takes powers in cl 157 to issue detailed tactical guidance to OFCOM on the 'exercise of their functions', to which OFCOM should have regard. This is in addition to Cl 153 which allows the Secretary of State to make a statement of

strategic priorities relating to online safety. The tactical guidance is incredibly broad in scope with no constraints other than the frequency at which such guidance may be issued (every three years) and could operate to shift de facto the way the regime works. The guidance has no Parliamentary input into its drafting. Even qualified by 'have regard' (157 (8)), this power confers a huge breadth in terms of the context of potential interference in how OFCOM carries out regulation. Labour [spoke against this clause in Committee](#) on 21st June, bringing forth an amendment to Page 124, line 40, leave out Clause 147 (as was). The amendment did not pass. **We therefore support Baroness Stowell's amendment that clause 157 should be deleted.**

Amendment

No	Clause	Tabled by	Detail
257	157	Baroness Stowell	<i>Page 135, line 38, leave out paragraph (a)</i>

Clause 156 Directions in Special Circumstances

Clause 156 provides strong powers for the Secretary of State to direct OFCOM to intervene with platforms if the SoS '*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.*' The direction is to be for a specified period, although there are no limits on that period. Although the powers to be used are OFCOM's media literacy powers, as structured the provision still envisages that regulated service providers must do something in response. In sum, this still permits the Secretary of State to interfere with how OFCOM operates the Online Safety regime. The publishing of directions provides only limited ex post oversight. If these powers are envisaged as emergency powers they should at the least be limited to emergency situations.

Additional areas of concern

We provide a table as an annex to this briefing which sets out over a dozen other areas of the Bill where the SofS's powers give rise to concern. The Labour front bench team in the Commons put down a number of amendments to address these at Commons report stage which aimed to convert the various powers of direction into more conventional ability to write letters to which OFCOM has to have regard.

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March 2023

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ANNEX A: recent House of Lords debates and statements re Secretary of State powers

Communications and Digital Committee Hearing - 25th January 2023

Paul Scully- “we have proposed the changes in the Written Ministerial Statement that was published on 7 July. Just to outline those, we are going to make it clear in the legislation in your House that this power would be used only in exceptional circumstances. We are going to replace that public policy wording with a more clearly defined list of reasons for which the Secretary of State could make a direction. It might be public health; it might be national security. There will be very specific areas in which Ofcom may not have, or inevitably in those situations would not have, the right level of information to be able to make such judgments. Ofcom's independence and expertise are obviously of the utmost importance to the success of the regime, but, because of the very broad nature of online harms, there will be subjects that may go beyond its remit as a regulator.”

...

Lord Lipsey: Are you not aware that, when this comes to Parliament and to the Lords, we will not accept this?... We will not accept this. It is not a runner. Is it not time that you thought again before putting too much investment into something that cannot possibly survive?”

Paul Scully: “a lot of this will have been out in the public before it even gets to the Secretary of State discussing this. The affirmative procedure will also be public, so if there is a sniff of deals being done in the corridors, as Lord Lipsey says, that is not going to make any Secretary of State look particularly good. It would take a pretty emboldened Secretary of State to go down the route, frankly, because of the public looking in on it. It is the old approach that sunlight is the best form of disinfectant.”

Lord Lipsey: “Do correct me if I am wrong, but one of the things about the Secretary of State intervening is exceptional circumstances. The judge of that is the Secretary of State. It does not get near Parliament in time for that judgment to be made. If ever a code comes before Parliament and we want to question whether something is exceptional, yes, we have a say then, but by then the water has flowed under the bridge.”

Chair, Baroness Stowell: “I am still not clear whether there is an ongoing facility for the Secretary of State to engage in a form of pingpong with Ofcom before something gets agreed between those two entities and then gets laid before Parliament.”

Paul Scully: Theoretically, that is possible; in practice, we do not expect that to happen.”

