

**ONLINE SAFETY BILL**

**AMENDMENT TO BE MOVED ON REPORT**

Clause 35, page 38, line 21	Add at end “( ) An offence under the common law crime of fraud in Scotland”
Clause 53, page 53, line 40	Leave out “it is an offence under the Consumer Protection from Unfair Trading Regulations 2008 (S.I. 2008/1277).” and insert “it is an offence under the Digital Markets, Competition and Consumers Act 2023”
Clause 55, page 56, line 18	after “OFCOM” insert “(i) the devolved authorities, (ii) the Children’s Commissioner for England, (iii) the Children and Young People’s Commissioner Scotland, (iv) the Children’s Commissioner for Wales; and (v) the Northern Ireland Commissioner for Children and Young People,”
Clause 91, page 83, line 17	Add at end “( ) A person who receives a notice from OFCOM must be advised of their right to legal advice and legal representation.”
Clause 92, page 85, line 9	After “provided” insert “(d) contain a statement that the recipient has the right to legal advice and representation,”
Clause 99, page 90, line 3	Add at end “( ) A person who receives a notice from OFCOM must be advised of their right to legal advice and legal representation.”
Clause 101, page 91, line 44	Add at end “( ) The audit notice must state in writing that the recipient has the right to legal advice and representation.”
Clause 106, page 94, line 38	leave out “may” and insert “must”

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| Clause 106, page 95, line 4   | Add at end “It is an offence for a person employed or an individual acting on behalf of OFCOM to disclose or publish information.” |
| Clause 129, page 113, line 38 | After “provider” insert “and the provider’s legal advisor”   |
| Clause 130, page 114, line 28 | After “provider” insert “and the provider’s legal advisor”   |
| Schedule 7, page 209, line 16 | Add at end “( ) An aggravation to an offence or an offence under the Hate Crime and Public Order (Scotland) Act 2021.”             |

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**AMENDMENT TO BE MOVED ON REPORT**

Clause 35, page 38, line 7

Add at end “( ) An offence under the common law crime of fraud in Scotland”.

**Effect**

This amendment ensures that the common law crime of fraud in Scotland is provided for in the Bill.

**Reason**

This amendment clarifies the difference between common law crime of fraud in Scots Law and the statutory offence under the Fraud Act 2006 in England. It ensures that the different provisions regarding fraud offences within the respective jurisdictions in the UK are provided for in the bill.

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Clause 53, page 53, line 40

Leave out “it is an offence under the Consumer Protection from Unfair Trading Regulations 2008 (S.I. 2008/1277).” and insert “it is an offence under the Digital Markets, Competition and Consumers Act 2023.”

**Effect**

This amendment ensures that the offence provision reflects the Digital Markets, Competition and Consumers bill.

**Reason**

Clause 243 (1) <sup>1</sup> of the Digital Markets, Competition and Consumers bill proposes to revoke the Consumer Protection from Unfair Trading Regulations 2008. Accordingly, the offence provisions which are found in the Digital Markets, Competition and Consumers bill at clauses 229 and 231 will be the effective provisions when, subject to Parliamentary approval, the Digital Markets, Competition and Consumers bill comes into effect. This amendment ensures that clause 53 reflects the anticipated statutory change.

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<sup>1</sup> [Digital Markets, Competition and Consumers Bill \(parliament.uk\)](https://www.parliament.uk)

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**AMENDMENT TO BE MOVED ON REPORT**

Clause 55, page 56, line 19

after “OFCOM” insert --

“and (i) the devolved authorities,

(ii) the Children’s Commissioner for England,

(iii) the Children and Young People’s Commissioner Scotland,

(iv) the Children’s Commissioner for Wales; and

(v) the Northern Ireland Commissioner for Children and Young People,”

Effect

This amendment ensures that the Secretary of State consults with the devolved administrations and the Children’s Commissioners before making regulations under section 54.

