



Online Safety Act 2023

2023 CHAPTER 50

PART 4

OTHER DUTIES OF PROVIDERS OF REGULATED USER-TO-USER SERVICES AND REGULATED SEARCH SERVICES

CHAPTER 3

TERMS OF SERVICE: TRANSPARENCY, ACCOUNTABILITY AND FREEDOM OF EXPRESSION

71 Duty not to act against users except in accordance with terms of service

- (1) A provider of a Category 1 service must operate the service using proportionate systems and processes designed to ensure that the provider does not—
 - (a) take down regulated user-generated content from the service,
 - (b) restrict users' access to regulated user-generated content, or
 - (c) suspend or ban users from using the service,except in accordance with the terms of service.
- (2) Nothing in subsection (1) is to be read as preventing a provider from taking down content from a service or restricting users' access to it, or suspending or banning a user, if such an action is taken—
 - (a) to comply with the duties set out in—
 - (i) section 10(2) or (3) (protecting individuals from illegal content), or
 - (ii) section 12(2) or (3) (protecting children from content that is harmful to children), or
 - (b) to avoid criminal or civil liability on the part of the provider that might reasonably be expected to arise if such an action were not taken.
- (3) In addition, nothing in subsection (1) is to be read as preventing a provider from—

- (a) taking down content from a service or restricting users' access to it on the basis that a user has committed an offence in generating, uploading or sharing it on the service, or
 - (b) suspending or banning a user on the basis that—
 - (i) the user has committed an offence in generating, uploading or sharing content on the service, or
 - (ii) the user is responsible for, or has facilitated, the presence or attempted placement of a fraudulent advertisement on the service.
- (4) The duty set out in subsection (1) does not apply in relation to—
- (a) consumer content (see section 74);
 - (b) terms of service which deal with the treatment of consumer content.
- (5) If a person is the provider of more than one Category 1 service, the duty set out in subsection (1) applies in relation to each such service.
- (6) The duty set out in subsection (1) extends only to the design, operation and use of a service in the United Kingdom, and references in this section to users are to United Kingdom users of a service.
- (7) In this section—
- “criminal or civil liability” includes such a liability under the law of a country outside the United Kingdom;
 - “fraudulent advertisement” has the meaning given by section 38;
 - “offence” includes an offence under the law of a country outside the United Kingdom.
- (8) See also section 18 (duties to protect news publisher content).

72 Further duties about terms of service

All services

- (1) A provider of a regulated user-to-user service must include clear and accessible provisions in the terms of service informing users about their right to bring a claim for breach of contract if—
- (a) regulated user-generated content which they generate, upload or share is taken down, or access to it is restricted, in breach of the terms of service, or
 - (b) they are suspended or banned from using the service in breach of the terms of service.

Category 1 services

- (2) The duties set out in subsections (3) to (7) apply in relation to a Category 1 service, and references in subsections (3) to (9) to “provider” and “service” are to be read accordingly.
- (3) A provider must operate a service using proportionate systems and processes designed to ensure that—
- (a) if the terms of service indicate (in whatever words) that the presence of a particular kind of regulated user-generated content is prohibited on the service, the provider takes down such content;

