



# Online Safety Act 2023

## 2023 CHAPTER 50

### PART 7

#### OFCOM'S POWERS AND DUTIES IN RELATION TO REGULATED SERVICES

### CHAPTER 4

#### INFORMATION

#### *Skilled persons' reports*

#### **104 Reports by skilled persons**

- (1) OFCOM may exercise the powers in this section where they consider that it is necessary to do so for either of the following purposes—
  - (a) assisting OFCOM in identifying and assessing a failure, or possible failure, by a provider of a regulated service to comply with a relevant requirement, or
  - (b) developing OFCOM's understanding of—
    - (i) the nature and level of risk of a provider of a regulated service failing to comply with a relevant requirement, and
    - (ii) ways to mitigate such a risk.
- (2) But the powers in this section may be exercised for a purpose mentioned in subsection (1)(b) only where OFCOM consider that the provider in question may be at risk of failing to comply with a relevant requirement.
- (3) Section 122 requires OFCOM to exercise the power in subsection (4) for the purpose of assisting OFCOM in connection with a notice under section 121(1).
- (4) OFCOM may appoint a skilled person to provide them with a report about matters relevant to the purpose for which the powers under this section are exercised (“the relevant matters”), and, where OFCOM make such an appointment, they must notify

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*Status: This is the original version (as it was originally enacted).*

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the provider about the appointment and the relevant matters to be explored in the report.

- (5) Alternatively, OFCOM may give a notice to the provider—
- (a) requiring the provider to appoint a skilled person to provide OFCOM with a report in such form as may be specified in the notice, and
  - (b) specifying the relevant matters to be explored in the report.
- (6) References in this section to a skilled person are to a person—
- (a) appearing to OFCOM to have the skills necessary to prepare a report about the relevant matters, and
  - (b) where the appointment is to be made by the provider, nominated or approved by OFCOM.
- (7) It is the duty of—
- (a) the provider of the service (“P”),
  - (b) any person who works for (or used to work for) P, or is providing (or used to provide) services to P related to the relevant matters, and
  - (c) other providers of internet services,
- to give the skilled person all such assistance as the skilled person may reasonably require to prepare the report.
- (8) The provider of the service is liable for the payment, directly to the skilled person, of the skilled person’s remuneration and expenses relating to the preparation of the report.
- (9) Subsections (10) to (12) apply in relation to an amount due to a skilled person under subsection (8).
- (10) In England and Wales, such an amount is recoverable—
- (a) if the county court so orders, as if it were payable under an order of that court;
  - (b) if the High Court so orders, as if it were payable under an order of that court.
- (11) In Scotland, such an amount may be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.
- (12) In Northern Ireland, such an amount is recoverable—
- (a) if a county court so orders, as if it were payable under an order of that court;
  - (b) if the High Court so orders, as if it were payable under an order of that court.
- (13) In this section “relevant requirement” means—
- (a) a duty or requirement set out in any of the following—
    - (i) section 9, 11, 26 or 28 (risk assessments);
    - (ii) section 10 or 27 (illegal content);
    - (iii) section 12 or 29 (children’s online safety);
    - (iv) section 14 (assessments related to the adult user empowerment duty set out in section 15(2));
    - (v) section 15 (user empowerment);
    - (vi) section 20 or 31 (content reporting);
    - (vii) section 21 or 32 (complaints procedures);
    - (viii) section 23 or 34 (record-keeping and review);

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- (ix) section 36 (children's access assessments);
- (x) section 38 or 39 (fraudulent advertising);
- (xi) section 64 (user identity verification);
- (xii) section 66 (reporting CSEA content);
- (xiii) section 71 or 72 (terms of service);
- (xiv) section 75 (deceased child users);
- (xv) section 77(3) or (4) (transparency reports);
- (xvi) section 81(2) (children's access to pornographic content);
- (b) a requirement under section 83 to notify OFCOM in connection with the charging of fees (see subsections (1), (3) and (5) of that section); or
- (c) a requirement imposed by a notice under section 121(1) (notices to deal with terrorism content and CSEA content).