

Written evidence submitted by the News Media Association (OSB0107)

1. Background

- 1.1. The News Media Association (“**NMA**”) is the voice of UK national, regional and local newspapers in all their print and digital forms - a £4 billion sector read by 49.2 million adults every month in print and online. Our members publish over 900 news media titles - from The Times, The Guardian, the Daily Mail and the Daily Mirror to the Yorkshire Post, Kent Messenger, and the Monmouthshire Beacon. Our membership spans the industry - from the largest groups to small, independent, family-owned companies publishing one or two local titles. Collectively these publishers are by far the biggest investors in news, accounting for 58 per cent of the total spend on news provision in the UK.
- 1.2. The NMA welcomes the [scrutiny](#) of the Joint Committee on the Draft Online Safety Bill (the “**Joint Committee**”). We are pleased that the Government is seeking to create mechanisms in the Online Safety Bill (the “**Bill**”) with the intention to exempt news publishers (and their content) from the scope of the Bill. We welcome Clause 40, which provides a comprehensive definition, and we are pleased that recognised news publisher content falls outside of ‘regulated content’. By extension, we are pleased that news publisher content also falls outside the ‘legal but harmful’ risk assessment duties on platforms (Clauses 45 and 46).
- 1.3. However, despite the Government’s clear intention to protect news publisher content, the Bill’s current drafting does not yet satisfy the Government’s aim to ensure that news publishers remain out of scope.

*“1.10 Freedom of expression is at the heart of the regulatory framework and there will be strong safeguards to ensure that media freedom is upheld. **Content and articles produced and published by news services on their own sites do not constitute user-generated content and so are out of scope.** The government recognises the importance of below-the-line comments for enabling reader engagement with the news. **User comments below articles on news publishers’ sites will be explicitly exempted from scope.** This will be achieved via the low-risk functionality exemption (see above).*

1.11 Journalistic content is shared across the internet, on social media, forums and other websites. Journalists use social media services to report directly to their audiences. This content is subject to in-scope services’ existing content moderation processes. This can result in journalistic content being removed for vague reasons, with limited opportunities for appeal. Media stakeholders have raised concerns that regulation may result in increased takedowns of journalistic content.

1.12 In order to protect media freedom, legislation will include robust protections for journalistic content shared on in-scope services. The government will continue to engage with a wide range of stakeholders to develop proposals that protect the invaluable role of a free media and ensure that the UK is the safest place in the world to be online.”¹

1.4. This paper sets out ways in which the Government’s aim could be more clearly achieved in the Bill. To assist fully with the Parliamentary scrutiny of the Bill: (i) we have sought advice from [Andrew Caldecott QC](#) at **ANNEX A** with drafting amendments that more clearly articulate the Government’s intentions and address the issues identified in this paper; (ii) for ease of reference, we provide a summary table of counsel’s proposed amendments to the Bill in **ANNEX B**; and (iii) for completeness, we provide a workable framework for addressing economic harms in **ANNEX C**. We welcome further discussion with the Joint Committee on these issues and the Bill more broadly.

2. Necessary amendments

2.1. Exemption for News Publishers

2.1.1. The Bill aims to provide two forms of exemption for news publishers: (i) an exemption for news publishers’ websites from the scope of the legislation generally; and (ii) an exemption for news publisher content, from some of the duties of care, where that content appears on, or is shared via, in-scope services.

2.1.2. In overview, the general exemption for publishers’ websites is provided in Paragraph 5 of Schedule 1 (the “*limited functionality services*” exemption). The specific content-based exemptions are found in Clause 18, which limits the application of the duties of care for search services, and Clause 39, which defines regulated content for user-to-user services. This section of our response will address each in turn and will then focus on redress.

News Publishers’ Websites

2.1.3. Without an exemption, any news publisher’s website with links to the UK that allows users to upload or share content (including by commenting on an article) would be in-scope of the Bill and a regulated service. It appears to us, though differing readings are possible, that the Bill intends to exempt news publishers’ websites *per se* from the scope of the Bill by virtue of the limited functionality exemption in Schedule 1 Paragraph 5. Provided that a news publisher’s website satisfies the requirements in Schedule 1 Paragraph 5, then the intended effect of Paragraph 5 and Clause 3(7) is such that they are not a regulated service, and the website is intended to remain outside the scope of the legislation.

¹ [Online Harms White Paper](#): Full Government Response to the Consultation (emphasis added).

