



# 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.

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*Status: This version of this part contains provisions that are prospective.*  
*Changes to legislation: There are currently no known outstanding effects for the Online Safety Act 2023, PART 11. (See end of Document for details)*

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- (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.

#### Commencement Information

- I1** S. 192 not in force at Royal Assent, see [s. 240\(1\)](#)  
**I2** S. 192 in force at 10.1.2024 by [S.I. 2023/1420](#), [reg. 2\(z23\)](#)

### 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).

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*Changes to legislation: There are currently no known outstanding effects*  
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**Commencement Information**

**I3** S. 193(1)(2)(a)(3)(4) in force at Royal Assent, see **s. 240(4)(w)**

*Time-limits for first guidance*

**194 Time for publishing first guidance under certain provisions of this Act**

- (1) OFCOM must publish guidance to which this section applies within the period of 18 months beginning with the day on which this Act is passed.
- (2) This section applies to—
  - (a) the first guidance under section 52(3)(a) (record-keeping and review);
  - (b) the first guidance under section 52(3)(b) (children’s access assessments);
  - (c) the first guidance under section 53(1) (content harmful to children);
  - (d) the first guidance under section 82 (provider pornographic content);
  - (e) the first guidance under section 99(1) (illegal content risk assessments under section 9);
  - (f) the first guidance under section 99(2) (illegal content risk assessments under section 26);
  - (g) the first guidance under section 99(3) (children’s risk assessments);
  - (h) the first guidance under section 151 (enforcement);
  - (i) the first guidance under section 193 relating to illegal content judgements within the meaning of subsection (2)(a) of that section (illegal content and fraudulent advertisements).
- (3) If OFCOM consider that it is necessary to extend the period mentioned in subsection (1) in relation to guidance mentioned in any of paragraphs (a) to (i) of subsection (2), OFCOM may extend the period in relation to that guidance by up to 12 months by making and publishing a statement.

But this is subject to subsection (6).
- (4) A statement under subsection (3) must set out—
  - (a) the reasons why OFCOM consider that it is necessary to extend the period mentioned in subsection (1) in relation to the guidance concerned, and
  - (b) the period of extension.
- (5) A statement under subsection (3) may be published at the same time as (or incorporate) a statement under section 43(12) (extension of time to prepare certain codes of practice).
- (6) But a statement under subsection (3) may not be made in relation to guidance mentioned in a particular paragraph of subsection (2) if—
  - (a) a statement has previously been made under subsection (3) (whether in relation to guidance mentioned in the same or a different paragraph of subsection (2)), or
  - (b) a statement has previously been made under section 43(12).

*Status: This version of this part contains provisions that are prospective.*  
*Changes to legislation: There are currently no known outstanding effects for the Online Safety Act 2023, PART 11. (See end of Document for details)*

#### Commencement Information

**I4** S. 194 in force at Royal Assent, see [s. 240\(4\)\(x\)](#)

### *Liability of providers etc*

#### **195 Providers that are not legal persons**

- (1) In this section a “relevant entity” means an entity that—
  - (a) is the provider of a regulated service, and
  - (b) is not a legal person under the law under which it is formed.
- (2) If a penalty notice is given to a relevant entity (in the name of the entity), the penalty must be paid out of the entity’s funds.
- (3) If a notice is given by OFCOM to a relevant entity (in the name of the entity) under any provision of this Act, the notice continues to have effect despite a change in the membership of the entity.
- (4) If a penalty notice is given jointly to two or more officers or members of a relevant entity, those individuals are jointly and severally liable to pay the penalty under it.
- (5) In subsection (4) the reference to officers or members of a relevant entity includes a reference to employees of such an entity or any other individuals associated with such an entity.
- (6) In this section a “penalty notice” means—
  - (a) a confirmation decision that imposes a penalty (see sections 132(5)(b) and 137),
  - (b) a penalty notice under section 139,
  - (c) a penalty notice under section 140(5), or
  - (d) a penalty notice under section 141(6).

#### Commencement Information

**I5** S. 195 not in force at Royal Assent, see [s. 240\(1\)](#)  
**I6** [S. 195](#) in force at 10.1.2024 by [S.I. 2023/1420](#), [reg. 2\(z24\)](#)

#### **196 Individuals providing regulated services: liability**

- (1) This section applies in relation to two or more individuals who together are the provider of a regulated service (see section 226(3), (5), (7), (9) and (11)).
- (2) Any duty or requirement imposed on such a provider under any of the provisions specified in subsection (3), or any liability of such a provider to pay a fee under section 84 or Schedule 10, is to be taken to be imposed on, or to be a liability of, all the individuals jointly and severally.
- (3) The provisions are—
  - (a) Chapter 2 of Part 3 (providers of user-to-user services: duties of care);
  - (b) Chapter 3 of Part 3 (providers of search services: duties of care);

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- (c) Chapter 4 of Part 3 (children’s access assessments);
  - (d) Chapter 5 of Part 3 (duties about fraudulent advertising);
  - (e) Chapter 1 of Part 4 (user identity verification);
  - (f) Chapter 2 of Part 4 (reporting CSEA content);
  - (g) Chapter 3 of Part 4 (terms of service: transparency, accountability and freedom of expression);
  - (h) Chapter 4 of Part 4 (deceased child users);
  - (i) Chapter 5 of Part 4 (transparency reporting);
  - (j) section 81 (provider pornographic content);
  - (k) section 83 (duty to notify OFCOM).
- (4) A notice in respect of a matter that may or must be given by OFCOM under any provision of this Act may be given—
- (a) to only one of the individuals,
  - (b) jointly to two or more of them, or
  - (c) jointly to all of them,
- but a separate notice may not be given to each of the individuals in respect of the matter.
- (5) If a penalty notice is given jointly to two or more individuals, those individuals are jointly and severally liable to pay the penalty under it.
- (6) In subsection (5) a “penalty notice” means—
- (a) a confirmation decision that imposes a penalty (see sections 132(5)(b) and 137),
  - (b) a penalty notice under section 139,
  - (c) a penalty notice under section 140(5), or
  - (d) a penalty notice under section 141(6).

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**Commencement Information**

- I7** S. 196 not in force at Royal Assent, see [s. 240\(1\)](#)
- I8** S. 196 in force at 10.1.2024 by [S.I. 2023/1420](#), [reg. 2\(z24\)](#)

**197 Liability of parent entities etc**

Schedule 15 contains provision about—

- (a) the giving of joint provisional notices of contravention to parent entities etc,
- (b) the liability of parent entities for failures by subsidiary entities,
- (c) the liability of subsidiary entities for failures by parent entities,
- (d) the liability of fellow subsidiary entities for failures by subsidiary entities, and
- (e) the liability of controlling individuals for failures by entities.

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**Commencement Information**

- I9** S. 197 not in force at Royal Assent, see [s. 240\(1\)](#)
- I10** S. 197 in force at 10.1.2024 by [S.I. 2023/1420](#), [reg. 2\(z24\)](#)

*Status: This version of this part contains provisions that are prospective.*  
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## 198 Former providers of regulated services

- (1) A power conferred by Chapter 6 of Part 7 (enforcement powers) to give a notice to a provider of a regulated service is to be read as including power to give a notice to a person who was, at the relevant time, a provider of such a service but who has ceased to be a provider of such a service (and that Chapter and Schedules 13 and 15 are to be read accordingly).
- (2) “The relevant time” means—
  - (a) the time of the failure to which the notice relates, or
  - (b) in the case of a notice which relates to the requirement in section 105(1) to co-operate with an investigation, the time of the failure or possible failure to which the investigation relates.

