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To: All Peers

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My Lords,

ONLINE SAFETY BILL: FOLLOW UP TO DEBATE ON DAY 2 AND 3 OF REPORT

With gratitude to all who took part in our debates on the second and third day of Report, I am pleased to provide further information below on a number of issues raised.

Lord Clement-Jones asked for the privacy duties in regards to the age verification measures required by the Bill to be set out in greater detail.

I am pleased to set out in writing the Bill's safeguards for user privacy in relation to its requirements for age assurance. As I stated during the debate, there are strong safeguards for user privacy built into the Bill, which I will explain in detail here.

Firstly, I should emphasise that the privacy requirements for services in scope of Part 5 are aligned as far as possible with the duties on user-to-user and search services in Part 3. Providers in scope of Part 3 will be required to have regard to the importance of protecting users' privacy when putting in place measures to meet any of their safety duties. This includes measures such as age verification or age estimation to prevent children from encountering primary priority content which is harmful to children, including pornography. Part 5 providers will need to keep a written record of how they have had regard to the importance of protecting users' privacy when putting in place measures such as age verification or age estimation to prevent children from encountering provider pornographic content. These duties are set out in clauses 18 and 28 and at clause 73(2)(b) of the Bill.

The necessary difference is that for Part 5 services the duty is framed as part of a wider record-keeping duty, rather than a duty to follow the safeguards set out in Codes of Practice. The record-keeping duty is intended to make the privacy duty for Part 5 enforceable: for the Part 3 duties Ofcom can recommend measures in its Codes of Practice for compliance with the privacy duty, but for Part 5 Ofcom will not issue Codes, so the addition of a record-keeping duty – in which the provider must explain how it has had regard to the importance of protecting users from a breach of privacy – gives Ofcom a simple means to enforce the privacy duty for Part 5.

The Age Assurance Principles set out in amendment 124 further strengthen privacy provisions with regard to age assurance measures specifically, and refer to privacy to the greatest degree possible within the framework of the Bill. The combination of paragraphs 10(1) and (2)(b) of Schedule 4 require that measures recommended in a code of practice must be designed to incorporate safeguards to protect the privacy of users. The proposed Age Assurance Principles in amendment 124 include in new paragraph 11A(1) a confirmation that the principle in paragraph 10(2)(b) regarding the importance of protecting the privacy of users is relevant to the code of practice's age assurance provisions. This includes protecting against breach of any statutory provision or rule of law concerning privacy, including in relation to the processing of personal data. Data protection obligations under UK law include the obligation to keep personal data secure. There is also a principle in amendment 124 at new paragraph 11A(2)(b) that Ofcom must have regard to the relevant standards set out in section 123 of the Data Protection Act 2018 (the age appropriate design code).

We have not included a reference to the ICO's Age Appropriate Design Code for Part 5 providers as this Code is aimed at services which are likely to be accessed by children, and not at services publishing content which children should be restricted from accessing.

Furthermore, companies that use age verification or age estimation will need to comply with the UK's robust data protection laws or face enforcement action. This country has high standards of data protection legislation set by the UK General Data Protection Regulation (GDPR) and the Data Protection Act 2018, which includes strong sanctions for malpractice. UK GDPR already includes provisions on purpose limitation, storage limitation and secure storage. Article 5 of UK GDPR already requires that those principles be complied with when processing personal data for age assurance. Amendments 125 and 217 seek to duplicate those principles.

Through the combination of clause 105's amendments to section 393 of the Communications Act 2003 and the existing provisions in the Communications Act 2003 (Disclosure of Information) Order 2014, Ofcom will be able to share information it obtains through its online safety functions with the ICO for the purpose of facilitating the ICO's carrying out of its data protection legislation enforcement functions.

Finally, restating existing data protection obligations in the same words as in other legislation would be bad legislative drafting practice because it could lead to the inference more generally across the statute book that legal obligations set out in other legislation do not apply unless specifically listed in each new piece of legislation. It would be impracticable for all new legislation specifically to set out all the 'general' legal obligations which already apply due to the effect of other legislation (e.g. the Data Protection Act, the Equality Act). Additionally, restatement of existing legal obligations in slightly different words risks undesirable results as it will be unclear what the correct legal test is. This is confusing for affected parties and may undermine the impact of the data protection legislation and the work of the ICO.

Lord Knight of Weymouth asked about the process of redress for parents when trying to access data relating to a deceased child.