Chair: “the extent to which there is ongoing dialogue between the Secretary of State and Ofcom on codes is only going to delay things further. If there is already concern within Ofcom about the timeline”

Letter from Baroness Stowell to Secretary of State Michelle Donelan, following the Committee's hearing:

On clause 39:

- "The explanations we have received for needing this power were unconvincing. The inclusion of powers to direct Ofcom for reasons of "economic policy and burden to business" was particularly poorly evidenced. Nor does the proposed amendment address the fact that the Government should respect Ofcom's independence in developing the codes of practice in the first place. The proposed amendment remains so broad that it could still capture an extensive range of issues. It goes substantially beyond what is provided in comparable legislation, such as the Communications Act 2003. The Government has also committed to tabling an amendment to clause 39 to provide that the power will be used only in exceptional circumstances. The Minister did not clarify in detail what this might involve. If it is an emergency power this should be made explicit."
- "The Government's proposed amendment to clarify the Secretary of State's powers is cosmetic and inadequate. It would provide needlessly expansive powers to undermine Ofcom's independence by interfering with the actual implementation of the online safety regime."
- "Clause 39 empowers the Secretary of State to engage in a private form of pingpong with Ofcom, potentially indefinitely, before any parliamentary oversight comes into play. This is troubling. It is also unnecessary. We recommend that the rest of clause 39 is amended to enable the Secretary of State to write to Ofcom about national security, terrorism, public safety or child sexual exploitation. Ofcom should be required to have regard to such letters but not be bound by them, and it can set out its reasons in the usual manner. In the event of emergencies we would expect Ofcom to follow the course set out by the Secretary of State, recognising the Government's responsibility for public safety and national security. Ofcom's draft codes which are amended following a Secretary of State letter should require parliamentary approval via the affirmative procedure."

Second Reading Debate (House of Lords)

Lord Parkinson, DCMS (opening statement)- "we remain committed to ensuring that Ofcom maintains its regulatory independence, which is vital to the success of this framework. As we are introducing ground-breaking regulation, our aim is to balance the need for the regulator's independence with appropriate oversight by Parliament and the elected Government.... We intend to bring forward two changes to the existing power: first, replacing the "public policy" wording with a defined list of reasons that a direction can be made; and secondly, making it clear that this element of the power can only be used in exceptional circumstances.... the framework ensures that Parliament will always have the final say on codes of practice, and that strong safeguards are in place to ensure that the use of this power is transparent and proportionate."

Baroness Merron- “There is a legitimate concern around the decision of Ministers to take powers of direction over what is supposed to be an independent regulator and to leave so much to secondary legislation. The need for flexibility is indeed understood, but Parliament must have an active role, rather than being sidelined.”

Lord Bishop of Manchester- “While I recognise that the Government have sought to address these concerns, more is required—Clauses 39 and 157 are not fit for purpose in their present form. We also need clear safeguards and parliamentary scrutiny for Secretary of State powers in the Bill that will allow them to direct Ofcom to direct companies in whatever we mean by “special circumstances”. Maintaining Ofcom's autonomy in decision-making is critical to preserving freedom of expression more broadly. While the pace of technological innovation sometimes requires very timely response, the Bill places far too much power in the hands of the Secretary of State.”

Lord Allan of Hallam- “This brings me to my first plea, which is that we allow Ofcom to make decisions about what constitutes compliance with the duties of care in the Bill without others second-guessing it. Because judgments and trade-offs are a necessary part of content moderation, there will always be people who take opposing views on where lines should have been drawn... we should avoid creating mechanisms that would lead to competing and potentially conflicting definitions of compliance emerging. One chain of command—Parliament to Ofcom to the platforms—is best for accountability and effective regulation.”

Baroness Stowell- “First, the regulator's independence is of fundamental importance, as the noble Baroness, Lady Merron, and others have already mentioned. The separation of powers between the Executive and the regulator is the cornerstone of media regulation in western Europe. Any government powers to direct or give guidance should be clearly defined, justified and limited in scope. The Online Safety Bill, as it stands, gives us the opposite.... Clause 39 allows the Secretary of State to direct Ofcom to change its codes of practice on regulating social media firms. That is not about setting priorities; it is direct and unnecessary interference. In our view, the Government's proposed amendment to clarify this clause, as my noble friend described, remains inadequate and does not respect the regulator's independence.... Clause 39 also empowers the Secretary of State to direct Ofcom in a private form of ping-pong as it develops codes of practice. This process could in theory go on for ever before any parliamentary oversight comes into play. Other powers are equally unnecessary.”