Reason

We consider this amendment will improve how “primary content that is harmful to children” is defined. The Secretary of State is obliged by this amendment to consult with the devolved administrations, and the Children’s Commissioner for England, the Children and Young People’s Commissioner Scotland, the Children’s Commissioner for Wales, and the Northern Ireland Commissioner for Children and Young<sup>2</sup>. By so consulting, the Secretary of State will be able to seek the views of the devolved administrations and the Children’s Commissioners, and by doing so will be able to define content that is harmful to children taking into account, those views from across the United Kingdom.

This amendment is particularly important taking into account the terms of clause 55(5) which provides that references to children in the clause are to “children in the United Kingdom” and the law relating to children is within devolved competence.

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<sup>2</sup> [Home - The Children and Young People’s Commissioner Scotland \(cypcs.org.uk\)](#), [Homepage | Children’s Commissioner for England \(childrenscommissioner.gov.uk\)](#), [Home - Children’s Commissioner for Wales \(childcomwales.org.uk\)](#), [Home - Niccy](#)

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**AMENDMENT TO BE MOVED ON REPORT**

Clause 91, page 83, line 17 Add at end “( ) A person who receives a notice from OFCOM must be advised of their right to legal advice and legal representation.”

Effect

This amendment ensures that the recipient of a notice from OFCOM must be advised of their right to legal advice and representation.

Reason

A person who receives a notice from OFCOM must be advised of the right to legal advice and representation.

Whilst the person is not being charged with a criminal offence, we consider that a person who receives a notice from OFCOM must be advised of their right to legal advice and representation, as this establishes compliance with the principles of fairness and access to justice.

This will incidentally ensure compliance with Article 6, paragraph 3 (3) (c) of the Convention Rights contained in Schedule 1 of the Human Rights Act 1998<sup>3</sup>.

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<sup>3</sup> [Human Rights Act 1998 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

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**AMENDMENT TO BE MOVED ON REPORT**

Clause 92, page 85, line 9

After “provided” insert “(d) contain a statement that the recipient has the right to legal advice and representation,”

Effect

This amendment ensures that the recipient of a notice from OFCOM must be advised of their right to legal advice and representation.

Reason

A person who receives a notice from OFCOM must be advised of the right to legal advice and representation.

Whilst the person is not being charged with a criminal offence, we consider that a person who receives a notice from OFCOM must be advised of their right to legal advice and representation, as this establishes compliance with the principles of fairness and access to justice.

This will incidentally ensure compliance with Article 6, paragraph 3 (3) (c) of the Convention Rights contained in Schedule 1 of the Human Rights Act 1998<sup>4</sup>.

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<sup>4</sup> [Human Rights Act 1998 \(legislation.gov.uk\)](https://legislation.gov.uk)

**ONLINE SAFETY BILL**

**AMENDMENT TO BE MOVED ON REPORT**

Clause 99, page 90, line 3

Add at end “( ) A person who receives a notice from OFCOM must be advised of their right to legal advice and legal representation.”

Effect

This amendment ensures that the recipient of a notice from OFCOM must be advised of their right to legal advice and representation.

Reason

A person who receives a notice from OFCOM must be advised of the right to legal advice and representation.

Whilst the person is not being charged with a criminal offence, we consider that a person who receives a notice from OFCOM must be advised of their right to legal advice and representation, as this establishes compliance with the principles of fairness and access to justice.

This will incidentally ensure compliance with Article 6, paragraph 3 (3) (c) of the Convention Rights contained in Schedule 1 of the Human Rights Act 1998<sup>5</sup>.

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<sup>5</sup> [Human Rights Act 1998 \(legislation.gov.uk\)](https://www.legislation.gov.uk)



**ONLINE SAFETY BILL**

**AMENDMENT TO BE MOVED ON REPORT**

Clause 101, page 91, line 44

Add at end “( ) The audit notice must state in writing that the recipient has the right to legal advice and representation.”

Effect

This amendment ensures that the recipient of an audit notice from OFCOM must be advised of the recipient’s right to legal advice and representation.

Reason

A person who receives an audit notice from OFCOM must be advised of the right to legal advice and representation.

