



Department  
for Culture,  
Media & Sport

Lord Parkinson of Whitley Bay  
Minister for Arts & Heritage  
1st Floor  
100 Parliament Street  
London SW1A 2BQ

E: [enquiries@dcms.gov.uk](mailto:enquiries@dcms.gov.uk)

[www.gov.uk/dcms](http://www.gov.uk/dcms)

26 May 2023

To: All Peers

INT2023/06038/DC

*my Lords,*

## **ONLINE SAFETY BILL: FOLLOW-UP TO DEBATE ON DAY SEVEN OF LORDS COMMITTEE**

Following the seventh day of debate in Committee on the Online Safety Bill, I am pleased to provide further information on a number of issues raised. As always, I am grateful to everyone who took part in the debate.

### **Baroness Fraser of Craigmaddie, Lord Stevenson of Balmacara and Lord Clement-Jones asked about issues relating to devolution**

#### *Regulatory Framework*

Baroness Fraser, Lord Stevenson and Lord Clement-Jones asked about devolved legislation with regard to the regulatory framework – in particular the illegal content duties – and the process for ongoing consultation and obtaining the consent of the devolved administrations.

We have strong working relationships with the devolved administrations, and have worked closely at all major stages of legislative drafting.

For priority offences set out in Schedules 5 (terrorism offences), 6 (offences related to child sexual exploitation and abuse), and 7 (other priority offences), Northern Irish and Scottish offences are included in the relevant schedules already. We expect ongoing informal engagement with the devolved administrations and the territorial offices to ensure that the Schedules remain up-to-date.

In relation to Schedule 7 (other priority offences), the Bill places a duty on the Secretary of State to consult the devolved authorities before making changes to add, amend, or remove offences which extend only to the devolved administrations, as per Clause 194(7) and (8). Any regulations amending Schedule 7, including in relation to offences in Scotland, Wales, or Northern Ireland, will be subject to the affirmative procedure, and Parliament will have the opportunity to debate any such changes to the scope of the regulatory framework. This power to amend Schedule 7 is limited to adding only offences which are prevalent online and which pose a risk of harm to people, looking at the severity of that harm. This limited power is needed since Schedule 7 covers such a broad range of criminal offences.



## *Criminal offences*

Lord Stevenson requested a table detailing how each of the new communications offences will apply in each of the four nations of the UK. **Annex A** below sets out the extent of the new offences, which reflects the preferences of the devolved administrations. In many cases where devolved administrations do not wish to extend the offence, this is because a similar offence already exists in their jurisdiction.

### **Lord Stevenson asked about the procedures for applying the Bill to the Bailiwick of Guernsey or the Isle of Man**

UK Acts do not normally apply to the Crown Dependencies; a Permissive Extent Clause is, however, offered to each during the passage of any major legislation pursued by the UK Government where it is identified that they may have a domestic interest in its provisions. The inclusion of this clause alone will not automatically extend the Online Safety Bill to their jurisdictions, but enables its extension via an Order-in-Council in the event a Crown Dependency determines that it would be appropriate to do so. Orders in Council are made by HM The King acting on the advice of His Privy Council; while not subject to the parliamentary process, they are made with the agreement of the Crown Dependencies under powers provided by the Permissive Extent clause.

The Permissive Extent clause has been included with the agreement of the Bailiwick of Guernsey and the Isle of Man. This approach respects the constitutional relationship of each of the Crown Dependencies and the United Kingdom. The Crown Dependencies are not part of the UK and have no representation in Parliament, as they are self-governing dependencies of The Crown. They have autonomy in their domestic affairs with each having a directly elected legislative assembly, administrative, fiscal and legal system, and courts of law. HM Government is responsible for the defence and international relations of the Crown Dependencies. Their relationship with the UK is exercised through The Crown.

### **Baroness Kidron asked for further information on the way in which suicide and self-harm material is covered by the Bill**

The Bill's regulatory framework tackles the harm caused by suicide and self-harm content in several ways.