- 2.1.4. However, this is not clear on the face of the Bill, which must expressly state that Schedule 1 Paragraph 5 applies to ‘recognised news publishers’ as defined in Clause 40. Without such an express statement, news publishers may face an unnecessary hurdle to rely on the very mechanism that has been designed to explicitly exempt their services. Instead, the current exemption is framed by reference to the functionality of inter-user communication on a service, as opposed to either the nature of the website’s content or the identity of the Service Provider. This approach seems unnecessary given the Government’s express intention is to exempt news publishers.
- 2.1.5. Furthermore, by framing the exemption this way, any news publisher website which goes further than the inter-user functionalities described in Schedule 1 Paragraph 5 will be a regulated service and outside the scope of the exemption. Many news publishers offer various functions for users on their websites that may be deemed as outside of the listed functionalities in Schedule 1 Paragraph 5, including games and online workshops. As currently drafted, the Bill would not exempt all news publisher websites as the Government has stated it intends to do, and would act to disincentivise news publishers from investing in features and services as part of their websites. News would seemingly face the choice of remaining a static news site sitting outside of the scope of the Bill’s framework, or choose to innovate but risk all of their online services being subject to the obligations of the new regulation.
- 2.1.6. In addition, paragraph 5(a) of Schedule 1 is problematic. The words “*relating to*” should not introduce a test of relevance by reference to the subject matter of the content, which we believe was never the Government’s intention. The wording should also be amended to be clear that “*communicate*” specifically means communication with other users. The real issue is whether the comment or review function is ancillary to provider content (i.e. it is not a freestanding chat functionality). This is also important to ensure that a function to communicate with the publisher or its journalists would not undermine the news publisher exemption.
- 2.1.7. We also note that the limited functionality exemption can be repealed or amended by the Secretary of State by regulation under Clause 3(9)-(11) of the Bill. The NMA opposes this ‘Henry VIII clause’ that stands to circumvent the democratic process – it must not be repealed other than by primary legislation.
- 2.1.8. If we are correct in our reading of the Bill, and the overall exemption for news publishers rests on the limited functionality exemption, it is very unsatisfactory, because it means news publishers’ websites are defined by a subsidiary service, readers’ comments, rather than their prime function, which is the provision of news and comment. It would also limit innovation and can be removed at will by the Secretary of State.
- 2.1.9. Schedule 1 Paragraph 5 should be amended to: (i) make clear that it relates to readers’ comments sections on news publishers’ websites; (ii) accurately reflect how user-to-user communication works on news publishers’ websites; and (iii) ensure it does not limit innovation.

2.1.10. There is a very good definition of news publishers in Clause 40 of the Bill. To address the issues above and ensure that the exemption is effective, we believe the simple solution is to add a sub-clause to Clause 2, to make it clear that news publisher content, whether published on their own websites or distributed by user-to-user or search services, is out of the scope of the Bill and that this rests on the fact that it is published by news publishers as defined in Clause 40. Please see **ANNEXES A and B** for suggested wording.

Exempting News Publisher Content Which Appears on In-scope Services

2.1.11. The second category of exemption is intended to apply where news publisher content is posted onto, or shared via, in-scope user-to-user services. This is achieved in the Bill by Clause 39 which defines “*regulated content*”, and which excludes “*news publisher content*” from its scope. This then excludes news publisher content from the scope of the safety duties imposed by the Bill on in-scope services.

2.1.12. In the case of user-to-user services, for content to be “*illegal content*”, “*content that is harmful to children*”, or “*content that is harmful to adults*” the content must also be regulated content.² By excluding news publisher content from these categories, news publishers are, rightly, not required to apply the safety duties under Clauses 9-11 of the Bill to their content.

2.1.13. In respect of search services, the exemption in Clause 18(2) is more straightforward. It provides that none of the duties imposed on search providers extend to recognised news publisher content, including the duty in Clause 23 concerning rights to freedom of expression and privacy.

Redress

2.1.14. Crucially, however, these exemptions have a fundamental drawback that risks undermining the news publisher exemption itself. While the Bill makes it clear that the duty of care does not apply to news publishers, and that platforms and search engines, therefore, do not face any sanction if they do not apply their codes of conduct to news publisher content when it is shared on social media, neither are they under any duty of care *not* to apply their codes of conduct to it. The impact of this is that the Bill creates significant incentives through high penalties to make platforms and search engines err on the side of caution whenever their algorithms encounter content that might put them at risk and to favour a zealous approach to police and take-down news publisher content. Indeed, we know the platforms are already taking down legitimate but controversial news publisher content in the US in response to vociferous lobby groups.

2.1.15. Clauses 39-40 do not stop platforms blocking news publisher content, and, as described more fully below, the protections for journalistic content in Clause 14 are

² For illegal content see Clause 41(2)(a), for content that is harmful to children see Clause 45(2)(a) and for content that is harmful to adults see Clause 46(2)(a).

insufficient to do so. News is a perishable commodity; therefore, an appeal to the platform, followed by another to OFCOM, which may take weeks or months, has no value at all as a protection for news publishers.

2.2. ***Duty to protect Journalistic Content***

2.2.1. The Bill aims to create a duty on in-scope Category 1 Service Providers to protect journalistic content on in-scope services via Clause 14 of the Bill. This provision is accompanied by a redress mechanism for the wrongful removal of journalistic content by platforms.³ This section of the response will address each in turn.

