ORG OPEN RIGHTS GROUP

Online Safety (Amendment) Bill

Explanatory Notes

Overview of the Bill

The Bill exempts from regulation under the Online Safety Act certain small, low risk user-to-user services.

In order to be exempt a service would have to (a) not be conducted for profit, (b) not present a material risk of significant harm to UK individuals and (c) qualify as a small service by reference to either active user numbers or operating expenses.

The Bill contains provision for Ofcom to serve notice on a service to disapply the exemption if Ofcom has evidence of a quantity of user-generated content on the service that presents a material risk of significant harm to UK individuals; and for a service in receipt of such a notice to be able to appeal to the First-tier Tribunal and then to the Upper Tribunal.

Commentary on provisions of the Bill

Clauses 1 and 2. These clauses amend the Online Safety Act by inserting new Sections 4A and 4B; and by amending Section 4(2)(b)(i) to add reference to the services described in new Section 4A. This would have the effect of excluding such services from the Act's definition of "regulated user-to-user services".

Sections inserted in the Online Safety Act

Since these sections would be inserted in the Online Safety Act, any relevant definitions contained in the Act would apply to these provisions.

Section 4A(1) and (2). Section 4A(1) sets out the three cumulative conditions for a service to qualify as a low risk exempt service. The first is that the service is not conducted with a view to profit. The second provides an objective test for belief that user-generated content present on the service does not present a material risk of significant harm (as defined in the Act) to UK individuals.

The third cumulative condition sets out alternative bases on which a service could qualify by reference either to active user numbers or operating expenses. Both are calculated as a monthly average over the preceding 12 months.

Section 4A(3) provides a 28 day grace period for compliance should a service cease to qualify as a low risk exempt service. It also provides that for purposes of the time for preparing a risk assessment, it would be treated as an existing service which becomes a Part 3 service under Schedule 3 part 1. However, the grace period would not be added to the period specified in Schedule 3 Part 1.

Section 4A(5) sets out the circumstances in which Ofcom may give a notice to a provider with the effect of disapplying the exemption. The grace period set out in Section 4A(3) would start to run from the giving of such a notice. The procedural provisions in the Online Safety Act regarding giving of notices by Ofcom would apply.

Section 4A(6) provides for an Ofcom notice under Section 4A(5) to cease to have effect after 12 months if it has not otherwise done so, for instance by being withdrawn or successfully appealed.

Section 4B contains provisions for appeal by the provider against a notice given under Section 4A(5), initially to the First-tier Tribunal and then to the Upper Tribunal. The available grounds for appeal include error of fact or law, or that the notice was unfair or unreasonable for any other reason. An appeal would not automatically suspend the operation of the notice. The relevant Tribunal would have power to order suspension pending determination or withdrawal of the appeal.