

CRIME AND POLICING BILL SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

The Government has tabled further amendments to the Crime and Policing Bill for Commons Consideration of Lords Amendments. 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 “*Power of Secretary of State to change maximum duration of closure orders*” – new section 83A of the Anti-social Behaviour, Crime and Policing Act 2014

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary procedure: Affirmative procedure

Context and purpose

1. Chapter 3 of Part 4 of the Anti-social Behaviour, Crime and Policing Act 2014 (“the 2014 Act”) provides for powers to close premises associated with nuisance and disorder. Closure notices and closure orders allow the police or a local authority to close premises quickly which are being used, or likely to be used, to commit nuisance or disorder. A closure order can also be used to tackle criminal behaviour on premises. A closure notice can be issued by a police officer or a local authority (extended to registered social housing providers by Clause 5 of the Bill) and can bar any person who is not a resident accessing the premises for a maximum of 48 hours (extended to 72 hours by Clause 3 of the Bill). A court issued closure order can close premises for up to three months (extendable to a maximum of six months) and can restrict all access. Breach of a closure notice or closure order is a criminal offence, punishable by a maximum penalty of three months’ imprisonment or six months’ imprisonment respectively, a fine, or both. Lords Amendment 333, tabled by Baroness Buscombe, would extend the maximum duration of a closure notice to seven days and of a closure order to 12 months (extendable by up to 12 months at a time).
2. The driver for this amendment was to tackle money laundering and other criminality carried out in retail premises. The Government acknowledges the sentiment behind this Lords amendment and agrees with the need to tackle money laundering, organised crime and other criminal activity on high streets. The cross-government High Street Organised Crime Unit is already examining the use of enforcement powers in this light, including the closure power.
3. It is important to note that the closure power is an anti-social behaviour power, intended as a temporary and targeted intervention rather than a long-term sanction. The power is used to address serious nuisance and disorder, as well as, criminal behaviour, and may be applied to both commercial and residential premises.

4. As such, the Government considers it necessary to consult prior to extending the maximum duration of closure orders made under the 2014 Act to address high street illegality. This is to prevent any unintended consequences resulting from closure orders of excessive length, which could adversely affect legitimate businesses or residential premises.
5. The Government has therefore tabled an amendment in lieu of Lords amendment 333. New clause "*Power of Secretary of State to change maximum duration of closure orders*" amends clause 3 of the Bill to add new section 83A to the 2014 Act to confer a power on the Secretary of State, by regulations, to amend the maximum periods for closure orders. This includes: the maximum period for which access to a premises may be prohibited under a closure order; the maximum period for which a closure order may be extended; and the maximum duration of an extended closure order.
6. Regulations may also make different provision for different purposes, for example to apply maximum durations to different categories of premises (such as commercial and residential premises), or different activities (such as nuisance and disorderly behaviour and criminal activity).
7. The Secretary of State is required, before making regulations, to consult such persons as the Secretary of State considers appropriate.

Justification for the power

8. The Government considers that proceeding by a regulation-making power is the most practical means of addressing concerns raised in the debate in the House of Lords around high street illegality, while ensuring that any broader potential implications have been thoroughly considered. Reflecting the will of the House of Lords in agreeing amendment 333, this power will enable the Government to move quickly to make regulations, following consultation, rather than waiting for another suitable Bill. Proceeding by regulations, will also enable the Government to consider how the extension of the duration of closure orders should apply to different premises and/or different activities.

Justification for the procedure

9. By virtue of new subsection (6) of clause 3, regulations made under new section 83A of the 2014 Act will be subject to the draft affirmative procedure. The draft affirmative procedure is considered appropriate given that the effect of any regulations will be to extend the maximum duration of closure orders thereby adversely impacting on the owner or occupier of premises made subject to such an order. The draft affirmative procedure is also apt given the Henry VIII nature of the power.

