



# Online Safety Act 2023

## 2023 CHAPTER 50

### PART 3

#### PROVIDERS OF REGULATED USER-TO-USER SERVICES AND REGULATED SEARCH SERVICES: DUTIES OF CARE

### CHAPTER 4

#### CHILDREN'S ACCESS ASSESSMENTS

#### **35 Children's access assessments**

- (1) In this Part, a “children's access assessment” means an assessment of a Part 3 service—
  - (a) to determine whether it is possible for children to access the service or a part of the service, and
  - (b) if it is possible for children to access the service or a part of the service, to determine whether the child user condition is met in relation to the service or a part of the service.
- (2) A provider is only entitled to conclude that it is not possible for children to access a service, or a part of it, if age verification or age estimation is used on the service with the result that children are not normally able to access the service or that part of it.
- (3) The “child user condition” is met in relation to a service, or a part of a service, if—
  - (a) there is a significant number of children who are users of the service or of that part of it, or
  - (b) the service, or that part of it, is of a kind likely to attract a significant number of users who are children.
- (4) For the purposes of subsection (3)—
  - (a) the reference to a “significant” number includes a reference to a number which is significant in proportion to the total number of United Kingdom users of a service or (as the case may be) a part of a service;

- (b) whether the test in paragraph (a) of that subsection is met is to be based on evidence about who actually uses a service, rather than who the intended users of the service are.

(5) In this Chapter—

- (a) references to children are to children in the United Kingdom;
- (b) references to a part of a service do not include any part of a service that is not, or is not included in, a user-to-user part of a service or a search engine.

### **36 Duties about children's access assessments**

- (1) A provider of a Part 3 service must carry out the first children's access assessment at a time set out in, or as provided by, Schedule 3.
- (2) Subsections (3) and (4) apply to a provider of a Part 3 service during any period when the service is not treated as likely to be accessed by children (see section 37).
- (3) The provider must carry out children's access assessments of the service not more than one year apart.
- (4) The provider must carry out a children's access assessment of the service—
  - (a) before making any significant change to any aspect of the service's design or operation to which such an assessment is relevant,
  - (b) in response to evidence about reduced effectiveness of age verification or age estimation that is used on the service as mentioned in section 35(2), or
  - (c) in response to evidence about a significant increase in the number of children using the service.
- (5) If a person is the provider of more than one Part 3 service, children's access assessments must be carried out for each service separately.
- (6) Children's access assessments must be suitable and sufficient for the purposes of this Part.
- (7) A provider must make and keep a written record, in an easily understandable form, of every children's access assessment.

### **37 Meaning of "likely to be accessed by children"**

- (1) For the purposes of this Part, a Part 3 service is to be treated as "likely to be accessed by children" in the following three cases (with the result that the duties set out in sections 11 and 12, or (as the case may be) sections 28 and 29, apply in relation to the service).
- (2) The first case is where a children's access assessment carried out by the provider of the service concludes that—
  - (a) it is possible for children to access the service or a part of it, and
  - (b) the child user condition is met in relation to—
    - (i) the service, or
    - (ii) a part of the service that it is possible for children to access.

This subsection is to be interpreted consistently with section 35.

- (3) In that case, the service is to be treated as likely to be accessed by children from the date on which the children's access assessment is completed.

- (4) The second case is where the provider of the service fails to carry out the first children's access assessment as required by section 36(1).
- (5) In that case—
  - (a) the service is to be treated as likely to be accessed by children from the date by which the first children's access assessment was required to have been completed (see Part 1 of Schedule 3), and
  - (b) the service is to continue to be treated as likely to be accessed by children by reason of subsection (4) until such time as the provider completes the first children's access assessment of the service.
- (6) The third case is where, following an investigation into a failure to comply with a duty set out in section 36, OFCOM determine that a service should be treated as likely to be accessed by children: see section 135(4) and (5).
- (7) In that case, the service is to be treated as likely to be accessed by children from the date of, or specified in, the confirmation decision given to the provider of the service (as the case may be: see section 135(5)).