



Department for
Digital, Culture,
Media & Sport

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The Rt Hon Baroness Stowell of Beeston MBE
Chair of the Communications and Digital
Committee
House of Lords
London SW1A 0PW

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Dear Baroness Stowell,

Thank you for your letter of 20 December to the Secretary of State for Digital, Culture, Media and Sport. I am responding as the Minister leading on the Online Safety Bill.

As you know, we are expecting the Online Safety Bill to be introduced to the House of Lords in the near future. The Bill is a vital piece of legislation, and this government is committed to ensuring that it does more to protect children and ensure that any provisions for adults consider the importance of free speech.

We are aware of the concerns that the Bill allows too great a degree of executive control over the regulator. These concerns 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, as you raise in your letter.

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 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. For example the requirement to use the affirmative resolution procedure when a code of practice is subject to a direction for reasons of public policy, as opposed to the usual negative procedure, ensuring that Parliament has increased oversight.

We have also committed to making two amendments to the power for the Secretary of State to direct Ofcom to modify a code of practice for reasons of public policy. Firstly, we will make it clear in legislation that this power would only be used in exceptional circumstances. Secondly, we will replace the 'public policy' wording with a more clearly defined list of reasons for which the Secretary of State could make 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. These changes will be brought forward during the Bill's passage through the House of Lords.



As we are introducing ground-breaking regulation, our aim is to balance the need for regulator independence with appropriate oversight for Parliament and government. Ofcom's independence and expertise will be of utmost importance to the success of the regime, but the very broad nature of online harms will mean there may be subjects which go beyond their remit as regulator. Ofcom's view when giving evidence to the Joint Committee on the draft Bill was that "there will clearly be some issues where the government has access to expertise of information that the regulator does not, such as national security". The changes we will introduce will ensure that the power will be focused, rather than being used for broader 'public policy' reasons. The framework ensures that Parliament will always have the final say on codes of practice, and the use of the affirmative procedure will further ensure an increased level of scrutiny in the exceptional cases where this element of the power is used.

The government has listened to concerns that provisions in the Bill relating to content that is 'legal but harmful' to adults could encourage companies to remove such content. It is not right that the government defines what legal content it considers harmful to adults and then requires platforms to risk assess for that content. Doing so will encourage companies to remove legal speech, undermining this government's commitment to freedom of expression. As such, we have removed the adult risk assessment and the adult safety duties from former clauses 12 and 13.

However, the government recognises the importance of ensuring platforms are transparent about and accountable for how they treat content on their services. That is why we are introducing new duties to improve transparency and accountability and to protect free speech.

These duties (in clauses 64 and 65) require Category 1 platforms to ensure they only remove or restrict access to content, or ban or suspend users, in accordance with their terms of service or another legal obligation. Where companies' terms of service say they will take one of these actions, they must ensure these are consistently enforced. Services must ensure their terms of service are easily understandable, and that they operate effective reporting and redress mechanisms, enabling users to raise concerns about companies' application of their terms of service.

The user empowerment content duties in clause 12 do not require companies to risk assess for the kinds of content listed in clause 12 subsections 10, 11, and 12. Category 1 services will be required to provide these features if it is likely that a user will encounter this kind of content on the service. This duty will now ensure that these companies provide their adult users with effective and easy to access optional features that give them greater control over the kinds of content listed in clause 12. This includes content that encourages, promotes or provides instructions for suicide, self-harm or eating disorders. These features must alert users to the nature of the content or reduce the likelihood that they encounter it.

There are still numerous ways in which the Bill will enable a better understanding of what is happening on online platforms. Platforms must conduct risk assessments for illegal content and content that is harmful to children. They will also need to publish a summary of these assessments which will improve users' access to information about the nature of risks on a given service.

In addition to this, Ofcom will have a broad power to require information from companies to assess compliance with providers' duties, including the new transparency, accountability and freedom of expression duties.

Platforms will also have to publish annual transparency reports with detailed information on steps they are taking in relation to illegal content, content that is harmful to children, and other content that they prohibit or restrict. This will ensure users have access to substantial new data that is not currently in the public domain.

Importantly, Ofcom can require category one platforms to publish information about all content that platforms prohibit or restrict, rather than just in relation to a list of priority harms. This expands the scope of the transparency provisions beyond what was previously included in the Bill. It will include information such as the incidence and dissemination of such content, how design choices enable the dissemination of illegal content and content that is harmful to children, and about how systems and processes are designed to enforce the terms of service.

Protecting children and stamping out illegal activity online is a top priority for the government and I am looking forward to appearing before your Committee to discuss the Online Safety Bill in more detail.

With best wishes,

A handwritten signature in blue ink, appearing to be 'Paul Scully', written in a cursive style.

Paul Scully MP
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Minister for London