

## SCHEDULES

### SCHEDULE 1

Sections 3 and 4

#### EXEMPT USER-TO-USER AND SEARCH SERVICES

#### PART 1

#### DESCRIPTIONS OF SERVICES WHICH ARE EXEMPT

##### *Email services*

- 1 A user-to-user service is exempt if emails are the only user-generated content (other than identifying content) enabled by the service.

##### *SMS and MMS services*

- 2 (1) A user-to-user service is exempt if SMS messages are the only user-generated content (other than identifying content) enabled by the service.  
(2) A user-to-user service is exempt if MMS messages are the only user-generated content (other than identifying content) enabled by the service.  
(3) A user-to-user service is exempt if SMS messages and MMS messages are the only user-generated content (other than identifying content) enabled by the service.  
(4) “SMS message” and “MMS message” have the meaning given by section 55(12).

##### *Services offering only one-to-one live aural communications*

- 3 (1) A user-to-user service is exempt if one-to-one live aural communications are the only user-generated content (other than identifying content) enabled by the service.  
(2) “One-to-one live aural communications” has the meaning given by section 55(5).

##### *Limited functionality services*

- 4 (1) A user-to-user service is exempt if the functionalities of the service are limited, such that users are able to communicate by means of the service only in the following ways—
  - (a) posting comments or reviews relating to provider content;
  - (b) sharing such comments or reviews on a different internet service;
  - (c) expressing a view on such comments or reviews, or on provider content, by means of—
    - (i) applying a “like” or “dislike” button or other button of that nature,
    - (ii) applying an emoji or symbol of any kind,
    - (iii) engaging in yes/no voting, or

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- (iv) rating or scoring the content (or the comments or reviews) in any way (including giving star or numerical ratings);
  - (d) producing or displaying identifying content in connection with any of the activities described in paragraphs (a) to (c).
- (2) In sub-paragraph (1), “provider content” means content published on a service by the provider of the service or by a person acting on behalf of the provider, including where the publication of the content is effected or controlled by means of—
- (a) software or an automated tool or algorithm applied by the provider or by a person acting on behalf of the provider, or
  - (b) an automated tool or algorithm made available on the service by the provider or by a person acting on behalf of the provider.
- (3) For the purposes of this paragraph, content that is user-generated content in relation to a service is not to be regarded as provider content in relation to that service.

*Services which enable combinations of user-generated content*

- 5 A user-to-user service is exempt if the only user-generated content enabled by the service is content of the following kinds—
- (a) content mentioned in paragraph 1, 2 or 3 and related identifying content;
  - (b) content arising in connection with any of the activities described in paragraph 4(1).

*Exception to exemptions in paragraphs 1 to 5*

- 6 But a user-to-user service described in any of paragraphs 1 to 5 is not exempt if—
- (a) regulated provider pornographic content is published or displayed on the service, and
  - (b) the service has links with the United Kingdom within the meaning of section 80(4).

*Internal business services (entire user-to-user service or search service)*

- 7 (1) A user-to-user service or a search service is exempt if the conditions in sub-paragraph (2) are met in relation to the service.
- (2) The conditions are—
- (a) the user-to-user service or search service is an internal resource or tool for a business, or for more than one business carried on by the same person,
  - (b) the person carrying on the business (or businesses) (“P”) is the provider of the user-to-user service or search service, and
  - (c) the user-to-user service or search service is available only to a closed group of people comprising some or all of the following—
    - (i) where P is an individual or individuals, that individual or those individuals,
    - (ii) where P is an entity, officers of P,
    - (iii) persons who work for P (including as employees or volunteers) for the purposes of any activities of the business (or any of the businesses) in question, and

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(iv) any other persons authorised by a person within sub-paragraph (i), (ii) or (iii) to use the service for the purposes of any activities of the business (or any of the businesses) in question (for example, a contractor, consultant or auditor, or in the case of an educational institution, pupils or students).

(3) In this paragraph—

“business” includes trade, profession, educational institution or other concern (whether or not carried on for profit);

“officer” includes a director, manager, partner, associate, secretary, governor, trustee or other similar officer.

#### *Internal business services (part of user-to-user service or search service)*

8 (1) A user-to-user service is exempt if—

- (a) the conditions in paragraph 7(2) are met in relation to a part of the service,
- (b) no user-generated content is enabled by the rest of the service, and
- (c) no regulated provider pornographic content is published or displayed on the rest of the service.

(2) A user-to-user service is also exempt if—

- (a) the conditions in paragraph 7(2) are met in relation to a part of the service,
- (b) the only user-generated content enabled by the rest of the service is—
  - (i) content mentioned in paragraph 1, 2 or 3 and related identifying content, or
  - (ii) content arising in connection with any of the activities described in paragraph 4(1), and
- (c) no regulated provider pornographic content is published or displayed on the rest of the service.

(3) A search service is exempt if—

- (a) the conditions in paragraph 7(2) are met in relation to a part of the service that is a search engine,
- (b) the service does not include a public search engine, and
- (c) no regulated provider pornographic content is published or displayed on the rest of the service.

(4) In this paragraph—

“public search engine” means a search engine other than one in relation to which the conditions in paragraph 7(2) are met;

“the rest of the service” means all parts of the user-to-user service or search service other than the part in relation to which the conditions in paragraph 7(2) are met.

#### *Services provided by public bodies*

9 (1) A user-to-user service or a search service is exempt if—

- (a) both of the following conditions are met in relation to the service—
  - (i) the provider of the service is a public authority within the meaning of section 6 of the Human Rights Act 1998, and
  - (ii) the service is provided in the exercise of public functions only,

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- (b) the provider of the service is Parliament, either House of Parliament, the Scottish Parliament, Senedd Cymru, the Northern Ireland Assembly or a person acting on behalf of any of those institutions,
  - (c) the provider of the service is a foreign sovereign power, or
  - (d) both of the following conditions are met in relation to the service—
    - (i) the provider of the service is an entity formed under the law of a country outside the United Kingdom, which exercises functions of a public nature, and
    - (ii) the service is provided in the exercise of such functions only.
- (2) But a user-to-user service or a search service is not exempt under this paragraph if—
- (a) the provider of the service is a person providing education or childcare, and
  - (b) the service is provided for the purposes of that education or childcare.
- See paragraph 10 for an exemption for services provided by persons providing education or childcare of particular descriptions.
- (3) This paragraph is without prejudice to the fact that this Act does not apply in relation to a user-to-user or search service provided by the Crown.
- (4) In this paragraph, “public function” means a function that is a function of a public nature for the purposes of the Human Rights Act 1998.

*Services provided by persons providing education or childcare*

- 10 (1) A user-to-user service or a search service is exempt if—
- (a) the provider of the service is—
    - (i) the person with legal responsibility for education or childcare of a description listed in Part 2 of this Schedule (“the responsible person”), or where the responsible person is a body, a member of that body, or
    - (ii) a person who is employed or engaged to provide education or childcare of a description listed in Part 2 of this Schedule, and who is subject to safeguarding duties which relate to the provision of that education or childcare, and
  - (b) the service is provided for the purposes of that education or childcare.
- (2) In sub-paragraph (1)(a)(ii), “safeguarding duties” means duties or requirements which are related to the safeguarding of children arising under enactments other than this Act, under guidance or requirements (however referred to) produced under enactments other than this Act, or as a result of contractual arrangements made by the responsible person.
- (3) For the purposes of this paragraph, the person with legal responsibility for education or childcare of a particular description is the person with legal responsibility for its day-to-day provision (for example, the person with legal responsibility for a particular school), rather than any other person who has a duty to ensure that, in general, education or childcare of that description (or education or childcare which includes education or childcare of that description) is provided.

*Interpretation*

- 11 In Part 1 of this Schedule—

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“enactment” includes—

- (a) an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978),
- (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament,
- (c) an enactment contained in, or in an instrument made under, a Measure or Act of Senedd Cymru, and
- (d) an enactment contained in, or in an instrument made under, Northern Ireland legislation;

“regulated provider pornographic content” and “published or displayed” have the same meaning as in Part 5 (see section 79);

“user-generated content” has the meaning given by section 55 (see subsections (3) and (4) of that section).

## PART 2

### PARAGRAPH 10 EXEMPTION: DESCRIPTIONS OF EDUCATION AND CHILDCARE

#### *England*

- 12 Early years childminding by an early years childminder registered under Chapter 2 of Part 3 of the Childcare Act 2006.
- 13 Early years provision by a person registered under Chapter 2 of Part 3 of that Act.
- 14 Later years childminding by a later years childminder registered under Chapter 3 of Part 3 of that Act.
- 15 Later years provision by a person registered under Chapter 3 of Part 3 of that Act.
- 16 Education or childcare in a maintained nursery school within the meaning of section 22 of the School Standards and Framework Act 1998.
- 17 Education or childcare in—
  - (a) an Academy school, within the meaning of section 1A of the Academies Act 2010;
  - (b) an alternate provision Academy, within the meaning of section 1C of that Act;
  - (c) a maintained school, within the meaning of the School Standards and Framework Act 1998 (see section 20(7) of that Act);
  - (d) a non-maintained special school, being a school that is approved under section 342 of the Education Act 1996;
  - (e) an independent educational institution registered on the register maintained under section 95 of the Education and Skills Act 2008;
  - (f) a pupil referral unit, within the meaning of section 19 of the Education Act 1996.
- 18 Education in—
  - (a) an institution in England within the further education sector, within the meaning of the Further and Higher Education Act 1992 (see section 91(3) of that Act);

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- (b) a 16 to 19 Academy, within the meaning of section 1B of the Academies Act 2010;
  - (c) a special post-16 institution, within the meaning of Part 3 of the Children and Families Act 2014 (see section 83(2) of that Act).
- 19 Education provided by an independent training provider.
- 20 Further education for persons under 19 provided by a local authority in England.
- 21 In paragraphs 12 to 15, “early years childminding”, “early years provision”, “later years childminding” and “later years provision” have the same meaning as in Part 3 of the Childcare Act 2006 (see section 98 of that Act).
- 22 In paragraph 19, “independent training provider” means a provider—
- (a) that is a provider of post-16 education or training carried on, or partly carried on, in England—
    - (i) to which Chapter 3 of Part 8 of the Education and Inspections Act 2006 (inspection of further education and training etc) applies, and
    - (ii) which is funded, wholly or partly, by the Secretary of State, a local authority in England or a combined authority, but
  - (b) that is not—
    - (i) an employer who only provides such education or training to its employees,
    - (ii) a 16 to 19 Academy (within the meaning of section 1B of the Academies Act 2010),
    - (iii) a school,
    - (iv) a local authority in England,
    - (v) an institution within the further education sector (within the meaning given by section 91(3) of the Further and Higher Education Act 1992), or
    - (vi) a higher education provider (within the meaning given by section 83(1) of the Higher Education and Research Act 2017).
- 23 In paragraphs 20 and 22, “local authority in England” has the same meaning as in the Education Act 1996 (see sections 579(1) and 581 of that Act).
- 24 In paragraph 22—
- “combined authority” means a combined authority established under section 103 of the Local Democracy, Economic Development and Construction Act 2009;
  - “school” has the meaning given by section 4(1) of the Education Act 1996.

### *Scotland*

- 25 Early learning and childcare, within the meaning of Part 6 of the Children and Young People (Scotland) Act 2014 (asp 8) (see section 46 of that Act).
- 26 Child minding, within the meaning of Part 5 of the Public Services Reform (Scotland) Act 2010 (asp 8) (see paragraph 12 of Schedule 12 to that Act).
- 27 Day care of children, within the meaning of Part 5 of that Act (see paragraph 13 of Schedule 12 to that Act).
- 28 Primary education, secondary education or childcare in—
- (a) a school, or

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(b) a hostel used mainly by pupils attending a school;  
and in this paragraph “school” has the same meaning as in the Education (Scotland) Act 1980 (see section 135(1) of that Act).

29 Further education provided by a body listed under the heading “Institutions formerly eligible for funding by the Scottish Further Education Funding Council” or under the heading “Other institutions” in Schedule 2 to the Further and Higher Education (Scotland) Act 2005 (asp 6).

30 Further education provided by a college of further education which is assigned to a regional strategic body by an order made under section 7C(1) of that Act.

### *Wales*

31 Child minding by a person who is registered as a child minder under Part 2 of the Children and Families (Wales) Measure 2010 (nawm 1).

32 Day care for children by a person who is registered to provide day care for children under Part 2 of that Measure.

33 Primary education, secondary education or childcare in a school in Wales, within the meaning of the Education Act 1996 as it applies in relation to Wales (see section 4 of that Act).

34 Education provided in accordance with section 19A of the Education Act 1996.

35 Further education in an institution in Wales within the further education sector, within the meaning of the Further and Higher Education Act 1992 (see section 91(3) of that Act).

36 Any other post-16 education or training in Wales, the facilities for which are secured under section 31(1)(a) or (b) or 32(1)(a) or (b) of the Learning and Skills Act 2000, that is funded by the Welsh Ministers or a local authority in Wales (within the meaning of section 579(1) of the Education Act 1996), but that is not provided by—

(a) an institution in Wales within the higher education sector, within the meaning of the Further and Higher Education Act 1992 (see section 91(5) of that Act), or

(b) a person who is a provider of such post-16 education or training only by reason of providing such education or training to the person’s employees.

37 In paragraphs 31 and 32, “child minding” and “day care for children” have the same meaning as in Part 2 of the Children and Families (Wales) Measure 2010 (see section 19 of that Measure).

### *Northern Ireland*

38 Childcare by persons who act as child minders or provide day care for children within the meaning of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)), and who are registered under Article 118 of that Order.

39 Pre-school education, within the meaning of Part 5 of the Education (Northern Ireland) Order 1998 (S.I. 1998/1759 (N.I. 13)) (see Article 17(8) of that Order).

40 Education in a nursery school, within the meaning of the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3)) (see Article 2(2) of that Order).



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- 41 Education or childcare in a school, within the meaning of the Education and Libraries (Northern Ireland) Order 1986 (see Article 2(2) of that Order).
- 42 Education which is suitable education otherwise than at school provided in accordance with Article 86 of the Education (Northern Ireland) Order 1998.
- 43 Education in an institution of further education, within the meaning of the Further Education (Northern Ireland) Order 1997 ([S.I. 1997/1772 \(N.I. 15\)](#)) (see Article 2(2) of that Order).
- 44 Education in agriculture and related subjects.

### PART 3

#### INTERPRETATION

- 45 The following definitions apply for the purposes of this Schedule.
- 46 “Childcare”—
- (a) in relation to provision in England, has same meaning as in the Childcare Act 2006 (see section 18 of that Act);
  - (b) in relation to provision in Scotland, means early learning and childcare within the meaning of Part 6 of the Children and Young People (Scotland) Act 2014 (see section 46 of that Act), and any form of care provided outside school hours or during school holidays to children who are in attendance at an educational establishment (and in this paragraph, “educational establishment” has the same meaning as in the Education (Scotland) Act 1980 (see section 135(1) of that Act));
  - (c) in relation to provision in Wales, means anything that amounts to child minding or day care for children for the purposes of Part 2 of the Children and Families (Wales) Measure 2010 (see section 19(2) to (4) of that Measure), and any form of care provided by a school outside school hours or during school holidays (and in this paragraph “school” has the same meaning as in the Education Act 1996 as it applies in relation to Wales (see section 4 of that Act));
  - (d) in relation to provision in Northern Ireland, means anything that amounts to child minding or day care for the purposes of Part 11 of the Children (Northern Ireland) Order 1995, and any form of care provided by a school outside school hours or during school holidays (and in this paragraph “school” has the same meaning as in the Education and Libraries (Northern Ireland) Order (see Article 2(2) of that Order)).
- 47 “Education”—
- (a) in relation to provision in England, Wales and Scotland, means primary education, secondary education, further education or higher education;
  - (b) in relation to provision in Northern Ireland, means primary education, secondary education, further education, higher education or education in agriculture and related subjects.
- 48 “Education in agriculture and related subjects”, in relation to provision in Northern Ireland, means education consisting of instruction in agriculture and related subjects provided by the Department of Agriculture, Environment and Rural Affairs in Northern Ireland under section 5(2)(a) of the [Agriculture Act \(Northern Ireland\)](#)



- 1949 (c. 2 (N.I.)), but not where the instruction is provided only to the Department’s employees.
- 49 “Further education”—
- (a) in relation to provision in England and Wales, has the same meaning as in the Education Act 1996 (see section 2 of that Act);
  - (b) in relation to provision in Scotland, has the same meaning as in Part 1 of the Further and Higher Education (Scotland) Act 1992 (see sections 1(3) and 6 of that Act);
  - (c) in relation to provision in Northern Ireland, has the same meaning as in the Further Education (Northern Ireland) Order 1997 (see Article 3 of that Order).
- 50 “Higher education”—
- (a) in relation to provision in England and Wales, has the same meaning as in the Education Act 1996 (see section 579(1) of that Act);
  - (b) in relation to provision in Scotland, has the same meaning as in Part 2 of the Further and Higher Education (Scotland) Act 1992 (see section 38 of that Act);
  - (c) in relation to provision in Northern Ireland, means—
    - (i) “higher education” within the meaning of the Further Education (Northern Ireland) Order 1997 (see Article 2(2) of that Order), and
    - (ii) any other education provided by a higher education institution within the meaning of the Education and Libraries (Northern Ireland) Order 1993 (S.I. 1993/2810 (N.I. 12)) (see Article 30 of that Order).
- 51 “Primary education” and “secondary education”—
- (a) in relation to provision in England and Wales, have the same meaning as in the Education Act 1996 (see section 2 of that Act);
  - (b) in relation to provision in Scotland, have the same meaning as in the Education (Scotland) Act 1980 (see section 135(2) of that Act);
  - (c) in relation to provision in Northern Ireland, have the same meaning as in the Education and Libraries (Northern Ireland) Order 1986 (see Article 2(2) of that Order).

## SCHEDULE 2

## Section 4

USER-TO-USER SERVICES AND SEARCH SERVICES THAT  
INCLUDE REGULATED PROVIDER PORNOGRAPHIC CONTENT

- 1 A user-to-user service described in any of paragraphs 1 to 5 of Schedule 1—
- (a) on which regulated provider pornographic content is published or displayed, and
  - (b) that has links with the United Kingdom.
- 2 (1) A user-to-user service within sub-paragraph (2) or (3).
- (2) A user-to-user service is within this sub-paragraph if—
- (a) the internal business service conditions are met in relation to a part of the service,

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- (b) no user-generated content is enabled by the rest of the service,
  - (c) regulated provider pornographic content is published or displayed on the rest of the service, and
  - (d) the service has links with the United Kingdom.
- (3) A user-to-user service is within this sub-paragraph if—
- (a) the internal business service conditions are met in relation to a part of the service,
  - (b) the only user-generated content enabled by the rest of the service is—
    - (i) content mentioned in paragraph 1, 2 or 3 of Schedule 1 and related identifying content, or
    - (ii) content arising in connection with any of the activities described in paragraph 4(1) of Schedule 1,
  - (c) regulated provider pornographic content is published or displayed on the rest of the service, and
  - (d) the service has links with the United Kingdom.
- 3 (1) A search service within sub-paragraph (2).
- (2) A search service is within this sub-paragraph if—
- (a) the internal business service conditions are met in relation to a part of the service that is a search engine,
  - (b) the service does not include a public search engine,
  - (c) regulated provider pornographic content is published or displayed on the rest of the service, and
  - (d) the service has links with the United Kingdom.
- 4 For the purposes of this Schedule, a service “has links with the United Kingdom” if it has links with the United Kingdom within the meaning of section 80(4).
- 5 In this Schedule—
- “the internal business service conditions” means the conditions in paragraph 7(2) of Schedule 1;
  - “public search engine” means a search engine other than one in relation to which the internal business service conditions are met;
  - “regulated provider pornographic content” and “published or displayed” have the same meaning as in Part 5 (see section 79);
  - “the rest of the service” means any part of the user-to-user service or search service other than the part in relation to which the internal business service conditions are met;
  - “user-generated content” has the meaning given by section 55 (see subsections (3) and (4) of that section).