Category 1 Services

2.2.2. Only Category 1 Services are subject to the proposed duty to protect “*journalistic content*” defined in Clause 14 as: (i) regulated content or news publisher content which is; (ii) “*generated for the purposes of journalism*”; and (iii) “*UK linked*”. The effect of (i) is that the Clause 14 duty will apply to both regulated and exempt journalistic content on in-scope services. It will apply equally to an article shared by a recognised news publisher, a post by a journalist or small publisher which does not meet the Clause 40 definition, and a post by a “*citizen journalist*” provided, in each case, the content is UK linked and generated for the purposes of journalism.

2.2.3. This raises three primary concerns: (i) there is no meaningful standard for decision making involving journalistic content; (ii) there is no specificity in provisions for handling complaints; and (iii) the proposed system of redress (which stops with the Service Provider), as outlined below, is not fit for purpose.

2.2.4. It is notably not in the interest of many Service Providers to protect journalistic content. Indeed, Service Providers may face large fines for not removing harmful content, which incentivises them to be broad and heavy-handed in applying their safety duties. There is every incentive for platforms to take down journalistic content via blanket application of algorithms that may not distinguish journalistic or news publisher content, no repercussions for doing so and scant redress for reinstatement of that content.

2.2.5. In addition, there is no equivalent of the Clause 14 duty for search engines, which is a significant lacuna that must also be addressed. Please see **ANNEXES A** and **B** for suggested wording to address this issue.

2.2.6. The current drafting of Clause 14 of the Bill leaves it to the Service Provider to decide how freedom of expression is taken into account when preparing its terms of service. The requirement is then to apply those terms of service consistently. This is insufficient. The Bill incentivises platforms to err on the side of caution and to take down any potentially risky content. Therefore, the Bill must go further than requiring Category 1 Services to “*take into account*” the importance of the free expression of

³ Clause 14(3)-(6).

journalistic content when designing their systems of processes, and instead set a positive standard to be applied when they make decisions about it.

- 2.2.7. There is precedent on which such a duty can be based which we believe can be achieved by drafting a clear and watertight news publisher exemption to avoid the conflicting parallel system of regulation created by the journalistic protections. The best way to address this would be by: (i) adding a sub-clause to Clause 2, to make it clear that news publisher content is out of the scope of the Bill when it is distributed by user-to-user or search services, as well as when published on news publishers' own websites, as set out in paragraph [2.1.10](#) above; together with (ii) a duty on Service Providers not to remove such content. Please see **ANNEXES A** and **B** for suggested wording.

Redress

- 2.2.8. The Bill provides that Category 1 Services must make available a dedicated and expedited complaints procedure available to either the user who uploaded the content, or its creator⁴ and to ensure that content is “*swiftly reinstated*” in the event of a complaint being upheld.⁵ This, however, is inadequate to protect news content.
- 2.2.9. It is inappropriate for the terms ‘journalistic content’, ‘content of democratic importance’, and what is meant by ‘protect’ and ‘take in account’, to be determined by platforms. The current draft also creates a conflicting parallel system of regulation for journalistic content ultimately overseen by OFCOM, which is entirely inappropriate and unworkable. For any exemption and redress procedures to be fit for purpose, they must be effective in practice and the swiftness of redress specified must be commensurate to the short shelf life of news.
- 2.2.10. Furthermore, we agree with the Chair of the House of Lords Communications Committee that giving citizen journalists (i.e., any member of the public) the same protections as professional journalists could [overwhelm a fast-track appeals process](#), further delaying redress.
- 2.2.11. These issues can only be meaningfully addressed if news publishers have a watertight exemption, as originally envisaged by Government, which would mean extending the duty of care so that social media companies are obliged not to apply their codes of conduct to news publisher content. General oversight by OFCOM of this process is neither appropriate nor practicable. Please see **ANNEXES A** and **B** for workable solutions to these issues.

3. Necessary addition - economic harms

- 3.1. An obvious omission from the Bill is the failure to address economic harms. The NMA feels this is a missed opportunity given the long title of the Bill is “*to make provision for and in connection with the regulation by Ofcom of certain internet*

⁴ Defined in Clause 14(11) as the publisher itself.

⁵ Clause 14(3)-(6).

services; and to make provision about and in connection with OFCOM's functions in relation to media literacy".

