



Online Safety Act 2023

2023 CHAPTER 50

PART 3

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

CHAPTER 6

CODES OF PRACTICE AND GUIDANCE

Codes of practice

41 Codes of practice about duties

- (1) OFCOM must prepare and issue a code of practice for providers of Part 3 services describing measures recommended for the purpose of compliance with duties set out in section 10 or 27 (illegal content) so far as relating to terrorism content or offences within Schedule 5 (terrorism offences).
- (2) OFCOM must prepare and issue a code of practice for providers of Part 3 services describing measures recommended for the purpose of compliance with duties set out in section 10 or 27 (illegal content) so far as relating to CSEA content or offences within Schedule 6 (child sexual exploitation and abuse offences).
- (3) OFCOM must prepare and issue one or more codes of practice for providers of Part 3 services describing measures recommended for the purpose of compliance with the relevant duties (except to the extent that measures for the purpose of compliance with such duties are described in a code of practice prepared under subsection (1) or (2)).
- (4) OFCOM must prepare and issue a code of practice for providers of Category 1 services and providers of Category 2A services describing measures recommended for the purpose of compliance with the duties set out in Chapter 5 (fraudulent advertising).
- (5) Where a code of practice under this section is in force, OFCOM may—

- (a) prepare a draft of amendments of the code of practice;
 - (b) prepare a draft of a code of practice under subsection (1), (2), (3) or (4) as a replacement for a code of practice previously issued under the subsection in question;
 - (c) withdraw the code of practice.
- (6) In the course of preparing a draft of a code of practice or amendments of a code of practice under this section, OFCOM must consult—
- (a) the Secretary of State,
 - (b) persons who appear to OFCOM to represent providers of Part 3 services,
 - (c) persons who appear to OFCOM to represent the interests of United Kingdom users of Part 3 services,
 - (d) persons who appear to OFCOM to represent the interests of children (generally or with particular reference to online safety matters),
 - (e) persons who appear to OFCOM to represent the interests of persons who have suffered harm as a result of matters to which the code of practice is relevant,
 - (f) persons whom OFCOM consider to have relevant expertise in equality issues and human rights, in particular—
 - (i) the right to freedom of expression set out in Article 10 of the Convention, and
 - (ii) the right to respect for a person’s private and family life, home and correspondence set out in Article 8 of the Convention,
 - (g) the Information Commissioner,
 - (h) the Children’s Commissioner,
 - (i) the Commissioner for Victims and Witnesses,
 - (j) the Domestic Abuse Commissioner,
 - (k) persons whom OFCOM consider to have expertise in public health, science or medicine that is relevant to online safety matters,
 - (l) persons whom OFCOM consider to have expertise in innovation, or emerging technology, that is relevant to online safety matters, and
 - (m) such other persons as OFCOM consider appropriate.
- (7) In the course of preparing a draft of a code of practice or amendments to which this subsection applies, OFCOM must also consult persons whom OFCOM consider to have expertise in the enforcement of the criminal law and the protection of national security that is relevant to online safety matters.
- (8) Subsection (7) applies to—
- (a) a code of practice under subsection (1) and amendments of such a code,
 - (b) a code of practice under subsection (2) and amendments of such a code,
 - (c) a code of practice under subsection (3) that describes measures recommended for the purpose of compliance with duties set out in section 10 or 27 (illegal content),
 - (d) amendments of a code of practice under subsection (3), if and to the extent that those amendments relate to measures recommended for the purpose of compliance with duties set out in section 10 or 27, and
 - (e) a code of practice under subsection (4) and amendments of such a code.
- (9) Subsections (6) and (7) are subject to section 48 (minor amendments of code of practice).

(10) In this section “the relevant duties” means the duties set out in—

- (a) sections 10 and 27 (illegal content),
- (b) sections 12 and 29 (children’s online safety),
- (c) section 15 (user empowerment),
- (d) section 17 (content of democratic importance),
- (e) section 19 (journalistic content),
- (f) sections 20 and 31 (content reporting), and
- (g) sections 21 and 32 (complaints procedures).