### Commencement Information

- I11** S. 198 not in force at Royal Assent, see [s. 240\(1\)](#)  
**I12** S. 198 in force at 10.1.2024 by [S.I. 2023/1420](#), [reg. 2\(z24\)](#)

## Offences

### 199 Information offences: supplementary

- (1) Proceedings against a person for an offence under section 109(1) or paragraph 18(1) (b) of Schedule 12 may be brought only if—
  - (a) OFCOM have given the person a provisional notice of contravention in respect of the failure to comply with the requirements of an information notice or the requirements imposed by a person acting under Schedule 12 (as the case may be),
  - (b) OFCOM have given the person a confirmation decision in respect of that failure imposing requirements of a kind described in section 133(1) and the time allowed for compliance with the decision has expired without those requirements having been complied with,
  - (c) OFCOM have not imposed a penalty on the person in respect of that failure,
  - (d) a service restriction order under section 144 has not been made in relation to a regulated service provided by the person in respect of that failure, and
  - (e) an access restriction order under section 146 has not been made in relation to a regulated service provided by the person in respect of that failure.
- (2) Proceedings for an offence under section 110(2) (failure by named senior manager to prevent offence under section 109(1)) may be brought only if the conditions in subsection (1) are met in respect of the offence under section 109(1).
- (3) Where a penalty has been imposed on a person in respect of an act or omission constituting an offence under section 69 or 109 or paragraph 18 of Schedule 12, no proceedings may be brought against the person for that offence.
- (4) Where a penalty has been imposed on an entity in respect of an act or omission constituting an offence under section 109, no proceedings for an offence under section 110 may be brought against an individual in respect of a failure to prevent that offence.

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- (5) A penalty may not be imposed on a person in respect of an act or omission constituting an offence under section 69 or 109 or paragraph 18 of Schedule 12 if—
- (a) proceedings for the offence have been brought against the person but have not been concluded, or
  - (b) the person has been convicted of the offence.
- (6) In this section “penalty” means a penalty imposed by—
- (a) a confirmation decision (see sections 132(5)(b) and 137), or
  - (b) a penalty notice under section 139.

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**Commencement Information**

- I13** S. 199 not in force at Royal Assent, see [s. 240\(1\)](#)  
**I14** S. 199 in force at 10.1.2024 for specified purposes by [S.I. 2023/1420, reg. 2\(z25\)](#)

**200 Offence of failure to comply with confirmation decision: supplementary**

- (1) Where a penalty has been imposed on a person by a penalty notice under section 139 in respect of a failure constituting an offence under section 138 (failure to comply with certain requirements of a confirmation decision), no proceedings may be brought against the person for that offence.
- (2) A penalty may not be imposed on a person by a penalty notice under section 139 in respect of a failure constituting an offence under section 138 if—
- (a) proceedings for the offence have been brought against the person but have not been concluded, or
  - (b) the person has been convicted of the offence.
- (3) Where a service restriction order under section 144 or an access restriction order under section 146 has been made in relation to a regulated service provided by a person in respect of a failure constituting an offence under section 138, no proceedings may be brought against the person for that offence.

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**Commencement Information**

- I15** S. 200 not in force at Royal Assent, see [s. 240\(1\)](#)  
**I16** S. 200 in force at 10.1.2024 for specified purposes by [S.I. 2023/1420, reg. 2\(z25\)](#)

**201 Defences**

- (1) Subsection (2) applies where a person relies on a defence under section 109 or 110.
- (2) If evidence is adduced which is sufficient to raise an issue with respect to the defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

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**Commencement Information**

- I17** S. 201 not in force at Royal Assent, see [s. 240\(1\)](#)  
**I18** S. 201 in force at 10.1.2024 for specified purposes by [S.I. 2023/1420, reg. 2\(z25\)](#)

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## 202 Liability of corporate officers for offences

- (1) In this section a “relevant entity” means an entity that is—
  - (a) the provider of a regulated service, and
  - (b) a legal person under the law under which it is formed.
- (2) If an offence is committed by a relevant entity and it is proved that the offence—
  - (a) has been committed with the consent or connivance of an officer of the entity, or
  - (b) is attributable to any neglect on the part of an officer of the entity,
 the officer (as well as the entity) commits the offence and (subject to section 199(1)) is liable to be proceeded against and punished accordingly.
- (3) In relation to an entity which is a body corporate, “officer” means—
  - (a) a director, manager, associate, secretary or other similar officer, or
  - (b) a person purporting to act in any such capacity.

In paragraph (a) “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.
- (4) In relation to a partnership which is not regarded as a body corporate under the law under which it is formed, “officer” means—
  - (a) a partner, or
  - (b) a person purporting to act as a partner.
- (5) In this section—
 

“body corporate” includes an entity incorporated outside the United Kingdom;

“offence” means an offence under this Act, except under Part 10.

### Commencement Information

**I19** S. 202 not in force at Royal Assent, see [s. 240\(1\)](#)

**I20** S. 202 in force at 10.1.2024 for specified purposes by [S.I. 2023/1420, reg. 2\(z25\)](#)

## 203 Application of offences to providers that are not legal persons

- (1) In this section a “relevant entity” means an entity that—
  - (a) is the provider of a regulated service, and
  - (b) is not a legal person under the law under which it is formed.
- (2) Proceedings for an offence alleged to have been committed by a relevant entity must be brought against the entity in its own name (and not in that of any of its officers or members).
- (3) For the purposes of such proceedings—
  - (a) rules of court relating to the service of documents have effect as if the entity were a body corporate; and
  - (b) the following provisions apply as they apply in relation to a body corporate—
    - (i) section 33 of the Criminal Justice Act 1925 and Schedule 3 to the Magistrates’ Courts Act 1980;



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- (ii) section 18 of the [Criminal Justice Act \(Northern Ireland\) 1945 \(c. 15 \(N.I.\)\)](#) and Article 166 of, and Schedule 4 to, the Magistrates' Courts (Northern Ireland) Order 1981 ([S.I. 1981/1675 \(N.I. 26\)](#)).
- (4) A fine imposed on a relevant entity on its conviction of an offence must be paid out of the entity's funds.
- (5) If an offence is committed by a relevant entity and it is proved that the offence—
- (a) has been committed with the consent or connivance of an officer of the entity, or
  - (b) is attributable to any neglect on the part of an officer of the entity,
- the officer (as well as the entity) commits the offence and (subject to [section 199\(1\)](#)) is liable to be proceeded against and punished accordingly.
- (6) In relation to a partnership, “officer” means—
- (a) a partner, or
  - (b) a person purporting to act as a partner.
- (7) In relation to a relevant entity other than a partnership, “officer” means—
- (a) an officer of the entity or a person concerned in the management or control of the entity, or
  - (b) a person purporting to act in such a capacity.
- (8) Subsection (2) is not to be read as prejudicing any liability of an officer under subsection (5).
- (9) In this section “offence” means an offence under this Act, except under Part 10.