## SCHEDULE 3

Sections 9, 11, 14, 26, 28 and 36

### TIMING OF PROVIDERS’ ASSESSMENTS

#### PART 1

##### TIMING OF ILLEGAL CONTENT RISK ASSESSMENTS AND CHILDREN’S ACCESS ASSESSMENTS

###### *Part 3 services already in operation at the outset of the regime provided for by this Act*

- 1 (1) This paragraph applies in relation to a Part 3 service which is in operation immediately before the day on which the first illegal content risk assessment guidance is published.
- (2) The first illegal content risk assessment of the service must be completed within the period of three months beginning with the day on which that guidance is published.
- (3) The first CAA of the service must be completed within the period of three months beginning with the day on which the first CAA guidance is published.

###### *New Part 3 services which start up, and existing services which become Part 3 services, between publication of the first illegal content risk assessment guidance and the first CAA guidance*

- 2 (1) In this paragraph “the first day”, in relation to a Part 3 service, means—
  - (a) the first day on which the service is a Part 3 service (being a new service), or
  - (b) the first day on which the service becomes a Part 3 service (having previously not been a Part 3 service).
- (2) Sub-paragraphs (3) and (4) apply if, on the first day, illegal content risk assessment guidance is available but the first CAA guidance has not yet been published.
- (3) The first illegal content risk assessment of the service must be completed within the period of three months beginning with the first day.
- (4) The first CAA of the service must be completed within the period of three months beginning with the day on which the first CAA guidance is published.

###### *New Part 3 services which start up when illegal content risk assessment guidance and CAA guidance are both available*

- 3 (1) In this paragraph “the first day”, in relation to a Part 3 service, means the first day on which the service is a Part 3 service (being a new service).
- (2) If, on the first day, illegal content risk assessment guidance and CAA guidance are both available, both of the following must be completed within the period of three months beginning with that day—
  - (a) the first illegal content risk assessment of the service, and
  - (b) the first CAA of the service.

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*Existing services which become Part 3 services when illegal content risk assessment guidance and CAA guidance are both available*

- 4 (1) In this paragraph “the first day”, in relation to a Part 3 service, means the first day on which the service becomes, or again becomes, a Part 3 service (following a period during which the service was not a Part 3 service).
- (2) If, on the first day, illegal content risk assessment guidance and CAA guidance are both available, both of the following must be completed within the period of three months beginning with that day—
- (a) an illegal content risk assessment of the service, and
  - (b) a CAA of the service.

## PART 2

### TIMING OF CHILDREN’S RISK ASSESSMENTS AND SECTION 15(2) ASSESSMENTS

*Children’s risk assessments*

- 5 (1) In this paragraph “the relevant day”, in relation to a Part 3 service, means—
- (a) the first day on which the service is treated as likely to be accessed by children, or
  - (b) the first day on which the service is again treated as likely to be accessed by children (following a period during which the service was not so treated).
- (2) If, on the relevant day, children’s risk assessment guidance is available, a children’s risk assessment of the service must be completed within the period of three months beginning with that day.
- (3) Sub-paragraph (4) applies if—
- (a) on the relevant day, the first children’s risk assessment guidance has not yet been published, and
  - (b) immediately before the publication of that guidance, the service is still treated as likely to be accessed by children.
- (4) The first children’s risk assessment of the service must be completed within the period of three months beginning with the day on which the first children’s risk assessment guidance is published.

*Section 15(2) assessments*

- 6 (1) In this paragraph “the relevant day”, in relation to a regulated user-to-user service, means—
- (a) the first day on which the service is a Category 1 service, or
  - (b) the first day on which the service again becomes a Category 1 service (following a period during which the service was not a Category 1 service).
- (2) If, on the relevant day, section 15(2) guidance is available, a section 15(2) assessment of the service must be completed within the period of three months beginning with that day.
- (3) Sub-paragraph (4) applies if—

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- (a) on the relevant day, the first section 15(2) guidance has not yet been published, and
  - (b) immediately before the publication of that guidance, the service is still a Category 1 service.
- (4) The first section 15(2) assessment of the service must be completed within the period of three months beginning with the day on which the first section 15(2) guidance is published.

### PART 3

#### PRE-EXISTING PART 4B SERVICES

##### *Interpretation of this Part*

- 7 (1) In this Part, “pre-existing Part 4B service” means—
- (a) an internet service which—
    - (i) is a video-sharing platform service by reason of the conditions in section 368S(1) and (2) of the Communications Act being met in relation to the service as a whole, and
    - (ii) was being provided immediately before Schedule 17 (videosharing platform services: transitional provision etc) comes into force; or
  - (b) a dissociable section of an internet service, where that dissociable section—
    - (i) is a video-sharing platform service by reason of the conditions in section 368S(1)(a) and (2) of the Communications Act being met in relation to that dissociable section, and
    - (ii) was being provided immediately before Schedule 17 comes into force.
- (2) In sub-paragraph (1), any reference to a service provided before Schedule 17 comes into force includes a reference to a service provided in breach of the requirement in section 368V of the Communications Act.
- 8 (1) In this Part, “assessment start day”, in relation to a pre-existing Part 4B service, means—
- (a) the date specified in regulations made by the Secretary of State for the purposes of this Part of this Schedule, or
  - (b) if the pre-existing Part 4B service ceases to be a video-sharing platform service before the date specified in the regulations, the date when that service ceases to be a video-sharing platform service.
- (2) But in respect of any period during which this Schedule is fully in force and no regulations under sub-paragraph (1) have yet been made, the definition in sub-paragraph (1) has effect as if—
- (a) for paragraph (a) there were substituted “the date when section 210 comes into force”, and
  - (b) in paragraph (b), for “specified in the regulations” there were substituted “when section 210 comes into force”.
- 9 In this Part “video-sharing platform service” has the same meaning as in Part 4B of the Communications Act (see section 368S of that Act).

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- 10 Any reference in this Part to the effect of Part 1 or 2 of this Schedule is a reference to the effect that Part 1 or 2 would have if this Part were disregarded.

PRE-EXISTING PART 4B SERVICES WHICH ARE REGULATED USER-TO-USER SERVICES

*Application of paragraphs 12 to 14*

- 11 (1) This paragraph and paragraphs 12 to 14 apply in relation to a pre-existing Part 4B service which—
- (a) is within the definition in paragraph (a) of paragraph 7(1), and
  - (b) is also a regulated user-to-user service.
- (2) If the effect of Part 1 of this Schedule is that the period within which the first illegal content risk assessment or CAA of the service must be completed begins on a day before the assessment start day, the time for carrying out that assessment is extended as set out in paragraph 12 or 13.
- (3) If the effect of paragraph 6 is that the period within which the first section 15(2) assessment of the service must be completed begins on a day before the assessment start day, the time for carrying out that assessment is extended as set out in paragraph 14.
- (4) But paragraphs 12 to 14 do not apply if the service ceases to be a regulated user-to-user service on the assessment start day.

*Illegal content risk assessments and children's access assessments*

- 12 (1) Sub-paragraphs (2) and (3) apply in relation to the service if, on the assessment start day, illegal content risk assessment guidance is available but the first CAA guidance has not yet been published.
- (2) The first illegal content risk assessment of the service must be completed within the period of three months beginning with the assessment start day.
- (3) The first CAA of the service must be completed within the period of three months beginning with the day on which the first CAA guidance is published.
- 13 If, on the assessment start day, illegal content risk assessment guidance and CAA guidance are both available, both of the following must be completed within the period of three months beginning with that day—
- (a) the first illegal content risk assessment of the service, and
  - (b) the first CAA of the service.

*Section 15(2) assessments*

- 14 (1) If section 15(2) guidance is available on the assessment start day, the first section 15(2) assessment of the service must be completed within the period of three months beginning with that day.
- (2) If, on the assessment start day, the first section 15(2) guidance has not yet been published, the first section 15(2) assessment of the service must be completed within the period of three months beginning with the day on which the first section 15(2) guidance is published.

REGULATED USER-TO-USER SERVICES WHICH INCLUDE A PRE-EXISTING PART 4B SERVICE

*Application of paragraphs 16 to 20*

- 15 (1) Paragraphs 16 to 20 make provision about the timing of assessments in the case of a regulated user-to-user service which includes a pre-existing Part 4B service within the definition in paragraph (b) of paragraph 7(1).
- (2) In sub-paragraph (3) and paragraphs 16 to 20—
- (a) “the regulated service” means the regulated user-to-user service, and
  - (b) “the Part 4B part” means the pre-existing Part 4B service which is included in the regulated service.
- (3) If the effect of Part 1 or paragraph 6 of this Schedule is that the period within which the first illegal content risk assessment, CAA or section 15(2) assessment of the regulated service must be completed begins on a day before the assessment start day—
- (a) the time for carrying out the assessment in question in relation to the Part 4B part is extended as set out in paragraph 16, 17 or 18 (whichever applies),
  - (b) Part 1 and paragraph 6 apply as set out in paragraph 19, and
  - (c) paragraph 5 applies as set out in paragraph 20.
- (4) But paragraphs 16 to 20 do not apply if the service ceases to be a regulated user-to-user service on the assessment start day.

*Illegal content risk assessments and children's access assessments of Part 4B part*

- 16 (1) Sub-paragraphs (2) and (3) apply in relation to the Part 4B part if, on the assessment start day, illegal content risk assessment guidance is available but the first CAA guidance has not yet been published.
- (2) The first illegal content risk assessment of the Part 4B part must be completed within the period of three months beginning with the assessment start day.
- (3) The first CAA of the Part 4B part must be completed within the period of three months beginning with the day on which the first CAA guidance is published.
- 17 If, on the assessment start day, illegal content risk assessment guidance and CAA guidance are both available, both of the following must be completed within the period of three months beginning with that day—
- (a) an illegal content risk assessment of the Part 4B part, and
  - (b) a CAA of the Part 4B part.

*Section 15(2) assessments of Part 4B part*

- 18 (1) If section 15(2) guidance is available on the assessment start day, a section 15(2) assessment of the Part 4B part must be completed within the period of three months beginning with that day.
- (2) If, on the assessment start day, the first section 15(2) guidance has not yet been published, a section 15(2) assessment of the Part 4B part must be completed within the period of three months beginning with the day on which the first section 15(2) guidance is published.



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*Application of Part 1 and paragraph 6*

- 19 (1) This paragraph applies in relation to—
- (a) an illegal content risk assessment or a CAA of the regulated service if an assessment of that kind is due to be carried out in relation to the Part 4B part of the service in accordance with paragraph 16 or 17;
  - (b) a section 15(2) assessment of the regulated service if a section 15(2) assessment is due to be carried out in relation to the Part 4B part of the service in accordance with paragraph 18.

References in the rest of this paragraph to an illegal content risk assessment, a CAA or a section 15(2) assessment are to an assessment of that kind to which this paragraph applies.

- (2) For the purposes of this paragraph—
- (a) the regulated service is “type 1” if it would still be a regulated user-to-user service even if the Part 4B part were to be assumed not to be part of the service;
  - (b) the regulated service is “type 2” if it would be a regulated search service if the Part 4B part were to be assumed not to be part of the service;
  - (c) the regulated service is “type 3” if it does not fall within paragraph (a) or (b).
- (3) If the regulated service is type 1, an illegal content risk assessment, a CAA or a section 15(2) assessment is to be treated as being due at the time provided for by Part 1 or paragraph 6 only in relation to the rest of the service.
- (4) In sub-paragraph (3) “the rest of the service” means any user-to-user part of the regulated service other than the Part 4B part.
- (5) If the regulated service is type 2—
- (a) an illegal content risk assessment is not required to be carried out at the time provided for by Part 1, but that is not to be taken to prevent an illegal content risk assessment as defined by section 26 from being due in relation to the search engine of the service at the time provided for by Part 1;
  - (b) a CAA is to be treated as being due at the time provided for by Part 1 only in relation to the search engine of the service;
  - (c) a section 15(2) assessment is not required to be carried out at the time provided for by paragraph 6.
- (6) If the regulated service is type 3, no illegal content risk assessment, CAA or section 15(2) assessment is required to be carried out at the time provided for by Part 1 or paragraph 6.

*Application of paragraph 5*

- 20 (1) This paragraph sets out how paragraph 5 (children’s risk assessments) is to apply if a CAA is required to be carried out in accordance with—
- (a) paragraph 16 or 17 (CAA of Part 4B part of a service),
  - (b) paragraph 19(3) (CAA of the rest of a service), or
  - (c) paragraph 19(5)(b) (CAA of search engine of a service).
- (2) The definition of “the relevant day” is to operate by reference to the CAA that was (or was required to be) carried out, and accordingly, references to the day on which the service is to be treated as likely to be accessed by children are to be read as

references to the day on which the Part 4B part of the service, the rest of the service or the search engine of the service (as the case may be) is to be treated as likely to be accessed by children.

- (3) References to a children’s risk assessment of the service are to a children’s risk assessment of the Part 4B part of the service, the rest of the service or the search engine of the service (as the case may be).

## PART 4

### INTERPRETATION, AND EXTENSION OF THREE-MONTH PERIODS

#### *Interpretation of this Schedule*

- 21 In this Schedule—
- “CAA” means a children’s access assessment (see section 35);
  - “CAA guidance” means OFCOM’s guidance under section 52(3)(b) (guidance about children’s access assessments);
  - “children’s risk assessment guidance” means OFCOM’s guidance under section 99(3);
  - “section 15(2) assessment” means OFCOM’s assessment under section 14 (assessments related to the adult user empowerment duty set out in section 15(2));
  - “section 15(2) guidance” means OFCOM’s guidance under section 52(1).
- 22 For the meaning of “likely to be accessed by children”, see section 37.
- 23 In relation to regulated user-to-user services (or in the case of combined services, the user-to-user part of such services)—
- (a) references to an illegal content risk assessment are to an illegal content risk assessment as defined by section 9;
  - (b) references to illegal content risk assessment guidance are to OFCOM’s guidance under section 99(1).
- 24 In relation to regulated search services and the search engine of combined services—
- (a) references to an illegal content risk assessment are to an illegal content risk assessment as defined by section 26;
  - (b) references to illegal content risk assessment guidance are to OFCOM’s guidance under section 99(2).
- 25 In relation to regulated user-to-user services (or in the case of combined services, the user-to-user part of such services)—
- (a) references to a children’s risk assessment are to a children’s risk assessment as defined by section 11;
  - (b) references to children’s risk assessment guidance are to be read as references to guidance about such children’s risk assessments.
- 26 In relation to regulated search services and the search engine of combined services—
- (a) references to a children’s risk assessment are to a children’s risk assessment as defined by section 28;
  - (b) references to children’s risk assessment guidance are to be read as references to guidance about such children’s risk assessments.

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- 27 For the purposes of this Schedule, guidance of a particular kind is available at a particular time if at that time there is in existence published guidance of that kind.

*Extension of three-month periods*

- 28 (1) This paragraph applies in relation to a time-limit of three months imposed by any provision of this Schedule for completing a CAA, a section 15(2) assessment or a particular kind of risk assessment.
- (2) Extra time may be allowed—
- (a) by agreement between OFCOM and the provider of a particular Part 3 service, or
  - (b) in accordance with a notice published by OFCOM specifying a longer period for CAAs, section 15(2) assessments or risk assessments of that kind (as the case may be) which relate to Part 3 services of a particular kind or size.

SCHEDULE 4

Section 42

CODES OF PRACTICE UNDER SECTION 41: PRINCIPLES, OBJECTIVES, CONTENT

*General principles*

- 1 In preparing a draft of a code of practice or amendments of a code of practice, OFCOM must—
- (a) consider the appropriateness of provisions of the code of practice to different kinds and sizes of Part 3 services and to providers of differing sizes and capacities, and
  - (b) have regard to the principles mentioned in paragraph 2.
- 2 The principles are as follows—
- (a) providers of Part 3 services must be able to understand which provisions of the code of practice apply in relation to a particular service they provide;
  - (b) the measures described in the code of practice must be sufficiently clear, and at a sufficiently detailed level, that providers understand what those measures entail in practice;
  - (c) the measures described in the code of practice must be proportionate and technically feasible: measures that are proportionate or technically feasible for providers of a certain size or capacity, or for services of a certain kind or size, may not be proportionate or technically feasible for providers of a different size or capacity or for services of a different kind or size;
  - (d) the measures described in the code of practice that apply in relation to Part 3 services of various kinds and sizes must be proportionate to OFCOM's assessment (under section 98) of the risk of harm presented by services of that kind or size.

*Online safety objectives*

- 3 OFCOM must ensure that measures described in codes of practice are compatible with pursuit of the online safety objectives.
- 4 The online safety objectives for regulated user-to-user services are as follows—

- (a) a service should be designed and operated in such a way that—
    - (i) the systems and processes for regulatory compliance and risk management are effective and proportionate to the kind and size of service,
    - (ii) the systems and processes are appropriate to deal with the number of users of the service and its user base,
    - (iii) United Kingdom users (including children) are made aware of, and can understand, the terms of service,
    - (iv) there are adequate systems and processes to support United Kingdom users,
    - (v) (in the case of a Category 1 service) users are offered options to increase their control over the content they encounter and the users they interact with,
    - (vi) the service provides a higher standard of protection for children than for adults,
    - (vii) the different needs of children at different ages are taken into account,
    - (viii) there are adequate controls over access to the service by adults, and
    - (ix) there are adequate controls over access to, and use of, the service by children, taking into account use of the service by, and impact on, children in different age groups;
  - (b) a service should be designed and operated so as to protect individuals in the United Kingdom who are users of the service from harm, including with regard to—
    - (i) algorithms used by the service,
    - (ii) functionalities of the service, and
    - (iii) other features relating to the operation of the service.
- 5 The online safety objectives for regulated search services are as follows—
- (a) a service should be designed and operated in such a way that—
    - (i) the systems and processes for regulatory compliance and risk management are effective and proportionate to the kind and size of service,
    - (ii) the systems and processes are appropriate to deal with the number of users of the service and its user base,
    - (iii) United Kingdom users (including children) are made aware of, and can understand, the publicly available statement referred to in sections 27 and 29,
    - (iv) there are adequate systems and processes to support United Kingdom users,
    - (v) the service provides a higher standard of protection for children than for adults, and
    - (vi) the different needs of children at different ages are taken into account;
  - (b) a service should be assessed to understand its use by, and impact on, children in different age groups;
  - (c) a search engine should be designed and operated so as to protect individuals in the United Kingdom who are users of the service from harm, including with regard to—

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- (i) algorithms used by the search engine,
  - (ii) functionalities relating to searches (such as a predictive search functionality), and
  - (iii) the indexing, organisation and presentation of search results.
- 6 In the case of a combined service—
- (a) the online safety objectives set out in paragraph 4 do not apply in relation to the search engine;
  - (b) the online safety objectives set out in paragraph 5 apply in relation to the search engine, and accordingly references in that paragraph to a search service are to be read as references to the search engine;
  - (c) the reference in paragraph 5(a)(iii) to a publicly available statement includes a reference to provisions of the terms of service which relate to the search engine.
- 7 The Secretary of State may by regulations amend paragraph 4 or 5 so as to vary the online safety objectives for regulated user-to-user services or regulated search services, and such regulations may make consequential amendments of paragraph 6.
- 8 If regulations are made amending the online safety objectives, OFCOM must, as soon as reasonably practicable after the regulations come into force, consider whether a review of the codes of practice published under section 46 is required and, if OFCOM consider that it is required, carry out a review to assess whether any amendments are needed to reflect the revised objectives.

