



Department for  
Science, Innovation  
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Baroness Kidron  
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Dear Beeban,

Thank you for your valuable input to Monday's debate and, as always, for championing the cause of online safety and protecting users online. Your dedication during both the passage and implementation of the Online Safety Act 2023 ("the Act"), particularly on protecting children, is truly commendable. I committed to writing back to you on points you raised during Monday's debate, and I hope this letter adequately addresses these issues.

You requested sight of legal advice received by the Secretary of State during the debate. While I am unable to share any legal advice, I can provide the clarity you seek about how Schedule 11 of the Act has been interpreted and how the decision was made by the Secretary of State.

Firstly, you voiced concerns that there is a gap between the Act as passed by Parliament and the government and Ofcom's interpretation of the Act. As I said during the debate, the Secretary of State has acted in accordance with his powers in the Act in setting the threshold conditions in the SI, which was the subject of scrutiny by the Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee before they were debated on Monday.

In relation to Category 1 services, Schedule 11 requires the Secretary of State to set threshold conditions on the number of users, functionalities and any other factors or characteristics of the user-to-user part of the service which he considers relevant. Schedule 11 also stipulates the procedure to be followed, firstly requiring Ofcom to carry out research for Category 1 on the easy, quick and wide dissemination of user-generated content on a service and the number of users and functionalities of the user-to-user part of such services, and such other characteristics or factors relating to that part as Ofcom consider to be relevant to Category 1 (paragraph 2 (2) of Schedule 11). In making these Regulations, the Secretary of State had a statutory duty to consider the likely impact of the number of users and functionalities on the easy, quick and wide dissemination of user-generated content (paragraph 1 (5) of Schedule 11). This is why Ofcom's research and advice on those matters was required in advance of the Secretary of State making his decision (paragraph 2 (11) of Schedule 11). Ofcom carried out its research and provided advice to the Secretary of State which was published (paragraph 2(5) and (7) of Schedule 11) at the following web address:

<https://www.ofcom.org.uk/siteassets/resources/documents/consultations/category-1-10-weeks/263963-categorisation-research-and-advice/categorisation-research-and-advice.pdf?v=322193>. This explains Ofcom's interpretation and explanation of the recommended thresholds.



I would also like to assure you that Ofcom and the government are not cherry-picking the provisions they wish to implement while ignoring the will of Parliament, as suggested during the debate. When considering this advice, the Secretary of State was cognisant of the provision in paragraph 2(8) and (9) of Schedule 11 for him to depart from Ofcom's advice and to publish an explanation for doing so. The Secretary of State explored setting additional threshold combinations as suggested by Baroness Morgan and others to bring "small but risky" services into scope by using the option in paragraph 1(4) of Schedule 11 which permits setting a threshold requirement for functionality alone or in combination with another characteristic/factor. However, although in principle there is a provision that allows a user number threshold not to be met, Schedule 11 does not allow for sub-delegation of the Secretary of State's power to set the thresholds to other parties such as coroners or Ofcom. There was also a material risk of capturing hundreds of small, low risk services by using a functionality threshold alone. Therefore, given these difficulties and the desire for timely implementation, the Secretary of State set the thresholds as Ofcom recommended.

Secondly, on Monday you commented that the government has ignored the requirement to consider functionalities in determining Category 1 services. However, I want to assure you that functionalities were considered, and the relevant functionalities have been included in the thresholds. For the first threshold combination, Ofcom determined that having a significant number of UK users (exceeding 34 million) in conjunction with the characteristic of a content recommender system was enough to satisfy the condition of easy, quick, and wide dissemination of content. For the second threshold combination, Ofcom concluded that with a reduced user number of more than 7 million UK users, a content recommender system in combination with the functionality of forwarding /re-sharing user-generated content similarly satisfied this condition. Ofcom specifically set out in their advice published last March, at paragraph 3.30, that it considered, but discounted, a recommendation that allowed for the categorisation of services for Category 1 by reference exclusively to functionalities and characteristics. This was because the research indicated that user reach has an important role to play in content dissemination.

We have been clear to Ofcom that they have the government's backing to be bold in their implementation of the Act and the forthcoming Statement of Strategic Priorities for Online Safety is designed to deliver a comprehensive, forward-looking set of online safety priorities for the full term of this government and further gives Ofcom our backing to be bold on specific areas, such as embedding safety by design. Ofcom has also been clear that this is laying the foundation for Online Safety and have committed to an iterative approach to their codes of practice, starting with the first consultation on further measures in Spring this year.