Lord Parkinson (closing statement)- “we have to balance the need for regulatory independence with the appropriate oversight for Parliament and the Government. In particular, concerns were raised about the Secretary of State's power of direction in Clause 39. Ofcom's independence and expertise will be of utmost importance here, but the very broad nature of online harms means that there may be subjects that go beyond its expertise and remit as a regulator... The framework in the Bill ensures that Parliament will always have the final say on codes of practice, and the use of the affirmative procedure will further ensure that there is an increased level of scrutiny in the exceptional cases where that element of the power is used. As I said, I know that we will look at that in detail in Committee.”

Delegated Powers and Regulatory Reform Committee report (March 2023)

On Clause 39: "The power of the Secretary of State to direct OFCOM to modify draft codes of practice is significant because the codes will play an important part in the regulatory regime. At the Bill's Second Reading in the House of Lords, a number of speakers expressed concern that this power of direction puts OFCOM's independence as a regulator at risk.

The Memorandum provides the following justification for the power— *"It is important that there are suitable, transparent checks and balances to ensure that the implementation of the regime by the independent regulator, OFCOM, delivers the policy intent of the democratically elected government Delegating this power is essential because it allows the Secretary of State to ensure that the codes may be modified to respond to public policy, national security, or public safety concerns."*

However, the Memorandum doesn't provide a convincing explanation: it proceeds by way of assertion rather than explanation. It states that the power is "essential" but it fails to explain why. It gives no examples of the sort of public policy, national security or public safety concerns that might prompt a direction or of the sort of modifications that might be directed to address such concerns. We find the power to direct modifications to a code of practice "for reasons of public policy" particularly troubling as "public policy" (which is not defined) is a vague term of broad scope."

On clause 157: "this Guidance is necessary to allow the Secretary of State to provide clarity to the regulator and others by setting out how they expect OFCOM to carry out their statutory functions in order to apply the legislation." The Committee came to the conclusion that "The reference to providing "clarity" to the regulator by setting out how the Secretary of State "expect[s]" OFCOM to carry out its functions suggests that the Secretary of State sees the purpose of the guidance as being a means to influence the way in which OFCOM exercises its statutory functions."

The Committee went on to note that "one of the primary concerns expressed about the Bill has been the too great degree of executive control over OFCOM. In our view, this concern lends weight to the argument that Parliament should have a role in scrutinising the guidance to enable it to scrutinise the extent to which, and the ways in which, the guidance is used to exert influence over the exercise of functions by OFCOM."

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

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

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

Provision	Content/purpose summary
<p>Cl. 39(1)</p> <p>Cls. 39 (2)-(3) and Cls. 39 (7)-(9)</p> <p>Cl. 39 (10)</p>	<p><u>SoS powers of direction:</u></p> <p>SoS power to direct OFCOM to modify a draft of a CoP to reflect <i>public policy</i> OR re: CSEA + terrorism for reasons of <i>national security or public safety</i></p> <p>Note powers of repeat direction under cl. 39 (2)-(3) and further directions under cl. 39 (7) but with limitations, i.e., reasons must be given (<i>national security or public safety</i>) and must lay before Parliament modified draft(s).</p> <p>See also power under cl. 39 (10) to remove/obscure info. in OFCOM's review statement subject to OFCOM's agreement</p> <p>This clause should be deleted.</p>
<p>Cl. 157 (1) & (3)</p>	<p><u>SoS guidance:</u></p> <p>SoS power to give guidance to OFCOM re:</p> <ol style="list-style-type: none"> a. OFCOM's exercise of its statutory powers and functions under the OSB; b. OFCOM's functions and general powers under s. 1(3) CA 2003; c. OFCOM's functions under s. 11 CA 2003 (media literacy). <p>but must first consult OFCOM before issuing/revising/replacing such guidance.</p> <p>Note some other elements of oversight: minimum frequency under cl. 157(4), present to Parliament under cl. 157(6) but no timings; publish the guidance under cl. 157 (7) and annual reporting on SoS functions under cl. 148 (amendment to s. 390(2) of the CA 2003)</p> <p>This clause should be deleted.</p>