*Content of codes of practice*

- 9 (1) Codes of practice that describe measures recommended for the purpose of compliance with a duty set out in section 10(2) or (3) (illegal content) must include measures in each of the areas of a service listed in section 10(4).
- (2) Codes of practice that describe measures recommended for the purpose of compliance with a duty set out in section 12(2) or (3) (children’s online safety) must include measures in each of the areas of a service listed in section 12(8).
- (3) Codes of practice that describe measures recommended for the purpose of compliance with a duty set out in section 27(2) or (3) (illegal content) must include measures in each of the areas of a service listed in section 27(4).
- (4) Codes of practice that describe measures recommended for the purpose of compliance with a duty set out in section 29(2) or (3) (children’s online safety) must include measures in each of the areas of a service listed in section 29(4).
- (5) Sub-paragraphs (1) to (4) apply to the extent that inclusion of the measures in question is consistent with paragraph 1(a) and the principles mentioned in paragraph 2(c) and (d).
- 10 (1) Measures described in a code of practice which are recommended for the purpose of compliance with any of the relevant duties must be designed in the light of the principles mentioned in sub-paragraph (2) and (where appropriate) incorporate safeguards for the protection of the matters mentioned in those principles.
- (2) The principles are—

- (a) the importance of protecting the right of users and (in the case of search services or combined services) interested persons to freedom of expression within the law, and
  - (b) the importance of protecting the privacy of users.
- (3) In sub-paragraph (2)(b) the reference to protecting the privacy of users is to protecting users from a breach of any statutory provision or rule of law concerning privacy that is relevant to the use or operation of a user-to-user service or a search service (including, but not limited to, any such provision or rule concerning the processing of personal data).
- (4) In this paragraph “the relevant duties” means the duties set out in—
- (a) sections 10 and 27 (illegal content),
  - (b) sections 12 and 29 (children’s online safety),
  - (c) section 15 (user empowerment),
  - (d) section 17 (content of democratic importance),
  - (e) section 19 (journalistic content),
  - (f) sections 20 and 31 (content reporting),
  - (g) sections 21 and 32 (complaints procedures), and
  - (h) sections 38 and 39 (fraudulent advertising).
- 11 Measures described in a code of practice may relate only to the design or operation of a Part 3 service—
- (a) in the United Kingdom, or
  - (b) as it affects United Kingdom users of the service.

*Content of codes of practice: age assurance*

- 12 (1) This paragraph is about the inclusion of age assurance in a code of practice as a measure recommended for the purpose of compliance with any of the duties set out in section 12(2) or (3) or 29(2) or (3), and sub-paragraph (2) sets out some further principles, in addition to those in paragraphs 1 and 2 (general principles) and 10(2) (freedom of expression and privacy), which are particularly relevant.
- (2) In deciding whether to recommend the use of age assurance, or which kinds of age assurance to recommend, OFCOM must have regard to the following—
- (a) the principle that age assurance should be effective at correctly identifying the age or age-range of users;
  - (b) relevant standards set out in the latest version of the code of practice under section 123 of the Data Protection Act 2018 (age-appropriate design code);
  - (c) the need to strike the right balance between—
    - (i) the levels of risk and the nature, and severity, of potential harm to children which the age assurance is designed to guard against, and
    - (ii) protecting the right of users and (in the case of search services or the search engine of combined services) interested persons to freedom of expression within the law;
  - (d) the principle that more effective kinds of age assurance should be used to deal with higher levels of risk of harm to children;
  - (e) the principle that age assurance should be easy to use, including by children of different ages and with different needs;

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- (f) the principle that age assurance should work effectively for all users regardless of their characteristics or whether they are members of a certain group;
  - (g) the principle of interoperability between different kinds of age assurance.
- (3) In a code of practice that describes measures for the purpose of compliance with the duty set out in section 12(3)(a), OFCOM must recommend (among other things) age verification or age estimation which is such of a kind, and which is to be used in such a way, that it is highly effective at correctly determining whether or not a particular user is a child (see section 12(6)).
- (4) In deciding which kinds and uses of age verification or age estimation to recommend for the purpose of compliance with the duty set out in section 12(3)(a), OFCOM must have regard to their guidance under section 82 that gives examples of kinds and uses of age verification and age estimation that are, or are not, highly effective at correctly determining whether or not a particular user is a child.
- (5) Nothing in sub-paragraph (2) is to be read as allowing OFCOM to recommend, for the purpose of compliance with the duty set out in section 12(3)(a) by providers subject to the requirement in section 12(4), a kind or use of age verification or age estimation which does not meet the requirement to be highly effective as mentioned in section 12(6).
- (6) A code of practice that recommends the use of age assurance for the purpose of compliance with the duties set out in section 12(2) or (3) must also describe measures recommended for the purpose of compliance with the duties set out in—
- (a) section 12(9), (11) and (13) (inclusion of clear information in terms of service), and
  - (b) section 21(2) and (3) (see, in particular, section 21(5)(e) (complaints about age assurance)).
- (7) A code of practice that recommends the use of age assurance for the purpose of compliance with the duties set out in section 29(2) or (3) must also describe measures recommended for the purpose of compliance with the duties set out in—
- (a) section 29(5) and (8) (inclusion of clear information in publicly available statement), and
  - (b) section 32(2) and (3) (see, in particular, section 32(5)(d) (complaints about age assurance)).
- (8) A code of practice may—
- (a) refer to industry or technical standards for age assurance (where they exist);
  - (b) elaborate on the principles mentioned in paragraphs (a) and (c) to (g) of sub-paragraph (2).
- (9) In this paragraph “age assurance” means age verification or age estimation, and see in particular section 230(4) (self-declaration of age not to be regarded as age verification or age estimation).

*Content of codes of practice: proactive technology*

- 13 (1) If OFCOM consider it appropriate to do so, and in accordance with the principles to which they must have regard (see paragraphs 1 and 2 and, in particular, 10(2)), they may include in a code of practice a measure describing the use of a kind of technology.



- (2) But there are constraints, set out in the rest of this paragraph, on OFCOM’s power to include in a code of practice a measure describing the use of proactive technology as a way (or one of the ways) of complying with a duty set out in this Act (a “proactive technology measure”).
- (3) A proactive technology measure may be recommended only for the purpose of compliance with any of the duties set out in—
- (a) section 10(2) or (3) (illegal content),
  - (b) section 12(2) or (3) (children’s online safety),
  - (c) section 27(2) or (3) (illegal content),
  - (d) section 29(2) or (3) (children’s online safety), or
  - (e) section 38(1) or 39(1) (fraudulent advertising).
- (4) A proactive technology measure may relate to the use of a kind of technology on or in relation to any Part 3 service or any part of such a service, but if the technology operates (or may operate) by analysing user-generated content or metadata relating to such content, the measure may not recommend the use of the technology to analyse user-generated content communicated privately, or metadata relating to user-generated content communicated privately.
- (5) A proactive technology measure may be included in a code of practice in relation to Part 3 services of a particular kind or size only if OFCOM are satisfied that use of the technology in question by such services would be proportionate to the risk of harm that the measure is designed to safeguard against (taking into account, in particular, the risk profile for the time being published by OFCOM under section 98 relating to such services).
- (6) In deciding whether to include a proactive technology measure in a code of practice, OFCOM must have regard to the degree of accuracy, effectiveness and lack of bias achieved by the technology in question, and may—
- (a) refer in the code of practice to industry or technical standards for the technology (where they exist);
  - (b) set out principles in the code of practice designed to ensure that the technology or its use is (so far as possible) accurate, effective and free of bias.
- (7) Sub-paragraph (6) does not apply in relation to proactive technology which is a kind of age verification or age estimation technology.

### *General*

- 14 A code of practice may make different provision for different purposes and may, in particular—
- (a) make different provision with regard to—
    - (i) user-to-user services, and
    - (ii) search services;
  - (b) make different provision with regard to user-to-user services of different kinds or search services of different kinds; and
  - (c) otherwise differentiate between Part 3 services, and between providers of such services, in such manner as OFCOM consider appropriate.
- 15 A code of practice may apply in relation to a person who provides a Part 3 service from outside the United Kingdom.

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### *Interpretation*

- 16 In this Schedule—
- “code of practice” means a code of practice under section 41;
  - “search results” has the meaning given by section 57(3);
  - “user-generated content” has the meaning given by section 55 (see subsections (3) and (4) of that section).

## SCHEDULE 5

Section 59

### TERRORISM OFFENCES

- 1 An offence under any of the following provisions of the Terrorism Act 2000—
- (a) section 11 (membership of a proscribed organisation);
  - (b) section 12(1) (inviting support for a proscribed organisation);
  - (c) section 12(1A) (expressing an opinion or belief supportive of a proscribed organisation);
  - (d) section 12(2) (arranging a meeting supportive of a proscribed organisation);
  - (e) section 13(1A) (publishing image of uniform of proscribed organisation);
  - (f) section 15 (terrorist fund-raising);
  - (g) section 16(1) (use of money or property for terrorist purposes);
  - (h) section 16(2) (possession of money or property for terrorist purposes);
  - (i) section 17 (involvement in terrorist funding arrangements);
  - (j) section 18 (laundering of terrorist property);
  - (k) section 54(1) (providing weapons training);
  - (l) section 54(3) (inviting another to receive weapons training);
  - (m) section 56 (directing a terrorist organisation);
  - (n) section 58 (collection of information likely to be of use to a terrorist);
  - (o) section 58A (publishing information about members of the armed forces etc);
  - (p) sections 59 to 61 (inciting terrorism outside the United Kingdom).
- 2 An offence under section 113 of the Anti-terrorism, Crime and Security Act 2001 (use of noxious substances or things).
- 3 An offence under any of the following provisions of the Terrorism Act 2006—
- (a) section 1 (encouragement of terrorism);
  - (b) section 2 (dissemination of terrorist publications);
  - (c) section 5 (preparation of terrorist acts);
  - (d) section 6 (training for terrorism);
  - (e) section 11 (terrorist threats relating to radioactive devices etc).

### *Inchoate offences*

- 4 (1) An offence of attempting or conspiring to commit an offence specified in this Schedule.

- (2) An offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting) in relation to an offence specified in this Schedule, or (in Scotland) inciting a person to commit such an offence.
- (3) An offence of aiding, abetting, counselling or procuring the commission of an offence specified in this Schedule, or (in Scotland) being involved art and part in the commission of such an offence.

## SCHEDULE 6

Section 59

### CHILD SEXUAL EXPLOITATION AND ABUSE OFFENCES

#### PART 1

##### ENGLAND AND WALES, AND NORTHERN IRELAND

- 1 An offence under section 2 of the Obscene Publications Act 1959 relating to an obscene article tending to deprave and corrupt others by encouraging them to commit an offence specified in paragraph 2, 4, 5, 7 or 8.
- 2 An offence under section 1 of the Protection of Children Act 1978 (indecent photographs of children).
- 3 An offence under Article 3 of the Protection of Children (Northern Ireland) Order 1978 (S.I. 1978/1047 (N.I. 17)) (indecent photographs of children).
- 4 An offence under section 160 of the Criminal Justice Act 1988 (possession of indecent photograph of a child).
- 5 An offence under any of the following provisions of the Sexual Offences Act 2003—
  - (a) section 8 (causing or inciting a child under 13 to engage in sexual activity);
  - (b) section 10 (causing or inciting a child to engage in sexual activity);
  - (c) section 11 (engaging in sexual activity in the presence of a child);
  - (d) section 12 (causing a child to watch a sexual act);
  - (e) section 13 (child sex offences committed by children or young persons);
  - (f) section 14 (arranging or facilitating commission of a child sex offence);
  - (g) section 15 (meeting a child following sexual grooming etc);
  - (h) section 15A (sexual communication with a child);
  - (i) section 47 (paying for sexual services of a child);
  - (j) section 48 (causing or inciting sexual exploitation of a child);
  - (k) section 49 (controlling a child in relation to sexual exploitation);
  - (l) section 50 (arranging or facilitating sexual exploitation of a child).
- 6 An offence under any of the following provisions of the Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2))—
  - (a) Article 15 (causing or inciting a child under 13 to engage in sexual activity);
  - (b) Article 17 (causing or inciting a child to engage in sexual activity);
  - (c) Article 18 (engaging in sexual activity in the presence of a child);
  - (d) Article 19 (causing a child to watch a sexual act);

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- (e) Article 20 (sexual offences against children committed by children or young persons);
  - (f) Article 21 (arranging or facilitating commission of a sex offence against a child);
  - (g) Article 22 (meeting a child following sexual grooming etc);
  - (h) Article 22A (sexual communication with a child);
  - (i) Article 37 (paying for sexual services of a child);
  - (j) Article 38 (causing or inciting child prostitution or pornography);
  - (k) Article 39 (controlling a child prostitute or a child involved in pornography);
  - (l) Article 40 (arranging or facilitating child prostitution or pornography).
- 7 An offence under section 62 of the Coroners and Justice Act 2009 (possession of prohibited image of a child).
- 8 An offence under section 69 of the Serious Crime Act 2015 (possession of paedophile manual).

### *Inchoate offences*

- 9 (1) An offence of attempting or conspiring to commit an offence specified in this Part.
- (2) An offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting) in relation to an offence specified in this Part.
- (3) An offence of aiding, abetting, counselling or procuring the commission of an offence specified in this Part.

## **PART 2**

### SCOTLAND

- 10 An offence under either of the following provisions of the Civic Government (Scotland) Act 1982—
- (a) section 52 (indecent photographs etc of children);
  - (b) section 52A (possession of indecent photographs of children).
- 11 An offence under any of the following provisions of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005—
- (a) section 1 (meeting a child following certain preliminary contact);
  - (b) section 9 (paying for sexual services of a child);
  - (c) section 10 (causing or inciting provision by child of sexual services or child pornography);
  - (d) section 11 (controlling a child providing sexual services or involved in pornography);
  - (e) section 12 (arranging or facilitating provision by child of sexual services or child pornography).
- 12 An offence under any of the following provisions of the Sexual Offences (Scotland) Act 2009—
- (a) section 21 (causing a young child to participate in a sexual activity);
  - (b) section 23 (causing a young child to look at a sexual image);

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- (c) section 24 (communicating indecently with a young child etc);
- (d) section 31 (causing an older child to participate in a sexual activity);
- (e) section 33 (causing an older child to look at a sexual image);
- (f) section 34 (communicating indecently with an older child etc);
- (g) section 54 (incitement to commit certain sexual acts outside Scotland).

### *Inchoate offences*

- 13 (1) An offence of attempting or conspiring to commit an offence specified in this Part.
- (2) An offence of inciting a person to commit an offence specified in this Part.
- (3) An offence of aiding, abetting, counselling or procuring the commission of an offence specified in this Part, or being involved art and part in the commission of such an offence.

## SCHEDULE 7

Section 59

### PRIORITY OFFENCES

#### *Assisting suicide*

- 1 An offence under section 2 of the Suicide Act 1961 (assisting suicide etc).
- 2 An offence under section 13 of the [Criminal Justice Act \(Northern Ireland\) 1966 \(c. 20 \(N.I.\)\)](#) (assisting suicide etc).

#### *Threats to kill*

- 3 An offence under section 16 of the Offences against the Person Act 1861 (threats to kill).

#### *Public order offences, harassment, stalking and fear or provocation of violence*

- 4 An offence under any of the following provisions of the Public Order Act 1986—
- (a) section 4 (fear or provocation of violence);
  - (b) section 4A (intentional harassment, alarm or distress);
  - (c) section 5 (harassment, alarm or distress);
- 5 An offence under any of the following provisions of the Public Order Act 1986—
- (a) section 18 (use of words or behaviour or display of written material);
  - (b) section 19 (publishing or distributing written material);
  - (c) section 21 (distributing, showing or playing a recording);
  - (d) section 29B (use of words or behaviour or display of written material);
  - (e) section 29C (publishing or distributing written material);
  - (f) section 29E (distributing, showing or playing a recording).
- 6 An offence under section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995 (racially-aggravated harassment).

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- 7 An offence under any of the following provisions of the Protection from Harassment Act 1997—
- (a) section 2 (harassment);
  - (b) section 2A (stalking);
  - (c) section 4 (putting people in fear of violence);
  - (d) section 4A (stalking involving fear of violence or serious alarm or distress).
- 8 An offence under any of the following provisions of the Protection from Harassment (Northern Ireland) Order 1997 (S.I. 1997/1180 (N.I. 9))—
- (a) Article 4 (harassment);
  - (b) Article 6 (putting people in fear of violence).
- 9 An offence under any of the following provisions of the Crime and Disorder Act 1998—
- (a) section 31 (racially or religiously aggravated public order offences);
  - (b) section 32 (racially or religiously aggravated harassment etc).
- 10 An offence under any of the following provisions of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13)—
- (a) section 38 (threatening or abusive behaviour);
  - (b) section 39 (stalking).
- 11 An offence under section 76 of the Serious Crime Act 2015 (controlling or coercive behaviour in an intimate or family relationship).

#### *Drugs and psychoactive substances*

- 12 An offence under any of the following provisions of the Misuse of Drugs Act 1971—
- (a) section 4(3) (unlawful supply, or offer to supply, of controlled drugs);
  - (b) section 9A (prohibition of supply etc of articles for administering or preparing controlled drugs);
  - (c) section 19 (inciting any other offence under that Act).
- 13 An offence under section 5 of the Psychoactive Substances Act 2016 (supplying, or offering to supply, a psychoactive substance).