- (i) **New clause “Online pornography (age and consent verification): power to amend Online Safety Act 2023”:** New section 217A of the Online Safety Act 2023 – Power to amend Online Safety Act in connection with the imposition of duties about pornographic content
- (ii) **New clause “Online pornography (age and consent verification): power to make regulations” - Power to make regulations in connection with the imposition of duties on providers of internet services about pornographic content**

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary procedure: Draft affirmative procedure

Context and purpose

10. Lords amendment 264, tabled by Baroness Bertin, would make it an offence to publish or allow or facilitate the publishing of pornographic content online where it has not been verified that: (a) every individual featuring in pornographic content on the platform has given their consent for the content in which they feature to be published or made available by the service, (b) every individual featuring in pornographic content on the platform has been verified as an adult, and that age verification was completed before the content was created and before it was published on the service, and (c) every individual featured in pornographic content on the platform, that had already been published on the service on the day on which this Act was passed, is an adult. The intention would be to require pornography websites to verify the age and permission of everyone featured on their site, and enable withdrawal of consent at any time. The maximum penalty for the offence would be imprisonment for a term not exceeding two years or a fine (or both) on conviction on indictment. In addition, the amendment would provide for civil sanctions for platforms that violate the duty to verify age, namely a fine of up to £18 million or 10 per cent of their qualifying worldwide revenue, whichever is greater. The Secretary of State would also be under a duty to make regulations relating to monitoring and enforcement and appoint one or more public bodies to monitor and enforce compliance by online platforms.

11. The Lords amendment seeks to give effect to two recommendations made by Baroness Bertin in her independent review into the regulation of on-line pornography, namely:

Recommendation 21: Companies that host pornographic content should have consistent safety protocols, processes and safeguards in place to ensure that all performers/creators are consenting adults, are of age (18+), and have not been exploited or coerced into creating content; and

Recommendation 22: There should be clear and standardised processes across the sector to enable performers and creators to withdraw consent and to have content they appear in removed from sites.

12. The Government announced in its Violence Against Women and Girls strategy, published in December 2025, the creation of a Joint Team consisting of the Department of Science, Innovation and Technology, Ministry of Justice, Department of Culture, Media and Sport and Home Office to look at the issues raised in Baroness Bertin's report. As part of this work, the Joint Team will conduct a review of the role of providers of internet services in verifying the age of individuals appearing in pornographic content published or displayed on their services and verifying whether individuals appearing in pornographic content published or displayed on their services consent to the content being published or displayed. New clause "Online pornography (age and consent verification): duty to review and report", tabled by the Government in lieu of Lords amendment 264, would place a duty on the Secretary of State, within 12 months of Royal Assent, to lay before Parliament and publish a report of the review.
13. To enable the Government to give effect to the recommendations of the review, new clauses "Online pornography (age and consent verification): power to amend Online Safety Act 2023" and "Online pornography (age and consent verification): power to make regulations" confer two regulation-making powers on the Secretary of State.
14. New clauses "Online pornography (age and consent verification): power to amend Online Safety Act 2023" inserts new section 217A into the Online Safety Act 2023 which confers a power on the Secretary of State, by regulations, to amend the 2023 Act for or in connection with the imposition on providers of regulated services of duties relating to— (a) verifying the age of individuals appearing in pornographic content published or displayed on regulated services ("age verification duties"); and (b) verifying whether individuals appearing in pornographic content published or displayed on regulated services consent to the content being published or displayed ("consent verification duties"). Consent verification duties may include duties relating to cases where consent previously given is withdrawn (new section 217A(2)). Age verification duties and consent verification duties may include duties relating to the systems and processes used to operate regulated services, or regulated services of a particular kind (new section 217A(2)). Regulations under new section 217A may make provision requiring OFCOM to issue guidance to regulated providers to assist them to comply with age verification duties and consent verification duties (new section 217A(4)).
15. New clause "Online pornography (age and consent verification): power to make regulations" confers a power on the Secretary of State, by regulations, to make freestanding provision for or in connection with the imposition on providers of regulated services of duties relating to— (a) verifying the age of individuals appearing in pornographic content published or displayed on regulated services ("age verification duties"); and (b) verifying whether individuals appearing in pornographic content published or displayed on regulated services consent to the content being published or displayed ("consent verification duties"). Age verification duties and consent verification duties may include duties relating to the systems and processes used to operate regulated services, or regulated services of a particular kind (subsection (2) of the new clause). Consent verification duties

may include duties relating to cases where consent previously given is withdrawn (subsection (3) of the new clause).