42 Codes of practice: principles, objectives, content

Schedule 4 contains—

- (a) provision about the principles OFCOM must consider when preparing codes of practice under section 41,
- (b) the online safety objectives (and a power for the Secretary of State by regulations to revise those objectives),
- (c) provision about the measures that may be described in codes of practice (including, in particular, constraints on the recommendation of the use of proactive technology), and
- (d) other provision related to codes of practice.

43 Procedure for issuing codes of practice

- (1) Where OFCOM have prepared a draft of a code of practice under section 41, they must submit the draft to the Secretary of State.
- (2) Unless the Secretary of State intends to give a direction to OFCOM under section 44(1), (2) or (3) in relation to the draft, the Secretary of State must, as soon as reasonably practicable, lay the draft before Parliament.
- (3) If, within the 40-day period, either House of Parliament resolves not to approve the draft—
 - (a) OFCOM must not issue the code of practice in the form of that draft, and
 - (b) OFCOM must prepare another draft of the code of practice under section 41.
- (4) If no such resolution is made within that period—
 - (a) OFCOM must issue the code of practice in the form of the draft laid before Parliament, and
 - (b) the code of practice comes into force at the end of the period of 21 days beginning with the day on which it is issued.
- (5) “The 40-day period” is the period of 40 days beginning with the day on which the draft is laid before Parliament (or, if it is not laid before each House of Parliament on the same day, the later of the days on which it is laid).
- (6) In calculating the 40-day period, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.

- (7) Subsections (1) to (6) apply in relation to a draft of amendments of a code of practice prepared under section 41 as they apply in relation to a draft of a code of practice prepared under that section.
- (8) This section is subject to section 48 (minor amendments of codes of practice).
- (9) Subsection (11) applies to—
- (a) a draft of the first code of practice prepared under section 41(1) (terrorism code of practice);
 - (b) a draft of the first code of practice prepared under section 41(2) (CSEA code of practice);
 - (c) a draft of the first code of practice prepared under section 41(3) relating to a duty set out in section 10 or 27 (illegal content);
 - (d) a draft of the first code of practice prepared under section 41(3) relating to a duty set out in section 12 or 29 (children’s online safety);
 - (e) a draft of the first code of practice prepared under section 41(3) relating to a duty set out in section 20 or 31 (content reporting);
 - (f) a draft of the first code of practice prepared under section 41(3) relating to—
 - (i) a duty set out in section 21 (complaints procedures) that concerns complaints of a kind mentioned in subsection (4) or (5) of that section, or
 - (ii) a duty set out in section 32 (complaints procedures).
- (10) For the purposes of paragraphs (c) to (f) of subsection (9) a draft of a code of practice is a draft of the first code of practice relating to a duty if—
- (a) it describes measures recommended for the purpose of compliance with the duty, and
 - (b) it is a draft of the first code of practice prepared under section 41(3) that describes measures for that purpose.
- (11) OFCOM must submit a draft to which this subsection applies to the Secretary of State under subsection (1) within the period of 18 months beginning with the day on which this Act is passed.
- (12) If OFCOM consider that it is necessary to extend the period mentioned in subsection (11) in relation to a draft mentioned in any of paragraphs (a) to (f) of subsection (9), OFCOM may extend the period in relation to that draft by up to 12 months by making and publishing a statement.
- But this is subject to subsection (15).
- (13) A statement under subsection (12) must set out—
- (a) the reasons why OFCOM consider that it is necessary to extend the period mentioned in subsection (11) in relation to the draft concerned, and
 - (b) the period of extension.
- (14) A statement under subsection (12) may be published at the same time as (or incorporate) a statement under section 194(3) (extension of time to prepare certain guidance).
- (15) But a statement under subsection (12) may not be made in relation to a draft mentioned in a particular paragraph of subsection (9) if—

- (a) a statement has previously been made under subsection (12) (whether in relation to a draft mentioned in the same or a different paragraph of subsection (9)), or
- (b) a statement has previously been made under section 194(3).