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**Commencement Information**

**I21** S. 203 not in force at Royal Assent, see [s. 240\(1\)](#)

**I22** S. 203 in force at 10.1.2024 for specified purposes by [S.I. 2023/1420, reg. 2\(z25\)](#)

*Extra-territorial application*

**204 Extra-territorial application**

- (1) References in this Act to an internet service, a user-to-user service or a search service include such a service provided from outside the United Kingdom (as well as such a service provided from within the United Kingdom).
- (2) The power to require the production of documents by an information notice includes power to require the production of documents held outside the United Kingdom.
- (3) The power conferred by section 106 includes power to require the attendance for interview of an individual who is outside the United Kingdom.
- (4) Sections 133(9) and 150(11) (requirements enforceable in civil proceedings against a person) apply whether or not the person is in the United Kingdom.

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**Commencement Information**

**I23** S. 204(1) in force at Royal Assent, see [s. 240\(4\)\(y\)](#)

*Status: This version of this part contains provisions that are prospective.*  
*Changes to legislation: There are currently no known outstanding effects for the Online Safety Act 2023, PART 11. (See end of Document for details)*

**I24** S. 204(2)-(4) in force at 10.1.2024 for specified purposes by S.I. 2023/1420, reg. 2(z25)

## **205 Offences: extra-territorial application and jurisdiction**

- (1) Sections 69, 109 and 112 apply to acts done by a person in the United Kingdom or elsewhere (information offences).
- (2) Section 110 applies to acts done by an individual in the United Kingdom or elsewhere (offences by senior managers of providers of regulated services).
- (3) Section 138 applies to acts done by a person in the United Kingdom or elsewhere (offence of failure to comply with confirmation decision).
- (4) Sections 202(2) and 203(5), so far as relating to an offence under a section specified in subsection (1) or (3) of this section, apply to acts done by an individual in the United Kingdom or elsewhere (liability of directors etc of providers of regulated services).
- (5) In the case of an offence under section 69, 109, 110, 112 or 138 which is committed outside the United Kingdom—
  - (a) proceedings for the offence may be taken at any place in the United Kingdom, and
  - (b) the offence may for all incidental purposes be treated as having been committed at any such place.
- (6) In the application of subsection (5) to Scotland, any such proceedings against a person may be taken—
  - (a) in any sheriff court district in which the person is apprehended or is in custody, or
  - (b) in such sheriff court district as the Lord Advocate may determine.
- (7) In this section—
 

“act” includes a failure to act;

“sheriff court district” is to be construed in accordance with the Criminal Procedure (Scotland) Act 1995 (see section 307(1) of that Act).

### **Commencement Information**

**I25** S. 205 not in force at Royal Assent, see s. 240(1)

**I26** S. 205 in force at 10.1.2024 for specified purposes by S.I. 2023/1420, reg. 2(z25)

### *Payment of sums into Consolidated Fund*

## **206 Payment of sums into the Consolidated Fund**

- (1) Section 400 of the Communications Act (destination of penalties etc) is amended as follows.
- (2) In subsection (1), after paragraph (i) insert—
  - “(j) an amount paid to OFCOM in respect of a penalty imposed by them under Chapter 6 of Part 7 of the Online Safety Act 2023;
  - (k) an amount paid to OFCOM in respect of an additional fee charged under Schedule 10 to the Online Safety Act 2023.”

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- (3) In subsection (2), after “applies” insert “(except an amount mentioned in subsection (1) (j) or (k))”.
- (4) After subsection (3) insert—
  - “(3A) Where OFCOM receive an amount mentioned in subsection (1)(j) or (k), it must be paid into the Consolidated Fund of the United Kingdom.”
- (5) In the heading, omit “licence”.

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**Commencement Information**

- I27** S. 206 not in force at Royal Assent, see [s. 240\(1\)](#)  
**I28** S. 206 in force at 10.1.2024 by [S.I. 2023/1420](#), [reg. 2\(z26\)](#)

*Publication by OFCOM*

**207 Publication by OFCOM**

Anything required by this Act to be published by OFCOM must be published in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by it.

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**Commencement Information**

- I29** S. 207 in force at Royal Assent, see [s. 240\(4\)\(z\)](#)

*Service of notices*

**208 Service of notices**

- (1) This section applies in relation to a notice that may or must be given by OFCOM to a person under any provision of this Act.
- (2) OFCOM may give a notice to a person by—
  - (a) delivering it by hand to the person,
  - (b) leaving it at the person’s proper address,
  - (c) sending it by post to the person at that address, or
  - (d) sending it by email to the person’s email address.
- (3) A notice to a body corporate may be given to any officer of that body.
- (4) A notice to a partnership may be given to any partner or to a person who has the control or management of the partnership business.
- (5) A notice to an entity that is not a legal person under the law under which it is formed (other than a partnership) may be given to any member of the governing body of the entity.
- (6) In the case of a notice given to a person who is a provider of a regulated service, the person’s proper address for the purposes of paragraphs (b) and (c) of subsection (2),

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and section 7 of the Interpretation Act 1978 in its application to those paragraphs, is any address (within or outside the United Kingdom) at which OFCOM believe, on reasonable grounds, that the notice will come to the attention of the person or (where the person is an entity) any director or other officer of that entity.

- (7) In the case of a notice given to a person other than a provider of a regulated service, a person’s proper address for the purposes of paragraphs (b) and (c) of subsection (2), and section 7 of the Interpretation Act 1978 in its application to those paragraphs, is—
- (a) in the case of an entity, the address of the entity’s registered or principal office;
  - (b) in any other case, the person’s last known address.
- (8) In the case of an entity registered or carrying on business outside the United Kingdom, or with offices outside the United Kingdom, the reference in subsection (7) to its principal office includes its principal office in the United Kingdom or, if the entity has no office in the United Kingdom, any place in the United Kingdom at which OFCOM believe, on reasonable grounds, that the notice will come to the attention of any director or other officer of that entity.
- (9) In the case of a notice given to an individual under section 106 (interviews), the reference in subsection (7) to the person’s last known address is to the individual’s home address or, if the individual is currently connected with a provider of a regulated service, the address of the provider’s registered or principal office.
- (10) For the purposes of subsection (2)(d), a person’s email address is—
- (a) any email address published for the time being by that person as an address for contacting that person, or
  - (b) if there is no such published address, any email address by means of which OFCOM believe, on reasonable grounds, that the notice will come to the attention of that person or (where that person is an entity) any director or other officer of that entity.
- (11) A notice sent by email is treated as given 48 hours after it was sent, unless the contrary is proved.
- (12) In this section—
- “director” includes any person occupying the position of a director, by whatever name called;
- “officer”, in relation to an entity, includes a director, a manager, a partner, an associate, a secretary or, where the affairs of the entity are managed by its members, a member.

**Commencement Information**

**I30** S. 208 not in force at Royal Assent, see [s. 240\(1\)](#)

**I31** S. 208 in force at 10.1.2024 by [S.I. 2023/1420](#), [reg. 2\(z27\)](#)

*Repeals and amendments*

**209 Amendments of Part 4B of the Communications Act**

Schedule 16 contains amendments of Part 4B of the Communications Act.