Other powers – in sequential order	
Cl. 36 (6)	<p><u>CoP about duties:</u></p> <p>SoS must be consulted by OFCOM when preparing a cl. 36 draft CoP/amendments to it</p>
Cl. 38 (1) Cl. 38 (2)	<p><u>Procedures for issuing CoP:</u></p> <p>OFCCOM CoP draft (under cl. 36) to be submitted to the SoS</p> <p>SoS to lay the draft before Parliament, unless they intend to exercise power under cl. 39 (1) power of direction below</p>
Cl. 42 (2) Cl. 42 (3) Cl. 42 (6)	<p><u>Review of CoP:</u></p> <p>SoS can require OFCOM to review a terrorism or CSEA CoP if necessary for reasons of <i>national security</i> or <i>public safety</i></p> <p>SoS to receive statement by OFCOM explaining reasons why the regulator considers changes to the CoP are not required</p> <p>SoS can make representations to OFCOM about the desirability of removing/obscuring info. in the OFCOM review statement (for reasons of national security, public safety, or government external affairs)</p> <p>Sir Jeremy Wright and the DCMS Select Committee both tabled amendments at Commons Report to remove all or part of this clause (then clause 41); see amendments 13 and 45 respectively.</p>
Cl. 43 (2)-(3)	<p><u>Minor amendments of CoP:</u></p> <p>SoS must be notified by OFCOM of proposed minor amendments and SoS to agree</p>
Cl. 54 (2)-(3)	<p><u>Content harmful to children:</u></p> <p>SoS to specify in regs. primary priority content harmful to children and priority content harmful to children but note:</p> <ul style="list-style-type: none"> a. limitations under cl. 55(1) and cl. 55(2); b. oversight under cl. 55(4): SoS must consult OFCOM AND under cl. 56; OFCOM must review regs. and publish report (SoS must receive copy)
Cls. 60 (1)-(3)	<p><u>Regs. about NCA reports:</u></p> <p>SoS power to make regs re: reports to NCA (see cl. 60 requirement to report CSEA to NCA) but must first consult NCA, OFCOM and other persons the SoS considers appropriate</p>

Cl. 68 (12)	<u>Transparency reports about certain Part 3 services:</u> SoS power to amend frequency of transparency reporting process but cl. 68(13) requires that SoS first consults OFCOM.
Cl. 73 (3)-(4)	<u>OFCOM guidance on duties about reg. provider porn. content:</u> SoS must be consulted before such guidance is produced (incl. revised or replacement guidance) and notified where minor revisions are proposed
Cl. 74 (3)(b) & 74 (11) Cl. 74(6)(b) Cl. 74(7)	<u>Duty to notify OFCOM:</u> SoS power to make regs. describing types of supporting evidence, documents, and other info. required for notification under cl. 74(1) but must consult OFCOM first SoS approval required for OFCOM to create exemption re: notification and fees (cl. 75) SoS approval required for OFCOM to revoke such an exemption
Cl. 76(4) Cl. 76(7)	<u>OFCOM statement re: qualifying worldwide revenue:</u> SoS to be consulted before OFCOM produces such a statement (incl. revised or replacement statement) SoS must receive copy of the statement (incl. revised or replacement) and lay before Parliament
Cl. 77(2) & 77(4) Cl. 77(5)	<u>Setting of threshold figure:</u> SoS power to set (and keep under review) appropriate threshold figure for cl. 74 (notification) and cl. 75 (fees) after having taken advice from OFCOM to inform the setting of such threshold; see cl. 77(3) for procedure (publication and laying before Parliament) SoS may request OFCOM to conduct a consultation if the SoS considers it appropriate to revise the threshold figure.
Cl. 78 (1) & (2) Cl. 78 (4) & (5)	<u>SoS guidance on principles re: cl. 75 payable fees:</u> SoS to issue guidance to OFCOM in determining fees payable but must first consult OFCOM before issuing/revising/replacing it; note time limitation for revising/replacing guidance in cl. 78 (3) SoS to lay guidance (and related revisions) before Parliament and publish said guidance (incl. revised/replacement)
Cl. 83(3)	SoS power to extend period within which OFCOM must respond to SoS statement of strategic priorities re: online safety matters under cl. 153(1)