#### *Firearms and other weapons*

- 14 An offence under section 1(1) or (2) of the Restriction of Offensive Weapons Act 1959 (sale etc of flick knife etc).
- 15 An offence under any of the following provisions of the Firearms Act 1968—
- (a) section 1(1) (purchase etc of firearms or ammunition without certificate);
  - (b) section 2(1) (purchase etc of shot gun without certificate);
  - (c) section 3(1) (dealing etc in firearms or ammunition by way of trade or business without being registered);
  - (d) section 3(2) (sale etc of firearms or ammunition to person other than registered dealer);
  - (e) section 5(1), (1A) or (2A) (purchase, sale etc of prohibited weapons);
  - (f) section 21(5) (sale etc of firearms or ammunition to persons previously convicted of crime);
  - (g) section 22(1) (purchase etc of firearms or ammunition by person under 18);

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- (h) section 24 (supplying firearms to minors);
  - (i) section 24A (supplying imitation firearms to minors).
- 16 An offence under any of the following provisions of the Crossbows Act 1987—
- (a) section 1 (sale and letting on hire of crossbow);
  - (b) section 2 (purchase and hiring of crossbow).
- 17 An offence under any of the following provisions of the Criminal Justice Act 1988—
- (a) section 141(1) or (4) (sale etc of offensive weapons);
  - (b) section 141A (sale of knives etc to persons under 18).
- 18 An offence under any of the following provisions of the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160 (N.I. 24))—
- (a) Article 53 (sale etc of knives);
  - (b) Article 54 (sale of knives etc to minors).
- 19 An offence under any of the following provisions of the Knives Act 1997—
- (a) section 1 (unlawful marketing of knives);
  - (b) section 2 (publication of material in connection with marketing of knives).
- 20 An offence under any of the following provisions of the Firearms (Northern Ireland) Order 2004 (S.I. 2004/702 (N.I. 3))—
- (a) Article 24 (sale etc of firearms or ammunition without certificate);
  - (b) Article 37(1) (sale etc of firearms or ammunition to person without certificate etc);
  - (c) Article 45(1) or (2) (purchase, sale etc of prohibited weapons);
  - (d) Article 63(8) (sale etc of firearms or ammunition to people who have been in prison etc);
  - (e) Article 66A (supplying imitation firearms to minors).
- 21 An offence under section 36(1)(c) or (d) of the Violent Crime Reduction Act 2006 (sale etc of realistic imitation firearms).
- 22 An offence under any of the following provisions of the Air Weapons and Licensing (Scotland) Act 2015 (asp 10)—
- (a) section 2 (requirement for air weapon certificate);
  - (b) section 24 (restrictions on sale etc of air weapons).

#### *Assisting illegal immigration*

- 23 An offence under any of the following provisions of the Immigration Act 1971—
- (a) section 24(A1), (B1), (C1) or (D1) (illegal entry and similar offences);
  - (b) section 25 (assisting unlawful immigration).

#### *Human trafficking*

- 24 An offence under section 2 of the Modern Slavery Act 2015 (human trafficking).
- 25 An offence under section 1 of the Human Trafficking and Exploitation (Scotland) Act 2015 (asp 12) (human trafficking).
- 26 An offence under section 2 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c. 2 (N.I.)) (human trafficking).



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### *Sexual exploitation*

- 27 An offence under any of the following provisions of the Sexual Offences Act 2003—
- (a) section 52 (causing or inciting prostitution for gain);
  - (b) section 53 (controlling prostitution for gain).
- 28 An offence under any of the following provisions of the Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2))—
- (a) Article 62 (causing or inciting prostitution for gain);
  - (b) Article 63 (controlling prostitution for gain).

### *Sexual images*

- 29 An offence under section 63 of the Criminal Justice and Immigration Act 2008 (possession of extreme pornographic images).
- 30 An offence under section 33 of the Criminal Justice and Courts Act 2015 (disclosing, or threatening to disclose, private sexual photographs and films with intent to cause distress).
- 31 An offence under section 2 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 (asp 22) (disclosing, or threatening to disclose, an intimate photograph or film).

### *Proceeds of crime*

- 32 An offence under any of the following provisions of the Proceeds of Crime Act 2002—
- (a) section 327 (concealing etc criminal property);
  - (b) section 328 (arrangements facilitating acquisition etc of criminal property);
  - (c) section 329 (acquisition, use and possession of criminal property).

### *Fraud*

- 33 An offence under any of the following provisions of the Fraud Act 2006—
- (a) section 2 (fraud by false representation);
  - (b) section 4 (fraud by abuse of position);
  - (c) section 7 (making or supplying articles for use in frauds);
  - (d) section 9 (participating in fraudulent business carried on by sole trader etc).
- 34 An offence under section 49(3) of the Criminal Justice and Licensing (Scotland) Act 2010 (articles for use in fraud).

### *Financial services*

- 35 An offence under any of the following provisions of the Financial Services and Markets Act 2000—
- (a) section 23 (contravention of prohibition on carrying on regulated activity unless authorised or exempt);
  - (b) section 24 (false claims to be authorised or exempt);
  - (c) section 25 (contravention of restrictions on financial promotion).

- 36 An offence under any of the following provisions of the Financial Services Act 2012—
- (a) section 89 (misleading statements);
  - (b) section 90 (misleading impressions).

*Foreign interference*

- 37 An offence under section 13 of the National Security Act 2023 (foreign interference).

*Animal welfare*

- 38 An offence under section 4(1) of the Animal Welfare Act 2006 (unnecessary suffering of an animal).

*Inchoate offences*

- 39 (1) An offence of attempting or conspiring to commit an offence specified in this Schedule.
- (2) An offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting) in relation to an offence specified in this Schedule, or (in Scotland) inciting a person to commit such an offence.
- (3) An offence of aiding, abetting, counselling or procuring the commission of an offence specified in this Schedule, or (in Scotland) being involved art and part in the commission of such an offence.

## SCHEDULE 8

Section 77

## TRANSPARENCY REPORTS BY PROVIDERS OF CATEGORY 1 SERVICES, CATEGORY 2A SERVICES AND CATEGORY 2B SERVICES

**PART 1**

## MATTERS ABOUT WHICH INFORMATION MAY BE REQUIRED: USER-TO-USER PART OF SERVICE

- 1 The incidence of illegal content, content that is harmful to children, relevant content and content to which section 15(2) applies on a service.
- 2 The dissemination of illegal content, content that is harmful to children, relevant content and content to which section 15(2) applies by means of a service.
- 3 The number of users who are assumed to have encountered illegal content, content that is harmful to children, relevant content or content to which section 15(2) applies by means of the service.
- 4 The formulation, development, scope and application of the terms of service.
- 5 The systems and processes for users to report content which they consider to be illegal content, content that is harmful to children or relevant content.

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- 6 The systems and processes that a provider operates to deal with illegal content, content that is harmful to children and relevant content, including systems and processes for identifying such content and taking it down.
- 7 Functionalities designed to help users manage risks relating to content that is harmful to children and relevant content.
- 8 Features, including functionalities, that a provider considers may contribute to risks of harm to individuals using the service, and measures taken or in use by the provider to mitigate and manage those risks.
- 9 The design and operation of algorithms which affect the display, promotion, restriction or recommendation of illegal content, content that is harmful to children, relevant content or content to which section 15(2) applies.
- 10 Measures taken or in use by a provider to comply with any duty set out in Chapter 2 or 4 of Part 3 or section 38 (including in particular measures that are described in a code of practice under section 41).
- 11 Measures taken or in use by a provider to comply with the duty set out in section 64(1) (user identity verification).
- 12 Arrangements that a provider has in place for the reporting (in the United Kingdom or elsewhere) of content relating to child sexual exploitation and abuse, and measures taken or in use by a provider to comply with a requirement under section 66.
- 13 Measures taken or in use by a provider to comply with any duty set out in section 71 or 72 (terms of service).
- 14 Measures taken or in use by a provider to comply with any duty set out in section 75 (deceased child users).
- 15 The systems and processes by which a provider assesses the risk of harm to individuals from the presence of illegal content or content that is harmful to children—
- (a) when the service is initially being designed or developed,
  - (b) when any further development or update to the service is being considered, and
  - (c) while the service is in operation.
- 16 The systems and processes that a provider operates—
- (a) to direct users of the service to information about how they can protect themselves from harm in relation to illegal content and content that is harmful to children, and
  - (b) to counteract or provide support to users of the service in relation to illegal content and content that is harmful to children present on the service.
- 17 Co-operation by a provider with government, regulatory or other public sector bodies in the United Kingdom, in particular those involved in the enforcement of the criminal law.
- 18 Measures taken or in use by a provider to provide for a higher standard of protection for children than for adults.
- 19 Measures taken or in use by a provider to improve the media literacy of users, and an evaluation of the effectiveness of such measures.

- 20 Any other measures taken or in use by a provider which relate to online safety matters.

## PART 2

### MATTERS ABOUT WHICH INFORMATION MAY BE REQUIRED: SEARCH ENGINE

- 21 The incidence of illegal search content and search content that is harmful to children on a service.
- 22 The number of users who are assumed to have encountered illegal search content or search content that is harmful to children.
- 23 The formulation, development, scope and application of the statements of policies and procedures mentioned in sections 27(5) and 29(5).
- 24 The systems and processes for users to report search content which they consider to be illegal content or content that is harmful to children, or other content which they consider breaches any statements of policies and procedures which have been made publicly available by the provider of a service.
- 25 The systems and processes that a provider operates to deal with illegal search content and search content that is harmful to children, including systems and processes for identifying such content and minimising the risk of those kinds of content being encountered by means of the service.
- 26 Functionalities designed to help users manage risks relating to search content that is harmful to children.
- 27 The design and operation of algorithms which affect the display, promotion, restriction or recommendation of illegal search content or search content that is harmful to children.
- 28 Measures taken or in use by a provider to comply with any duty set out in Chapter 3 or 4 of Part 3 or section 39 (including in particular measures that are described in a code of practice under section 41).
- 29 Arrangements that a provider has in place for the reporting (in the United Kingdom or elsewhere) of content relating to child sexual exploitation and abuse, and measures taken or in use by a provider to comply with a requirement under section 66.
- 30 Measures taken or in use by a provider to comply with any duty set out in section 75 (deceased child users).
- 31 The systems and processes by which a provider assesses the risk of harm to individuals from illegal search content or search content that is harmful to children—
- (a) when the service is initially being designed or developed,
  - (b) when any further development or update to the service is being considered, and
  - (c) while the service is in operation.
- 32 The systems and processes that a provider operates—
- (a) to direct users of the service to information about how they can protect themselves from harm in relation to illegal content and content that is harmful to children, and

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- (b) to counteract or provide support to users of the service in relation to illegal search content and search content that is harmful to children.
- 33 Co-operation by a provider with government, regulatory or other public sector bodies in the United Kingdom, in particular those involved in the enforcement of the criminal law.
- 34 Measures taken or in use by a provider to provide a higher standard of protection for children than for adults.
- 35 Measures taken or in use by a provider to improve the media literacy of users, and an evaluation of the effectiveness of such measures.
- 36 Any other measures taken or in use by a provider which relate to online safety matters.

### PART 3

#### FURTHER PROVISION AND INTERPRETATION

- 37 When determining which information to require in a notice under section 77(1) in relation to a particular service, OFCOM must take into account—
  - (a) the kind of service it is;
  - (b) the functionalities of the service;
  - (c) the number of users of the service;
  - (d) the capacity of the provider;
  - (e) the duties set out in Chapter 2 or 3 of Part 3 or Chapters 1 to 4 of Part 4 that apply in relation to the service;
  - (f) the proportion of users of the service who are children.
- 38 The Secretary of State may by regulations—
  - (a) amend Part 1 or Part 2 of this Schedule so as to add further matters about which information may be required, or to vary or omit matters about which information may be required, and
  - (b) amend paragraph 37 in connection with any such amendment.
- 39 The Secretary of State must consult OFCOM before making regulations under paragraph 38.
- 40 In the application of Part 2 of this Schedule to a combined service, references to statements of policies and procedures include references to provisions of the terms of service which relate to the search engine.
- 41 (1) For the purposes of this Schedule, content of a particular kind is “relevant content” if—
  - (a) a term of service, other than a term of service within sub-paragraph (2), indicates (in whatever words) that the presence of content of that kind is prohibited on the service or that users’ access to content of that kind is restricted, and
  - (b) it is regulated user-generated content.
 (2) The terms of service within this sub-paragraph are as follows—
  - (a) terms of service which make provision of the kind mentioned in section 10(5) (protecting individuals from illegal content) or 12(9) (protecting children from content that is harmful to children);

- (b) terms of service which deal with the treatment of consumer content.
- (3) References in this Schedule to relevant content are to content that is relevant content in relation to the service in question.
- (4) The reference in sub-paragraph (1) to users' access to content being restricted is to be construed in accordance with sections 58 and 236(6).
- 42 In this Schedule—
- “consumer content” has the same meaning as in Chapter 3 of Part 4 (see section 74(3));
- “content that is harmful to children” has the same meaning as in Part 3 (see section 60);
- “illegal content” has the same meaning as in Part 3 (see section 59);
- “illegal search content” means search content that is illegal content;
- “regulated user-generated content” has the same meaning as in Part 3 (see section 55), and references to such content are to content that is regulated user-generated content in relation to the service in question;
- “search content” has the same meaning as in Part 3 (see section 57);
- “users” means United Kingdom users (see section 227), except in paragraphs 16(a) and 32(a) where “users” means individuals in the United Kingdom who are users of a service.

## SCHEDULE 9

Section 80

CERTAIN INTERNET SERVICES NOT SUBJECT TO DUTIES  
RELATING TO REGULATED PROVIDER PORNOGRAPHIC CONTENT

*Internal business services (entire internet service)*

- 1 (1) An internet service, other than a user-to-user service or a search service, in relation to which the conditions in sub-paragraph (2) are met.
- (2) The conditions are—
- (a) the internet service is an internal resource or tool for a business, or for more than one business carried on by the same person,
- (b) the person carrying on the business (or businesses) (“P”) is the provider of the internet service, and
- (c) the internet service is available only to a closed group of people comprising some or all of the following—
- (i) where P is an individual or individuals, that individual or those individuals,
- (ii) where P is an entity, officers of P,
- (iii) persons who work for P (including as employees or volunteers) for the purposes of any activities of the business (or any of the businesses) in question, and
- (iv) any other persons authorised by a person within sub-paragraph (i), (ii) or (iii) to use the service for the purposes of any activities of the business (or any of the businesses) in question (for example, a

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contractor, consultant or auditor, or in the case of an educational institution, pupils or students).

- (3) In this paragraph—  
“business” includes trade, profession, educational institution or other concern (whether or not carried on for profit);  
“officer” includes a director, manager, partner, associate, secretary, governor, trustee or other similar officer.

*Internal business services (part of internet service)*

- 2 (1) An internet service, other than a user-to-user service or a search service, within sub-paragraph (2).
- (2) An internet service is within this sub-paragraph if—  
(a) the conditions in paragraph 1(2) are met in relation to a part of the service, and  
(b) no regulated provider pornographic content is published or displayed on the rest of the service.
- (3) In sub-paragraph (2)(b), “the rest of the service” means all parts of the internet service other than the part in relation to which the conditions in paragraph 1(2) are met.

*Services provided by public bodies*

- 3 (1) An internet service, other than a user-to-user service or a search service, which is provided by a public body.
- (2) An internet service is “provided by a public body” if—  
(a) both of the following conditions are met in relation to the service—  
(i) the provider of the service is a public authority within the meaning of section 6 of the Human Rights Act 1998, and  
(ii) the service is provided in the exercise of public functions only,  
(b) the provider of the service is Parliament, either House of Parliament, the Scottish Parliament, Senedd Cymru, the Northern Ireland Assembly or a person acting on behalf of any of those institutions,  
(c) the provider of the service is a foreign sovereign power, or  
(d) both of the following conditions are met in relation to the service—  
(i) the provider of the service is an entity formed under the law of a country outside the United Kingdom, which exercises functions of a public nature, and  
(ii) the service is provided in the exercise of such functions only.
- (3) But an internet service is not within this paragraph if—  
(a) the provider of the service is a person providing education or childcare, and  
(b) the service is provided for the purposes of that education or childcare.

See paragraph 4.

- (4) This paragraph is without prejudice to the fact that this Act does not apply in relation to an internet service provided by the Crown.



- (5) In this paragraph, “public function” means a function that is a function of a public nature for the purposes of the Human Rights Act 1998.

*Services provided by persons providing education or childcare*

- 4 (1) An internet service, other than a user-to-user service or a search service—
- (a) of which the provider is—
    - (i) the person with legal responsibility for education or childcare of a description listed in Part 2 of Schedule 1 (“the responsible person”), or where the responsible person is a body, a member of that body, or
    - (ii) a person who is employed or engaged to provide education or childcare of a description listed in Part 2 of Schedule 1, and who is subject to safeguarding duties which relate to the provision of that education or childcare, and
  - (b) which is provided for the purposes of that education or childcare.
- (2) In sub-paragraph (1)(a)(ii), “safeguarding duties” means duties or requirements which are related to the safeguarding of children arising under enactments other than this Act, under guidance or requirements (however referred to) produced under enactments other than this Act, or as a result of contractual arrangements made by the responsible person.
- (3) For the purposes of this paragraph, the person with legal responsibility for education or childcare of a particular description is the person with legal responsibility for its day-to-day provision (for example, the person with legal responsibility for a particular school), rather than any other person who has a duty to ensure that, in general, education or childcare of that description (or education or childcare which includes education or childcare of that description) is provided.

*On-demand programme services (entire internet service)*

- 5 (1) An internet service that is an on-demand programme service.
- (2) In this paragraph and paragraph 6, “on-demand programme service” has the same meaning as in the Communications Act (see section 368A of that Act).

*On-demand programme services (part of internet service)*

- 6 (1) An internet service within sub-paragraph (2).
- (2) An internet service is within this sub-paragraph if—
- (a) part of the service is an on-demand programme service, and
  - (b) no regulated provider pornographic content is published or displayed on the rest of the service.
- (3) In sub-paragraph (2)(b), “the rest of the service” means all parts of the internet service other than the part which is an on-demand programme service.

*Interpretation*

- 7 In this Schedule—
- “education” and “childcare” have the same meaning as in Schedule 1 (see Part 3 of that Schedule);



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“enactment” includes—

- (a) an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978),
- (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament,
- (c) an enactment contained in, or in an instrument made under, a Measure or Act of Senedd Cymru, and
- (d) an enactment contained in, or in an instrument made under, Northern Ireland legislation;

“regulated provider pornographic content” and “published or displayed” have the same meaning as in Part 5 (see section 79).

## SCHEDULE 10

Section 89

### RECOVERY OF OFCOM’S INITIAL COSTS

#### *Recovery of initial costs*

- 1 (1) This Schedule concerns the recovery by OFCOM of an amount equal to the aggregate of the amounts of WTA receipts which, in accordance with section 401(1) of the Communications Act and OFCOM’s statement under that section, are retained by OFCOM for the purpose of meeting their initial costs.
- (2) OFCOM must seek to recover the amount described in sub-paragraph (1) (“the total amount of OFCOM’s initial costs”) by charging providers of regulated services fees under this Schedule (“additional fees”).
- (3) In this Schedule—
  - “initial costs” means the costs incurred by OFCOM before the first day of the initial charging year on—
    - (a) preparations for the exercise of their online safety functions, or
    - (b) the exercise of their online safety functions;
  - “WTA receipts” means the amounts described in section 401(1)(a) of the Communications Act which are paid to OFCOM (certain receipts under the Wireless Telegraphy Act 2006).