*Status: This version of this part contains provisions that are prospective.*  
**Changes to legislation:** There are currently no known outstanding effects  
for the Online Safety Act 2023, PART 11. (See end of Document for details)

#### Commencement Information

- I32** S. 209 not in force at Royal Assent, see [s. 240\(1\)](#)  
**I33** S. 209 in force at 10.1.2024 by [S.I. 2023/1420](#), [reg. 2\(z28\)](#)

PROSPECTIVE

### 210 Repeal of Part 4B of the Communications Act

- (1) In the Communications Act, omit Part 4B (video-sharing platform services).
- (2) In the Audiovisual Media Services Regulations 2020 ([S.I. 2020/1062](#)), omit Part 4 (which inserts Part 4B into the Communications Act).
- (3) In this Act, omit—
  - (a) section 209, and
  - (b) Schedule 16.
- (4) In the Audiovisual Media Services (Amendment) (EU Exit) Regulations 2020 ([S.I. 2020/1536](#)), omit regulation 4.

#### Commencement Information

- I34** S. 210 not in force at Royal Assent, see [s. 240\(1\)](#)

### 211 Repeal of Part 4B of the Communications Act: transitional provision etc

- (1) Schedule 17 contains transitional, transitory and saving provision—
  - (a) about the application of this Act and Part 4B of the Communications Act during a period before the repeal of Part 4B of the Communications Act (or, in the case of Part 3 of Schedule 17, in respect of charging years as mentioned in that Part);
  - (b) in connection with the repeal of Part 4B of the Communications Act.
- (2) The Secretary of State may by regulations make transitional, transitory or saving provision of the kind mentioned in subsection (1)(a) and (b).
- (3) Regulations under subsection (2) may amend or repeal—
  - (a) Part 3 of Schedule 3;
  - (b) Schedule 17.
- (4) Regulations under subsection (2) may, in particular, make provision about—
  - (a) the application of Schedule 17 in relation to a service if the transitional period in relation to that service ends on a date before the date when section 210 comes into force;
  - (b) the application of Part 3 of Schedule 17, including further provision about the calculation of a provider's non-Part 4B qualifying worldwide revenue for the purposes of paragraph 19 of that Schedule;

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- (c) the application of Schedule 10 (recovery of OFCOM’s initial costs), and in particular how fees chargeable under that Schedule may be calculated, in respect of charging years to which Part 3 of Schedule 17 relates.

**Commencement Information**

- I35** S. 211 not in force at Royal Assent, see [s. 240\(1\)](#)  
**I36** S. 211 in force at 10.1.2024 by [S.I. 2023/1420](#), [reg. 2\(z29\)](#)

**212 Repeals: Digital Economy Act 2017**

- (1) The Digital Economy Act 2017 is amended as follows.
- (2) Omit—
- (a) Part 3 (online pornography), and
  - (b) section 119(10) and (11) (power to extend that Part to the Channel Islands or the Isle of Man).
- (3) Omit section 103 (code of practice for providers of online social media platforms).

**Commencement Information**

- I37** S. 212 in force at Royal Assent, see [s. 240\(z1\)](#)

**213 Offence under the Obscene Publications Act 1959: OFCOM defence**

- (1) Section 2 of the Obscene Publications Act 1959 (prohibition of publication of obscene matter) is amended in accordance with subsections [\(2\)](#) and [\(3\)](#).
- (2) After subsection [\(5\)](#) insert—
- “(5A) A person shall not be convicted of an offence against this section of the publication of an obscene article if the person proves that—
- (a) at the time of the offence charged, the person was a member of OFCOM, employed or engaged by OFCOM, or assisting OFCOM in the exercise of any of their online safety functions (within the meaning of section 235 of the Online Safety Act 2023), and
  - (b) the person published the article for the purposes of OFCOM’s exercise of any of those functions.”
- (3) In subsection [\(7\)](#)—
- (a) the words after “In this section” become paragraph (a), and
  - (b) at the end of that paragraph, insert “;
    - (b) “OFCOM” means the Office of Communications.”

**Commencement Information**

- I38** S. 213 not in force at Royal Assent, see [s. 240\(1\)](#)  
**I39** S. 213 in force at 10.1.2024 by [S.I. 2023/1420](#), [reg. 2\(z30\)](#)

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*Status:* This version of this part contains provisions that are prospective.  
*Changes to legislation:* There are currently no known outstanding effects  
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## 214 Offences regarding indecent photographs of children: OFCOM defence

### *England and Wales*

- (1) Section 1B of the Protection of Children Act 1978 (defence to offence relating to indecent photographs of children) is amended in accordance with subsections (2) and (3).
- (2) In subsection (1)—
  - (a) for “he”, in each place, substitute “the defendant”;
  - (b) for “him”, in each place, substitute “the defendant”;
  - (c) omit “or” at the end of paragraph (b);
  - (d) at the end of paragraph (c) insert “, or  
(i) was at the time of the offence charged a member of OFCOM, employed or engaged by OFCOM, or assisting OFCOM in the exercise of any of their online safety functions (within the meaning of section 235 of the Online Safety Act 2023), and  
(ii) made the photograph or pseudo-photograph for the purposes of OFCOM’s exercise of any of those functions.”
- (3) After subsection (2) insert—

“(3) In this section “OFCOM” means the Office of Communications.”

### *Scotland*

- (4) Section 52 of the Civic Government (Scotland) Act 1982 (indecent photographs of children) is amended in accordance with subsections (5) and (6).
- (5) After subsection (4) insert—

“(4A) Where a person is charged with an offence under subsection (1)(a) of making an indecent photograph or pseudo-photograph of a child, it shall be a defence for the person to prove that—

  - (a) at the time of the offence charged, the person was a member of OFCOM, employed or engaged by OFCOM, or assisting OFCOM in the exercise of any of their online safety functions (within the meaning of section 235 of the Online Safety Act 2023), and
  - (b) the person made the photograph or pseudo-photograph for the purposes of OFCOM’s exercise of any of those functions.”
- (6) In subsection (8), after paragraph (d) insert—

“(e) “OFCOM” means the Office of Communications.”

### *Northern Ireland*

- (7) Article 3A of the Protection of Children (Northern Ireland) Order 1978 ([S.I. 1978/1047 \(N.I. 17\)](#)) (defence to offence relating to indecent photographs of children) is amended in accordance with subsections (8) and (9).
- (8) In paragraph (1)—

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- (a) for “he”, in each place, substitute “the defendant”;
- (b) for “him”, in each place, substitute “the defendant”;
- (c) omit “or” at the end of sub-paragraph (b);
- (d) at the end of sub-paragraph (c) insert “, or
  - (d) the defendant—
    - (i) was at the time of the offence charged a member of OFCOM, employed or engaged by OFCOM, or assisting OFCOM in the exercise of any of their online safety functions (within the meaning of section 235 of the Online Safety Act 2023), and
    - (ii) made the photograph or pseudo-photograph for the purposes of OFCOM’s exercise of any of those functions.”

(9) After paragraph (2) insert—

“(3) In this Article “OFCOM” means the Office of Communications.”