- (b) if the terms of service state that the provider will restrict users' access to a particular kind of regulated user-generated content in a specified way, the provider does restrict users' access to such content in that way;
 - (c) if the terms of service state cases in which the provider will suspend or ban a user from using the service, the provider does suspend or ban the user in those cases.
- (4) A provider must ensure that—
 - (a) terms of service which make provision about the provider taking down regulated user-generated content from the service or restricting users' access to such content, or suspending or banning a user from using the service, are—
 - (i) clear and accessible, and
 - (ii) written in sufficient detail to enable users to be reasonably certain whether the provider would be justified in taking the specified action in a particular case, and
 - (b) those terms of service are applied consistently.
- (5) A provider must operate a service using systems and processes that allow users and affected persons to easily report—
 - (a) content which they consider to be relevant content (see section 74);
 - (b) a user who they consider should be suspended or banned from using the service in accordance with the terms of service.
- (6) A provider must operate a complaints procedure in relation to a service that—
 - (a) allows for complaints of a kind mentioned in subsection (8) to be made,
 - (b) provides for appropriate action to be taken by the provider of the service in response to complaints of those kinds, and
 - (c) is easy to access, easy to use (including by children) and transparent.
- (7) A provider must include in the terms of service provisions which are easily accessible (including to children) specifying the policies and processes that govern the handling and resolution of complaints of a kind mentioned in subsection (8).
- (8) The kinds of complaints referred to in subsections (6) and (7) are—
 - (a) complaints by users and affected persons about content present on a service which they consider to be relevant content;
 - (b) complaints by users and affected persons if they consider that the provider is not complying with a duty set out in any of subsections (1) or (3) to (5);
 - (c) complaints by a user who has generated, uploaded or shared content on a service if that content is taken down, or access to it is restricted, on the basis that it is relevant content;
 - (d) complaints by users who have been suspended or banned from using a service.
- (9) The duties set out in subsections (3) and (4) do not apply in relation to terms of service which—
 - (a) make provision of the kind mentioned in section 10(5) (protecting individuals from illegal content) or 12(9) (protecting children from content that is harmful to children), or
 - (b) deal with the treatment of consumer content.

Further provision

- (10) If a person is the provider of more than one regulated user-to-user service or Category 1 service, the duties set out in this section apply in relation to each such service.
- (11) The duties set out in this section extend only to the design, operation and use of a service in the United Kingdom, and references to users are to United Kingdom users of a service.
- (12) See also section 18 (duties to protect news publisher content).

73 OFCOM’s guidance about duties set out in sections 71 and 72

- (1) OFCOM must produce guidance for providers of Category 1 services to assist them in complying with their duties set out in sections 71 and 72(3) to (7).
- (2) OFCOM must publish the guidance (and any revised or replacement guidance).

74 Interpretation of this Chapter

- (1) This section applies for the purposes of this Chapter.
- (2) “Regulated user-generated content” has the same meaning as in Part 3 (see section 55), and references to such content are to content that is regulated user-generated content in relation to the service in question.
- (3) “Consumer content” means—
 - (a) regulated user-generated content that constitutes, or is directly connected with content that constitutes, an offer to sell goods or to supply services,
 - (b) regulated user-generated content that amounts to an offence under the Consumer Protection from Unfair Trading Regulations 2008 (S.I. 2008/1277) (construed in accordance with section 59: see subsections (3), (11) and (12) of that section), or
 - (c) any other regulated user-generated content in relation to which an enforcement authority has functions under those Regulations (see regulation 19 of those Regulations).
- (4) References to restricting users’ access to content, and related references, are to be construed in accordance with sections 58 and 236(6).
- (5) Content of a particular kind is “relevant content” if—
 - (a) a term of service, other than a term of service mentioned in section 72(9), indicates (in whatever words) that the presence of content of that kind is prohibited on the service or that users’ access to content of that kind is restricted, and
 - (b) it is regulated user-generated content.

References to relevant content are to content that is relevant content in relation to the service in question.

- (6) “Affected person” means a person, other than a user of the service in question, who is in the United Kingdom and who is—
 - (a) the subject of the content,
 - (b) a member of a class or group of people with a certain characteristic targeted by the content,

- (c) a parent of, or other adult with responsibility for, a child who is a user of the service or is the subject of the content, or
 - (d) an adult providing assistance in using the service to another adult who requires such assistance, where that other adult is a user of the service or is the subject of the content.
- (7) In determining what is proportionate for the purposes of sections 71 and 72, the size and capacity of the provider of a service is, in particular, relevant.
- (8) For the meaning of “Category 1 service”, see section 95 (register of categories of services).