44 Secretary of State's powers of direction

- (1) The Secretary of State may direct OFCOM to modify a draft of a code of practice submitted under section 43(1) if the Secretary of State believes that modifications are required for the purpose of securing compliance with an international obligation of the United Kingdom.
- (2) The Secretary of State may direct OFCOM to modify a draft of a code of practice, other than a terrorism or CSEA code of practice, submitted under section 43(1) if the Secretary of State believes that modifications are required for exceptional reasons relating to—
 - (a) national security,
 - (b) public safety,
 - (c) public health, or
 - (d) relations with the government of a country outside the United Kingdom.
- (3) The Secretary of State may direct OFCOM to modify a draft of a terrorism or CSEA code of practice submitted under section 43(1) if the Secretary of State believes that modifications are required—
 - (a) for reasons of national security or public safety, or
 - (b) for exceptional reasons relating to public health or relations with the government of a country outside the United Kingdom.
- (4) But if a draft of a terrorism or CSEA code of practice is submitted under section 43(1) following a review under section 47(2), the Secretary of State may only direct OFCOM to modify the draft if the Secretary of State believes that modifications are required for reasons of national security or public safety.
- (5) If, following a review of a terrorism or CSEA code of practice under section 47(2), OFCOM submit a statement to the Secretary of State under section 47(3)(b) (“OFCOM’s review statement”), the Secretary of State may direct OFCOM to modify the code of practice if the Secretary of State believes that modifications are required for reasons of national security or public safety.
- (6) A direction given under subsection (5)—
 - (a) must be given within the period of 45 days beginning with the day on which OFCOM’s review statement is submitted to the Secretary of State, and
 - (b) must make particular reference to OFCOM’s review statement.
- (7) A direction given under this section—
 - (a) may not require OFCOM to include in a code of practice provision about a particular measure recommended to be taken or used by providers of Part 3 services,
 - (b) must set out the Secretary of State’s reasons for requiring modifications, except in a case where the Secretary of State considers that doing so would be against the interests of national security, public safety or relations with the government of a country outside the United Kingdom, and

- (c) must, as soon as reasonably practicable, be published and laid before Parliament.
- (8) If the Secretary of State considers that publishing and laying before Parliament a direction given under this section would be against the interests of national security, public safety or relations with the government of a country outside the United Kingdom—
- (a) subsection (7)(c) does not apply in relation to the direction, and
 - (b) the Secretary of State must, as soon as reasonably practicable, publish and lay before Parliament a document stating—
 - (i) that a direction has been given,
 - (ii) the kind of code of practice to which it relates, and
 - (iii) the reasons for not publishing it.
- (9) If the Secretary of State gives a direction under this section, OFCOM must, as soon as reasonably practicable—
- (a) comply with the direction,
 - (b) submit to the Secretary of State a draft of the code of practice modified in accordance with the direction,
 - (c) submit to the Secretary of State a document containing—
 - (i) (except in a case mentioned in subsection (7)(b)) details of the direction, and
 - (ii) details about how the draft has been revised in response to the direction,
 - (d) publish the document, and
 - (e) inform the Secretary of State about modifications that OFCOM have made to the draft that are not in response to the direction (if there are any).
- (10) The Secretary of State may give OFCOM one or more further directions requiring OFCOM to modify the draft of the code of practice.
- (11) Such further directions may only be given for the reasons set out in subsection (1), (2), (3), (4) or (5) (as the case may be), and subsections (7) to (9) apply again in relation to such further directions.
- (12) When the Secretary of State is satisfied that no further modifications to the draft are required, the Secretary of State must, as soon as reasonably practicable, lay before Parliament—
- (a) the modified draft,
 - (b) any document submitted by OFCOM as mentioned in subsection (9)(c), and
 - (c) in the case of a direction under subsection (5), OFCOM’s review statement.
- (13) Before laying OFCOM’s review statement before Parliament, the Secretary of State may, with OFCOM’s agreement, remove or obscure information in the statement (whether by redaction or otherwise) in order to prevent the disclosure of matters that the Secretary of State considers would be against the interests of national security, public safety or relations with the government of a country outside the United Kingdom.
- (14) This section applies in relation to a draft of amendments of a code of practice submitted under section 43(1) as it applies in relation to a draft of a code of practice submitted under that provision.