**Commencement Information**

**140** S. 214 in force at Royal Assent, see [s. 240\(z2\)](#)

*Power to amend Act to regulate app stores*

**215 Power to regulate app stores**

- (1) Subject to the following provisions of this section and section 216, the Secretary of State may by regulations amend any provision of this Act to make provision for or in connection with the regulation of internet services that are app stores.
- (2) Regulations under this section may not be made before OFCOM have published a report under section 161 (report about use of app stores by children).
- (3) Regulations under this section may be made only if the Secretary of State, having considered that report, considers that there is a material risk of significant harm to an appreciable number of children presented by either of the following, or by both taken together—
  - (a) harmful content present on app stores, or
  - (b) harmful content encountered by means of regulated apps available in app stores.
- (4) Before making regulations under this section the Secretary of State must consult—
  - (a) persons who appear to the Secretary of State to represent providers of app stores,
  - (b) persons who appear to the Secretary of State to represent the interests of children (generally or with particular reference to online safety matters),
  - (c) OFCOM,
  - (d) the Information Commissioner,
  - (e) the Children’s Commissioner, and
  - (f) such other persons as the Secretary of State considers appropriate.



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- (5) In this section and in section 216—
- “amend” includes repeal and apply (with or without modifications);
  - “app” includes an app for use on any kind of device, and “app store” is to be read accordingly;
  - “content that is harmful to children” has the same meaning as in Part 3 (see section 60);
  - “harmful content” means—
    - (a) content that is harmful to children,
    - (b) search content that is harmful to children, and
    - (c) regulated provider pornographic content;
  - “regulated app” means an app for a regulated service;
  - “regulated provider pornographic content” has the same meaning as in Part 5 (see section 79);
  - “search content” has the same meaning as in Part 3 (see section 57).
- (6) In this section and in section 216 references to children are to children in the United Kingdom.

#### Commencement Information

- I41** S. 215 not in force at Royal Assent, see [s. 240\(1\)](#)  
**I42** S. 215 in force at 10.1.2024 by [S.I. 2023/1420](#), [reg. 2\(z31\)](#)

## 216 Power to regulate app stores: supplementary

- (1) In this section (except in subsection (4)(c)) “regulations” means regulations under section 215(1).
- (2) Provision may be made by regulations only for or in connection with the purposes of minimising or mitigating the risks of harm to children presented by harmful content as mentioned in section 215(3)(a) and (b).
- (3) Regulations may not have the effect that any body other than OFCOM is the regulator in relation to app stores.
- (4) Regulations may—
- (a) make provision exempting specified descriptions of app stores from regulation under this Act;
  - (b) make provision amending Part 2, section 55 or Schedule 1 in connection with provision mentioned in paragraph (a);
  - (c) make provision corresponding or similar to provision which may be made by regulations under paragraph 1 of Schedule 11 (“threshold conditions”), with the effect that only app stores which meet specified conditions are regulated by this Act.
- (5) Regulations may make provision having the effect that app stores provided from outside the United Kingdom are regulated by this Act (as well as app stores provided from within the United Kingdom), but, if they do so, must contain provision corresponding or similar to section 4(5) and (6) (UK links).
- (6) The provision that may be made by regulations includes provision—

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- (a) imposing on providers of app stores duties corresponding or similar to duties imposed on providers of Part 3 services by—
    - (i) section 11 or 12 (children’s online safety: user-to-user services) or any of sections 20 to 23 so far as relating to section 11 or 12;
    - (ii) section 28 or 29 (children’s online safety: search services) or any of sections 31 to 34 so far as relating to section 28 or 29;
  - (b) imposing on providers of app stores duties corresponding or similar to duties imposed on providers of internet services within section 80(2) by section 81 (duties about regulated provider pornographic content);
  - (c) imposing on providers of app stores requirements corresponding or similar to requirements imposed on providers of regulated services by, or by OFCOM under, Part 6 (fees);
  - (d) imposing on OFCOM duties in relation to app stores corresponding or similar to duties imposed in relation to Part 3 services by Chapter 3 of Part 7 (OFCOM’s register of risks, and risk profiles);
  - (e) conferring on OFCOM functions in relation to app stores corresponding or similar to the functions that OFCOM have in relation to regulated services under—
    - (i) Chapter 4 of Part 7 (information), or
    - (ii) Chapter 6 of Part 7 (enforcement), including provisions of that Chapter conferring power for OFCOM to impose monetary penalties;
  - (f) about OFCOM’s production of guidance or a code of practice relating to any aspect of the regulation of app stores that is included in the regulations.
- (7) The provision that may be made by regulations includes provision having the effect that app stores fall within the definition of “Part 3 service” or “regulated service” for the purposes of specified provisions of this Act (with the effect that specified provisions of this Act which apply in relation to Part 3 services or regulated services, or to providers of Part 3 services or regulated services, also apply in relation to app stores or to providers of app stores).
- (8) Regulations may not amend or make provision corresponding or similar to—
- (a) Chapter 2 of Part 4 (reporting CSEA content),
  - (b) Chapter 5 of Part 7 (notices to deal with terrorism content and CSEA content), or
  - (c) Part 10 (communications offences).
- (9) Regulations may make different provision with regard to app stores of different kinds.
- (10) In this section “specified” means specified in regulations.

#### Commencement Information

- I43** S. 216 not in force at Royal Assent, see **s. 240(1)**
- I44** S. 216 in force at 10.1.2024 by **S.I. 2023/1420, reg. 2(z31)**

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*Status: This version of this part contains provisions that are prospective.*  
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*Power to amend Act: alternative dispute resolution*

**217 Power to impose duty about alternative dispute resolution procedure**

- (1) The Secretary of State may by regulations amend this Act for or in connection with the imposition on providers of Category 1 services of an ADR duty.
- (2) An “ADR duty”—
  - (a) is a duty requiring providers of Category 1 services to arrange for and engage in an alternative dispute resolution procedure in specified circumstances for the resolution of disputes about their handling of relevant complaints, and
  - (b) may include a duty requiring such providers to meet the costs incurred by any other person in using a dispute resolution procedure which is so arranged.
- (3) Complaints are “relevant” for the purposes of subsection (2)(a) if they—
  - (a) relate to a Category 1 service,
  - (b) are of a specified kind, and
  - (c) are made by persons of a specified kind.
- (4) Regulations under this section may not be made before the publication of a statement by the Secretary of State responding to OFCOM’s report under section 160 (report about reporting and complaints procedures in use by providers of Part 3 services: see subsection (10) of that section).
- (5) Before making regulations under this section the Secretary of State must consult—
  - (a) OFCOM,
  - (b) the Information Commissioner, and
  - (c) such other persons as the Secretary of State considers appropriate.
- (6) If the power conferred by subsection (1) is exercised, the first regulations made under the power must—
  - (a) require the use of a dispute resolution procedure which is impartial, and
  - (b) prohibit the use of a dispute resolution procedure which restricts or excludes the availability of civil proceedings.
- (7) Provision made by regulations under this section may have the effect that the duties set out in any or all of sections 21, 22 and 23 which apply in relation to duties imposed by other provisions of Chapter 2 of Part 3 are also to apply in relation to the ADR duty, and accordingly the regulations may amend—
  - (a) section 21(6),
  - (b) the definition of “safety measures and policies” in section 22(8), or
  - (c) the definition of “relevant duties” in section 23(11).
- (8) The provisions of this Act that may be amended by the regulations in connection with the imposition of the ADR duty include, but are not limited to, the following provisions (in addition to those mentioned in subsection (7))—
  - (a) section 7(5),
  - (b) section 104(13)(a), and
  - (c) section 131(2).
- (9) If the power conferred by subsection (1) is exercised, the first regulations made under the power must require OFCOM to—

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- (a) produce and publish guidance for providers of Category 1 services to assist them in complying with the ADR duty, and
  - (b) consult the Secretary of State, the Information Commissioner and such other persons as OFCOM consider appropriate before producing the guidance.
- (10) Section 204(1) applies for the purposes of the references to Category 1 services in this section.
- (11) In this section “specified” means specified in regulations under this section.
- (12) For the meaning of “Category 1 service”, see section 95 (register of categories of services).