#### *Recovery of initial costs: first phase*

- 2 (1) The first phase of OFCOM’s recovery of their initial costs is to take place over a period of several charging years to be specified in regulations under paragraph 7 (“specified charging years”).
- (2) Over that period OFCOM must, in aggregate, charge providers of regulated services additional fees of an amount equal to the total amount of OFCOM’s initial costs.
- (3) OFCOM may not charge providers additional fees in respect of any charging year which falls before the first specified charging year.
- (4) OFCOM may require a provider to pay an additional fee in respect of a charging year only if the provider is required to pay a fee in respect of that year under section 84 (and references in this Schedule to charging providers are to be read accordingly).

- (5) The amount of an additional fee payable by a provider is to be calculated in accordance with regulations under paragraph 7.

*Further recovery of initial costs*

- 3 (1) The second phase of OFCOM's recovery of their initial costs begins after the end of the last of the specified charging years.
- (2) As soon as reasonably practicable after the end of the last of the specified charging years, OFCOM must publish a statement specifying—
- (a) the amount which is at that time the recoverable amount (see paragraph 6), and
  - (b) the amounts of the variables involved in the calculation of the recoverable amount.
- (3) OFCOM's statement must also specify the amount which is equal to that portion of the recoverable amount which is not likely to be paid or recovered.
- The amount so specified is referred to in sub-paragraphs (4) and (5) as “the outstanding amount”.
- (4) Unless a determination is made as mentioned in sub-paragraph (5), OFCOM must, in aggregate, charge providers of regulated services additional fees of an amount equal to the outstanding amount.
- (5) The Secretary of State may, as soon as reasonably practicable after the publication of OFCOM's statement, make a determination specifying an amount by which the outstanding amount is to be reduced, and in that case OFCOM must, in aggregate, charge providers of regulated services additional fees of an amount equal to the difference between the outstanding amount and the amount specified in the determination.
- (6) Additional fees mentioned in sub-paragraph (4) or (5) must be charged in respect of the charging year immediately following the last of the specified charging years (“year 1”).
- (7) The process set out in sub-paragraphs (2) to (6) is to be repeated in successive charging years, applying those sub-paragraphs as if—
- (a) in sub-paragraph (2), the reference to the end of the last of the specified charging years were to the end of year 1 (and so on for successive charging years);
  - (b) in sub-paragraph (6), the reference to year 1 were to the charging year immediately following year 1 (and so on for successive charging years).
- (8) Any determination by the Secretary of State under this paragraph must be published in such manner as the Secretary of State considers appropriate.
- (9) Sub-paragraphs (4) and (5) of paragraph 2 apply to the charging of additional fees under this paragraph as they apply to the charging of additional fees under that paragraph.
- (10) The process set out in this paragraph comes to an end in accordance with paragraph 4.

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*End of the recovery process*

- 4 (1) The process set out in paragraph 3 comes to an end if a statement by OFCOM under that paragraph records that—
- (a) the recoverable amount is nil, or
  - (b) all of the recoverable amount is likely to be paid or recovered.
- (2) Or the Secretary of State may bring that process to an end by making a determination that OFCOM are not to embark on another round of charging providers of regulated services additional fees.
- (3) The earliest time when such a determination may be made is after the publication of OFCOM’s first statement under paragraph 3.
- (4) A determination under sub-paragraph (2)—
- (a) must be made as soon as reasonably practicable after the publication of a statement by OFCOM under paragraph 3;
  - (b) must be published in such manner as the Secretary of State considers appropriate.
- (5) A determination under sub-paragraph (2) does not affect OFCOM’s power—
- (a) to bring proceedings for the recovery of the whole or part of an additional fee for which a provider became liable at any time before the determination was made, or
  - (b) to act in accordance with the procedure set out in section 141 in relation to such a liability.

*Providers for part of a year only*

- 5 (1) For the purposes of this Schedule, the “provider” of a regulated service, in relation to a charging year, includes a person who is the provider of the service for part of the year.
- (2) Where a person is the provider of a regulated service for part of a charging year only, OFCOM may refund all or part of an additional fee paid to OFCOM under paragraph 2 or 3 by that provider in respect of that year.

*Calculation of the recoverable amount*

- 6 For the purposes of a statement by OFCOM under paragraph 3, the “recoverable amount” is given by the formula—

$$C - (F - R) - D$$

where—

- C is the total amount of OFCOM’s initial costs,
- F is the aggregate amount of the additional fees received by OFCOM at the time of the statement in question,
- R is the aggregate amount of the additional fees received by OFCOM that at the time of the statement in question have been, or are due to be, refunded (see paragraph 5(2)), and
- D is the amount specified in a determination made by the Secretary of State under paragraph 3 (see paragraph 3(5)) at a time before the statement

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in question or, where more than one such determination has been made, the sum of the amounts specified in those determinations.

*Regulations about recovery of initial costs*

- 7 (1) The Secretary of State must make regulations making such provision as the Secretary of State considers appropriate in connection with the recovery by OFCOM of their initial costs.
- (2) The regulations must include provision as set out in sub-paragraphs (3), (4) and (6).
- (3) The regulations must specify the total amount of OFCOM's initial costs.
- (4) For the purposes of paragraph 2, the regulations must specify—
- (a) the charging years in respect of which additional fees are to be charged, and
  - (b) the proportion of the total amount of initial costs which OFCOM must seek to recover in each of the specified charging years.
- (5) The following rules apply to provision made in accordance with sub-paragraph (4)
- (a)—
    - (a) the initial charging year may not be specified;
    - (b) only consecutive charging years may be specified;
    - (c) at least three charging years must be specified;
    - (d) no more than five charging years may be specified.
  - (6) The regulations must specify the computation model that OFCOM must use to calculate fees payable by individual providers of regulated services under paragraphs 2 and 3 (and that computation model may be different for different charging years).
  - (7) The regulations may make provision about what OFCOM may or must do if the operation of this Schedule results in them recovering more than the total amount of their initial costs.
  - (8) The regulations may amend this Schedule or provide for its application with modifications in particular cases.
  - (9) Before making regulations under this paragraph, the Secretary of State must consult—
    - (a) OFCOM,
    - (b) providers of regulated user-to-user services,
    - (c) providers of regulated search services,
    - (d) providers of internet services within section 80(2), and
    - (e) such other persons as the Secretary of State considers appropriate.

*Interpretation*

- 8 In this Schedule—
- “additional fees” means fees chargeable under this Schedule in respect of the recovery of OFCOM's initial costs;
  - “charging year” has the meaning given by section 90;
  - “initial charging year” has the meaning given by section 90;

“initial costs” has the meaning given by paragraph 1(3), and the “total amount” of initial costs means the amount described in paragraph 1(1);  
 “recoverable amount” has the meaning given by paragraph 6;  
 “specified charging year” means a charging year specified in regulations under paragraph 7 for the purposes of paragraph 2.

## SCHEDULE 11

Section 94

CATEGORIES OF REGULATED USER-TO-USER SERVICES  
AND REGULATED SEARCH SERVICES: REGULATIONS*Regulations specifying threshold conditions for categories of Part 3 services*

- 1 (1) The Secretary of State must make regulations specifying conditions (“Category 1 threshold conditions”) for the user-to-user part of regulated user-to-user services relating to each of the following—
- (a) number of users of the user-to-user part of the service,
  - (b) functionalities of that part of the service, and
  - (c) any other characteristics of that part of the service or factors relating to that part of the service that the Secretary of State considers relevant.
- (2) The Secretary of State must make regulations specifying conditions (“Category 2A threshold conditions”) for the search engine of regulated search services and combined services relating to each of the following—
- (a) number of users of the search engine, and
  - (b) any other characteristics of the search engine or factors relating to the search engine that the Secretary of State considers relevant.
- (3) The Secretary of State must make regulations specifying conditions (“Category 2B threshold conditions”) for the user-to-user part of regulated user-to-user services relating to each of the following—
- (a) number of users of the user-to-user part of the service,
  - (b) functionalities of that part of the service, and
  - (c) any other characteristics of that part of the service or factors relating to that part of the service that the Secretary of State considers relevant.
- (4) Regulations under this paragraph must specify the way or ways in which the relevant threshold conditions may be met, and that may be by meeting the conditions in any specified combination, subject to the rule that—
- (a) in relation to the Category 1 threshold conditions and the Category 2B threshold conditions, at least one specified condition about number of users or functionality must be met, and
  - (b) in relation to the Category 2A threshold conditions, at least one specified condition about number of users must be met.
- (5) In making regulations under sub-paragraph (1), the Secretary of State must take into account the likely impact of the number of users of the user-to-user part of the service, and its functionalities, on how easily, quickly and widely regulated user-generated content is disseminated by means of the service.

- (6) In making regulations under sub-paragraph (2), the Secretary of State must take into account the likely impact of the number of users of the search engine on the level of risk of harm to individuals from search content that is illegal content or search content that is harmful to children.
- (7) In making regulations under sub-paragraph (3), the Secretary of State must take into account the likely impact of the number of users of the user-to-user part of the service, and its functionalities, on the level of risk of harm to individuals from illegal content and content that is harmful to children disseminated by means of the service.
- (8) In this paragraph “specified” means specified in the regulations.

*Procedure for first regulations under paragraph 1*

- 2 (1) This paragraph describes the procedure that must be followed in relation to the making of the first regulations under each of sub-paragraphs (1), (2) and (3) of paragraph 1.
- (2) In the case of regulations under paragraph 1(1), within the period of six months beginning with the day on which this Act is passed, OFCOM must carry out research into—
  - (a) how easily, quickly and widely regulated user-generated content is disseminated by means of regulated user-to-user services,
  - (b) the number of users and functionalities of the user-to-user part of such services, and
  - (c) such other characteristics of that part of such services or factors relating to that part of such services as OFCOM consider to be relevant to specifying the Category 1 threshold conditions.
- (3) In the case of regulations under paragraph 1(2), within the period of six months beginning with the day on which this Act is passed, OFCOM must carry out research into the following aspects of the search engine of regulated search services and combined services—
  - (a) the prevalence of search content that is illegal content and search content that is harmful to children,
  - (b) the number of users of the search engine, and
  - (c) such other characteristics or factors as OFCOM consider to be relevant to specifying the Category 2A threshold conditions.
- (4) In the case of regulations under paragraph 1(3), within the period of six months beginning with the day on which this Act is passed, OFCOM must carry out research into—
  - (a) the dissemination of illegal content and content that is harmful to children by means of regulated user-to-user services,
  - (b) the number of users and functionalities of the user-to-user part of such services, and
  - (c) such other characteristics of that part of such services or factors relating to that part of such services as OFCOM consider to be relevant to specifying the Category 2B threshold conditions.
- (5) OFCOM must provide the Secretary of State with advice based on the research under sub-paragraph (2), (3) or (4) (as the case may be) as to the provision which OFCOM consider it is appropriate for the regulations in question to make.

- (6) Such advice may include advice that the regulations should include another characteristic or factor in addition to number of users and (in the case of regulations under paragraph 1(1) or (3)) functionalities, and what that other characteristic or factor should be.
- (7) As soon as reasonably practicable after OFCOM provide advice as mentioned in sub-paragraph (5)—
  - (a) OFCOM must publish the advice, and
  - (b) the Secretary of State must make the regulations.
- (8) If the regulations include provision which differs in any material respect from provision advised by OFCOM, the Secretary of State must publish a statement which explains why the Secretary of State has departed from that advice.
- (9) A statement mentioned in sub-paragraph (8) must be published—
  - (a) no later than the time at which the regulations to which the statement relates are made, and
  - (b) in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons who may be affected by it.
- (10) The Secretary of State may give OFCOM extra time to carry out their research in the case of regulations under paragraph 1(2) or (3), but OFCOM must carry out such research within the period of 18 months beginning with the day on which this Act is passed.
- (11) The Secretary of State may not make regulations under paragraph 1 until OFCOM have carried out research and provided advice to the Secretary of State as required by this paragraph.

*Procedure for amending or replacing regulations under paragraph 1*

- 3 (1) Regulations in force under paragraph 1(1) may not be amended or replaced by further regulations under that provision except following further research carried out by OFCOM into the matters mentioned in paragraph 2(2).
- (2) Regulations in force under paragraph 1(2) may not be amended or replaced by further regulations under that provision except following further research carried out by OFCOM into the matters mentioned in paragraph 2(3).
- (3) Regulations in force under paragraph 1(3) may not be amended or replaced by further regulations under that provision except following further research carried out by OFCOM into the matters mentioned in paragraph 2(4).
- (4) The further research in question—
  - (a) may be initiated by OFCOM or carried out in response to a request from the Secretary of State, and
  - (b) may be in as much depth as OFCOM consider appropriate.
- (5) A request from the Secretary of State to OFCOM to carry out further research must indicate why the Secretary of State considers that to be necessary.
- (6) Where such research is carried out, OFCOM must provide the Secretary of State with advice as to whether, in OFCOM's opinion—



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- (a) it is appropriate to make changes to the regulations in question, specifying the changes that OFCOM recommend, or
  - (b) it is not appropriate to make any changes to the regulations in question.
- (7) OFCOM must publish such advice as soon as reasonably practicable after providing it to the Secretary of State.
- (8) Where, following such advice, regulations are amended or replaced by further regulations under the provision in question (“new regulations”)—
  - (a) if the new regulations include provision which differs in any material respect from provision advised by OFCOM, the Secretary of State must publish a statement explaining the departures from that advice;
  - (b) if OFCOM’s advice was as mentioned in sub-paragraph (6)(b), the Secretary of State must publish a statement explaining the reasons for the new regulations.
- (9) Where OFCOM’s advice is as mentioned in sub-paragraph (6)(a) and the Secretary of State does not make new regulations, the Secretary of State must, as soon as reasonably practicable, publish a statement explaining that decision.
- (10) A statement mentioned in sub-paragraph (8) must be published no later than the time at which the regulations to which the statement relates are made.
- (11) A statement mentioned in sub-paragraph (8) or (9) must be published in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons who may be affected by it.
- (12) Sub-paragraphs (1) to (3) do not apply to regulations made only for the purpose of correcting existing regulations under paragraph 1.

#### *Publication of OFCOM’s advice under paragraphs 2 and 3*

- 4 (1) In arranging for the publication of advice under paragraph 2(7)(a) or 3(7), OFCOM must have regard to the need to exclude from publication, so far as that is practicable, matters which are confidential in accordance with sub-paragraphs (2) and (3).
- (2) A matter is confidential under this sub-paragraph if—
  - (a) it relates specifically to the affairs of a particular body, and
  - (b) publication of that matter would or might, in OFCOM’s opinion, seriously and prejudicially affect the interests of that body.
- (3) A matter is confidential under this sub-paragraph if—
  - (a) it relates to the private affairs of an individual, and
  - (b) publication of that matter would or might, in OFCOM’s opinion, seriously and prejudicially affect the interests of that individual.

#### *Interpretation*

- 5 References in this Schedule to the number of users of a user-to-user part of a service or a search engine are to the number of United Kingdom users of such a part or search engine.
- 6 In this Schedule the “characteristics” of a user-to-user part of a service or a search engine include its user base, business model, governance and other systems and processes.



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- 7 In this Schedule—
- “content that is harmful to children” has the same meaning as in Part 3 (see section 60);
  - “illegal content” has the same meaning as in Part 3 (see section 59);
  - “regulated user-generated content” has the same meaning as in Part 3 (see section 55);
  - “search content” has the same meaning as in Part 3 (see section 57).

## SCHEDULE 12

Section 107

### OFCOM’S POWERS OF ENTRY, INSPECTION AND AUDIT

#### *Authorised persons*

- 1 (1) OFCOM may authorise persons to—
- (a) exercise powers of entry and inspection under paragraph 2;
  - (b) carry out audits in accordance with notices under paragraph 4;
  - (c) apply for a warrant to be issued under paragraph 5, and execute such a warrant that has been issued.
- (2) “Authorised person” means—
- (a) in paragraph 2, a person authorised for the purposes mentioned in sub-paragraph (1)(a);
  - (b) in paragraph 4, a person authorised for the purposes mentioned in sub-paragraph (1)(b);
  - (c) in other paragraphs of this Schedule, a person authorised for the purposes mentioned in sub-paragraph (1)(c).
- (3) An authorisation under this paragraph must be in writing.

#### *Power of entry and inspection without a warrant*

- 2 (1) The powers conferred by this paragraph may be exercised in relation to premises only if OFCOM—
- (a) believe that the premises are being used by the provider of a regulated service in connection with the provision of a regulated service, and
  - (b) have given the occupier of the premises seven days’ notice that they propose to exercise the powers.
- (2) The powers conferred by this paragraph must be exercised at a reasonable hour.
- (3) Before exercising a power of entry under this paragraph, an authorised person must, if requested to do so by a person on the premises—
- (a) produce evidence of the authorised person’s identity, and
  - (b) outline the purpose for which the power is exercised.
- (4) An authorised person may—
- (a) enter the premises,
  - (b) inspect the premises,
  - (c) observe the carrying on of the regulated service at the premises,

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- (d) inspect any document or equipment found on the premises,
  - (e) require any person on the premises to provide any information, or produce any document in the person’s possession or control, that the authorised person considers is relevant to the provision of the regulated service, and
  - (f) require any person on the premises to provide an explanation of any document or to state where it may be found.
- (5) The power to observe the carrying on of the regulated service at the premises includes the power to view, using equipment or a device on the premises, information generated in real time by the performance of a test or demonstration required by a notice given under paragraph 3.
- (6) An authorised person may take copies of any document found or produced under sub-paragraph (4).
- (7) An authorised person may exercise powers conferred by this paragraph only so far as is required in connection with the exercise by OFCOM of their functions under this Act.

*Notice requiring information, documents or tests at inspection*

- 3
- (1) This paragraph applies where OFCOM intend to exercise the powers conferred by paragraph 2 to enter and inspect premises.
  - (2) OFCOM may give the occupier of the premises a notice requiring relevant information to be provided, relevant documents to be produced, or a relevant test or demonstration to be performed, during the inspection.
  - (3) Any such notice must be given at least seven days in advance of the proposed inspection date.
  - (4) For the purposes of this paragraph, information or a document, test or demonstration is “relevant” if it is required in connection with the exercise by OFCOM of their functions under this Act.
  - (5) A notice under this paragraph must—
    - (a) specify or describe the information to be provided, the documents to be produced, or the test or demonstration to be performed, during the inspection, and
    - (b) contain information about the consequences of not complying with the notice.

*Audit*

- 4
- (1) OFCOM may give the provider of a regulated service a notice (an “audit notice”) requiring the provider to permit OFCOM to carry out an audit—
    - (a) to assess whether the provider has complied or is complying with enforceable requirements that apply in respect of the service, or
    - (b) to assess—
      - (i) the nature and level of risk of the provider failing to comply with an enforceable requirement that applies in respect of the service, and
      - (ii) ways to mitigate such a risk.