16. Subsection (4) of the new clause provides that the regulations may confer functions on— (a) a body established by the regulations, or (b) another body specified in the regulations, (“the regulator”). Subsection (5) of the new clause provides that the regulations may make provision: (a) establishing or modifying the constitutional arrangements of the regulator; (b) establishing or modifying the funding arrangements of the regulator. Subsection (6) of the new clause provides that the functions which regulations may confer on the regulator include: (a) powers to require providers of internet services to provide information to the regulator; and (b) powers, in relation to requirements imposed by or under the regulations, corresponding or similar to those conferred on OFCOM by or under Chapter 6 of Part 7 of the Online Safety Act 2023 in relation to enforceable requirements, including provisions conferring power to impose monetary penalties. The provision that may be made under subsection (5)(a) includes provision corresponding or similar to that made in relation to requirements to provide information to OFCOM by: (a) section 109 of the Online Safety Act 2023 (offences in connection with information notices), and (b) section 113 of that Act so far as relating to section 109 (penalties for information offences) (subsection (7) of the new clause). Where regulations made under subsection (6)(b) make provision corresponding or similar to provision in relation to which an appeal lies under section 168 of the Online Safety Act 2023, subsection (8) requires that the regulations must make corresponding or similar provision for an appeal. Subsection (9) of the new clause provides that regulations may make provision for appeals against other decisions of the regulator. Subsection (10) of the new clause provides that the regulations may make provision requiring providers of internet services to pay fees to the regulator. Such provision includes provision similar to that made in relation to the payment of fees to OFCOM by or under Part 6 of the 2023 Act (subsection (11) of the new clause). Subsection (12) of the new clause provides that the regulations may make provision requiring the regulator to issue guidance to providers of internet services to assist them to comply with the age verification duties and consent verification duties.
17. It is intended that the two regulation-making powers detailed above operate in the alternative. One or other will be exercised, as necessary, to give effect to the recommendations of the review. Until the review has completed its work and the Government has agreed the conclusions, it is necessary to keep open the alternative options of adapting the regulatory regime in the 2023 Act or establishing a bespoke regulatory regime to introduce and enforce new duties on internet services providers in respect of verifying the age and consent of persons appearing in pornographic content online.

Justification for the power

18. The need to strengthen the duties on internet services providers to verify the age and consent of persons appearing on pornographic websites has been the subject of on-going parliamentary debate, with amendments tabled during the Commons and Lords stages of this Bill and amendment 264, tabled by Baroness Bertin, being

carried at Lords Report. The Government acknowledges the need to introduce further safeguards in this area to protect vulnerable persons from sexual exploitation. However, the Government considers that it is first necessary to examine further what additional safeguards should be put in place, including the nature of any new duties on internet services providers and the appropriate enforcement mechanisms, including whether to confer relevant functions on an existing regulator or to establish a new regulator.

19. In the current circumstances, the Government considers that proceeding by regulation-making powers is the most practical means to provide for future new requirements on internet services providers. Proceeding in this way will enable the Government to examine the appropriate means to strengthen arrangements to ensure persons appearing in pornographic content are 18 or over and consenting, to determine on whom such duties should apply to and how they should be applied before enshrining a scheme in law.

20. It remains the case, however, that the Bill itself will set out the essential core policy of how these powers may apply, including who is in scope of the regulatory regime (internet services providers) and what the regime is to cover (the verification of the age and consent of individuals appearing in pornographic content published or displayed on regulated services), while leaving the detail of the regulatory regime (which, in one scenario, may be that contained in the 2023 Act) to regulations.

