

CRIME AND POLICING BILL

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

The Government has tabled further amendments to the Crime and Policing Bill for Lords Third Reading. These amendments introduce new delegated powers. This supplementary memorandum explains why the new powers have been taken and the justification for the procedure selected.

New clause “*Taking down intimate image content*”: Power to make regulations about the requirements for an ‘intimate image content report’ for the purposes of duties imposed on regulated user-to-user services and power to make regulations about the requirements for an ‘intimate image content report’ for the purposes of duties imposed on regulated search services.

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary procedure: Negative procedure

Context and purpose

1. As part of the Government’s commitment to protecting users, particularly women and girls, whilst online, the Government has tabled amendments for Lords Third Reading Stage of the Crime and Policing Bill to require the removal of non-consensual intimate images (“NCII”) from user-to-user services and search services.
2. Subsection (2) of new clause “*Taking down intimate image content*” inserts new section 10(3A) into the Online Safety Act 2023 (“the OSA”) to create a new duty on regulated user-to-user services to use proportionate systems and processes designed to remove content in relation to which an ‘intimate image content report’ is made (and any content which is the same, or substantially the same), as soon as reasonably practicable and no later than 48 hours after the report is received.
3. The duty will not apply if the service provider considers that either the content is not ‘intimate image content’, or the person making the report is not the subject of the content or acting on their behalf.
4. Subsection (5) of new clause “*Taking down intimate image content*” inserts new section 27(3A) into the OSA, imposing a corresponding duty in relation to regulated search services. The duty will require search services to use proportionate systems and processes designed to ensure that individuals are no longer able to encounter intimate image content as ‘search content’.
5. Subsection (8) of new clause “*Taking down intimate image content*” defines ‘intimate image content’ as “content that amounts to an offence under section

66B(1), (2) or (3) of the Sexual Offences Act 2003 (sharing intimate image of a person without consent)”).

6. Subsection (3) and (6) of the new clause respectively insert new sections 20A and 31A into the OSA to establish the statutory reporting mechanism under which an affected person may easily give an ‘intimate image content report’ to a provider. Section 20A deals with reports to user-to-user services whilst section 31A deals with reports to search services. In both cases the reporting mechanism is the same.
7. New sections 20A(2) and 31A(2) set out what is meant by an ‘intimate image content report’. Subparagraphs (a) to (d) specify the matters which a valid report will contain:
 - (a) a declaration that content present on the service is intimate image content;
 - (b) a declaration that the report is made by the subject of the content or a person acting on their behalf,
 - (c) sufficient information about the content for the provider to identify it; and
 - (d) contact details for the person making the report.
8. New sections 20A(2)(e) and 31A(2)(e) confer identical powers for the Secretary of State to specify other requirements for reports.
9. New sections 20A(3) and 31A(3) confer identical powers for the Secretary of State to make provision about how the report requirements set out at new sections 20A(2) and 31A(2) are to be met.

Justification for the power

10. Subsections (3) and (6) of new clause “*Taking down intimate image content*” specify the main requirements of a ‘valid’ intimate image content report (given to user-to-user or search services, as the case may be) on the face of the legislation. The Government considers it appropriate for power to make additional or more detailed provision in respect of these requirements to be delegated, since the technical and procedural detail of the reporting mechanism may need to be adjusted, including at pace, to ensure that the new regime remains effective, accessible to victims, and resilient to abuse or misuse.
11. The scope of the powers is narrowly defined, and any future exercise will not be used to make wider changes or unpredictable provision. The regulations may only make supplementary provision about the matters already specified in new sections 20A(2)(a) to (d) or 31A(2)(a) to (d), or to specify additional requirements for an intimate image content report. The Government anticipates such further provision might include detail about what is meant by “sufficient information” (in order to identify the content), what contact details are needed or what form the required declarations should take. Experience of operating the new reporting regime may demonstrate the need to require particular evidence or additional declarations in order to strike an appropriate balance between rapid protection for victims of NCII abuse, and fairness to service providers and

other users. Delegated legislation allows such refinements to be made responsively.

12. The powers cannot be used to alter the substantive duties, the definition of 'intimate image content', or the statutory timeframe for compliance.

Justification for the procedure

13. Regulations made under new sections 20A(2)(e) or (3) or 31A(2)(e) or (3) are subject to the negative resolution procedure.
14. The Government considers this will provide an appropriate level of scrutiny given that the substantive duties on service providers, and the 'core' requirements of an intimate image content report will be set out in primary legislation, and these powers are limited to making technical amendments to the reporting mechanism.

Department for Science, Innovation and Technology
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