- 3.2. Digital platforms are the gatekeepers to the modern economy. News media businesses cannot access a significant proportion of their audiences without dealing with Google, Facebook and Apple (in particular). The gatekeepers therefore hold substantial bargaining power and can unilaterally impose commercial terms on news media businesses without variation. This imbalance of power has several ramifications, including:
 - (i) **Reducing the safety of, and trust in, news content** available online by jeopardising investment in of high-quality UK journalism and forcing news media businesses to cut costs rather than ensure high standards and appropriate content; and
 - (ii) **Reducing media literacy** by reducing the public's exposure to high-quality UK journalism (including freely-available journalism) and reducing differentiation on quality between news media businesses.
- 3.3. As other jurisdictions ranging from Australia to France have recognised, statutory intervention is necessary because of the risk to the public of low quality news content, the public benefit provided by the production and dissemination of trusted news, and the importance of a strong independent media in a well-functioning democracy. High quality, independent journalism informs and engages the public, debunks misinformation, brings together communities and holds the powerful to account.
- 3.4. We provide in **ANNEX C** suggested Clauses that can be inserted into the Bill. The Clauses aim to provide a level playing field for the provision of online journalism such that safe and trusted news content is not disadvantaged and its prevalence is not steadily reduced.
- 3.5. The Clauses in **ANNEX C** empower an independent and well-established regulator to act at arm's length from the Executive and Parliament. The proposed Clauses would specify a duty on "*user-to-user services*" and "*search services*" to enter into a mandatory bargaining process with "*recognised news publishers*", consistent with the definitions in the Bill. This process would apply when they are bargaining in relation to the licensing of journalism for commercial use by large digital platforms. This would ensure the survival of the business models of high-quality news media businesses, and therefore safe and trusted news content, without asking a regulator to influence the content of the journalism, which would in itself jeopardise the independence of news media businesses.
- 3.6. The suggested Clauses also ensure consistency with the proposed new regulatory regime for the digital gatekeepers by including the firms with Strategic Market Status. In the longer term, the process could readily be folded into the new

regulatory regime for digital gatekeepers, which will be administered by the new Digital Markets Unit, and in which OFCOM will play an important role.

4. Next Steps

- 4.1. In summary: (i) news publisher content needs to be entirely and clearly out of scope; and concurrently (ii) platforms must be under a positive duty not to apply their codes of conduct to such content. Otherwise, this will pose grave consequences for the news industry given the incentives in the Bill for platforms to police all content defensively, and the paucity of redress mechanisms for news publishers. Furthermore, it would be remiss not to address economic harms caused to news publisher by platforms and search engines in this Bill.

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ANNEX A

Re: The Draft Online Safety Bill

DRAFT AMENDMENTS AS AT 16.9.21

A. Amendment to expressly exclude news publisher websites from the scope of the Bill

Clause 2

At the start of subsection (1) insert

(1) Subject to subsection (7) below, [...]

At the start of subsection (5) insert

(5) Subject to subsection (7) below, [...]

After subsection (6), add:

(7) Notwithstanding the provisions of this section, where an internet service is provided by a Recognised News Publisher it is not a “user-to-user service” or “search service” for the purposes of this Act.

(8) For the definition of “Recognised News Publisher” see section 40.

[NOTE: The purpose of this amendment is to ensure that websites operated by recognised news publishers (as defined in Clause 40) do not constitute “user-to-user services” or “search services” for the purposes of the Bill, ensuring they are outside the scope of the proposed legislation.]

B. Amendments to Clause 14 to protect news publisher content and provide a scheme of effective redress for breaches of the duty to protect.

Clause 14

Leave out subsection (2) and (3) and insert –

(2) A duty not to apply any of online safety duties in this Act to news publisher content.

(3) A duty not to remove or restrict users’ access to news publisher content, or to materially alter the way in which news publisher content would ordinarily be viewed, on the basis that the content infringes a content moderation rule.

After subsection (4) insert –

(4A) Without prejudice to the duties in (2) or (3) above, where the creator of the journalistic content is a recognised news publisher, a duty to:

(a) Notify the creator within 24 hours of any decision to take down or restrict access to the content and the reasons for that decision.

(b) Consider any representations made by the creator in response and, in the event those representations are not accepted, notify the creator of the reasons for their rejection”

(c) Promptly reinstate any content removed or restricted in breach of the duty in (2) or (3) above.

Leave out subsection (6) and insert:

(6) A duty to specify in terms of service by what methods content present on the service is to be identified as journalistic content including specifically by reference to OFCOM's register of broadcast licence holders and any register of recognised news publishers maintained by:

- (a) News Media Association;*
- (b) Professional Publishers' Association;*
- (c) Independent Community News Network; or*
- (d) Any other trade or industry body, established by two or more UK linked entities whose principal purpose is the publication of news, and which is identified for this purpose by OFCOM in a Code of Practice.*

After subsection (7) add –

(7B) A Recognised News Publisher may make a complaint to OFCOM that a regulated service has failed to comply with any of the duties in this section.

(7C) The Secretary of State must make regulations containing provision about procedural matters relating to complaints under subsection (7B) which shall, in particular, include provision about the following matters –

- (a) Notification to OFCOM of an intention to make a complaint under subsection (7B);*
- (b) The form and manner of such a complaint, including requirements for supporting evidence;*
- (c) The steps that OFCOM must take in relation to such a complaint; and*
- (d) Time limits for taking steps in relation to such a complaint.*

After subsection (11) add

(11A) In this section "content moderation rule" means any term of service, rule, policy or other standard maintained by the provider or any third party acting on the provider's behalf, which by itself imposes limits or restrictions on the uploading or sharing of content by reference to the substance or subject matter of the content itself.