- (15) In this section “terrorism or CSEA code of practice” means a code of practice under section 41(1) or (2).

45 Procedure for issuing codes of practice following direction under section 44

- (1) This section sets out the procedure that applies where a draft of a code of practice is laid before Parliament under section 44(12).
- (2) If the draft contains modifications made following a direction given under section 44(1), (2) or (3)(b), the affirmative procedure applies.
- (3) If the draft contains modifications made following a direction given under section 44(3)(a), (4) or (5), the negative procedure applies.
- (4) The “affirmative procedure” is as follows—
- (a) a code of practice in the form of the draft laid before Parliament must not be issued by OFCOM unless the draft has been approved by a resolution of each House of Parliament;
 - (b) if the draft is so approved, the code of practice comes into force at the end of the period of 21 days beginning with the day on which it is issued;
 - (c) if the draft is not so approved, OFCOM must prepare another draft of the code of practice under section 41.
- (5) The “negative procedure” is as follows—
- (a) if, within the 40-day period, either House of Parliament resolves not to approve the draft—
 - (i) OFCOM must not issue the code of practice in the form of that draft, and
 - (ii) OFCOM must prepare another draft of the code of practice under section 41;
 - (b) if no such resolution is made within that period—
 - (i) OFCOM must issue the code of practice in the form of the draft laid before Parliament, and
 - (ii) the code of practice comes into force at the end of the period of 21 days beginning with the day on which it is issued.
- (6) “The 40-day period” has the same meaning as in section 43 (see subsections (5) and (6) of that section).
- (7) This section applies in relation to a draft of amendments of a code of practice laid before Parliament under section 44(12) as it applies in relation to a draft of a code of practice laid under that provision.

46 Publication of codes of practice

- (1) OFCOM must publish each code of practice issued under section 43 or 45 within the period of three days beginning with the day on which it is issued.
- (2) Where amendments of a code of practice are issued under either of those sections, OFCOM must publish the amended code of practice within the period of three days beginning with the day on which the amendments are issued.
- (3) Where a code of practice is withdrawn, OFCOM must publish a notice to that effect.

47 Review of codes of practice

- (1) OFCOM must keep under review each code of practice published under section 46.
- (2) The Secretary of State may require OFCOM to review a terrorism or CSEA code of practice published under section 46 if the Secretary of State considers a review to be necessary for reasons of national security or public safety (and the Secretary of State must notify OFCOM whether the reasons fall into the category of national security or public safety).
- (3) OFCOM must carry out a review of the code of practice under subsection (2) as soon as reasonably practicable, and when it is completed—
 - (a) if OFCOM consider that changes are required, they must prepare a draft of amendments to the code of practice or a draft of a replacement code of practice under section 41, or
 - (b) if OFCOM consider that no changes are required, they must submit to the Secretary of State a statement which explains the reasons for that conclusion.
- (4) Subsection (5) applies if—
 - (a) OFCOM submit a statement under subsection (3)(b) to the Secretary of State,
 - (b) the period of 45 days beginning with the day on which the statement was submitted has elapsed, and
 - (c) the Secretary of State has not given a direction under section 44(5).
- (5) OFCOM must publish the statement as soon as reasonably practicable after the end of the period mentioned in subsection (4)(b), making it clear which code of practice the statement relates to.
- (6) In advance of publication, the Secretary of State may make representations to OFCOM about the desirability of removing or obscuring information in the statement (whether by redaction or otherwise) in order to prevent the disclosure of matters that the Secretary of State considers would be against the interests of national security, public safety or relations with the government of a country outside the United Kingdom (and see also section 116(3)).
- (7) In this section “terrorism or CSEA code of practice” means a code of practice under section 41(1) or (2).

48 Minor amendments of codes of practice

- (1) This section applies if—
 - (a) OFCOM propose to amend a code of practice under section 41, and
 - (b) OFCOM consider that the minor nature of the proposal means that—
 - (i) consultation is unnecessary, and
 - (ii) the proposed amendments should not be required to be laid before Parliament.
- (2) OFCOM must notify the Secretary of State of the proposed amendments.
- (3) If the Secretary of State agrees with OFCOM that it is appropriate—
 - (a) the consultation requirements set out in section 41(6) and (7) do not apply in relation to the proposed amendments, and
 - (b) section 43 does not apply to the amendments, once prepared.