#### **Commencement Information**

- I45** S. 217 not in force at Royal Assent, see [s. 240\(1\)](#)  
**I46** S. 217 in force at 10.1.2024 by [S.I. 2023/1420](#), [reg. 2\(z32\)](#)

#### *Other powers to amend Act*

### **218 Power to amend section 40**

- (1) The Secretary of State may by regulations amend section 40 (fraud etc offences).
- But the power to add an offence to that section is limited by subsections (2) and (3).
- (2) An offence may be added to section 40 only if the Secretary of State considers it appropriate to do so because of—
- (a) the prevalence on Category 1 services of content (other than regulated user-generated content) consisting of paid-for advertisements that amount to that offence, or the prevalence in or via search results of Category 2A services of paid-for advertisements that amount to that offence,
  - (b) the risk of harm to individuals in the United Kingdom presented by such advertisements, and
  - (c) the severity of that harm.
- (3) An offence may not be added to section 40 if—
- (a) the offence concerns—
    - (i) the infringement of intellectual property rights,
    - (ii) the safety or quality of goods (as opposed to what kind of goods they are), or
    - (iii) the performance of a service by a person not qualified to perform it; or
  - (b) it is an offence under the Consumer Protection from Unfair Trading Regulations 2008 ([S.I. 2008/1277](#)).
- (4) In this section—
- (a) “regulated user-generated content” has the same meaning as in Part 3 (see section 55);
  - (b) the words “in or via search results” are to be construed in accordance with section 39;

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- (c) references to advertisements that amount to an offence are to be construed in accordance with section 59 (see subsections (3), (11) and (12) of that section).

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**Commencement Information**

- I47** S. 218 not in force at Royal Assent, see [s. 240\(1\)](#)  
**I48** S. 218 in force at 10.1.2024 by [S.I. 2023/1420](#), [reg. 2\(z33\)](#)

## 219 Powers to amend sections 61 and 62

- (1) The Secretary of State may by regulations amend—
- (a) section 61 (primary priority content that is harmful to children);
  - (b) section 62 (priority content that is harmful to children).

But the power to add a kind of content is limited by subsections (2) to (4).

- (2) A kind of content may be added to section 61 only if the Secretary of State considers that, in relation to Part 3 services—
- (a) there is a material risk of significant harm to an appreciable number of children presented by content of that kind that is regulated user-generated content or search content, and
  - (b) it is appropriate for the duties set out in sections 12(3)(a) and 29(3)(a) (duty in relation to children of all ages) to apply in relation to content of that kind.
- (3) A kind of content may be added to section 62 only if the Secretary of State considers that, in relation to Part 3 services, there is a material risk of significant harm to an appreciable number of children presented by content of that kind that is regulated user-generated content or search content.
- (4) A kind of content may not be added to section 61 or 62 if the risk of harm presented by content of that kind flows from—
- (a) the content’s potential financial impact,
  - (b) the safety or quality of goods featured in the content, or
  - (c) the way in which a service featured in the content may be performed (for example, in the case of the performance of a service by a person not qualified to perform it).
- (5) The Secretary of State must consult OFCOM before making regulations under this section.
- (6) In this section references to children are to children in the United Kingdom.
- (7) In this section—
- “regulated user-generated content” has the same meaning as in Part 3 (see section 55);
  - “search content” has the same meaning as in Part 3 (see section 57).

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**Commencement Information**

- I49** S. 219 in force at Royal Assent, see [s. 240\(z3\)](#)

*Status: This version of this part contains provisions that are prospective.*

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## **220 Powers to amend or repeal provisions relating to exempt content or services**

- (1) The Secretary of State may by regulations—
  - (a) amend section 55(5), or
  - (b) repeal section 55(2)(d) and (5), and make a consequential amendment of sections 3(6), 5(2)(a) and 55(2)(f),
 if the Secretary of State considers that it is appropriate to do so because of the risk of harm to individuals in the United Kingdom presented by one-to-one live aural communications.
- (2) Subject to subsection (3), the Secretary of State may by regulations amend section 55(2)(e), (6) or (7) if the Secretary of State considers that it is appropriate to do so because of the risk of harm to individuals in the United Kingdom presented by comments and reviews on provider content.
- (3) Regulations under subsection (2) may not have the effect that comments and reviews on provider content present on a service of which the provider is a recognised news publisher become regulated user-generated content within the meaning of Part 3.
- (4) The Secretary of State may by regulations amend Part 1 of Schedule 1 to provide for a further description of user-to-user service or search service to be exempt, if the Secretary of State considers that the risk of harm to individuals in the United Kingdom presented by a service of that description is low.
- (5) Regulations under subsection (4) may amend sections 3, 5 and 55 and Schedule 2 in connection with the amendment of Part 1 of Schedule 1.
- (6) The Secretary of State may by regulations amend Schedule 9 to provide for a further description of internet service to be included, if the Secretary of State considers that the risk of harm to children in the United Kingdom presented by regulated provider pornographic content published or displayed on a service of that description is low.
- (7) If the condition in subsection (8) is met, the Secretary of State may by regulations amend or repeal either of the following—
  - (a) paragraph 3 of Schedule 1 (services offering only one-to-one live aural communications);
  - (b) any provision of that Schedule added in exercise of the power conferred by subsection (4).
- (8) The condition is that the Secretary of State considers that it is appropriate to amend or repeal the provision in question (as the case may be) because of the risk of harm to individuals in the United Kingdom presented by a service of the description in question.
- (9) Subject to subsection (10), the Secretary of State may by regulations amend paragraph 4 of Schedule 1 (limited functionality services) if the Secretary of State considers that it is appropriate because of the risk of harm to individuals in the United Kingdom presented by a service described in that paragraph.
- (10) Regulations under subsection (9) may not have the effect that a service described in paragraph 4 of Schedule 1 of which the provider is a recognised news publisher is no longer exempt under that paragraph.
- (11) Regulations under subsection (7) may amend or repeal a provision of Schedule 2 in connection with the amendment or repeal of a provision of Part 1 of Schedule 1.