During the debate you also suggested Ofcom acknowledges certain functionalities but does not address these in their codes. Under the Act providers are required to assess the risk of users encountering certain kinds of illegal content via their services, and also the risk of the use of their services facilitating certain kinds of priority illegal harms. For example, in its risk assessment guidance for the illegal content duties, Ofcom sets out certain features or functionalities, that are common to online platforms, that may be 'risk factors' for various illegal harms. Where a provider assesses its service does incorporate such risks of users encountering specific kinds of harmful content (including cumulatively harmful content), then it needs to take mitigatory steps. As you are aware, Ofcom is required to set out proportionate steps that providers can take to fulfil these safety duties in their codes of practice. These include steps that relate to the design and operation of providers' services.

Ofcom has issued its first codes of practice for the illegal content duties which will come into force next month. Many of the steps in the codes such as systems for allowing users to report illegal content are cross-cutting and will apply to all relevant areas of their services, including

into functionalities or features through which users may encounter harmful content, or which might facilitate certain priority kinds of illegal harm, such as live-streaming functionalities. They also include some steps which are tailored to specific features or functionalities. For example, the codes include specific steps that relevant providers should take with respect to their content recommender systems.

The illegal content codes are a vital step in implementing the new regime and Ofcom intends to build on these foundations and has announced plans to launch a consultation in spring 2025 on additional measures for the codes. This includes consulting on how automated tools can be used to proactively detect illegal content, including the content most harmful to children, going beyond the automated detection measures that Ofcom have already included.

Additionally, the Act is clear that platforms' child safety risk assessments should consider the impact of functionalities in increasing the risk of children encountering harmful content. It is not just the nature, but also the fact or manner of dissemination of the content which may give rise to harm. Ofcom's draft children's safety codes of practice include specific recommendations for services to ensure that algorithms or certain functionalities do not target child users with harmful content. The codes also point to the prominence of cumulative harm, whereby physical or psychological harm could arise from the fact or manner of dissemination of the content, not just the nature of the content.

You also brought up concerns surrounding considerations by Ofcom's surrounding the different needs of children in different age groups. Ofcom's Register of Risk sets out age-specific risks for five different age categories, and the guidance on risk assessments highlights that providers must assess the impact of the risk of harm to children in different age groups on their service. Further guidance on the risks from certain content to different age groups can be found in the draft children's risk profiles, which services must refer to when conducting a risk assessment.

Regarding recommendations Ofcom has made in its draft Children's Safety Codes, it has found there are challenges in distinguishing between different age groups under 18, as age assurance technology and mechanisms are still developing. Additionally, Ofcom has noted that measures which establish a child's age should not result in services using those measures denying a child access to the benefits of being online, unless the child is under the minimum age of access in their terms of service.

Ofcom's statement on age assurance, published on 16 January, notes that the regulator will address the subject of age groups in their Protection of Children statement in April 2025, and that it will consider the role of verifiable parental consent in supporting more age-appropriate experiences.

On the issue of choice architecture you raised, and relevant protections for children, Ofcom's draft child safety codes, as I have mentioned, point to the prominence of cumulative harm. Ofcom's guidance on risk assessments also directs service providers to consider the risk of cumulative harm as a fundamental part of their risk assessment. The guidance asks providers to specifically consider features which affect how much children use the service, for example the use of infinite content feeds or business models which can cause children to spend more time using a service. If a provider's risk assessment identifies that there is an increased risk of significant harm from content encountered as a result of these specific features and functionalities, then providers will be required to take appropriate steps to manage and mitigate these risks.

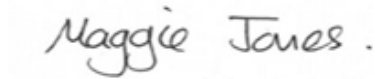
Finally, you have urged for a separate digital regulation committee to be established. It is vital that regulators are accountable to Parliament for their activities, including through existing annual reports and reporting requirements. Parliamentary committees play an important role in

this and we will continue to work with existing committees to support their scrutiny of digital regulation. The idea of setting up a new joint committee for digital regulation has been strongly put forward a number of times and whilst there is merit in such a committee, there are risks of duplication, and it is ultimately a matter for both Houses to agree.

Once again, I'd like to thank you for your contributions to the debate and continued engagement on this and many other important matters.

A copy of this letter will also be deposited in the Libraries of both Houses.

Yours sincerely,

A handwritten signature in black ink that reads "Maggie Jones .". The signature is written in a cursive style and is centered on the page.

Baroness Maggie Jones  
**Minister for the Future Digital Economy and Online Safety**