- (4) If the Secretary of State agrees with OFCOM as mentioned in subsection (3), OFCOM may prepare and issue the amendments of the code of practice.
- (5) Amendments of a code of practice issued under this section come into force at the end of the period of 21 days beginning with the day on which the amendments are issued.
- (6) Section 46(2) applies in relation to amendments of a code of practice issued under this section as it applies in relation to amendments of a code of practice issued under section 43 or 45.

49 Relationship between duties and codes of practice

Duties set out in Chapters 2 and 3

- (1) A provider of a Part 3 service is to be treated as complying with a relevant duty if the provider takes or uses the measures described in a code of practice which are recommended for the purpose of compliance with the duty in question.
- (2) A provider of a user-to-user service—
 - (a) is to be treated as complying with the duty set out in section 22(2) (freedom of expression) if the provider takes or uses such of the relevant recommended measures as incorporate safeguards to protect users' right to freedom of expression within the law;
 - (b) is to be treated as complying with the duty set out in section 22(3) (privacy) if the provider takes or uses such of the relevant recommended measures as incorporate safeguards to protect the privacy of users.
- (3) A provider of a search service—
 - (a) is to be treated as complying with the duty set out in section 33(2) (freedom of expression) if the provider takes or uses such of the relevant recommended measures as incorporate safeguards to protect the rights of users and interested persons to freedom of expression within the law;
 - (b) is to be treated as complying with the duty set out in section 33(3) (privacy) if the provider takes or uses such of the relevant recommended measures as incorporate safeguards to protect the privacy of users.

Duties set out in Chapter 5

- (4) A provider of a Category 1 service or a Category 2A service (or a provider of a service which is both a Category 1 service and a Category 2A service) is to be treated as complying with a duty set out in Chapter 5 if the provider takes or uses the measures described in a fraudulent advertising code of practice which are recommended for the purpose of compliance with the duty in question.

Alternative measures

- (5) A provider of a Part 3 service who seeks to comply with a relevant duty by acting otherwise than by taking or using a measure described in a code of practice or a fraudulent advertising code of practice which is recommended for the purpose of compliance with the duty must have particular regard to the importance of the following (where relevant)—
 - (a) protecting the right of users and (in the case of search services) interested persons to freedom of expression within the law, and

- (b) protecting the privacy of users.
- (6) When assessing whether a provider of a Part 3 service is compliant with a relevant duty where the provider has acted otherwise than by taking or using a measure described in a code of practice or a fraudulent advertising code of practice which is recommended for the purpose of compliance with the duty, OFCOM must consider the extent to which the alternative measures taken or in use by the provider—
- (a) extend across all areas of a service as mentioned in section 10(4), 12(8), 27(4) or 29(4) (if relevant to the duty in question), and
 - (b) (where appropriate) incorporate safeguards for the protection of the matters mentioned in subsection (5)(a) and (b).

Interpretation

- (7) In subsections (1) to (4), references to taking or using measures recommended for the purpose of compliance with a duty, or to taking or using relevant recommended measures, are to taking or using such of those measures as are relevant to the provider and the service in question.
- (8) In this section—
- (a) references to protecting the privacy of users are to protecting users from a breach of any statutory provision or rule of law concerning privacy that is relevant to the use or operation of a user-to-user service or search service (including, but not limited to, any such provision or rule concerning the processing of personal data);
 - (b) references to a search service include references to a combined service (see section 7(6)).
- (9) In this section—
- “Chapter 2 safety duty” means a duty set out in—
 - (a) section 10 (illegal content), or
 - (b) section 12 (children’s online safety);
 - “Chapter 3 safety duty” means a duty set out in—
 - (a) section 27 (illegal content), or
 - (b) section 29 (children’s online safety);
 - “code of practice” means a code of practice published under section 46, except a fraudulent advertising code of practice;
 - “fraudulent advertising code of practice” means a code of practice prepared under section 41(4) and published under section 46;
 - “relevant duty” means—
 - (a) a Chapter 2 safety duty,
 - (b) a Chapter 3 safety duty,
 - (c) a duty set out in section 15 (user empowerment),
 - (d) a duty set out in section 17 (content of democratic importance),
 - (e) a duty set out in section 19 (journalistic content),
 - (f) a duty set out in section 20 or 31 (content reporting), or
 - (g) a duty set out in section 21 or 32 (complaints procedures);
 - “relevant recommended measures” means the measures described in a code of practice which are recommended for the purpose of compliance with—
 - (a) in the case of a user-to-user service—