Justification for the procedure

21. By virtue of an amendment to section 225(1) of the 2023 Act regulations made under new section 217A of that Act would be subject to the draft affirmative procedure. Similarly, by virtue of an amendment to clause 198(3)(a) of the Bill, regulations under new clause “Online pornography (age and consent verification): power to make regulations” would also be subject to the draft affirmative procedure. The draft affirmative procedure is considered appropriate in each case given that any regulations would impose new regulatory duties on internet services providers with financial sanctions for non-compliance. In addition, regulations made under new clause “Online pornography (age and consent verification): power to make regulations” would assign an existing regulator or establish a new regulator to enforce such duties. Given the significance of such provision it is appropriate that they are debated and approved by both Houses. The draft affirmative procedure is also apt for regulations made under new section 217A of the 2023 Act given the Henry VIII nature of the power.

New Schedule “Intimate image material: reporting and registration”:

- i) Paragraph 1 – Duty to designate trusted flagger.**
- ii) Paragraph 2 – Power to amend Online Safety Act 2023 to impose duties on providers of regulated services to report intimate image content to trusted flagger.**
- iii) Paragraph 3 – Power to make provision for intimate image register.**
- iv) Paragraph 4 - Power to make provision for operation of intimate image register.**
- v) Paragraph 5 – Power to make provision in respect of payment of fees to Registrar.**

- vi) **Paragraph 6 - Power to make provision in respect of duties of providers of internet services and internet access services.**
- vii) **Paragraph 7 - Power to make provision in respect of enforcement.**
- viii) **Paragraph 8 - Power to make provision in respect of payment of fees to enforcement authority.**
- ix) **Paragraph 9 – Power to issue guidance.**
- x) **Paragraph 10 - Power to make provision in respect of the duties of OFCOM.**
- xi) **Paragraph 11 - Power to amend Online Safety Act 2023 for or in connection with the imposition on providers of regulated services of duties relating to intimate images.**

Power conferred on: Secretary of State

Power exercised by: Regulations made by secondary legislation

Parliamentary procedure: (i) Negative resolution procedure; (ii)-(viii), (x) and (xi) Draft affirmative procedure; (ix) None.

Context and purpose

22. The scale of non-consensual intimate image (“NCII”) abuse has continued to rise and causes prolonged trauma for victims, who are faced with tracking and reporting their NCII across numerous online platforms for it to be removed. Yet even after repeated reports, NCII frequently remains online due to non-compliant platforms failing to act, and current legal frameworks make it difficult to require swift and consistent removal.
23. Unlike child sexual abuse material, where mere possession is a criminal offence, NCII offences prohibit the creation, sharing, or threatening to share such content with the requirement that such actions be done without the consent of the person depicted. This means that internet service providers (“ISPs”) consider that they are restricted from blocking this content both under net neutrality legislation and because they are not competent to make decisions about whether content has been shared illegally.
24. As part of the Government’s commitment to explore routes to ensure that intimate images that are taken, created or shared without consent are removed online, and following the decision of the House of Lords at Report stage to agree amendments tabled by Baroness Owen of Alderley Edge (Lords amendments 259 and 260), the Government has tabled amendments-in-lieu for Commons Consideration of Lords Amendments.
25. New Schedule “Intimate image material: reporting and registration” makes provision for an intimate image register to facilitate the swift removal of NCII from online platforms. Paragraph 1 of the new Schedule places a duty on the Secretary of State to designate a trusted flagger for the purpose of providing information to ISPs and providers of internet access services (“IASPs”) about verified NCII content which, if shared, is likely to amount to an offence under section 66B of the Sexual Offences Act 2003. Paragraph 2 of the new Schedule confers a power on

the Secretary of State to amend the Online Safety Act 2023 (“OSA”) for, or in connection with, the imposition of duties on user-to-user and search services to provide information to the designated trusted flagger.