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- (12) Regulations under subsection (7)(b) may amend or repeal a provision of sections 3, 5 and 55 in connection with the amendment or repeal of a provision of Part 1 of Schedule 1.
- (13) The Secretary of State may by regulations amend or repeal any provision of Schedule 9 added in exercise of the power conferred by subsection (6), if the Secretary of State considers that it is appropriate to do so because of the risk of harm to children in the United Kingdom presented by regulated provider pornographic content published or displayed on a service of that description.
- (14) In this section—
- “comments and reviews on provider content” and “one-to-one live aural communications” have the meaning given by section 55;
  - “recognised news publisher” has the meaning given by section 56;
  - “regulated provider pornographic content” and “published or displayed” have the same meaning as in Part 5 (see section 79).

#### Commencement Information

**I50** S. 220 not in force at Royal Assent, see [s. 240\(1\)](#)

**I51** S. 220 in force at 10.1.2024 by [S.I. 2023/1420](#), [reg. 2\(z34\)](#)

## 221 Powers to amend Part 2 of Schedule 1

### *England*

- (1) The Secretary of State may by regulations amend the part of the list in Part 2 of Schedule 1 which relates to England—
- (a) if there has been an amendment or repeal of legislation, or of a provision of legislation, by reference to which a description of education or childcare is framed;
  - (b) to add a further description of education or childcare, if the Secretary of State considers that it is appropriate to do so because of the application of enactments other than this Act, or guidance or requirements (however referred to) produced under enactments other than this Act, to persons providing education or childcare of that description;
  - (c) to omit a description of education or childcare, if the Secretary of State considers that it is appropriate to do so because of the risk of harm to individuals in England presented by services provided by persons providing education or childcare of that description which are provided for the purposes of such education or childcare (other than a service described in paragraph 7 of Schedule 1).
- (2) In subsection (1)(b), “enactment” includes an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978).

### *Scotland*

- (3) The Scottish Ministers may by regulations amend the part of the list in Part 2 of Schedule 1 which relates to Scotland—

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- (a) if there has been an amendment or repeal of legislation, or of a provision of legislation, by reference to which a description of education or childcare is framed;
  - (b) to add a further description of education or childcare, if the Scottish Ministers consider that it is appropriate to do so because of the application of enactments other than this Act, or guidance or requirements (however referred to) produced under enactments other than this Act, to persons providing education or childcare of that description;
  - (c) to omit a description of education or childcare, if the Scottish Ministers consider that it is appropriate to do so because of the risk of harm to individuals in Scotland presented by services provided by persons providing education or childcare of that description which are provided for the purposes of such education or childcare (other than a service described in paragraph 7 of Schedule 1).
- (4) In subsection (3)(b), “enactment” includes an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament.

#### *Wales*

- (5) The Welsh Ministers may by regulations made by statutory instrument amend the part of the list in Part 2 of Schedule 1 which relates to Wales—
- (a) if there has been an amendment or repeal of legislation, or of a provision of legislation, by reference to which a description of education or childcare is framed;
  - (b) to add a further description of education or childcare, if the Welsh Ministers consider that it is appropriate to do so because of the application of enactments other than this Act, or guidance or requirements (however referred to) produced under enactments other than this Act, to persons providing education or childcare of that description;
  - (c) to omit a description of education or childcare, if the Welsh Ministers consider that it is appropriate to do so because of the risk of harm to individuals in Wales presented by services provided by persons providing education or childcare of that description which are provided for the purposes of such education or childcare (other than a service described in paragraph 7 of Schedule 1).
- (6) In subsection (5)(b), “enactment” includes an enactment contained in, or in an instrument made under, a Measure or Act of Senedd Cymru.

#### *Northern Ireland*

- (7) The relevant Department may by regulations amend the part of the list in Part 2 of Schedule 1 which relates to Northern Ireland—
- (a) if there has been an amendment or repeal of legislation, or of a provision of legislation, by reference to which a description of education or childcare is framed;
  - (b) to add a further description of education or childcare, if the relevant Department considers that it is appropriate to do so because of the application of enactments other than this Act, or guidance or requirements (however referred to) produced under enactments other than this Act, to persons providing education or childcare of that description;
  - (c) to omit a description of education or childcare, if the relevant Department considers that it is appropriate to do so because of the risk of harm to



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individuals in Northern Ireland presented by services provided by persons providing education or childcare of that description which are provided for the purposes of such education or childcare (other than a service described in paragraph 7 of Schedule 1).

- (8) In subsection (7), “the relevant Department” means—
- (a) where the amendment relates to childcare, primary education or secondary education, the Department of Education in Northern Ireland;
  - (b) where the amendment relates to further education or higher education, the Department for the Economy in Northern Ireland with the concurrence of the Department of Agriculture, Environment and Rural Affairs in Northern Ireland, or the Department of Agriculture, Environment and Rural Affairs in Northern Ireland with the concurrence of the Department for the Economy in Northern Ireland;
  - (c) where the amendment relates to education in agriculture and related subjects, the Department of Agriculture, Environment and Rural Affairs in Northern Ireland.
- (9) In subsection (7)(b), “enactment” includes an enactment contained in, or in an instrument made under, Northern Ireland legislation.

#### *Interpretation*

- (10) In this section, the following terms have the same meaning as in Schedule 1—
- “childcare”;
  - “education”;
  - “education in agriculture and related subjects”;
  - “further education”;
  - “higher education”;
  - “primary education”;
  - “secondary education”.

#### **Commencement Information**

**I52** S. 221 in force at Royal Assent, see [s. 240\(z4\)](#)

## **222 Powers to amend Schedules 5, 6 and 7**

- (1) The Secretary of State may by regulations amend—
- (a) Schedule 5 (terrorism offences);
  - (b) Part 1 of Schedule 6 (child sexual exploitation and abuse offences).
- (2) The Scottish Ministers may by regulations amend Part 2 of Schedule 6.
- (3) The Secretary of State may by regulations amend Schedule 7 (priority offences).
- But an offence may be added to that Schedule only on the grounds in subsection (4) or (5), and subsection (6) limits the power to add an offence.
- (4) The first ground for adding an offence to Schedule 7 is that the Secretary of State considers it appropriate to do so because of—

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*Status: This version of this part contains provisions that are prospective.*  
*Changes to legislation: There are currently no known outstanding effects for the Online Safety Act 2023, PART 11. (See end of Document for details)*

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- (a) the prevalence on regulated user-to-user services of regulated user-generated content that amounts to that offence, or the prevalence on regulated search services and combined services of search content that amounts to that offence,
  - (b) the risk of harm to individuals in the United Kingdom presented by regulated user-generated content or search content that amounts to that offence, and
  - (c) the severity of that harm.
- (5) The second ground for adding an offence to Schedule 7 is that the Secretary of State considers it appropriate to do so because of—
- (a) the prevalence of the use of regulated user-to-user services for the commission or facilitation of that offence,
  - (b) the risk of harm to individuals in the United Kingdom presented by the use of such services for the commission or facilitation of that offence, and
  - (c) the severity of that harm.
- (6) An offence may not be added to Schedule 7 if—
- (a) the offence concerns—
    - (i) the infringement of intellectual property rights,
    - (ii) the safety or quality of goods (as opposed to what kind of goods they are), or
    - (iii) the performance of a service by a person not qualified to perform it; or
  - (b) it is an offence under the Consumer Protection from Unfair Trading Regulations 2008 ([S.I. 2008/1277](#)).
- (7) The Secretary of State must consult the Scottish Ministers before making regulations under subsection (3) which—
- (a) add an offence that extends only to Scotland, or
  - (b) amend or remove an entry specifying an offence that extends only to Scotland.
- (8) The Secretary of State must consult the Department of Justice in Northern Ireland before making regulations under subsection (3) which—
- (a) add an offence that extends only to Northern Ireland, or
  - (b) amend or remove an entry specifying an offence that extends only to Northern Ireland.
- (9) In this section—
- (a) “regulated user-generated content” has the same meaning as in Part 3 (see section 55);
  - (b) “search content” has the same meaning as in Part 3 (see section 57);
  - (c) references to content that amounts to an offence are to be construed in accordance with section 59 (see subsections (3), (11) and (12) of that section).