The Bill's provisions mean that, if a parent or guardian considers there to be content harmful to his or her child on a service accessible by his or her child, for example self-harm content, then that parent or guardian will be able to use the reporting mechanisms that such providers must offer to easily report said content. Further, if a parent or guardian considers that a service

accessible by his or her child is failing to comply with its child safety duties – for example by failing to prevent children from accessing content harmful to children, such as eating disorder or self-harm content – he or she will be able to make a complaint through the provider's mandatory complaints procedures.

Amendments 84, 98, 190, 191, 200, 224, 231, 234, 241, 243, 248, 252 and 261 will also require the largest services, such as the largest social media platforms and search services, to have easily accessible policies on disclosure of information about the online activities of a deceased child. Parents will be able to review these policies to find out:

- the procedure they must follow to request information;
- the kind of evidence the provider will require in order to disclose information; and
- the kind of information that will be disclosed and how it will be disclosed.

Amendment 190 will also require companies to provide a dedicated helpline, or similar means, so that parents can find out how to request information and obtain updates about requests. This will ensure that bereaved parents can easily request information and updates from such companies rather than facing radio silence.

If providers do not implement content reporting and complaints procedures as required by the Bill, including in relation to access to the data of a bereaved child, Ofcom will be able to use its suite of enforcement measures. These include substantial fines of up to £18 million or 10 per cent of global revenue (whichever is higher), requiring companies to make improvements and applying for business disruption measures, including blocking, via the courts.

Where parents consider that companies have not fulfilled the responsibilities set out above, services must again ensure that they can make complaints to the service. The service must also allow for appropriate action to be taken as a result of such a complaint, and this may include revising their policy to ensure it meets the new duties.

If parents remain unsatisfied, they are also free to submit concerns directly to Ofcom if they believe that platforms are not fulfilling their obligations. While Ofcom does not have a role in responding to or adjudicating on individual user complaints, it will be able to consider such complaints to help it monitor whether regulated services are complying with their duties.

To strengthen the Bill further in this area, the Government has tabled an amendment which will place a requirement on Ofcom to undertake a report about Part 3 services' reporting and complaints procedures. This report will assess the measures taken or in use by providers of Part 3 services to enable users and others to report content and make complaints. It will ensure that the effectiveness of the Bill's content reporting and complaints provisions can be assessed two years after the commencement of the provision, providing time for reporting and complaints procedures to bed in.

Following Ofcom's report, the Secretary of State will have a power to make regulations to amend the Act to impose on providers of Category 1 services an alternative dispute resolution duty. This would give users and affected persons a place to which to turn (for example, if they are unsatisfied with the outcome of a platform's own complaints mechanisms). If, following Ofcom's review, the Bill's existing user redress provisions are found to be insufficient, this power will ensure that this requirement can be quickly added if it will strengthen the Bill.

Baroness Fox of Buckley raised the British Board of Film Classification's decision about the categorisation of *The Conservative Woman* website.

I am following up on this case as promised and will respond separately when I have received further information about it.

Lord Clement-Jones asked why there was a difference in approach between the powers to direct in clauses 39 and 158, and why the Secretary of State should have powers to direct Ofcom about its media literacy functions in relation to social media, but not broadcast media.

Clause 158 gives the Secretary of State the power to direct Ofcom to give priority to specific objectives when exercising its media literacy functions during special circumstances. These circumstances include where threats to national security or public health exist.

It is important to note that the Public Statement Notices that Ofcom can be directed to issue to platforms under clause 158 will require these platforms to set out how they are responding to the particular crisis; they will not enable the Government to direct what content appears on services.

The power to direct Ofcom's media literacy activity is justified in special circumstances, such as public health or national security crises, where the Government may be privy to classified information that Ofcom is not. As Lord Clement-Jones noted, where this power is used in these circumstances, the Secretary of State will publish the reasons for directing Ofcom's activity in this limited way – except where there are national security considerations.

The amendments we have made to clause 39 and the Secretary of State's power of direction in respect of codes of practice similarly sets out a specified list of reasons under which the Secretary of State can use the power, and ensures that there is appropriate transparency.

In respect of the comparison between social media and broadcast media and the need for these powers, as we have seen during crises such as the COVID-19 pandemic, social media platforms can inadvertently serve as hubs for low-quality, user-generated information which is not required to meet journalistic standards. This information can in certain circumstances pose a direct threat to key considerations such as public health. This is very different to broadcast news where Ofcom's Broadcasting Code ensures that broadcast news, in whatever form, is reported with due accuracy and presented with due impartiality. This means that regulated broadcasters can be trusted to strive to communicate credible, authoritative information to their audiences.

Lord Clement-Jones, Baroness Kidron, Lord Knight of Weymouth, and Baroness Finlay of Llandaff sought clarification about a number of issues in relation to the Bill's approach to provider content.