Cl. 103 (2)	<p><u>Collab. and info. sharing with overseas regulators:</u></p> <p>SoS power to specify in regs. overseas regulators in relation to which OFCOM's ability to co-operate etc. applies</p>
Cl. 106(3)	<p>Amendment to s. 24B of the CA 2003 (formulation of policy) – provision of info. to the SoS</p>
Cl. 113(13)	<p>SoS power to set out minimum accuracy standards for detecting terrorism and/or CSEA content but following advice from OFCOM</p>
Cl. 116(2)	<p>SoS to receive copy of OFCOM's annual report and lay it before Parliament</p>
Cl. 131 (10)	<p><u>Service restriction orders (business disruption measures):</u></p> <p>SoS to be informed by OFCOM after a service restriction order has been made</p>
Cl. 133 (8)	<p><u>Access restriction orders (business disruption measures):</u></p> <p>SoS to be informed by OFCOM after an access restriction order has been made</p>
Cl. 138 (4)(a)	<p><u>OFCOM guidance re: enforcement action:</u></p> <p>SoS to be consulted before OFCOM produces guidance (incl. revised/replacement guidance) about how it will use its enforcement powers</p> <p>Labour tabled an amendment (23) to this clause (then cl 130) at Commons Report stage to remove the SofS from the list of consultees.</p>
Cl. 146 (5)	<p><u>OFCOM report about independent researchers' access to info:</u></p> <p>SoS to receive copy of such report and lay it before Parliament</p>
Cl. 150 (3) & (5)	<p><u>Power to make super-complaints:</u></p> <p>SoS power to designate in regs. criteria for eligible entity to make super-complaints but must first consult OFCOM and other appropriate persons</p> <p>Labour tabled amendments (24 and 25) to this clause (then 141) at Commons report stage to give OFCOM the power to make the regulations.</p>
Cl. 151 (1) & (3)	<p><u>Procedure for super-complaints:</u></p> <p>SoS to make regs re: procedural matters about super-complaints but must first consult OFCOM and other appropriate persons</p>

Cl. 153 & 154	<p><u>Statement of strategic priorities:</u></p> <p>SoS power to prepare a statement of strategic priorities re: online safety matters and publish in a manner determined by SoS (see cl. 153(5)); but frequency limitations on amendments (see cl. 153(7) and cl. 153(8)), consultation (see cl. 154(2)) and draft before Parliament (see cl. 154 (4))</p> <p>Labour tabled a series of amendments (26-30) to this clause (then 146) at Commons Report stage.</p>
Cl. 155 (1) & (2) Cl. 155 (5)	<p><u>Advisory committee directions:</u></p> <p>SoS can direct OFCOM to establish expert committee to advise on a specific online safety matter but must first consult OFCOM before giving/varying direction;</p> <p>SoS can vary/revoke such direction</p>
Cl. 156(1) & (6) Cl. 156 (2) Cl. 156(3)-(5) Cl. 156 (7)	<p><u>Directions in special circ/s (public health/safety or security):</u></p> <p>SoS power to direct OFCOM where the SoS has 'reasonable grounds for believing' that there is a threat to the public's health or safety, or to national security but SoS must publish reasons</p> <p>This includes directing OFCOM to:</p> <ul style="list-style-type: none"> a. prioritise action to respond to a specific threat when exercising its media literacy functions; b. require specified service providers (or providers of regulated services generally) to publicly report on what steps they are taking to respond to that threat <p>SoS power to vary/revoke such direction</p>
Cl. 157 (1) & (3)	<p><u>SoS guidance:</u></p> <p>SoS power to give guidance to OFCOM re:</p> <ul style="list-style-type: none"> d. OFCOM's exercise of its statutory powers and functions under the OSB; e. OFCOM's functions and general powers under s. 1(3) CA 2003; f. OFCOM's functions under s. 11 CA 2003 (media literacy). <p>but must first consult OFCOM before issuing/revising/replacing such guidance.</p> <p>Note some other elements of oversight: minimum frequency under cl. 157(4), present to Parliament under cl. 157(6) but no timings; publish the guidance under cl. 157 (7) and annual reporting on SoS functions under cl. 148 (amendment to s. 390(2) of the CA 2003)</p>
Cl. 159 (1)	<p><u>OSB review:</u></p> <p>SoS to undertake review to assess framework effectiveness</p>