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**Commencement Information**

**I53** S. 222 in force at Royal Assent, see [s. 240\(z4\)](#)

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*Status:* This version of this part contains provisions that are prospective.  
*Changes to legislation:* There are currently no known outstanding effects  
for the Online Safety Act 2023, PART 11. (See end of Document for details)

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## Regulations

### 223 Power to make consequential provision

- (1) The Secretary of State may by regulations make provision that is consequential on this Act or regulations under this Act.
- (2) The regulations may—
  - (a) amend or repeal provision made by the Communications Act;
  - (b) amend or revoke provision made under that Act.
- (3) The regulations may make transitional, transitory or saving provision.

#### Commencement Information

**I54** S. 223 in force at Royal Assent, see [s. 240\(z4\)](#)

### 224 Regulations: general

- (1) Regulations under this Act may make different provision for different purposes and may, in particular—
  - (a) make different provision with regard to—
    - (i) user-to-user services,
    - (ii) search services, and
    - (iii) internet services, other than regulated user-to-user services or regulated search services, that are within section 80(2);
  - (b) make different provision with regard to user-to-user services of different kinds;
  - (c) make different provision with regard to search services of different kinds;
  - (d) make different provision with regard to different kinds of services mentioned in paragraph (a)(iii);
  - (e) make different provision with regard to different kinds of internet services within section 80(2).

- (2) A power to make regulations under this Act includes power to make supplementary, incidental, transitional, transitory or saving provision.

This subsection does not apply to regulations under section 223 (consequential provision).

- (3) Any power of the Secretary of State or OFCOM under this Act to make regulations is exercisable by statutory instrument.
- (4) The Statutory Instruments Act 1946 applies in relation to OFCOM's powers to make regulations under this Act as if OFCOM were a Minister of the Crown.
- (5) The Documentary Evidence Act 1868 (proof of orders and regulations etc) has effect as if—
  - (a) OFCOM were included in the first column of the Schedule to that Act;
  - (b) OFCOM and persons authorised to act on their behalf were mentioned in the second column of that Schedule.

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- (6) This section does not apply to regulations under section 240 (commencement and transitional provision).

**Commencement Information**

**I55** S. 224 in force at Royal Assent, see s. 240(z4)

**225 Parliamentary procedure for regulations**

- (1) A statutory instrument containing (whether alone or with other provision)—
- (a) regulations under section 77(12),
  - (b) regulations under section 85(1),
  - (c) regulations under section 114(2),
  - (d) regulations under section 169(3),
  - (e) regulations under section 211(2),
  - (f) regulations under section 215(1),
  - (g) regulations under section 217(1),
  - (h) regulations under section 218(1),
  - (i) regulations under section 220(1), (2), (4), (6), (7), (9) or (13),
  - (j) regulations under section 221(1),
  - (k) regulations under section 222(1) or (3),
  - (l) regulations under section 223 that amend or repeal provision made by the Communications Act,
  - (m) regulations under paragraph 7 of Schedule 4,
  - (n) regulations under paragraph 38 of Schedule 8,
  - (o) regulations under paragraph 7 of Schedule 10, or
  - (p) regulations under paragraph 5(9) of Schedule 13,
- may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (2) A statutory instrument containing regulations under section 219(1) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (3) But a statutory instrument mentioned in subsection (2) may be made without a draft of the instrument being laid before, and approved by a resolution of, each House of Parliament if it contains a declaration that the Secretary of State is of the opinion that, because of urgency, it is necessary to make the regulations without a draft being so laid and approved.
- (4) After an instrument is made in accordance with subsection (3), it must be laid before Parliament.
- (5) Regulations contained in an instrument made in accordance with subsection (3) cease to have effect at the end of the period of 28 days beginning with the day on which the instrument is made unless, during that period, the instrument is approved by a resolution of each House of Parliament.
- (6) In calculating the period of 28 days, no account is to be taken of any whole days that fall within a period during which—

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- (a) Parliament is dissolved or prorogued, or
  - (b) either House of Parliament is adjourned for more than 4 days.
- (7) If regulations cease to have effect as a result of subsection (5), that does not—
- (a) affect the validity of anything previously done under or by virtue of the regulations, or
  - (b) prevent the making of new regulations.
- (8) A statutory instrument containing the first regulations under paragraph 1(1) of Schedule 11 (whether alone or with regulations under paragraph 1(2) or (3) of that Schedule) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (9) Any other statutory instrument containing regulations under paragraph 1(1) of Schedule 11 is subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) A statutory instrument containing—
- (a) regulations under section 67(1),
  - (b) regulations under section 85(2),
  - (c) regulations under section 86,
  - (d) regulations under section 170(1),
  - (e) regulations under section 223 that do not amend or repeal provision made by the Communications Act,
  - (f) regulations under paragraph 8(1) of Schedule 3, or
  - (g) regulations under paragraph 1(2) or (3) of Schedule 11,
- is subject to annulment in pursuance of a resolution of either House of Parliament.
- (11) As soon as a draft of a statutory instrument containing regulations under section 85(1) or paragraph 5(9) of Schedule 13 (whether alone or with provision under section 85(2)) is ready for laying before Parliament, OFCOM must send the draft to the Secretary of State, and the Secretary of State must lay the draft before Parliament.
- (12) Immediately after making a statutory instrument containing only regulations under section 85(2), OFCOM must send the instrument to the Secretary of State, and the Secretary of State must lay it before Parliament.
- (13) Regulations made by the Scottish Ministers under—
- (a) section 221(3), and
  - (b) section 222(2),
- are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)).
- (14) A statutory instrument containing regulations under section 221(5) may not be made by the Welsh Ministers unless a draft of the instrument has been laid before and approved by a resolution of Senedd Cymru.
- (15) The power of the relevant Department to make regulations under section 221(7) is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).

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*Status: This version of this part contains provisions that are prospective.*

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- (16) Regulations may not be made by the relevant Department under section 221(7) unless a draft of the regulations has been laid before and approved by a resolution of the Northern Ireland Assembly.
- (17) In subsections (15) and (16), “the relevant Department” has the same meaning as in section 221(7) (see subsection (8) of that section).

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**Commencement Information**

**I56** S. 225 in force at Royal Assent, see s. 240(z4)

**Status:**

This version of this part contains provisions that are prospective.

**Changes to legislation:**

There are currently no known outstanding effects for the Online Safety Act 2023, PART 11.