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- (2) An audit notice may require the provider to take any of the following actions for a purpose mentioned in sub-paragraph (1)—
- (a) to permit an authorised person to enter and inspect specified premises;
  - (b) to permit an authorised person to observe the carrying on of the regulated service at the premises;
  - (c) to direct an authorised person to documents on the premises that are of a specified description;
  - (d) to assist an authorised person to view information of a specified description that is capable of being viewed using equipment or a device on the premises;
  - (e) to assist an authorised person to view, using equipment or a device on the premises, information demonstrating in real time the operation of systems, processes or features of a specified description, including functionalities or algorithms of a specified description;
  - (f) to assist an authorised person to view, using equipment or a device on the premises, information generated in real time by the performance of a test or demonstration of a specified description;
  - (g) to comply with a request from an authorised person for a copy (in such form as may be requested) of the documents or information to which the person is directed or which the person is assisted to view;
  - (h) to permit an authorised person to inspect the documents, information or equipment to which the person is directed or which the person is assisted to view;
  - (i) to provide an authorised person with an explanation of such documents or information;
  - (j) to make available for interview by the authorised person a specified number of people of a specified description who are involved in the provision of the regulated service (not exceeding the number who are willing to be interviewed).
- (3) An audit notice—
- (a) must be given at least 28 days in advance of the start of the audit, and
  - (b) must specify the time or times at which, or period or periods within which, each requirement imposed by the notice must be complied with.
- (4) An audit notice may not require a provider to permit an authorised person to enter domestic premises.
- (5) An audit notice may not require a provider to do anything that would result in the disclosure of information or documents in respect of which a claim to legal professional privilege, or (in Scotland) to confidentiality of communications, could be maintained in legal proceedings.
- (6) An audit notice must contain information about the consequences of not complying with the requirements which it imposes.
- (7) An audit notice may by further notice—
- (a) be revoked by OFCOM;
  - (b) be varied by OFCOM so as to make it less onerous.
- (8) OFCOM may require a provider to pay some or all of the reasonable costs of an audit carried out in accordance with an audit notice.

- (9) If OFCOM require a provider to pay an amount as mentioned in sub-paragraph (8), paragraph 6 of Schedule 13 applies in relation to the amount as it applies in relation to a penalty within the meaning of that Schedule.
- (10) In this paragraph “specified” means specified in an audit notice.

*Conditions for issue of a warrant*

- 5 (1) A justice of the peace or (in Northern Ireland) a lay magistrate may issue a warrant in relation to premises specified in an application only if satisfied on sworn information in writing given by an authorised person that—
- (a) the premises are being used by the provider of a regulated service in connection with the provision of a regulated service;
  - (b) there are reasonable grounds to suspect that—
    - (i) the provider is failing to comply, or has failed to comply, with an enforceable requirement that applies in respect of that service, and
    - (ii) there is information or equipment on the premises, or there are documents on the premises, relevant to OFCOM’s investigation into that failure (or possible failure); and
  - (c) any of the conditions in sub-paragraph (2) are met.
- (2) The conditions are that, in relation to the premises specified in the application for a warrant—
- (a) OFCOM have previously given notice to enter the premises, as required in relation to entry without a warrant under paragraph 2, but a person authorised by OFCOM to exercise powers under that paragraph was denied access,
  - (b) a requirement imposed by a person acting in the exercise of powers conferred by paragraph 2 has not been complied with,
  - (c) a requirement of a notice under paragraph 3 has not been complied with,
  - (d) a requirement of a notice under paragraph 4 (audit notice) has not been complied with,
  - (e) giving notice to enter the premises would defeat the object of entry, or
  - (f) OFCOM require access to the premises urgently.

*Evidence of authority*

- 6 (1) Before exercising a power of entry under a warrant, an authorised person must—
- (a) produce a copy of the warrant,
  - (b) supply the occupier (if present), or any other person appearing to the authorised person to be in charge of the premises, with a copy of the warrant, and
  - (c) if requested to do so—
    - (i) produce evidence of the authorised person’s identity, and
    - (ii) outline the purpose for which the power is exercised.
- (2) If neither the occupier nor any other person appearing to the authorised person to be in charge of the premises is present, the authorised person must leave a copy of the warrant in a prominent place on the premises.

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*Powers exercisable by warrant*

- 7 An authorised person executing a warrant may do any of the following for the purposes of OFCOM's investigation into whether there is, or has been, a failure referred to in paragraph 5(1)(b)(i)—
- (a) enter the premises specified in the warrant;
  - (b) search the premises;
  - (c) inspect any documents or equipment found on the premises, or any information capable of being viewed using equipment or a device on the premises;
  - (d) require any person on the premises to provide information, including requiring an explanation of any document found on the premises or any information capable of being viewed using equipment or a device on the premises;
  - (e) require any person on the premises to produce any document in the person's possession or control;
  - (f) take copies of any document found on the premises or produced in response to a requirement under paragraph (e);
  - (g) require information which is stored in electronic form and may be accessed from the premises to be produced in a form in which it can be taken away and in which it is visible and legible (or from which it can readily be produced in a visible and legible form);
  - (h) operate any equipment found on the premises for the purposes of producing such information in such a form;
  - (i) require any person on the premises to give the authorised person any assistance that the authorised person may reasonably require (including for the purposes of paragraphs (g) and (h));
  - (j) take copies of anything produced in accordance with paragraph (g);
  - (k) seize any document found on the premises or produced in response to a requirement under paragraph (e), or anything produced in accordance with paragraph (g), or any equipment found on the premises;
  - (l) open any container found on the premises;
  - (m) take a photograph or video recording of anything found on the premises.

*Powers of seizure: supplementary*

- 8 (1) This paragraph applies where the person executing a warrant seizes a document or other thing.
- (2) The person must, on request—
- (a) give a receipt for it, and
  - (b) (in the case of a document) give an occupier of the premises a copy of it.
- (3) Sub-paragraph (2)(b) does not apply if the person executing the warrant considers that providing a copy would result in undue delay.
- (4) Anything seized may be retained for so long as is necessary in all the circumstances.

### *Further provision about executing warrants*

- 9 Entry and search under a warrant must be at a reasonable hour, unless it appears to the person executing it that the purpose of a search would be frustrated or seriously prejudiced by entry at a reasonable hour.
- 10 Entry and search under a warrant must be within the period of one month starting with the date of its issue.
- 11 An authorised person executing a warrant may take such other persons and such equipment and materials onto the premises as appear to that person to be necessary.
- 12 A person taken on to the premises under paragraph 11 may exercise any power conferred on an authorised person by paragraph 7 if the person is in the company and under the supervision of an authorised person executing a warrant.
- 13 An authorised person may use reasonable force, if necessary, for the purpose of exercising a power under a warrant.
- 14 A warrant authorises entry on one occasion only, unless it specifies that it authorises multiple entries.
- 15 If the premises are unoccupied or the occupier is temporarily absent, an authorised person executing a warrant must leave the premises as effectively secured against trespassers as that person found them.

### *Return of warrants*

- 16 (1) Where a warrant is executed—
- (a) it must be returned to the appropriate person (see sub-paragraph (3)) after being executed, and
  - (b) the person by whom it is executed must write on the warrant a statement of the powers that have been exercised under the warrant.
- (2) Where a warrant is not executed, it must be returned to the appropriate person within the time authorised for its execution.
- (3) The appropriate person is—
- (a) in the case of a warrant issued in England and Wales, the designated officer for the local justice area in which the justice of the peace was acting when issuing the warrant;
  - (b) in the case of a warrant issued in Scotland, the clerk of the justice of the peace court;
  - (c) in the case of a warrant issued in Northern Ireland, the clerk of petty sessions.
- (4) The appropriate person must retain a search warrant returned under sub-paragraph (1) or (2) until the end of the period of 12 months starting with the date of its return.
- (5) If during that period the occupier of premises to which the warrant relates asks to inspect it, the occupier must be allowed to do so.

### *Restrictions on powers*

- 17 (1) This paragraph applies in relation to—
- (a) powers conferred by paragraph 2 (entry and inspection without warrant), and
  - (b) powers exercisable under a warrant.

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- (2) Those powers are not exercisable in respect of domestic premises.
- (3) Those powers are not exercisable in relation to information or documents in respect of which a claim to legal professional privilege, or (in Scotland) to confidentiality of communications, could be maintained in legal proceedings.

### *Offences*

- 18 (1) A person commits an offence if—
- (a) the person intentionally obstructs a person acting under this Schedule;
  - (b) the person fails, without reasonable excuse, to comply with any requirement imposed by a person acting under this Schedule;
  - (c) in response to a requirement imposed by a person acting under this Schedule, the person provides information that is false in a material respect, knowing that it is false in a material respect or being reckless as to whether it is false in a material respect.
- (2) A person who commits an offence under this paragraph is liable—
- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates’ court or a fine (or both);
  - (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both);
  - (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both);
  - (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).

### *Interpretation*

- 19 In this Schedule—
- “domestic premises” means premises, or a part of premises, used as a dwelling;
  - “premises” means premises in the United Kingdom.
- 20 References in this Schedule to a person “acting under this Schedule” are to a person acting—
- (a) in the exercise of powers conferred by paragraph 2 (entry and inspection without warrant), or
  - (b) in the execution of a warrant,
- and the reference in paragraph 18(1)(a) also includes a person carrying out an audit in accordance with an audit notice.
- 21 In this Schedule “enforceable requirement” has the same meaning as in Chapter 6 of Part 7 (see section 131), except that—
- (a) it does not include—
    - (i) a requirement under (or a requirement of a notice under) section 104 (reports by skilled persons), or
    - (ii) a requirement imposed by a person acting under this Schedule;
  - (b) it includes a requirement imposed by a notice under section 121(1) (notices to deal with terrorism content and CSEA content).

- 22 In paragraphs 6 to 17 and 20 “warrant” means a warrant issued under paragraph 5.
- 23 In the application of paragraph 5(1) to Scotland, the reference to sworn information in writing has effect as a reference to evidence on oath.
- 24 In the application of paragraph 5(1) to Northern Ireland, the reference to sworn information in writing has effect as a reference to a complaint on oath.

## SCHEDULE 13

Section 143

### PENALTIES IMPOSED BY OFCOM UNDER CHAPTER 6 OF PART 7

#### *Meaning of “penalty” in this Schedule*

- 1 Except as otherwise indicated, references in this Schedule to a “penalty” are to any of the following—
- (a) a penalty imposed by a confirmation decision (see sections 132(5)(b) and 137), whether that is—
    - (i) a penalty of a single amount, or
    - (ii) a penalty calculated by reference to a daily rate;
  - (b) a penalty imposed by a penalty notice under section 139;
  - (c) a penalty imposed by a penalty notice under section 140(5);
  - (d) a penalty imposed by a penalty notice under section 141(6).

#### *Amount of penalties: principles*

- 2 (1) In determining the amount of a penalty to be imposed on a person, OFCOM must, in particular, take into account—
- (a) any representations made, and evidence provided, by the person, and
  - (b) the effects of the failure (or failures) in respect of which the penalty is imposed.
- (2) In the case of a penalty imposed by a confirmation decision, OFCOM must also take into account any representations made, and evidence provided, by any other person to whom the earlier provisional notice of contravention relating to the same matter was given.
- (3) OFCOM must also take into account—
- (a) in the case of a penalty imposed by a confirmation decision, any steps taken by the person towards—
    - (i) complying with any duty or requirement specified in the provisional notice of contravention given to the person, or
    - (ii) remedying the failure to comply with any such duty or requirement;
  - (b) in the case of a penalty imposed by a penalty notice under section 139, any steps taken by the person towards—
    - (i) complying with any duty or requirement specified in the confirmation decision given to the person, or
    - (ii) remedying the failure to comply with any such duty or requirement;



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- (c) in the case of a penalty imposed by a penalty notice under section 140(5), any steps taken by the person towards complying with the notice under section 121(1);
  - (d) in the case of a penalty imposed by a penalty notice under section 141(6), any steps taken by the person towards paying any amount of the fee due to OFCOM.
- (4) A penalty must be of an amount that OFCOM consider to be—
- (a) appropriate, and
  - (b) proportionate to the failure (or failures) in respect of which it is imposed.
- (5) See also section 392 of the Communications Act (which requires OFCOM to produce guidelines about their determination of the amount of penalties that they impose).

*Limitation to type and amount of penalties previously proposed*

- 3
- (1) A confirmation decision or penalty notice may not impose a penalty of a different kind, of a greater amount or (in the case of a penalty calculated by reference to a daily rate) payable over a longer period than that proposed in the earlier notice in relation to the same matter.
  - (2) Sub-paragraph (1) applies in a case where a provisional notice of contravention and confirmation decision in relation to the same matter are both given jointly (in accordance with Schedule 15) to the same entities, but does not otherwise apply in relation to a penalty for which two or more entities are jointly and severally liable.
  - (3) In this paragraph “penalty notice” means a penalty notice under section 139, 140(5) or 141(6).

*Maximum amount of penalties*

- 4
- (1) Where a penalty is imposed on a person in respect of a regulated service provided by that person, the maximum amount of the penalty for which the person is liable is whichever is the greater of—
    - (a) £18 million, and
    - (b) 10% of the person’s qualifying worldwide revenue for the person’s most recent complete accounting period (subject to sub-paragraph (5)).
  - (2) But if the person does not have an accounting period, the maximum amount of the penalty for which the person is liable is £18 million.
  - (3) The maximum amount of a penalty for which a person not within sub-paragraph (1) is liable is £18 million.
  - (4) If the person’s first accounting period has not yet ended, sub-paragraph (1)(b) is to be read as referring to 10% of the amount that OFCOM estimate to be the person’s likely qualifying worldwide revenue for that period.
  - (5) If the duration of the accounting period by reference to which an amount of qualifying worldwide revenue is calculated is less than a year, the amount mentioned in sub-paragraph (1)(b) is to be proportionately increased.

If the duration of that accounting period is more than a year, that amount is to be proportionately reduced.

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- (6) The amount of a person’s qualifying worldwide revenue for an accounting period is, in the event of a disagreement between the person and OFCOM, the amount determined by OFCOM.
- (7) In the case of a confirmation decision that imposes a penalty of a single amount and a penalty calculated by reference to a daily rate, references in sub-paragraphs (1) to (3) to the maximum amount for which a person is liable are to the maximum amount of both those penalties taken together.
- (8) In this paragraph “accounting period”, in relation to a person, means a period in respect of which accounts are prepared in relation to that person or, where that person is an individual, in respect of that individual’s business of providing a regulated service.
- (9) Regulations made by OFCOM under section 85(1)(a) (including regulations making provision of a kind mentioned in section 85(3), (4) or (5)) apply for the purpose of determining the qualifying worldwide revenue of a provider of a regulated service for an accounting period as mentioned in this paragraph as they apply for the purpose of determining the qualifying worldwide revenue of a provider of a regulated service for a qualifying period for the purposes of Part 6.

*Maximum amount of penalties: group of entities*

- 5 (1) This paragraph contains modifications of paragraph 4 in a case where, in accordance with Schedule 15, two or more entities are jointly and severally liable for a penalty.
- (2) Sub-paragraphs (3) to (5) of this paragraph apply instead of paragraph 4(1) to (4).
- (3) The maximum amount of the penalty for which the entities are liable is whichever is the greater of—
  - (a) £18 million, and
  - (b) 10% of the qualifying worldwide revenue of the group of entities that consists of—
    - (i) the entity that is the provider of the regulated service to which the decision or notice in question relates (“entity E”), and
    - (ii) every other entity which (at the time the decision or notice is given) is a group undertaking in relation to entity E.
- (4) In sub-paragraph (3)(b), the reference to the qualifying worldwide revenue of a group of entities is to—
  - (a) the amount of the group’s qualifying worldwide revenue for the most recent complete accounting period of the entities liable for the penalty, or
  - (b) if the first accounting period of the entities liable for the penalty has not yet ended, the amount that OFCOM estimate to be the group’s likely qualifying worldwide revenue for that period.
- (5) In a case where the accounting periods of the entities liable for the penalty are different—
  - (a) the reference in sub-paragraph (4)(a) to the accounting period of the entities is to be read as a reference to the accounting period of any of the entities (at OFCOM’s discretion), and
  - (b) sub-paragraph (4)(b) is to apply as if—

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- (i) for “the first accounting period of the entities” there were substituted “the first accounting period of all of the entities”, and
  - (ii) for “that period” there were substituted “the accounting period of any of the entities (at OFCOM’s discretion)”.
- (6) Sub-paragraphs (5), (6) and (7) of paragraph 4 are to be read with the necessary modifications in their application for the purposes of this paragraph.
- (7) In this paragraph—
- “accounting period”, in relation to an entity, means a period in respect of which accounts are prepared in relation to that entity;
  - “group undertaking” has the meaning given by section 1161(5) of the Companies Act 2006.
- (8) For the purposes of this paragraph, sections 1161(5) and 1162 of, and Schedule 7 to, the Companies Act 2006—
- (a) are to apply in relation to an entity which is not an undertaking (as defined in section 1161(1) of that Act) as they apply in relation to an undertaking, and
  - (b) are to be read with any necessary modifications if applied to an entity formed under the law of a country outside the United Kingdom.
- (9) OFCOM may by regulations make provision about how the qualifying worldwide revenue of a group of entities is to be determined for the purposes of this paragraph.
- (10) Before making regulations under sub-paragraph (9) OFCOM must consult—
- (a) the Secretary of State,
  - (b) the Treasury, and
  - (c) such other persons as OFCOM consider appropriate.
- (11) Regulations under sub-paragraph (9) may make provision subject to such exemptions and exceptions as OFCOM consider appropriate.

### *Recovery of penalties*

- 6 (1) In England and Wales, a penalty is recoverable—
- (a) if the county court so orders, as if it were payable under an order of that court;
  - (b) if the High Court so orders, as if it were payable under an order of that court.
- (2) In Scotland, a penalty may be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.
- (3) In Northern Ireland, a penalty is recoverable—
- (a) if a county court so orders, as if it were payable under an order of that court;
  - (b) if the High Court so orders, as if it were payable under an order of that court.

## SCHEDULE 14

Section 191

### AMENDMENTS CONSEQUENTIAL ON OFFENCES IN PART 10 OF THIS ACT

#### PART 1

#### AMENDMENTS CONSEQUENTIAL ON OFFENCES IN SECTIONS 179, 181 AND 183

##### *Football Spectators Act 1989*

- 1 In Schedule 1 to the Football Spectators Act 1989 (football banning orders: relevant offences), after paragraph 1(y) insert—
- “(z) any offence under section 179 (false communications) or 181 (threatening communications) of the Online Safety Act 2023—
    - (i) which does not fall within paragraph (d), (e), (m), (n), (r) or (s),
    - (ii) as respects which the court has stated that the offence is aggravated by hostility of any of the types mentioned in section 66(1) of the Sentencing Code (racial hostility etc), and
    - (iii) as respects which the court makes a declaration that the offence related to a football match, to a football organisation or to a person whom the accused knew or believed to have a prescribed connection with a football organisation.”

##### *Sexual Offences Act 2003*

- 2 In Schedule 5 to the Sexual Offences Act 2003, in the list of offences for England and Wales, after paragraph 63C insert—
- “63D An offence under section 179 of the Online Safety Act 2023 (false communications).
  - 63E An offence under section 181 of that Act (threatening communications).”
- 3 In Schedule 5 to the Sexual Offences Act 2003, in the list of offences for Northern Ireland, after paragraph 171H insert—
- “171I An offence under section 179 of the Online Safety Act 2023 (false communications).
  - 171J An offence under section 181 of that Act (threatening communications).”

