

The Online Safety (Amendment) Bill

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BILL

TO

Amend the Online Safety Act 2023; and for connected purposes.

BE IT ENACTED by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) The Online Safety Act 2023 is amended as follows.

(2) In section 4 (“Regulated service”, “Part 3 service” etc) in subsection (2)(b)(i), after “Schedule 1” insert “or section 4A”.

2. (1) After section 4 of the Online Safety Act 2023 insert—

“4A Small, low risk user-to-user services

(1) A user-to-user service is not a regulated user-to-user service if it is a user-to-user service in respect of which the following conditions are met in relation to the service:

- (a) Provision of the service is not conducted with a view to profit; and
- (b) There are no grounds on which a reasonable person in the position of the service provider would believe that there is a material risk of significant harm to individuals in the United Kingdom presented by user-generated content present on the service or, if the service includes a search engine, search content of the service; and
- (c) Either the user condition or the operating expenses condition applies to the service –
 - (i) The user condition is that the number of users of the service who during the relevant period have generated content directly on the service, or uploaded to or shared content on the service, is less than 2000 per month on average over the relevant period;

- (ii) The operating expenses condition is that during the relevant period expenses incurred for the purpose of providing the service are less than £2000 per month on average over the relevant period.
- (d) For the purposes of paragraph (c) the relevant period is the preceding 12 whole calendar months or, if less, the period of whole calendar months from commencement of the service.
- (2) A service that satisfies the conditions of subsection (1) is a “low risk exempt service”
- (3) Should a low risk exempt service cease to satisfy the conditions in subsection (1), it shall continue to be treated as a low risk exempt service for a period of 28 days thereafter. Notwithstanding that, for the purposes of Schedule 3 Part 1 such a service shall be treated as an existing service which becomes a Part 3 service as from the date at which it ceases to satisfy the conditions in subsection (1).
- (4) Without prejudice to the generality of the foregoing, and subject to subsections (6) and (7), a low risk exempt service shall be taken to cease to satisfy the conditions of subsection (1) if Ofcom gives a notice to the provider of the service under subsection (5).
- (5) Ofcom may give to the provider of the service a notice containing full particulars of at least three items of user-generated content present on the service in the previous three whole calendar months which Ofcom considers (individually or cumulatively) present a material risk of significant harm to individuals in the United Kingdom
- (6) A notice given under subsection (5) shall, if apart from this subsection it would continue to have effect, cease to have effect one year after expiry of the period of 28 days referred to in subsection (3).
- (7) Section 4B shall apply to a notice given under subsection (5).

4B Appeal from notice under section 4(5)

- (1) A person who is given a notice under section 4A(5) may appeal to the First-tier Tribunal (“the Tribunal”) against the notice or any provision of it.
- (2) An appeal under this section is to be brought before the end of a period of 28 days after the day on which the notice was given.
- (3) On an appeal under this section, the Tribunal—
 - (a) if it is satisfied that any of the grounds in subsection (4) applies, may—
 - (i) vary the notice, or
 - (ii) cancel the notice or any part of it;
 - (b) if it is not so satisfied, must confirm the notice.
- (4) The grounds referred to in subsection (3)(a) are—
 - (a) that the decision to give the notice, or to include any provision in the notice, was based, wholly or partly, on an error of fact;

- (b) that the decision to give the notice, or to include any provision in the notice, was wrong in law;
- (c) that the notice, or any provision of it, was unfair or unreasonable for any other reason.

(5) If the Tribunal cancels a notice to which this section applies (in whole or in part), it may refer the matter back to the person that gave the notice with a direction to reconsider and make a new decision in accordance with its ruling.

(6) But the Tribunal may not direct the person that gave the notice to take any action which the person would not otherwise have the power to take.

(7) In determining an appeal under this section, the Tribunal may—

- (a) review any determination of fact on which the decision to give the notice, or to include any provision in it, was based;
- (b) take into account evidence which was not available to the person that gave the notice.

(8) Where an appeal in respect of a notice to which this section applies is or may be made to the Tribunal under this section, the Tribunal may suspend the notice to which the appeal relates, or any provision of it, until the appeal is determined or withdrawn.

(9) Where an appeal is or may be made to the Upper Tribunal in relation to a decision of the Tribunal under this section, the Upper Tribunal may suspend the notice to which the appeal relates, or any provision of it, until the appeal is determined or withdrawn.”