Cl. 159 (6)-(7) Cl. 159 (2) & (3)-(4) Cl. 159 (5)	SoS to publish and lay before Parliament (but no time limits) Review timing requirements set down and considerations SoS to consult OFCOM and appropriate persons in carrying out the review;
Cl. 191 (1)	<u>Powers to amend OSB/Act:</u> SoS power to amend by regs. cl. 35 (duties about fraudulent advertising on Cat 1 services) but subject to constraints: <ul style="list-style-type: none"> a. cl. 191(2) for criteria new offences must meet before SoS includes in the list; and b. cl. 191 (3) re: offences that cannot be added to avoid reg. duplication.
Cl. 192	SoS powers to amend/repeal provisions re: exempt content or services, i.e., regs. can exempt certain content/services from OSB scope or bring them into scope (conditions apply);
Cl. 193	SoS powers to amend the list in Part 2 of Sch. 1 re: para. 10 of Sch. 1 exemption (descriptions of education and childcare) which relates to England and for the relevant Devolved Ministers to amend the list in their respective areas (note this clause includes criteria to be met before such amendments are to be made).
Cl. 194 Cl. 194 (7)-(8)	SoS power to amend related Schs. 5, 6 and 7: <ul style="list-style-type: none"> a. SoS can amend list of terrorism offences; b. SoS can amend list of CSEA offences except for those extending only to Scotland (which may be amended by the Scottish Ministers); c. SoS can amend priority offences but with reasons listed in cl. 179(4) and only if the amendment would not add an offence of a type listed in cl. 179(5). <p>The SoS must consult the Scottish Ministers or the DoJ in NI before making regs. which amend Sch. 7 in connection with an offence extending to Scotland or NI only.</p>
Cl. 195	SoS power to make consequential provisions (by regs.) re: OSB or to regs. under the OSB; this includes power to amend CA 2003
Cl. 211 (2)	Commencement
Cl. 211 (5)	SoS power to make by regs. transitional, transitory, or saving provision in connection with coming into force of any provision in the OSB

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Schedule provision	Content/purpose summary
Sch. 4, ¹ para. 7 and Cl. 38, para. 6 (a)	<p>SoS power to amend by regs. paras. 4 or 5 of Sch. 4 to vary the online safety objectives for regulated U2U services and regulated search services</p> <p>Note such regs. may make consequential amend/s to para. 6 of the same Sch. (re: combined services).</p>
Sch. 8, ² para. 34	<p>SoS power to add/vary/omit (by regs.) matters in Sch. 8, Part 1 (Matters about which info. may be required: U2U part of service) or Sch. 8, Part 2 (Matters about which info. may be required: search engine)</p> <p>and</p> <p>SoS power to amend (by regs.) Sch. 8, para. 35 concerning factors OFCOM must consider when determining what info. to request</p> <p>but SoS must consult OFCOM before making para. 34 regs.</p>
<p>Sch. 10,³ paras. 3(5) and 3(8)</p> <p>New Sch. 10 makes provision about fees chargeable to providers of regulated services in connection with OFCOM's recovery of costs incurred on preparations for the exercise of their online safety functions.</p> <p>Sch. 10, paras. 4(2) and 4(4)</p> <p>Sch. 10, paras. 7(1) and 7(9)</p>	<p>SoS power to determine, after OFCOM's statement specifying the outstanding amount (i.e., portion of recoverable amount unlikely to be paid or recovered), an amount by which the latter is to be reduced; such determination is to be published in such a manner the SoS considers appropriate.</p> <p>SoS power to bring OFCOM's recovery of their initial costs process to an end by determining that the regulator is not to embark on another charging round; such determination is to be published in such a manner the SoS considers appropriate</p> <p>SoS power to make regs. they consider appropriate in re: the recovery by OFCOM of their initial costs but must first consult OFCOM and providers listed in para. 7(9)</p>
Sch. 11, ⁴ para. 1	SoS power to make regs. specifying threshold conditions for categories of Part 3 services. i.e.,

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