



Online Safety Act 2023

2023 CHAPTER 50

PART 11

SUPPLEMENTARY AND GENERAL

Providers' judgements about the status of content

192 Providers' judgements about the status of content

- (1) This section sets out the approach to be taken where—
 - (a) a system or process operated or used by a provider of a Part 3 service for the purpose of compliance with relevant requirements,
 - (b) a risk assessment required to be carried out by Part 3, or
 - (c) an assessment required to be carried out by section 14,involves a judgement by a provider about whether content is content of a particular kind.
- (2) Such judgements are to be made on the basis of all relevant information that is reasonably available to a provider.
- (3) In construing the reference to information that is reasonably available to a provider, the following factors, in particular, are relevant—
 - (a) the size and capacity of the provider, and
 - (b) whether a judgement is made by human moderators, by means of automated systems or processes or by means of automated systems or processes together with human moderators.
- (4) Subsections (5) to (7) apply (as well as subsection (2)) in relation to judgements by providers about whether content is—
 - (a) illegal content, or illegal content of a particular kind, or
 - (b) a fraudulent advertisement.

Status: This is the original version (as it was originally enacted).

- (5) In making such judgements, the approach to be followed is whether a provider has reasonable grounds to infer that content is content of the kind in question (and a provider must treat content as content of the kind in question if reasonable grounds for that inference exist).
- (6) Reasonable grounds for that inference exist in relation to content and an offence if, following the approach in subsection (2), a provider—
 - (a) has reasonable grounds to infer that all elements necessary for the commission of the offence, including mental elements, are present or satisfied, and
 - (b) does not have reasonable grounds to infer that a defence to the offence may be successfully relied upon.
- (7) In the case of content generated by a bot or other automated tool, the tests mentioned in subsection (6)(a) and (b) are to be applied in relation to the conduct or mental state of a person who may be assumed to control the bot or tool (or, depending what a provider knows in a particular case, the actual person who controls the bot or tool).
- (8) In considering a provider’s compliance with relevant requirements to which this section is relevant, OFCOM may take into account whether providers’ judgements follow the approaches set out in this section (including judgements made by means of automated systems or processes, alone or together with human moderators).
- (9) In this section—
 - “fraudulent advertisement” has the meaning given by section 38 or 39 (depending on the kind of service in question);
 - “illegal content” has the same meaning as in Part 3 (see section 59);
 - “relevant requirements” means—
 - (a) duties and requirements under this Act, and
 - (b) requirements of a notice given by OFCOM under this Act.

193 OFCOM’s guidance about illegal content judgements

- (1) OFCOM must produce guidance for providers of Part 3 services about the matters dealt with in section 192 so far as relating to illegal content judgements.
- (2) “Illegal content judgements” means—
 - (a) judgements of a kind mentioned in subsection (4) of that section, and
 - (b) judgements by providers about whether news publisher content amounts to a relevant offence (see section 18(5) and (10)).
- (3) Before producing the guidance (including revised or replacement guidance), OFCOM must consult such persons as they consider appropriate.
- (4) OFCOM must publish the guidance (and any revised or replacement guidance).