[NOTE: the purpose of these amendments is to:

- (a) Ensure that exempt news publisher content does not, in practice, become subject to the online safety duties as a result of the practical application of those duties by Category 1 Services.
- (b) Protect the fundamental right of freedom of expression, including the public's right to receive information, by preventing Category 1 services from applying content moderation or other standards-based regulation to news publisher content shared on those services.
- (c) Ensure that news publishers are notified where their content is removed or restricted and that the reason for this is given. This provides a mechanism by which news publishers can ascertain whether decisions are being made to restrict access to their content in breach of the duties in the amended provision and provision is made for representations in response to improper removal.
- (d) Provide a mechanism by which recognised news publishers may complain to OFCOM in cases where a regulated service has failed to comply with the duties to protect journalistic content. It is proposed that the procedure for handling such complaints is to be dealt with in secondary legislation (this is consistent with the approach to super-complaints under the Bill). In order to ensure this complaints mechanism is effective, a consequential amendment is needed to Clause 70 to ensure OFCOM can

issue information notices in support of the exercise of its complaints handling function.]

Clause 70

In subsection (4)(f), after “(super-complaints)” add “or complaints under sections 14 or 18A”.

[NOTE: this amendment is consequential on the amendments to Clause 14 and 18A to provide for complaints to OFCOM. Its purpose is to ensure that OFCOM can exercise its enforcement powers when handling those complaints.]

C. Ensuring equivalent protection for news publisher content in search results

In **Clause 18** omit subsection (2)

After **Clause 18** add Clause 18A:

“18A Duties of care: protection of news publisher content

- (1) The “duties to protect news publisher content” in relation to search services are the duties set out in this section.*
- (2) A duty not to apply any of the online safety duties in this Act to news publisher content.*
- (3) A duty not to remove or restrict users’ access to news publisher content, or to materially alter the way in which news publisher content would ordinarily be viewed, on the basis that the content infringes a content moderation rule (as defined in sub-section 12).*
- (4) A duty, in relation to a decision by a provider to remove news publisher content from search results or otherwise to restrict access to it, to make a dedicated and expedited complaints procedure available to the creator of that content.*
- (5) Without prejudice to the duties in (3) and (4) above, a duty to:*
 - (a) Notify the creator within 24 hours of any decision to take down or restrict access to news publisher content and the reasons for that decision, and*
 - (b) Consider any representations made by the creator in response and, in the event those representations are not accepted, notify the creator of the reasons for their rejection.”*
- (6) A duty to specify in terms of service by what method content appearing in search results is to be identified as news publisher content including specifically by reference to OFCOM’s register of broadcast licence holders and any register of recognised news publishers maintained by:*
 - (a) News Media Association;*
 - (b) Professional Publishers’ Association;*
 - (c) Independent Community News Network; or*
 - (d) Any other trade or industry body, established by two or more UK linked entities whose principal purpose is the publication of news, and which is identified for this purpose by OFCOM in a Code of Practice.*
- (7) A recognised news publisher may make a complaint to OFCOM that a regulated service has failed to comply with any of the duties in this section.*
- (8) The Secretary of State must make regulations containing provision about procedural matters relating to complaints under subsection (5) which shall, in particular, include provision about the following matters –*
 - (a) Notification to OFCOM of an intention to make a complaint under subsection (5);*

- (b) The form and manner of such a complaint, including requirements for supporting evidence;*
- (c) The steps that OFCOM must take in relation to such a complaint;*
- (d) Time limits for taking steps in relation to such a complaint*
- (9) For the purposes of this section content is “news publisher content”, in relation to a search service, if the content is located on an internet service operated by a recognised news publisher.*
- (10) In this section the reference to a person who is the “creator” of content is to the recognised news publisher in question.*
- (11) For the meaning of “recognised news publisher” see section 40.*
- (12) In this section “content moderation rule” means any term of service, rule, policy or other standard maintained by the provider or any third party acting on the provider’s behalf, which by itself would justify the removal or restriction of content from search results by reference to the substance or subject matter of the content itself.*

[NOTE: the purpose of this amendment is to impose an equivalent duty to protect news publisher content as in amended Clause 14 (above) on providers of search services.]

D. Other

In **Clause 39** subsection (9) add after “recognised news publisher”
“or its employees or agents”

[NOTE: The purpose of this amendment is to bring content produced by journalists working for a recognised news publisher within the scope of “news publisher content” (and so outside the scope of “regulated content” when published on a regulated user-to-user service).]