##### *Regulatory Enforcement and Sanctions Act 2008*

- 4 In Schedule 3 to the Regulatory Enforcement and Sanctions Act 2008 (relevant enactments for the purposes of relevant functions to which Parts 1 and 2 of that Act apply), at the appropriate place insert—
- “Online Safety Act 2023, sections 179 and 181”.

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*Elections Act 2022*

- 5 In Schedule 9 to the Elections Act 2022 (offences for purposes of Part 5), in Part 2, after paragraph 52 insert—

*“Online Safety Act 2023*

- 52A An offence under any of the following provisions of the Online Safety Act 2023—
- (a) section 179 (false communications);
  - (b) section 181 (threatening communications);
  - (c) section 183 (sending or showing flashing images).”

**PART 2**

AMENDMENTS CONSEQUENTIAL ON OFFENCE IN SECTION 184

*Children and Young Persons Act 1933*

- 6 In Schedule 1 to the Children and Young Persons Act 1933 (offences against children and young persons with respect to which special provisions of Act apply), after the entry relating to the Suicide Act 1961 insert—
- “An offence under section 184(1) of the Online Safety Act 2023 (encouraging or assisting serious self-harm) where the relevant act is an act capable of, and done with the intention of, encouraging or assisting the serious self-harm of a child or young person.”

*Visiting Forces Act 1952*

- 7 (1) The Schedule to the Visiting Forces Act 1952 (offences referred to in section 3) is amended as follows.
- (2) In paragraph 1(b), after paragraph (xv) insert—
- “(xvi) section 184 of the Online Safety Act 2023;”.
- (3) In paragraph 2(b), after paragraph (iv) insert—
- “(v) section 184 of the Online Safety Act 2023;”.

*Children and Young Persons Act (Northern Ireland) 1968 (c. 34 (N.I.))*

- 8 In Schedule 1 to the Children and Young Persons Act (Northern Ireland) 1968 (offences against children and young persons with respect to which special provisions of Act apply), after the entry relating to the Criminal Justice Act (Northern Ireland) 1966 insert—
- “An offence under section 184(1) of the Online Safety Act 2023 (encouraging or assisting serious self-harm) where the relevant act is an act capable of, and done with the intention of, encouraging or assisting the serious self-harm of a child or young person.”

*Criminal Attempts Act 1981*

- 9 In section 1 of the Criminal Attempts Act 1981 (attempting to commit an offence), in subsection (4), after paragraph (c) insert—
- “(d) an offence under section 184(1) of the Online Safety Act 2023 (encouraging or assisting serious self-harm).”

*Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 (S.I. 1983/1120 (N.I. 13))*

- 10 In Article 3 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 (attempting to commit an offence), in paragraph (4), after sub-paragraph (c) insert—
- “(ca) an offence under section 184(1) of the Online Safety Act 2023 (encouraging or assisting serious self-harm);”.

*Armed Forces Act 2006*

- 11 In Schedule 2 to the Armed Forces Act 2006 (“Schedule 2 offences”), in paragraph 12, at the end insert—
- “(ba) an offence under section 184 of the Online Safety Act 2023 (encouraging or assisting serious self-harm).”

*Serious Crime Act 2007*

- 12 (1) The Serious Crime Act 2007 is amended as follows.
- (2) In section 51A (exceptions to section 44 for encouraging or assisting suicide)—
- (a) the existing text becomes subsection (1);
- (b) after that subsection insert—
- “(2) Section 44 does not apply to an offence under section 184(1) of the Online Safety Act 2023 (offence of encouraging or assisting serious self-harm).”;
- (c) in the heading, at the end insert “or serious self-harm”.
- (3) In Part 1 of Schedule 3 (listed offences: England and Wales and Northern Ireland), after paragraph 24A insert—

*“Online Safety Act 2023*

- 24B An offence under section 184(1) of the Online Safety Act 2023 (encouraging or assisting serious self-harm).”

**PART 3**

AMENDMENTS CONSEQUENTIAL ON OFFENCES IN SECTIONS 187 AND 188

*Children and Young Persons Act 1933*

- 13 In Schedule 1 to the Children and Young Persons Act 1933 (offences against children and young persons with respect to which special provisions of Act apply), in the first entry relating to the Sexual Offences Act 2003, after “66” insert “, 66A, 66B”.

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*Police and Criminal Evidence Act 1984*

- 14 In section 65A of the Police and Criminal Evidence Act 1984 (“qualifying offences” for the purposes of Part 5 of that Act), in subsection (2)(p) after “61 to” insert “66A, 66B(2) and (3),”.

*Sexual Offences (Amendment) Act 1992*

- 15 In section 6 of the Sexual Offences (Amendment) Act 1992 (interpretation), after subsection (2A) insert—
- “(2B) For the purposes of this Act, where it is alleged or there is an accusation that an offence under section 66B(4) of the Sexual Offences Act 2003 (threatening to share intimate photograph or film) has been committed, the person against whom the offence is alleged to have been committed is to be regarded as—
- (a) the person to whom the threat mentioned in that subsection is alleged to have been made, and
  - (b) (if different) the person shown, or who appears to be shown, in an intimate state in the photograph or film that is the subject of the threat.”

*Sexual Offences Act 2003*

- 16 (1) The Sexual Offences Act 2003 is amended as follows.
- (2) In section 78 (meaning of “sexual”), after “15A” insert “, 66B to 66D”.
- (3) In section 136A(3A) (specified child sex offences), in paragraph (c), after “66” insert “, 66A, 66B(2) and (3)”.
- (4) In Schedule 3 (sexual offences for purposes of Part 2), after paragraph 33 insert—
- “33A An offence under section 66A of this Act (sending etc photograph or film of genitals) if—
- (a) where the offender was under 18, the offender is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
  - (b) in any other case—
    - (i) the victim was under 18, or
    - (ii) the offender, in respect of the offence or finding, is or has been—
      - (a) sentenced to a term of imprisonment,
      - (b) detained in a hospital, or
      - (c) made the subject of a community sentence of at least 12 months.
- 33B An offence under section 66B(3) of this Act (sharing intimate photograph or film for purpose of obtaining sexual gratification) if—
- (a) where the offender was under 18, the offender is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
  - (b) in any other case—
    - (i) the victim was under 18, or

- (ii) the offender, in respect of the offence or finding, is or has been—
  - (a) sentenced to a term of imprisonment,
  - (b) detained in a hospital, or
  - (c) made the subject of a community sentence of at least 12 months.”

*Criminal Justice Act 2003*

- 17 (1) The Criminal Justice Act 2003 is amended as follows.
- (2) In Part 2 of Schedule 15 (specified sexual offences for purposes of section 325), after paragraph 149 insert—
- “149A An offence under section 66A of that Act (sending etc photograph or film of genitals).
  - 149B An offence under section 66B(2) or (3) of that Act (sharing intimate photograph or film with intent to cause alarm, distress or humiliation or for purpose of obtaining sexual gratification).”
- (3) In Schedule 34A (child sex offences for purposes of section 327A), in paragraph 10—
- (a) after “66” insert “, 66A, 66B(2) or (3)”, and
  - (b) after “exposure” insert “, sending etc photograph or film of genitals, sharing intimate photograph or film with intent to cause alarm, distress or humiliation or for purpose of obtaining sexual gratification”.

*Anti-social Behaviour, Crime and Policing Act 2014*

- 18 In section 116 of the Anti-social Behaviour, Crime and Policing Act 2014 (information about guests at hotels believed to be used for child sexual exploitation), in subsection (8)(c), in the entry that relates to exposure and voyeurism offences in the Sexual Offences Act 2003—
- (a) after “66” insert “, 66A, 66B(2) and (3)”, and
  - (b) after “exposure” insert “, sending etc photograph or film of genitals, sharing intimate photograph or film with intent to cause alarm, distress or humiliation or for purpose of obtaining sexual gratification”.

*Modern Slavery Act 2015*

- 19 In Schedule 4 to the Modern Slavery Act 2015 (offences to which defence in section 45 does not apply), in paragraph 33 (offences under Sexual Offences Act 2003), after the entry for section 66 insert—
- “section 66A (sending etc photograph or film of genitals)
  - section 66B(2) (sharing intimate photograph or film with intent to cause alarm, distress or humiliation)
  - section 66B(3) (sharing intimate photograph or film for purpose of obtaining sexual gratification)”.



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### *Sentencing Act 2020*

- 20 In Part 2 of Schedule 18 to the Sentencing Act 2020 (specified sexual offences for purposes of section 306), in paragraph 38 (offences under Sexual Offences Act 2003), after sub-paragraph (ax) insert—
- “(axa) section 66A (sending etc photograph or film of genitals);
  - “(axb) section 66B(2) (sharing intimate photograph or film with intent to cause alarm, distress or humiliation);
  - “(axc) section 66B(3) (sharing intimate photograph or film for purpose of obtaining sexual gratification);”.

### *Elections Act 2022*

- 21 In Schedule 9 to the Elections Act 2022 (offences for purposes of Part 5), after paragraph 47(f) insert—
- “(g) section 66A (sending etc photograph or film of genitals).”

## **PART 4**

### AMENDMENTS CONSEQUENTIAL ON SECTION 190

### *Criminal Justice and Courts Act 2015*

- 22 (1) The Criminal Justice and Courts Act 2015 is amended as follows.
- (2) In section 96 (extent), in subsection (6), omit paragraphs (c) and (g).
  - (3) Omit Schedule 8 (disclosing or threatening to disclose private sexual photographs or films: providers of information society services).

### *Domestic Abuse Act 2021*

- 23 (1) The Domestic Abuse Act 2021 is amended as follows.
- (2) Omit section 69 (threats to disclose private sexual photographs and films with intent to cause distress) and the italic heading before it.
  - (3) In section 85 (power to make consequential provision), in subsection (1)(b), omit “69,”.
  - (4) In section 86 (power to make transitional or saving provision), in subsection (1)(b), omit “69,”.

### *Overseas Operations (Service Personnel and Veterans) Act 2021*

- 24 In Part 1 of Schedule 1 to the Overseas Operations (Service Personnel and Veterans) Act 2021 (“excluded offences” for the purposes of section 6 of that Act), omit paragraph 11.

*Criminal Justice (Electronic Commerce) (Amendment) (EU Exit) Regulations 2021 (S.I. 2021/835)*

- 25 In the Criminal Justice (Electronic Commerce) (Amendment) (EU Exit) Regulations 2021, omit regulation 8 (amendment of the Criminal Justice and Courts Act 2015).

SCHEDULE 15

Section 197

LIABILITY OF PARENT ENTITIES ETC

*Joint provisional notices of contravention*

- 1 (1) This paragraph applies if—
- (a) OFCOM are satisfied that there are grounds to give an entity (“E”) a provisional notice of contravention relating to a regulated service, and
  - (b) E is the provider of that service.
- (2) If there is an entity which is a parent undertaking in relation to E, the provisional notice of contravention may be given—
- (a) to E alone, or
  - (b) jointly to E and to an entity which is a parent undertaking in relation to E.
- (3) If there is an entity which is a subsidiary undertaking in relation to E, the provisional notice of contravention may be given—
- (a) to E alone, or
  - (b) jointly to E and to an entity which is a subsidiary undertaking in relation to E.
- (4) If E is a subsidiary undertaking and there is an entity which is a fellow subsidiary undertaking in relation to E, the provisional notice of contravention may be given—
- (a) to E alone, or
  - (b) jointly to E and to an entity which is a fellow subsidiary undertaking in relation to E.
- (5) If an individual or individuals control E (see paragraph 5(4)), the provisional notice of contravention may be given—
- (a) to E alone, or
  - (b) jointly to E and to the individual or individuals who control E.
- (6) If a provisional notice of contravention is given jointly as mentioned in subparagraph (2)(b), (3)(b), (4)(b) or (5)(b), section 130(8) is to be read, in its application for the purposes of this paragraph, as if it included a reference to representations about whether joint and several liability would be appropriate.

*Liability of parent entities for failures by subsidiary entities*

- 2 (1) This paragraph applies if—
- (a) OFCOM are satisfied that there are grounds to give an entity (“E”) a relevant decision or notice relating to a regulated service,
  - (b) E is the provider of that service, and
  - (c) there is an entity which is a parent undertaking in relation to E (a “parent entity”).

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- (2) The relevant decision or notice may be given—
  - (a) to E alone, or
  - (b) (subject to sub-paragraph (4)) jointly to E and to a parent entity.
- (3) But before giving a penalty notice to a parent entity, or giving a confirmation decision to a parent entity which was not previously given a provisional notice of contravention relating to the same matter, OFCOM must give that entity an opportunity to make representations to OFCOM about—
  - (a) the matters contained in the decision or notice, and
  - (b) whether joint and several liability would be appropriate.
- (4) OFCOM may not give a relevant decision or notice to a parent entity (“P”) if—
  - (a) P meets the condition in section 1162(2)(a) of the Companies Act in relation to E, and
  - (b) P makes representations (under section 130(8) as applied by paragraph 1(6), or under sub-paragraph (3)) which satisfy OFCOM that P does not meet any condition in section 1162(2)(b), (c) or (d) or (4) of the Companies Act in relation to E.
- (5) If a relevant decision or notice is given to entities jointly as mentioned in sub-paragraph (2)(b), those entities are jointly and severally liable to comply with the requirements, or (as the case may be) pay the penalty, imposed by the decision or notice.
- (6) See also paragraph 5 of Schedule 13 (maximum amount of penalties: group of entities).

*Liability of subsidiary entities for failures by parent entities*

- 3
- (1) This paragraph applies if—
    - (a) OFCOM are satisfied that there are grounds to give an entity (“E”) a relevant decision or notice relating to a regulated service,
    - (b) E is the provider of that service, and
    - (c) there is an entity which is a subsidiary undertaking in relation to E (a “subsidiary entity”).
  - (2) The relevant decision or notice may be given—
    - (a) to E alone, or
    - (b) jointly to E and to a subsidiary entity.
  - (3) But—
    - (a) before giving a penalty notice to a subsidiary entity, or giving a confirmation decision to a subsidiary entity which was not previously given a provisional notice of contravention relating to the same matter, OFCOM must give that entity an opportunity to make representations to OFCOM about—
      - (i) the matters contained in the decision or notice, and
      - (ii) whether joint and several liability would be appropriate; and
    - (b) a relevant decision or notice may be given to a subsidiary entity only if that entity’s acts or omissions contributed to the failure in respect of which the decision or notice is given.

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- (4) If a relevant decision or notice is given to entities jointly as mentioned in subparagraph (2)(b), those entities are jointly and severally liable to comply with the requirements, or (as the case may be) pay the penalty, imposed by the decision or notice.
- (5) See also paragraph 5 of Schedule 13 (maximum amount of penalties: group of entities).

*Liability of fellow subsidiary entities for failures by subsidiary entities*

- 4 (1) This paragraph applies if—
- (a) OFCOM are satisfied that there are grounds to give an entity (“E”) a relevant decision or notice relating to a regulated service,
  - (b) E is the provider of that service,
  - (c) E is a subsidiary undertaking, and
  - (d) there is an entity which is a fellow subsidiary undertaking in relation to E (a “fellow subsidiary entity”).
- (2) The relevant decision or notice may be given—
- (a) to E alone, or
  - (b) jointly to E and to a fellow subsidiary entity.
- (3) But—
- (a) before giving a penalty notice to a fellow subsidiary entity, or giving a confirmation decision to a fellow subsidiary entity which was not previously given a provisional notice of contravention relating to the same matter, OFCOM must give that entity an opportunity to make representations to OFCOM about—
    - (i) the matters contained in the decision or notice, and
    - (ii) whether joint and several liability would be appropriate; and
  - (b) a relevant decision or notice may be given to a fellow subsidiary entity only if that entity’s acts or omissions contributed to the failure in respect of which the decision or notice is given.
- (4) If a relevant decision or notice is given to entities jointly as mentioned in subparagraph (2)(b), those entities are jointly and severally liable to comply with the requirements, or (as the case may be) pay the penalty, imposed by the decision or notice.
- (5) See also paragraph 5 of Schedule 13 (maximum amount of penalties: group of entities).

*Liability of controlling individuals for failures by entities*

- 5 (1) This paragraph applies if—
- (a) OFCOM are satisfied that there are grounds to give an entity (“E”) a relevant decision or notice relating to a regulated service,
  - (b) E is the provider of that service, and
  - (c) an individual or individuals control E.
- (2) The relevant decision or notice may be given—
- (a) to E alone, or

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- (b) (subject to sub-paragraph (5)) jointly to E and to the individual or individuals who control E.
- (3) But before giving a penalty notice to an individual, or giving a confirmation decision to an individual who was not previously given a provisional notice of contravention relating to the same matter, OFCOM must give that individual an opportunity to make representations to OFCOM about—
  - (a) the matters contained in the decision or notice, and
  - (b) whether joint and several liability would be appropriate.
- (4) An individual or individuals are to be taken to “control” E if that individual or those individuals would, if they were an undertaking, be a parent undertaking in relation to E within the meaning of section 1162 of the Companies Act by reason of meeting the condition in subsection (2)(a), (b), (c) or (d) or (4)(a) of that section.
- (5) OFCOM may not give a relevant decision or notice to an individual or individuals (“P”) if—
  - (a) the condition by reason of which P controls E is the condition in section 1162(2)(a) of the Companies Act, and
  - (b) P makes representations (under section 130(8) as applied by paragraph 1(6), or under sub-paragraph (3)) which satisfy OFCOM that P does not control E by reason of any condition in section 1162(2)(b), (c) or (d) or (4) of the Companies Act.
- (6) If a relevant decision or notice is given jointly to E and to an individual or individuals as mentioned in sub-paragraph (2)(b), that entity and that individual or those individuals are jointly and severally liable to comply with the requirements, or (as the case may be) pay the penalty, imposed by the decision or notice.

#### *OFCOM’s guidance*

- 6 OFCOM’s guidance under section 151 must include information about the factors that OFCOM would consider it appropriate to take into account when considering whether to give a decision or notice jointly as mentioned in this Schedule.

#### *Interpretation*

- 7 In this Schedule—
  - “the Companies Act” means the Companies Act 2006;
  - “fellow subsidiary undertaking” has the meaning given by section 1161(4) of the Companies Act;
  - “parent undertaking” and “subsidiary undertaking” are to be read in accordance with section 1162 of the Companies Act;
  - “penalty notice” means a penalty notice under section 139, 140(5) or 141(6);
  - “relevant decision or notice” means—
    - (a) a confirmation decision that includes requirements of a kind described in section 133(1) or imposes a penalty as mentioned in section 137 (or both), or
    - (b) a penalty notice.
- 8 In its application for the purposes of this Schedule, paragraph 4 of Schedule 7 to the Companies Act is to be read as if the reference to operating and financial policies

were to policies relating to compliance with the regulatory requirements imposed by this Act.