Whilst the person is not being charged with a criminal offence, we consider that a person who receives a notice from OFCOM must be advised of their right to legal advice and representation, as this establishes compliance with the principles of fairness and access to justice.

This will incidentally ensure compliance with Article 6, paragraph 3 (3) (c) of the Convention Rights contained in Schedule 1 of the Human Rights Act 1998<sup>6</sup>.

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<sup>6</sup> [Human Rights Act 1998 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

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**AMENDMENT TO BE MOVED ON REPORT**

Clause 106, page 94, line 38

leave out “may” and insert “must”

Effect

This ensures that OFCOM must not disclose information received (directly or indirectly) from an intelligence service unless the intelligence service consents to the disclosure.

Reason

This strengthens the obligations on OFCOM not to disclose information from an intelligence service unless the intelligence service gives consent to the disclosure.

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**AMENDMENT TO BE MOVED ON REPORT**

Clause 106, page 95, line 4 Add at end “( ) It is an offence for a person employed or an individual acting on behalf of OFCOM to disclose or publish information.”

**Effect**

This amendment ensures that if an employee or an individual acting on behalf of OFCOM, discloses or publishes information, they commit an offence.

**Reason**

This amendment ensures a consistent approach with other legislation, such as section 43 (4) of the Legal Profession and Legal Aid (Scotland) Act 2007<sup>7</sup>, where it is an offence for a person employed or acting on behalf of the Scottish Legal Complaints Commission to disclose information. Whilst the bill provides for publication or disclosure provisions for OFCOM, this amendment addresses the position of an employee or an individual acting on behalf of OFCOM and makes it an offence to disclose or publish information. The bill is silent on this issue, and accordingly this amendment is necessary.

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<sup>7</sup> [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(legislation.gov.uk\)](http://legislation.gov.uk)

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**AMENDMENT TO BE MOVED ON REPORT**

Clause 129, page 113, line 38      After “provider” insert “and the provider’s legal advisor”

Effect

This amendment means that the provider’s legal advisor can also make representations to OFCOM (with any supporting evidence) about the matters contained in the notice.

Reason

If a provider has instructed a legal advisor regarding a notice, this amendment will allow the legal advisor to make representations to OFCOM (with any supporting evidence) about the notice. It allows the provider’s legal advisor to engage with OFCOM directly and it ensures that legal advisor can represent the provider.

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**AMENDMENT TO BE MOVED ON REPORT**

Clause 130, page 114, line 28      After “provider” insert “and the provider’s legal advisor”

Effect

This amendment means that the provider’s legal advisor can also make representations to OFCOM (with any supporting evidence) about the matters contained in the notice.

Reason

If a provider has instructed a legal advisor regarding a notice, this amendment will allow the legal advisor to make representations to OFCOM (with any supporting evidence) about the notice. It allows the provider’s legal advisor to engage with OFCOM directly and it ensures that legal advisor can represent the provider.

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**AMENDMENT TO BE MOVED ON REPORT**

Schedule 7, page 209, line 16      Add at end “( ) An aggravation to an offence or an offence under the Hate Crime and Public Order (Scotland) Act 2021”.

Effect

This amendment ensures that the offences under the Hate Crime and Public Order (Scotland) Act 2021 are provided in the Bill.

Reason

Priority offences under clause 53 are defined in schedules 5, 6 and 7. The Hate Crime and Public Order (Scotland) Act 2021 (HCPOA) does not appear on the list of priority offences in Schedule 7 to the bill, however offences under the Public Order Act 1986, the Criminal Law (Consolidation) (Scotland) Act 1995 and the Crime and Disorder Act 1998 do.

The HCPOA repeals, as regards Scotland, the:

- Public Order Act 1986 sections 18-21 and parts of 23, 25 and 29
- Criminal Law (Consolidation) (Scotland) Act 1995, Section 50A (racially aggravated harassment) and
- Crime and Disorder Act 1998 Section 96 (offences racially aggravated).

Accordingly it is important that the bill takes into account the terms of HCPOA and that schedule 7 is clarified by this amendment.