Andrew Caldecott QC
Ben Gallop

16.9.21

ANNEX B
Table of Proposed Amendments to the Bill

Clause	Amendments
2	<p>Meaning of “user-to-user service” and “search service”</p> <p>(1) Subject to subsection (7) below, in this Act “user-to-user service” means an internet service by means of which content that is generated by a user of the service, or uploaded to or shared on the service by a user of the service, may be encountered by another user, or other users, of the service.</p> <p>(2) In subsection (1) the reference to content that may be encountered by another user, or other users, of a service includes content that is capable of being shared with such a user or users by operation of a functionality of the service that allows the sharing of content.</p> <p>(3) For the purposes of subsection (1) it does not matter what proportion of content present on a service is content described in that subsection.</p> <p>(4) For the meaning of “content” and “encounter”, see section 137.</p> <p>(5) Subject to subsection (7) below, in this Act “search service” means an internet service that—</p> <p>(a) is, or includes, a search engine (see section 134), and</p> <p>(b) is not a user-to-user service.</p> <p>(6) For the purposes of this Act, a dissociable part of a user-to-user service, or a dissociable part of a search service, is to be regarded as not forming part of the service if the conditions in paragraph 4(2) of Schedule 1 (internal business services) are satisfied in relation to that part.</p> <p>(7) Notwithstanding the provisions of this section, where an internet service is provided by a Recognised News Publisher it is not a “user-to-user service” or “search service” for the purposes of this Act.</p> <p>(8) For the definition of “Recognised News Publisher” see section 40.</p>
14	<p>Duties to protect journalistic content: Category 1 services</p> <p>(1) The “duties to protect journalistic content” in relation to user-to-user services are the duties set out in this section.</p> <p>(2) A duty not to apply any of the online safety duties in this Act to news publisher content. A duty to operate a service using systems and processes designed to ensure that the importance of the free expression of journalistic content is taken into account when making decisions about—</p>

Clause	Amendments
	<p>(a) how to treat such content (especially decisions about whether to take it down or restrict users' access to it), and (b) whether to take action against a user generating, uploading or sharing such content.</p> <p>(3) A duty not to remove or restrict users' access to news publisher content, or to materially alter the way in which news publisher content would ordinarily be viewed, on the basis that the content infringes a content moderation rule. A duty, in relation to a decision by a provider to take down content or to restrict access to it, to make a dedicated and expedited complaints procedure available to a person who considers the content to be journalistic content and who is— (a) the user who generated, uploaded or shared the content on the service, or (b) the creator of the content (see subsection (11)).</p> <p>(4) A duty to make a dedicated and expedited complaints procedure available to users of a service in relation to a decision by the provider of the service to take action against a user because of content generated, uploaded or shared by the user which the user considers to be journalistic content.</p> <p>(4A) Without prejudice to the duties in (2) or (3) above, where the creator of the journalistic content is a recognised news publisher, a duty to: (a) Notify the creator within 24 hours of any decision to take down or restrict access to the content and the reasons for that decision. (b) Consider any representations made by the creator in response and, in the event those representations are not accepted, notify the creator of the reasons for their rejection. (c) Promptly reinstate any content removed or restricted in breach of the duty in (2) or (3) above.</p> <p>(5) A duty to ensure that— (a) if a complaint about a decision mentioned in subsection (3) is upheld, the content is swiftly reinstated on the service; (b) if a complaint about a decision mentioned in subsection (4) is upheld, the action against the user is swiftly reversed.</p> <p>(6) A duty to specify in terms of service by what methods content present on the service is to be identified as journalistic content including specifically by reference to OFCOM's register of broadcast licence holders and any register of recognised news publishers maintained by: (a) News Media Association; (b) Professional Publishers' Association;</p>

Clause	Amendments
	<p>(c) Independent Community News Network; or</p> <p>(d) Any other trade or industry body, established by two or more UK linked entities whose principal purpose is the publication of news, and which is identified for this purpose by OFCOM in a Code of Practice. A duty to specify in the terms of service—</p> <p>(a) by what methods content present on the service is to be identified as journalistic content;</p> <p>(b) how the importance of the free expression of journalistic content is to be taken into account when making decisions mentioned in subsection (2);</p> <p>(c) the policies and processes for handling complaints in relation to content which is, or is considered to be, journalistic content.</p> <p>(7) A duty to ensure that—</p> <p>(a) the terms of service referred to in subsection (6) are clear and Accessible, and</p> <p>(b) those terms of service are applied consistently.</p> <p>(7B) A Recognised News Publisher may make a complaint to OFCOM that a regulated service has failed to comply with any of the duties in this section.</p> <p>(7C) The Secretary of State must make regulations containing provision about procedural matters relating to complaints under subsection (7B) which shall, in particular, include provision about the following matters –</p> <p>(a) Notification to OFCOM of an intention to make a complaint under subsection (7B);</p> <p>(b) The form and manner of such a complaint, including requirements for supporting evidence;</p> <p>(c) The steps that OFCOM must take in relation to such a complaint; and</p> <p>(d) Time limits for taking steps in relation to such a complaint.</p> <p>(8) For the purposes of this section content is “<i>journalistic content</i>”, in relation to a user-to-user service, if—</p> <p>(a) the content is—</p> <p>(i) news publisher content in relation to that service, or</p> <p>(ii) regulated content in relation to that service;</p> <p>(b) the content is generated for the purposes of journalism; and</p> <p>(c) the content is UK-linked.</p> <p>(9) For the purposes of this section content is “UK-linked” if—</p> <p>(a) United Kingdom users of the service form one of the target markets for the content (or the only target market), or</p> <p>(b) the content is or is likely to be of interest to a significant number of United Kingdom users.</p> <p>(10) In this section references to “taking action” against a user are to</p>