As I explained in the debate, the Bill is focused on user-to-user and search services as there is significant evidence to support the case for regulation in these areas based on risk of harm to users and the current lack of regulatory or other routes of accountability. The hosting, sharing, and discovery of user-generated content and activity give rise to a range of online harms which

is why we have focused on these services. The Bill does not regulate content published by user-to-user service providers themselves, i.e. provider content. Providers are instead already liable for the content they publish on their service themselves, and the criminal law is the most appropriate mechanism for dealing with services which publish illegal provider content.

The exception to this approach, as I mentioned, is in Part 5 of the Bill, where services which publish or display provider pornographic content are required to use age verification or age estimation to ensure that children cannot normally encounter this content. This is an access requirement and does not change the potential for criminal liability that already exists for material they publish.

As part of a user-to-user service's risk assessments, providers will be required to consider not just the risk in relation to user-generated content but also aspects such as how the design and operation of their service – including functionalities and the way the service is used – might increase the risk of harm to children and presence of illegal content. A user-to-user service will need to consider any feature which enables interactions of any description between users of the service when carrying out its risk assessments.

In relation to virtual characters and avatars, the Bill broadly defines content as 'anything communicated by means of an internet service', meaning it already captures the various ways through which users may encounter content. In the metaverse, this could therefore include things like avatars or characters created by users.

Lord Allan asked whether there would be a mechanism for disputes in relation to decisions about recognised news publishers.

Under the Bill's framework, in-scope providers will be required to operate a complaints procedure, so that users are able to submit complaints about a provider not properly complying with its duties, including those at clause 14. For Category 1 providers, this would mean that they would need to have a system allowing users and affected persons to make complaints if they felt that the provider is not applying the recognised news publisher protections to a particular organisation. Ofcom will set out steps that providers can take to fulfil their duties about complaints procedures in codes of practice.

Beyond complaining to the platform, if an individual organisation or other party suspects that a provider has failed to fulfil its duties under the Bill (for instance, if it has failed to grant 'news publisher' status appropriately), it can submit its concerns directly to Ofcom. While Ofcom does not have a role in responding to or adjudicating individual user complaints, it will be able to consider such complaints to help it monitor whether regulated services are complying with their duties (including services' complaints-handling duties). If a provider is failing its duties, Ofcom will be able to take enforcement action against that provider.

Under the framework, eligible entities will also be able to submit super-complaints to Ofcom if they believe there are systemic issues about services' conduct which are significantly adversely affecting freedom of expression or otherwise having a significant adverse impact on users. It is possible that super complaints could be made in relation to the application of the 'recognised news publisher' criteria and any consequences of that.

The Bill also requires Ofcom to carry out a review of the news publisher protections, and requires the Secretary of State to review the wider operation of the framework after it has had time to bed in. These reviews could also incorporate consideration of providers' judgements against the news publisher criteria, and the effect of these on the wider framework.

Lord Clement-Jones asked for a fuller response regarding Amendment 180A and the Bill's approach to animal trafficking.

Amendment 180A would require the Secretary of State to review offences under the Control of Trade in Endangered Species Regulations 2018 and, where appropriate, to include those in the Bill as priority offences in Schedule 7.

The UK is committed to ensuring any trade in wildlife is legal, sustainable, and safe. We continue to support global efforts to tackle the illegal trade in wildlife to protect biodiversity, support local communities, and deliver economic benefits, including investing a further £30 million between 2022 and 2025 to directly counter this issue.

We are fully committed to the effective implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and continue to work with our international partners to protect endangered species from over-exploitation in international trade. In addition, a police-led group of partners has been given the task of delivering a joined-up, cohesive approach to tackling cyber-enabled wildlife crime, for example where illegal wildlife trading through internet sales platforms is concerned. The National Wildlife Crime Unit maintains an action plan for the group.

We are confident in our ability to implement CITES effectively to tackle the illegal wildlife trade and smuggling of endangered species, with parts of the UK system being described by the United Nations Office on Drugs and Crime as international best practice.

Baroness Kidron asked for information on the consultation process for regulations about reports to the National Crime Agency concerning child sexual exploitation and abuse.

Clause 60 sets out the process by which the consultation will take place. Before making the regulations, the Secretary of State must consult the NCA, Ofcom, and such other persons as the Secretary of State deems appropriate. We expect that this will include an array of organisations which have the necessary knowledge and experience to assist the Secretary of State in deciding on the content of these regulations.

I am grateful to all the Noble Lords who raised points and questions during the debate, and hope this information proves helpful. I look forward to further engagement and debate as we continue Report Stage.

With best wishes,

Parkinson of Whitley Bay

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Minister for Arts & Heritage