- (i) a Chapter 2 safety duty, or
- (ii) a duty set out in section 15 (user empowerment);
- (b) in the case of a search service, a Chapter 3 safety duty.

50 Effects of codes of practice

- (1) A failure by a provider of a Part 3 service to act in accordance with a provision of a code of practice does not of itself make the provider liable to legal proceedings in a court or tribunal.
- (2) A code of practice is admissible in evidence in legal proceedings.
- (3) In any proceedings in a court or tribunal, the court or tribunal must take into account a provision of a code of practice in determining a question arising in the proceedings if—
 - (a) the question relates to a time when the provision was in force, and
 - (b) the provision appears to the court or tribunal to be relevant to the question.
- (4) OFCOM must take into account a provision of a code of practice in determining a question arising in connection with their exercise of any relevant function if—
 - (a) the question relates to a time when the provision was in force, and
 - (b) the provision appears to OFCOM to be relevant to the question.
- (5) In this section—
 - “code of practice” means a code of practice published under section 46;
 - “relevant functions” means OFCOM’s functions under—
 - (a) Chapter 4 of Part 7 (information),
 - (b) Chapter 5 of Part 7 (notices to deal with terrorism content and CSEA content),
 - (c) Chapter 6 of Part 7 (enforcement), and
 - (d) Chapter 2 of Part 8 (super-complaints).

51 Duties and the first codes of practice

- (1) A duty mentioned in subsection (3) applies to providers of Part 3 services from the day on which a code of practice prepared under section 41(3) that is the first code of practice relating to that duty comes into force.
- (2) In the case of the duties set out in sections 10 and 27, subsection (1) is subject to subsections (5) and (6).
- (3) The duties referred to in subsection (1) are the duties set out in—
 - (a) sections 10 and 27 (illegal content),
 - (b) sections 12 and 29 (children’s online safety),
 - (c) section 15 (user empowerment),
 - (d) section 17 (content of democratic importance),
 - (e) section 19 (journalistic content),
 - (f) sections 20 and 31 (content reporting), and
 - (g) sections 21 and 32 (complaints procedures).
- (4) For the purposes of subsection (1) a code of practice is the first code of practice relating to a duty if—

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

- (a) it describes measures recommended for the purpose of compliance with that duty, and
 - (b) it is the first code of practice prepared under section 41(3) that describes measures for that purpose.
- (5) The duties set out in sections 10 and 27, so far as relating to terrorism content or offences within Schedule 5 (terrorism offences), apply to providers of Part 3 services from the day on which the first code of practice prepared under section 41(1) comes into force.
- (6) The duties set out in sections 10 and 27, so far as relating to CSEA content or offences within Schedule 6 (child sexual exploitation and abuse offences), apply to providers of Part 3 services from the day on which the first code of practice prepared under section 41(2) comes into force.
- (7) The duties set out in Chapter 5 (fraudulent advertising) apply to providers of a Category 1 service and providers of a Category 2A service (and to providers of a service which is both a Category 1 service and a Category 2A service) from the day on which the first code of practice prepared under section 41(4) comes into force.
- (8) In relation to the provider of a particular Part 3 service, references in this section to duties applying to providers of Part 3 services (or to providers of Category 1 services or Category 2A services) are to such duties as apply in relation to that service in accordance with sections 7 and 24 or (as the case may be) Chapter 5.
- (9) This section is subject to Part 2 of Schedule 17 (video-sharing platform services: transitional provision etc).