Clause	Amendments
	<p>giving a warning to a user, or suspending or banning a user from using a service, or in any way restricting a user’s ability to use a service.</p> <p>(11) In this section the reference to a person who is the “creator” of content is a reference to any of the following—</p> <p>(a) in the case of news publisher content, the recognised news publisher in question;</p> <p>(b) an individual who—</p> <p>(i) created the content, and</p> <p>(ii) is in the United Kingdom;</p> <p>(c) an entity which—</p> <p>(i) created the content, and</p> <p>(ii) is incorporated or formed under the law of any part of the United Kingdom.</p> <p><i>(11A)) In this section “content moderation rule” means any term of service, rule, policy or other standard maintained by the provider or any third party acting on the provider’s behalf, which by itself imposes limits or restrictions on the uploading or sharing of content by reference to the substance or subject matter of the content itself.</i></p> <p>(12) For the meaning of “news publisher content”, “regulated content” and “recognised news publisher”, see sections 39 and 40.</p>
70(4)(f)	the purpose of dealing with complaints made to OFCOM under section 106 (super-complaints) <i>or complaints under sections 14 or 18A;</i>
18	<p>Duties of care: supplementary</p> <p>(1) A duty set out in this Chapter which must be complied with in relation to a search service extends only to—</p> <p>(a) the design and operation of the service in the United Kingdom, or</p> <p>(b) in the case of a duty that is expressed to apply in relation to users of a service, the design and operation of the service as it affects United Kingdom users of the service.</p> <p>(2) A duty set out in this Chapter which must be complied with in relation to a search service does not extend to—</p> <p>(a) content present on the website of a recognised news publisher (see section 40), or</p> <p>(b) content, that may be encountered via search results, that—</p> <p>(i) reproduces in full an article or written item that was originally published by a recognised news publisher (and is not a screenshot or photograph of that article or item or of part of it),</p> <p>(ii) is a recording of an item originally broadcast by a recognised news publisher (and is not an excerpt of such a recording), or</p> <p>(iii) is a link to a full article or written item originally published by a recognised news publisher, or to a full recording of an item originally</p>

Clause	Amendments
	<p>broadcast by a recognised news publisher.</p> <p>(3) Where duties in this Chapter must be complied with in relation to a search engine forming part of a user-to-user service (see section 5(6)), the references in subsections (1) and (2) to a search service are to be read as references to the search engine.</p>
18A	<p>18A Duties of care: protection of news publisher content</p> <p>(1) The “duties to protect news publisher content” in relation to search services are the duties set out in this section.</p> <p>(2) A duty not to apply any of online safety duties in this Act to news publisher content.</p> <p>(3) A duty not to remove or restrict users’ access to news publisher content, or to materially alter the way in which news publisher content would ordinarily be viewed, on the basis that the content infringes a content moderation rule (as defined in sub-section 12).</p> <p>(4) A duty, in relation to a decision by a provider to remove news publisher content from search results or otherwise to restrict access to it, to make a dedicated and expedited complaints procedure available to the creator of that content.</p> <p>(5) Without prejudice to the duties in (3) and (4) above, a duty to:</p> <ul style="list-style-type: none"> (a) Notify the creator within 24 hours of any decision to take down or restrict access to news publisher content and the reasons for that decision, and (b) Consider any representations made by the creator in response and, in the event those representations are not accepted, notify the creator of the reasons for their rejection. <p>(6) A duty to specify in terms of service by what method content appearing in search results is to be identified as news publisher content including specifically by reference to OFCOM’s register of broadcast licence holders and any register of recognised news publishers maintained by:</p> <ul style="list-style-type: none"> (a) News Media Association; (b) Professional Publishers’ Association; (c) Independent Community News Network; or (d) Any other trade or industry body, established by two or more UK linked entities whose principal purpose is the publication of news, and which is identified for this purpose by OFCOM in a Code of Practice. <p>(7) A recognised news publisher may make a complaint to OFCOM that a regulated service has failed to comply with any of the duties in this section.</p>

Clause	Amendments
	<p>(8) The Secretary of State must make regulations containing provision about procedural matters relating to complaints under subsection (5) which shall, in particular, include provision about the following matters –</p> <p>(a) Notification to OFCOM of an intention to make a complaint under subsection (5);</p> <p>(b) The form and manner of such a complaint, including requirements for supporting evidence;</p> <p>(c) The steps that OFCOM must take in relation to such a complaint;</p> <p>(d) Time limits for taking steps in relation to such a complaint.</p> <p>(9) For the purposes of this section content is “<i>news publisher content</i>”, in relation to a search service, if the content is located on an internet service operated by a recognised news publisher.</p> <p>(10) In this section the reference to a person who is the “<i>creator</i>” of content is to the recognised news publisher in question.</p> <p>(11) For the meaning of “<i>recognised news publisher</i>” see section 40.</p> <p>(12) In this section “<i>content moderation rule</i>” means any term of service, rule, policy or other standard maintained by the provider or any third party acting on the provider’s behalf, which by itself would justify the removal or restriction of content from search results by reference to the substance or subject matter of the content itself.</p>
39(9)	Content is within this subsection if it was generated directly on the service by a user of the service that is a recognised news publisher or its employees or agents.