- 9 For the purposes of this Schedule, sections 1161(4) and 1162 of, and Schedule 7 to, the Companies Act—
- (a) are to apply in relation to an entity which is not an undertaking (as defined in section 1161(1) of that Act) as they apply in relation to an undertaking, and
  - (b) are to be read with any necessary modifications if applied to an entity formed under the law of a country outside the United Kingdom.

## SCHEDULE 16

Section 209

### AMENDMENTS OF PART 4B OF THE COMMUNICATIONS ACT

- 1 Part 4B of the Communications Act (video-sharing platform services) is amended in accordance with this Schedule.
- 2 In section 368U (maintenance of list of providers)—
- (a) omit subsection (2);
  - (b) for subsection (3) substitute—
- “(3) OFCOM must publish the up to date list on a publicly accessible part of their website.”
- 3 In section 368V(4) (meaning of “significant differences”), for the words from “the determination of jurisdiction” to the end substitute “whether or not the person has the required connection with the United Kingdom under section 368S(2)(d)”.
- 4 In section 368Y(2)(d) (information to be provided by providers of video-sharing platform services), for the words from “under the jurisdiction” to the end substitute “subject to regulation under this Part in respect of the video-sharing platform service that P provides”.
- 5 In section 368Z1(3) (duty to take appropriate measures), for the words from “of the description” to the end substitute “to monitor the information which they transmit or store, or actively to seek to discover facts or circumstances indicating illegal activity”.
- 6 In section 368Z10(3)(a) (power to demand information), for the words from “falls under” to the end substitute “has the required connection with the United Kingdom under section 368S(2)(d)”.
- 7 For section 368Z12 (co-operation with member States and the European Commission) substitute—

#### “368Z12 Co-operation with EEA States

OFCOM may co-operate with EEA states which are subject to the Audiovisual Media Services Directive, and with the national regulatory authorities of such EEA states, for the following purposes—

- (a) facilitating the carrying out by OFCOM of any of their functions under this Part; or

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- (b) facilitating the carrying out by the national regulatory authorities of the EEA states of any of their functions in relation to video-sharing platform services under that Directive as it has effect in EU law as amended from time to time.”

## SCHEDULE 17

Section 211

### VIDEO-SHARING PLATFORM SERVICES: TRANSITIONAL PROVISION ETC

#### PART 1

##### INTERPRETATION

- 1 (1) In this Schedule, “pre-existing Part 4B service” means—
- (a) an internet service which—
    - (i) is a video-sharing platform service by reason of the conditions in section 368S(1) and (2) of the Communications Act being met in relation to the service as a whole, and
    - (ii) was being provided immediately before this Schedule comes into force; or
  - (b) a dissociable section of an internet service, where that dissociable section—
    - (i) is a video-sharing platform service by reason of the conditions in section 368S(1)(a) and (2) of the Communications Act being met in relation to that dissociable section, and
    - (ii) was being provided immediately before this Schedule comes into force.
- (2) In sub-paragraph (1), any reference to a service provided before this Schedule comes into force includes a reference to a service provided in breach of the requirement in section 368V of the Communications Act.
- 2 In this Schedule—
- “the relevant day”, in relation to a pre-existing Part 4B service or to a service which includes a pre-existing Part 4B service, means—
    - (a) the date when section 210 comes into force (repeal of Part 4B of the Communications Act), or
    - (b) if the pre-existing Part 4B service ceases to be a video-sharing platform service before the date mentioned in paragraph (a), the date when that service ceases to be a video-sharing platform service;
  - “safety duties” means the duties mentioned in section 7(2), (4) and (5), except the duties set out in—
    - (a) section 9 (illegal content risk assessments),
    - (b) section 11 (children’s risk assessments),
    - (c) section 14 (assessments related to the adult user empowerment duty set out in section 15(2)), and
    - (d) section 23(2), (9) and (10) (records of assessments);
  - “the transitional period”, in relation to a pre-existing Part 4B service or to a service which includes a pre-existing Part 4B service, means the period—

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- (a) beginning with the date when this Schedule comes into force, and
  - (b) ending with the relevant day;
- “video-sharing platform service” has the same meaning as in Part 4B of the Communications Act (see section 368S of that Act).

## PART 2

### DURING THE TRANSITIONAL PERIOD

#### *Pre-existing Part 4B services which are regulated user-to-user services*

- 3 (1) This paragraph applies in relation to a pre-existing Part 4B service which—
- (a) is within the definition in paragraph (a) of paragraph 1(1), and
  - (b) is also a regulated user-to-user service.
- (2) Both this Act and Part 4B of the Communications Act apply in relation to the pre-existing Part 4B service during the transitional period.
- (3) But that is subject to—
- (a) sub-paragraph (4),
  - (b) sub-paragraph (5), and
  - (c) paragraph 4.
- (4) The following duties and requirements under this Act do not apply during the transitional period in relation to the pre-existing Part 4B service—
- (a) the safety duties;
  - (b) the duties set out in section 38 (fraudulent advertising);
  - (c) the duties set out in section 64 (user identity verification);
  - (d) the requirements under section 66(1) and (2) (reporting CSEA content to the NCA);
  - (e) the duties set out in sections 71 and 72 (terms of service);
  - (f) the duties set out in section 75 (deceased child users);
  - (g) the duty on OFCOM to give a notice under section 77(1) requiring information in a transparency report;
  - (h) the requirements to produce transparency reports under section 77(3) and (4).
- (5) OFCOM’s powers under Schedule 12 to this Act (powers of entry, inspection and audit) do not apply during the transitional period in relation to the pre-existing Part 4B service.
- (6) In sub-paragraph (2) the reference to this Act does not include a reference to Part 6 (fees); for the application of Part 6, see Part 3 of this Schedule.

#### *Regulated user-to-user services that include regulated provider pornographic content*

- 4 (1) The duties set out in section 81 of this Act do not apply during the transitional period in relation to any regulated provider pornographic content published or displayed on a pre-existing Part 4B service.



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- (2) In the case of a regulated user-to-user service which includes a pre-existing Part 4B service within the definition in paragraph (b) of paragraph 1(1), nothing in sub-paragraph (1) is to be taken to prevent the duties set out in section 81 from applying during the transitional period in relation to any regulated provider pornographic content published or displayed on any other part of the service.
- (3) In this paragraph “regulated provider pornographic content” and “published or displayed” have the same meaning as in Part 5 of this Act (see section 79).

*Pre-existing Part 4B services which form part of regulated user-to-user services*

- 5 (1) During the transitional period, Part 4B of the Communications Act applies in relation to a pre-existing Part 4B service within the definition in paragraph (b) of paragraph 1(1).
- (2) Sub-paragraph (3), and paragraphs 6 to 8, apply in relation to a regulated user-to-user service which includes a pre-existing Part 4B service within the definition in paragraph (b) of paragraph 1(1).
- (3) During the transitional period, this Act applies in relation to the regulated user-to-user service with the modifications set out in paragraph 6, 7, or 8 (whichever applies).
- (4) In paragraphs 6 to 8 the dissociable section of the service which is the pre-existing Part 4B service is referred to as “the Part 4B part”.
- (5) In sub-paragraph (3) the reference to this Act does not include a reference to Part 6 (fees); for the application of Part 6, see Part 3 of this Schedule.

*Regulated user-to-user services with a Part 4B part and another user-to-user part*

- 6 (1) This paragraph applies in relation to a regulated user-to-user service described in paragraph 5(2) if the service would still be a regulated user-to-user service even if the Part 4B part were to be assumed not to be part of the service.
- (2) During the transitional period—
  - (a) any duty or requirement mentioned in paragraph 3(4) which applies in relation to the regulated service is to be treated as applying only in relation to the rest of the service;
  - (b) the powers mentioned in paragraph 3(5) are to be treated as applying only in relation to the rest of the service.
- (3) In this paragraph “the rest of the service” means any user-to-user part of the regulated service other than the Part 4B part.

*Regulated user-to-user services with a Part 4B part and a search engine*

- 7 (1) This paragraph applies in relation to a regulated user-to-user service described in paragraph 5(2) if the service would be a regulated search service if the Part 4B part were to be assumed not to be part of the service.
- (2) During the transitional period, no duty or requirement mentioned in paragraph 3(4) applies in relation to the Part 4B part of the service (but that is not to be taken to prevent any other duty or requirement under this Act from applying in relation to the search engine of the service during the transitional period).

- (3) During the transitional period, the powers mentioned in paragraph 3(5) are to be treated as applying only in relation to the search engine of the service.

*Regulated user-to-user services with a Part 4B part but no other user-to-user part or search engine*

- 8 (1) This paragraph applies in relation to a regulated user-to-user service described in paragraph 5(2) if the service does not fall within paragraph 6 or 7.
- (2) The duties, requirements and powers mentioned in paragraph 3(4) and (5) do not apply in relation to the regulated service during the transitional period.

*Assessments of pre-existing Part 4B services or of services which include a pre-existing Part 4B service*

- 9 See Part 3 of Schedule 3 for provision about—
- (a) the timing of certain assessments of pre-existing Part 4B services, and
  - (b) modifications of Parts 1 and 2 of that Schedule in connection with certain assessments of services which include a pre-existing Part 4B service within the definition in paragraph (b) of paragraph 1(1).

*Operation of section 368U of the Communications Act*

- 10 During the transitional period, section 368U of the Communications Act has effect as a requirement to establish and maintain an up to date list of persons providing a video-sharing platform service to which Part 4B applies.

*Video-sharing platform services which start up, or start up again, during the transitional period*

- 11 Part 4B of the Communications Act does not apply in relation to a video-sharing platform service which is first provided on or after the date when this Schedule comes into force.
- 12 (1) Sub-paragraph (2) applies in relation to a pre-existing Part 4B service if—
- (a) the service ceases to be a video-sharing platform service on a date within the transitional period, and
  - (b) the service begins again to be a video-sharing platform service on some later date within the transitional period.
- (2) Part 4B of the Communications Act does not start applying again in relation to the service on the date mentioned in sub-paragraph (1)(b).
- 13 Paragraphs 11 and 12 apply regardless of whether, or when, a provider of a service has notified the appropriate regulatory authority in accordance with section 368V of the Communications Act.

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### PART 3

#### APPLICATION OF PART 6 OF THIS ACT: FEES

##### *Introduction*

- 14 This Part makes provision about the application of the following provisions of this Act in relation to a person who is the provider of a relevant regulated service—
- (a) section 83 (duty to notify OFCOM in relation to the charging of fees);
  - (b) section 84 (payment of fees);
  - (c) Schedule 10 (additional fees).
- 15 In this Part “relevant regulated service” means—
- (a) a regulated user-to-user service which is a pre-existing Part 4B service within the definition in paragraph (a) of paragraph 1(1), or
  - (b) a regulated user-to-user service which includes a pre-existing Part 4B service within the definition in paragraph (b) of paragraph 1(1).

##### *Application of section 83*

- 16 (1) Sub-paragraph (2) applies in relation to a person who is the provider of a relevant regulated service, whether or not the person is the provider of any other regulated service.
- (2) Section 83, which makes provision about the notification of OFCOM in relation to a charging year, applies to the provider in relation to every charging year, regardless of whether any part, or all, of a charging year falls within the transitional period.
- 17 (1) This paragraph applies in relation to a person who is the provider of a relevant regulated service, unless the person is an exempt provider (see paragraph 24).
- (2) Sub-paragraph (3) applies in relation to the provider if—
- (a) the provider is required by section 83 to give details to OFCOM of the provider’s qualifying worldwide revenue for the qualifying period that relates to a charging year,
  - (b) the provider gives such details in relation to that charging year at a time within the transitional period, and
  - (c) no regulations under section 240(1) have been made before that time specifying that section 210 is to come into force on or before the first day of that charging year.
- (3) The provider’s notification under section 83 about qualifying worldwide revenue must include a breakdown indicating the amounts which are wholly referable to a relevant Part 4B service (if any).

##### *Application of section 84: transitional charging year*

- 18 If a person who is the provider of a relevant regulated service is an exempt provider, section 84 and Schedule 10 do not apply in relation to the provider in respect of a transitional charging year (see paragraph 23).
- 19 (1) If a person who is the provider of a relevant regulated service is not an exempt provider, section 84 and Schedule 10 apply in relation to the provider in respect of a transitional charging year.

- (2) But sub-paragraphs (3) and (4) apply in relation to the provider in respect of a transitional charging year if the provider’s notification under section 83 in relation to that charging year has included details of amounts wholly referable to a relevant Part 4B service (as mentioned in paragraph 17(3)).
- (3) For the purposes of the computation of the provider’s fee under section 84 in respect of the transitional charging year, references in that section to the provider’s qualifying worldwide revenue are to be taken to be references to the provider’s non-Part 4B qualifying worldwide revenue.
- (4) OFCOM may not require the provider to pay a fee under section 84 in respect of the transitional charging year if the provider’s non-Part 4B qualifying worldwide revenue for the qualifying period that relates to that charging year is less than the threshold figure that has effect for that charging year.
- (5) The amount of a provider’s “non-Part 4B qualifying worldwide revenue” is the amount that would be the provider’s qualifying worldwide revenue (see section 85) if all amounts wholly referable to a relevant Part 4B service were left out of account.

*Application of section 84: non-transitional charging year*

- 20
- (1) Sub-paragraph (2) applies in relation to a person who is the provider of a relevant regulated service, whether or not the person is the provider of any other regulated service.
  - (2) Section 84 and Schedule 10 apply without modification in relation to the provider in respect of a non-transitional charging year (even if the notification date in relation to such a charging year fell within the transitional period).

*Amounts wholly referable to relevant Part 4B service*

- 21
- (1) For the purposes of this Part, OFCOM may produce a statement giving information about the circumstances in which amounts do, or do not, count as being wholly referable to a relevant Part 4B service.
  - (2) If OFCOM produce such a statement, they must publish it (and any revised or replacement statement).

*Interpretation of this Part*

- 22
- In this Part—
- “non-transitional charging year” means a charging year which is not a transitional charging year;
  - “notification date”, in relation to a charging year, means the latest date by which a notification under section 83 relating to that charging year is required to be given (see section 83(5));
  - “relevant Part 4B service” means—
    - (a) a regulated user-to-user service described in paragraph 15(a), or
    - (b) a pre-existing Part 4B service included in a regulated user-to-user service described in paragraph 15(b).
- 23
- For the purposes of this Part a charging year is a “transitional charging year” if—

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- (a) the notification date in relation to that charging year fell within the transitional period, and
  - (b) no regulations under section 240(1) were made before the notification date specifying that section 210 was to come into force on or before the first day of that charging year.
- 24 (1) In this Part “exempt provider” means a person within sub-paragraph (2) or (3).
- (2) A person is within this sub-paragraph if the person is the provider of only one regulated service, and that service is—
- (a) a regulated user-to-user service which is a pre-existing Part 4B service within the definition in paragraph (a) of paragraph 1(1), or
  - (b) a regulated user-to-user service which—
    - (i) includes a pre-existing Part 4B service within the definition in paragraph (b) of paragraph 1(1), and
    - (ii) does not fall within paragraph 6 or 7.
- (3) A person is within this sub-paragraph if the person is the provider of more than one regulated service, if each regulated service is of a kind described in sub-paragraph (2).
- 25 In this Part the following terms have the same meaning as in Part 6 of this Act—
- “charging year”;
  - “qualifying period”;
  - “threshold figure”.

## PART 4

### AFTER THE END OF THE TRANSITIONAL PERIOD

#### *Interpretation of this Part*

- 26 In this Part of this Schedule—
- (a) “the repeal time” means the time when section 210 of this Act comes into force (repeal of Part 4B of the Communications Act);
  - (b) (except in paragraph (a)) references to sections are to sections of the Communications Act.
- 27 For the purposes of this Part an investigation relating to a person begins when OFCOM notify the person to that effect.

#### *OFCOM as appropriate regulatory authority*

- 28 The repeal of section 368T does not affect OFCOM’s powers to act after the repeal time as the appropriate regulatory authority under Part 4B of the Communications Act as it has effect by virtue of this Part of this Schedule.

#### *Duties of service providers to co-operate with investigations*

- 29 The repeal of section 368Y(3)(c) (duty to co-operate) does not affect the application of that provision after the repeal time in relation to—

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- (a) an investigation as mentioned in section 368Z10(3)(f) begun before that time, or
- (b) any demand for information for the purpose mentioned in section 368Z10(3)(i) resulting from such an investigation.

*Demands for information, and enforcement of such demands*

- 30 (1) The repeal of sections 368Y(3)(b) and 368Z10 (demands for information) does not affect the application of those provisions after the repeal time in a case in which—
- (a) OFCOM require information after the repeal time for the purposes of an investigation as mentioned in section 368Z10(3)(f), and
  - (b) the investigation was begun before that time.
- (2) The repeal of sections 368Z2, 368Z4 and 368Z10 does not affect the application of those sections after the repeal time in connection with—
- (a) a failure to comply with a requirement under section 368Z10 imposed before that time, or
  - (b) a failure to comply with a requirement imposed after that time under section 368Z10 as it has effect in a case mentioned in sub-paragraph (1).
- (3) In this paragraph—
- (a) “the purposes of an investigation” include the purposes of any enforcement action or proceedings resulting from an investigation;
  - (b) references to sections 368Z2 and 368Z4 include references to those sections as modified by section 368Z10.

*Enforcement notifications, financial penalties etc*

- 31 (1) The repeal of sections 368W and 368Z4 (enforcement of section 368V) does not affect the application of those sections after the repeal time in a case in which OFCOM—
- (a) made a determination as mentioned in section 368W(1) before that time, or
  - (b) began, before that time, to investigate whether they may have grounds to make such a determination.
- (2) The repeal of sections 368Z2 and 368Z4 (enforcement of sections 368Y and 368Z1(6) and (7)) does not affect the application of those sections after the repeal time in a case in which OFCOM—
- (a) made a determination as mentioned in section 368Z2(1) before that time, or
  - (b) began, before that time, to investigate whether they may have grounds to make such a determination.
- (3) The repeal of sections 368Z3 and 368Z4 (enforcement of sections 368Z1(1) and (2)) does not affect the application of those sections after the repeal time in a case in which OFCOM—
- (a) made a determination as mentioned in section 368Z3(1) before that time, or
  - (b) began, before that time, to investigate whether they may have grounds to make such a determination.

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*Suspension or restriction of service for contraventions or failures*

- 32 (1) The repeal of section 368Z5 (suspension or restriction of service for contraventions or failures) does not affect the application of that section after the repeal time in a case in which OFCOM—
- (a) made a determination as mentioned in section 368W(1), 368Z2(1) or 368Z3(1) before that time, or
  - (b) made such a determination after that time following an investigation begun before that time.
- (2) The repeal of section 368Z5 does not affect the application of that section (as modified by section 368Z10) after the repeal time in a case in which—
- (a) OFCOM are satisfied that a person failed to comply with a requirement under section 368Z10 imposed before that time, or
  - (b) OFCOM are satisfied that a person failed to comply with a requirement imposed after that time under section 368Z10 as it has effect in a case mentioned in paragraph 30(1).
- (3) The repeal of sections 368Z7 (directions under sections 368Z5 and 368Z6) and 368Z8 (offence relating to such directions) does not affect the application of those sections after the repeal time in connection with a direction given under section 368Z5 as it has effect by virtue of this paragraph.