There are strong duties on services in relation to illegal content. The Bill lists as priority offences in Schedule 7 section 2 of the Suicide Act 1961, which criminalises a person who assists the suicide of another, and section 4(3) of the Misuse of Drugs Act 1971, which makes it an offence to offer to sell controlled drugs. All in-scope services will be required proactively to tackle this type of illegal content. User-to-user services will be required to use means such as content moderation or safety-by-design measures to prevent users from encountering this type of content from the outset, and to mitigate or manage the risk of their services being used to facilitate or commit these offences. Search services will be required to use systems and processes designed to minimise the risk of people encountering this content by means of their service. This could include, for example, deprioritisation algorithms which ensure search results do not promote suicide fora or weblogs which intentionally assist or encourage suicide.

Additionally, I am pleased to confirm that the Government has tabled amendments to add a new offence of serious self-harm communications to the Bill. The offence will capture communications which intentionally encourage or assist serious self-harm, and will include any form of self-harm which meets the threshold of amounting to grievous bodily harm, including eating disorders. The offence will apply to all victims – children as well as adults – whether or

not the perpetrator is targeting a specific, known victim. Once the offence is introduced, all companies will need to treat it as illegal content under the framework, taking steps to remove it once they become aware of it.

In addition to the illegal content duties, the largest (Category 1) user-to-user service providers must also uphold their terms of service where they say that they will take down or restrict access to content. Many of these platforms say they ban content promoting self-harm, suicide and eating disorders, but users' experience is commonly very different from this. The Bill will give Ofcom the power to take enforcement action against companies which fail to uphold and consistently enforce their terms of service.

Furthermore, all adult users of Category 1 services, including the most vulnerable, will be offered tools to protect themselves from this content, even where it falls below the illegal threshold and providers do not ban it. Where users are likely to encounter content which promotes self-harm or suicide on Category 1 services, the service providers must offer user empowerment tools. These tools will allow adult users, including vulnerable users, to choose to reduce the likelihood of their encountering this kind of content or to be alerted to its nature in advance.

The Bill goes even further for children. The Government intends to designate content promoting suicide, self-harm, or eating disorders as categories of primary priority content on the face of the Bill. This means all user-to-user services in scope of the Bill which are likely to be accessed by children will need to risk assess for this kind of content on their service, and put in place proportionate systems and processes to prevent children of all ages from encountering it. Search services likely to be accessed by children will also need to risk-assess for this content and put in place proportionate systems and processes to minimise the risk of children of all ages encountering this kind of search content.

The Bill presents a significant step in reducing the accessibility of the most harmful content online, including material which promotes, assists or encourages suicide, self-harm, and eating disorders.

**Lord Stevenson asked whether parliamentary approval would be required should Ofcom negotiate contracted duties with charities.**

I welcome the support that was shown for the Internet Watch Foundation (IWF) during the debate. The Government will continue to champion its important role.

Ofcom will need to build a variety of relationships with other organisations, and may choose to pursue relationships with charitable bodies. As raised during the debate, Ofcom and the IWF have been discussing possible ways for the IWF to support the implementation of the regime, and are working to agree a Memorandum of Understanding. We encourage this engagement to support their future relationship and collaboration.

Ofcom is able to contract organisations to carry out discrete pieces of work — such as research in support of the fulfilment of its duties — without statutory co-designations being a requirement. It has specific powers, for example under Section 1(5)(b) of the Communications Act 2003, to enter into arrangements for others to carry out research and development work relevant to its functions.

For formal co-designation, whereby Ofcom's functions under the legislation may be exercised by an authorised person, there is an existing procedure in place. Section 1(7) of the Communications Act 2003 and Part 2 of the Deregulation and Contracting Out Act 1994 provide a route for Ofcom to enter into co-regulatory arrangements under the online safety framework. This requires a draft Order to be made by a Minister, following consultation with Ofcom, to be laid before, and approved by a resolution of, each House of Parliament. Our view is that this parliamentary scrutiny is appropriate for any contracting out of Ofcom's new online safety functions and Ofcom is content with this approach.

I hope these answers are satisfactory. I look forward to listening to the debate and further engaging with colleagues as the Bill continues its parliamentary passage.

With best wishes,

A handwritten signature in black ink, reading "Parkinson of Whitley Bay". The script is cursive and fluid, with the first name "Parkinson" being more prominent than the second.

Lord Parkinson of Whitley Bay  
**Minister for Arts & Heritage**