ANNEX C

Proposed addition to the Bill

Amendments to Part 3 of the Online Safety Bill in relation to trusted news content distributed by digital platforms

Insert a new Chapter 1 (with current Chapter 1 becoming Chapter 2 and so on), starting at Clause 49

49. The mandatory bargaining process

- (1) The regulator must prepare a code of practice describing duties that digital platforms and recognised news publishers have for the purpose of protecting the provision of original news-related material in the United Kingdom by remedying the significant bargaining imbalance between digital platforms

and recognised news publishers when agreeing terms for the distribution of news-related material by digital platforms.

- (2) In drafting its code of practice under sub-section (1), the regulator may include provisions relating to—
- a. bargaining between digital platforms and recognised news publishers in good faith in relation to news-related material made available by digital platforms, whether collectively or individually;
 - b. compulsory final offer arbitration where parties cannot come to a negotiated agreement about remuneration relating to the making available of news-related material on digital platforms within three months after bargaining starts;
 - c. a requirement that digital platforms provide recognised news publishers with a list and explanation of the data that their platform collects (whether or not it shares the data with the recognised news publisher) about the recognised news publisher’s users through their engagement with news-related material made available by the platform, this list and explanation to be updated and supplied annually;
 - d. a requirement that, if requested by a recognised news publisher or the regulator, the digital platform supplies it with the data and information relevant to assessing the benefit that the platform receives from the news-related material of each recognised news publisher;
 - e. a requirement for digital platforms to provide recognised news publishers with 28 days’ advance notification of planned changes to an algorithm or internal policy or practice that is likely to have a significant effect on either (i) the ranking of the recognised news publisher’s covered news-related material made available by the platform, or (ii) the display and presentation of advertising directly associated with that content;
 - f. a requirement that this notification describes the changes to be made and their expected effect in comprehensible terms, and explain how the recognised news publisher can minimise any negative effects;
 - g. non-differentiation requirements stipulating that digital platforms shall not differentiate between recognised news publishers because of matters that arise in relation to their participation or non-participation in the process;
 - h. contracting out, so that a digital platform may reach a commercial bargain with a recognised news publisher outside the process about remuneration or other matters.
- (3) The regulator may include any other provisions which it believes are required or desirable to achieve the purpose of the code of practice or matters reasonably related to that purpose.

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- (4) The regulator may exclude from the code of practice prepared for the purposes of sub-section (1) any digital platform or recognised news publisher that is of insufficient importance or size, if it does not have links with the United Kingdom within the definition in section 3, or if there is another reasonable justification for doing so.
- (5) Before issuing its code of practice under sub-section (1), the regulator must consult digital platforms, recognised news publishers and persons who appear to the regulator to be affected by the code of practice.
- (6) Sections 32 to 35 shall apply to a code of practice prepared under sub-section (1).
- (7) The submission by the regulator of the proposed code of practice under section 32(1) must take place within four months of this Act coming into force.
- (8) Digital platforms and recognised news publishers must comply with the code of practice prepared under sub-section (1).
- (9) Where a code of practice under this section is in force, the regulator may—
 - a. prepare amendments of the code of practice;
 - b. prepare a code of practice under sub-section (1) as a replacement for a code of practice previously prepared under that sub-section;
 - c. withdraw the code of practice.
- (10) In this Part, “digital platform” means any of the following—
 - a. a “*user-to-user service*” as defined in section 2;
 - b. a “*search service*” as defined in section 2; or
 - c. an entity with “*strategic market status*”.
- (11) In this Part, an entity with “*strategic market status*” means an entity that has been found in whole or in part to have strategic market status by a body with statutory authority to make such a finding, or is or will be otherwise subject to regulation owing to the market power or strategic status it holds in the United Kingdom’s economy.
- (12) In this Part, “*recognised news publisher*” has the definition given in section 40.

Consequential amendments

Section 70 (now 71) (power to require information):

- Add two new paragraphs to sub-section (3) stating: *“an entity with strategic market status”* and *“a recognised news publisher”*.
- Add new paragraph to sub-section (4) stating: *“the purpose of assessing compliance with a code of practice issued under section 49.”*

Section 82 (now 83) (requirements enforceable by the regulator against providers of regulated services):

- Add *“and digital platforms”* to the title (or alternatively, delete *“against providers of regulated services”*).
- Add new paragraph stating: *“each of the duties set out in a code of practice under section 49”*.

Section 119 (now 120) (liability of parent entities for failures by subsidiary entities):

- Add *“or digital platform”* at the end of sub-section (1)(a).
- Add *“or platform”* after *“service”* in sub-section (1)(b).

Section 121 (now 122) (liability of subsidiary entities for failures by parent or fellow subsidiary entities):

- Add *“or digital platform”* at the end of sub-section (1)(a).
- Add *“or platform”* after *“service”* in sub-section (1)(b).

Section 127 (now 128) (Extra-territorial application):

- Add *“a digital platform,”* after *“internet service”* in sub-section (1).