26. Paragraph 3 of the new Schedule confers a power on the Secretary of State to make further provisions to establish a register of intimate image content, for the purpose of removing and minimising the dissemination of intimate image abuse material on regulated internet services within the UK. The intention is that this power will be deployed if the Secretary of State considers that it is appropriate following findings from a Government scoping exercise on the existing legislation and the technical requirements necessary for the long-term operation of registry.
27. Paragraphs 4 to 10 of the new Schedule enable the Secretary of State to make specific provision in regulations connected to the operation of a register of intimate image content, including provision in respect of the payment of fees to the Registrar (to meet the costs of operating the register), the placing duties on ISPs and IASPs, enforcement (including provision for monetary penalties for failure to comply with specified duties), the payment of fees to a designated enforcement authority, the issue of guidance and provision requiring OFCOM to have regard to the intimate image register when exercising specified functions. Such powers are to be deployed if necessary for the successful operation of the intimate image register, following findings from a Government scoping exercise.
28. Paragraph 11 of the new Schedule enables the Secretary of State to make amendments to the OSA to impose duties on providers of regulated services under that Act relating to providing information to the Registrar and taking down relevant content from those services. This power echoes the power at paragraph 6 of the new Schedule, but enables provision relating to certain services to be made by way of amendment to the OSA and form part of that regulatory framework, rather than by way of freestanding provision in regulations.

Justification for the power

29. To allow the Government to swiftly designate a trusted flagger and ensure that a long-term register can operate successfully, it is intended that the power in new Schedule “Intimate image material: reporting and registration” are exercised in two phases.
30. The first power requires the Secretary of State to designate a trusted flagger for information purposes, who can verify if content appearing on the platforms of ISPs and IASPs is considered NCII. The Government intends to designate the Revenge Porn Helpline, which already performs this role, as the trusted flagger thereby giving the organisation statutory backing and building trust in the Register. The Government considers a delegated power to be the most appropriate way to do this so that the Secretary of State has the flexibility to designate the body most appropriate to fill this role at any given time.
31. The Government considers it necessary to undertake a scoping exercise to determine how the intimate image register may most effectively operate. Until this scoping exercise has been completed, it is not possible to set out in primary

legislation the provisions under which the register will operate. Accordingly, in these circumstances, the Government considers that it is appropriate to leave the details of the scheme to secondary legislation. Lords amendments 259 and 260 agreed by the House at Report stage similarly contemplated that such matters should be left to regulations. Proceeding by regulations will ensure that the operating model for the register is appropriate and fit for purpose.

32. The specific enabling powers provided for in the new Schedule are drafted as narrowly as possible to ensure that Parliament is able to understand the nature of the duties and powers which may be conferred by regulations while ensuring that the register can function effectively to meet the needs revealed by further analysis.
33. The new Schedule confers powers that are more tightly drafted and contains more safeguards than those conferred by Lords amendments 259 and 260, including conferring express power to make provision about enforcement, including setting maximum monetary penalties and mandating provision for appeals, and clear provision about the nature of duties which may be imposed on providers of relevant services in relation to the register.
34. Where the amendment includes Henry VIII powers, primarily for amending the OSA, these are narrow and permit amendment for specific purposes only. The Government considers that these powers are necessary to ensure that there is regulatory coherence if the scoping exercise suggests that duties fitting within the OSA regulatory framework would be most appropriate.

Justification for the procedure

35. By virtue of clause 198(4) read with an amendment to clause 198(3)(a), regulations made under paragraph 1 of the new Schedule to designate a person as a trusted flagger are subject to the negative resolution procedure. This is considered to be appropriate for a power of this type given that such regulations will not include provision imposing duties or affecting any person's rights.
36. By virtue of an amendment to clause 198(3)(a), regulations made in exercise of any of the other powers created by the new Schedule will be subject to the draft affirmative procedure. The Government considers that this is appropriate given that such regulations may impose new duties on providers of internet services and internet access services and provide for their enforcement. The affirmative procedure is also apt given the Henry VIII nature of the powers at paragraphs 2 and 11 of the new Schedule.
37. Paragraph 9 of the new Schedule enables regulations to make provision for the issue of guidance by the Registrar, enforcement authorities and/or the Secretary of State in respect of the operation of the intimate image register. While the regulations conferring powers to issue guidance will themselves be subject to the draft affirmative procedure, any guidance issued will not be subject to any parliamentary procedure on the grounds that it would provide practical advice to ISPs, and others about the operation of the register. The guidance will not conflict with the provisions in regulations made under the new Schedule. Moreover, whilst

regulations may provide for specified persons to have regard to the guidance, the guidance will not be binding.

Home Office
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