



Department for
Science, Innovation
& Technology

Department for Science, Innovation &
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The Rt Hon. the Baroness Stowell of Beeston MBE
Chair, Communications and Digital Committee
House of Lords
London SW1A 0PW

23 February 2023

Dear Baroness Stowell,

Thank you for your letter of 30 January to the then Secretary of State for Digital, Culture, Media and Sport. As you know, responsibility for the Online Safety Bill now sits with the new Department for Science, Innovation and Technology. We are responding as the Minister and Lords Minister leading on the Bill.

Your Committee has played a valuable role throughout the development of this important policy. It was very helpful to discuss the issues about which you are most concerned at the evidence session on 25 January and to have your recommendations set out so clearly. We have responded to each area below and look forward to working together towards Royal Assent.

Clause 39: Power to direct for reasons of public policy and power to issue further directions

We acknowledge the concerns that you raise about the Secretary of State's powers in the Bill, in particular the power to direct Ofcom to modify a code of practice in clause 39. Ofcom's independence will be vital to the success of the regime but the Bill is ground-breaking legislation which will affect many areas of public life, and it is important that there are proportionate checks and balances to ensure that the implementation of the regime by the independent regulator delivers the policy intent that will be decided by the democratically elected Government and approved by Parliament.

With regard to the amendment described in the Written Ministerial Statement of 7 July, our intention was to acknowledge the concerns about Government having too much power over the independent regulator, while retaining an ability for Government to have influence in cases where an issue went beyond Ofcom's remit, such as protecting national security or public safety. For example, the Government might have access to particular national security information to which Ofcom did not have access. Our intention was also to reinforce that this power would only be for exceptional use in cases where it was absolutely necessary.



It is clear from your letter and from the points raised during Second Reading that, despite the intended amendments, there remain concerns about this aspect of the Bill. We propose that we discuss further ahead of and during Committee stage.

Clause 157 and guidance

In terms of the power for the Secretary of State to issue guidance to the regulator, the online safety regime is a new regulatory framework and this power provides a transparent process for the Government to provide guidance to Ofcom on exercising its online safety functions. Ofcom must 'have regard' to the guidance, but it is non-binding. The Bill requires that Ofcom is fully consulted about any guidance before it is issued. It is not a power designed to be used regularly and it is absolutely not the intention to interfere in Ofcom's 'day to day' work.

Parliamentary oversight

On your recommendation to establish a joint committee of both Houses to oversee digital regulation, we agree that effective parliamentary oversight has an important role to play. We remain of the view that there are risks of duplication in establishing a permanent Joint Committee on Digital Regulation, which would cut across the work of existing parliamentary committees that are already well placed to scrutinise these matters. The arrangements to reflect the establishment of the new Department and to scrutinise its work will be an added factor in consideration of this.

The Joint Committee on the draft Online Safety Bill performed a valuable role ahead of the introduction of the Bill and we continue to welcome views on parliamentary oversight for the online safety legislative framework in a way that best uses the expertise we have in both Houses.

Please also note, that as part of the Autumn Statement, the Chancellor announced that the Government will bring forward the Digital Markets, Competition and Consumer Bill in the third Parliamentary session. This is still our intention; the Bill will be introduced when parliamentary time allows.

Risk assessments, transparency and freedom of speech

As noted in our letter of 17 January, the requirement for Category 1 services to carry out adult safety risk assessments was removed from the Bill to mitigate concerns that designating types of content as harmful to adults could have an unwanted negative effect on individuals' legal speech.

However, the Bill still addresses platform transparency, online safety and freedom of expression in other ways.

Firstly, the transparency reporting provisions in clause 68 will give Ofcom the power to require Category 1, 2A and 2B platforms to publish information including in relation to illegal content, and content that is harmful to children on their services. Category 1 services may also be required to report on any content that they prohibit or restrict access to on their services in accordance with their terms of service (Clause 64: Duty not to act against users except in accordance with terms of service, is a duty only for Category 1 services). This will include information about the incidence of such content, the likelihood of encountering it, the functionalities that help users to manage the risks associated with such content and content moderation systems and processes.

It is worth noting that these transparency reporting duties now apply to *all* content to which such platforms prohibit or restrict access. Previously they only applied to priority content that is harmful to adults (i.e. a list of content designated as such by the Secretary of State in regulation), as well as illegal content and content that is harmful to children. Given that platforms which are likely to be Category 1 services generally prohibit a wider range of content than what is intended to be on that list, in most cases Ofcom will now be able to require information to be published about a wider list of content.

The full list of information that Ofcom can request Category 1, 2A and 2B platforms to publish in its transparency reports is in Schedule 8 of the Bill. In the context of the user empowerment duties for Category 1 services set out in clause 12, Ofcom is able to request information about the measures taken or in use by a company to comply with these duties including for example the effectiveness of such measures.

Ofcom must specify the manner in which the transparency report must be published by the service. Further, Ofcom must produce and publish an annual transparency report summarising its conclusions of the providers transparency reports and good industry practice, which will help users understand the risks associated with a service. As well as transparency reports, Ofcom's information-gathering powers will allow it to require further information from companies to assess their compliance with their duties.

In addition, platforms may be required to publish information about how they protect freedom of expression. For example, Ofcom can request that platforms publish information about how they are complying with their transparency, accountability and freedom of expression duties (clauses 64 and 65) and their clause 18 and 28 freedom of expression duties, the application of their terms of service, and the systems and processes in place to deal with illegal content, content that is harmful to children and content that they prohibit or restrict (including how their systems and processes safeguard freedom of expression).

As such, the Bill already requires transparency about both online safety and freedom of expression.

The Bill includes strong protections for freedom of expression. The previous adult safety risk assessment requirements were not focused on freedom of expression, so reinstating the risk assessment would not achieve your recommendation that platforms should set out how the design of their service affects freedom of expression. Protections for freedom of expression are however built in throughout the framework, in addition to the transparency reporting duties above. Clauses 18 and 28 require user-to-user and search services to have particular regard to freedom of expression when carrying out their safety duties. In practice this will require services to put in place safeguards for freedom of expression when fulfilling their duties; clause 38 sets out that Ofcom must put safeguards for freedom of expression into the codes of practice where necessary; and clause 45 sets out that services will be taken as complying with the clause 18 and 28 duty to have particular regard if they follow these safeguards or take alternative action that meets the same objectives.

In addition, Category 1 platforms will be required to assess the impact of measures they take to

comply with the safety duties, including the user empowerment duties, on freedom of expression. They will be required to publish this assessment, keep it up to date and set out the steps they are taking to mitigate any impact.

Child protection

Services which play a functional role in enabling online activity are not in scope of the duty of care, including app store providers. The Government's view is that companies with direct control over the content and activity on a service are best placed to fulfil the duties of care imposed by the Bill, which require them to accurately assess risk and to put in place systems and processes to minimise harm.

We believe it would not be proportionate to impose duties on companies that do not control if, or how, content is hosted or promoted. Subjecting them to new duties could incentivise broad blocking or removal of websites or apps, which would pose significant risks to freedom of expression and users' ability to access services.

We will continue to engage closely with Peers, and have set up a number of meetings and technical briefings on the Online Safety Bill in the coming weeks. We remain committed to ensuring that the Bill protects children and tackles illegal content online, whilst safeguarding free expression and improving user choice.

Yours sincerely,



Paul Scully MP



Lord Parkinson of Whitley Bay