



# Online Safety Act 2023

## 2023 CHAPTER 50

### PART 7

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

### CHAPTER 6

#### ENFORCEMENT POWERS

##### *Penalty notices etc*

#### **139 Penalty for failure to comply with confirmation decision**

- (1) This section applies if—
  - (a) OFCOM have given a confirmation decision to a person,
  - (b) the decision includes requirements of a kind described in section 133(1) (requirements to take steps),
  - (c) OFCOM are satisfied that the person has failed to comply with one or more of those requirements, and
  - (d) OFCOM have not imposed a daily rate penalty under section 137(1)(b) in respect of that failure.
- (2) OFCOM may give the person a penalty notice under this section in respect of the failure to comply with the confirmation decision, requiring the person to pay to OFCOM a penalty of a single amount in sterling determined by OFCOM.
- (3) But OFCOM may give such a notice to the person only after—
  - (a) notifying the person that they propose to give a penalty notice under this section, specifying the reasons for doing so and indicating the amount of the proposed penalty, and
  - (b) giving the person an opportunity to make representations (with any supporting evidence).

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- (4) A penalty notice under this section must—
- (a) give OFCOM's reasons for their decision to impose the penalty,
  - (b) state the amount of the penalty,
  - (c) state the reasons for the amount of the penalty, including any aggravating or mitigating factors that OFCOM have taken into account,
  - (d) specify the period within which the penalty must be paid,
  - (e) contain details of the rights of appeal under section 168, and
  - (f) contain information about the consequences of not paying the penalty (including information about the further kinds of enforcement action that it would be open to OFCOM to take).
- (5) The period specified under subsection (4)(d) must be at least 28 days beginning with the day on which the penalty notice is given.

#### **140 Penalty for failure to comply with notice under section 121(1)**

- (1) This section applies if—
- (a) OFCOM have given a notice under section 121(1) relating to a Part 3 service to the provider of that service (notices to deal with terrorism content and CSEA content), and
  - (b) OFCOM are satisfied that the provider has failed, or is failing, to comply with the notice.
- (2) OFCOM may give the provider a notice under this subsection stating that they propose to impose a penalty on the provider in respect of that failure.
- (3) The provider may make representations to OFCOM (with any supporting evidence) about the matters contained in the notice.
- (4) Subsection (5) applies if—
- (a) the period allowed for representations has expired, and
  - (b) OFCOM are still satisfied as to the failure mentioned in subsection (1).
- (5) OFCOM may give the provider a penalty notice under this subsection requiring the provider to pay to OFCOM a penalty of an amount in sterling determined by OFCOM.
- (6) The penalty may consist of any of the following, depending on what was specified in the notice about the proposed penalty—
- (a) a single amount;
  - (b) an amount calculated by reference to a daily rate;
  - (c) a combination of a single amount and an amount calculated by reference to a daily rate.
- (7) See section 142 for information which must be included in notices under this section.
- (8) Nothing in this section is to be taken to prevent OFCOM from giving the provider a further notice under section 121(1) (see section 126), as well as giving a penalty notice under subsection (5).

#### **141 Non-payment of fee**

- (1) This section applies if—

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- (a) the provider of a regulated service is liable to pay a fee to OFCOM under section 84 or Schedule 10 in respect of the current charging year (within the meaning of Part 6) or a previous charging year, and
  - (b) in OFCOM's opinion, the provider has not paid the full amount of the fee that the provider is liable to pay.
- (2) OFCOM may give the provider a notice under this subsection specifying—
- (a) the outstanding amount of the fee that OFCOM consider the provider is due to pay to them under section 84 or Schedule 10, and
  - (b) the period within which the provider must pay it.
- (3) A notice under subsection (2)—
- (a) may be given in respect of liabilities that relate to different charging years;
  - (b) may also state that OFCOM propose to impose a penalty on the provider.
- (4) The provider may make representations to OFCOM (with any supporting evidence) about the matters contained in the notice.
- (5) Subsection (6) applies if—
- (a) the notice under subsection (2) stated that OFCOM propose to impose a penalty,
  - (b) the period allowed for representations has expired, and
  - (c) OFCOM are satisfied that an amount of the fee is still due to them.
- (6) OFCOM may give the provider a penalty notice under this subsection requiring the provider to pay to OFCOM a penalty of an amount in sterling determined by OFCOM.
- (7) The penalty may consist of any of the following, depending on what was specified in the notice about the proposed penalty—
- (a) a single amount;
  - (b) an amount calculated by reference to a daily rate;
  - (c) a combination of a single amount and an amount calculated by reference to a daily rate.
- (8) A penalty notice under subsection (6) may require the payment of separate single amounts in respect of liabilities that relate to different charging years.
- (9) See section 142 for information which must be included in notices under this section.
- (10) Nothing in this section affects OFCOM's power to bring proceedings (whether before or after the imposition of a penalty by a notice under subsection (6)) for the recovery of the whole or part of an amount due to OFCOM under section 84 or Schedule 10.
- (11) But OFCOM may not bring such proceedings unless a provider has first been given a notice under subsection (2) specifying the amount due to OFCOM.

## **142 Information to be included in notices under sections 140 and 141**

- (1) Subsection (2) applies in relation to—
- (a) a notice under section 140(2), and
  - (b) a notice under section 141(2) stating that OFCOM propose to impose a penalty.
- (2) Such a notice must—

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- (a) state the reasons why OFCOM propose to impose the penalty,
  - (b) state whether OFCOM propose that the penalty should consist of a single amount, an amount calculated by reference to a daily rate, or a combination of the two,
  - (c) indicate the amount of the proposed penalty, including (in relation to an amount calculated by reference to a daily rate) the daily rate and how the penalty would be calculated,
  - (d) in relation to an amount calculated by reference to a daily rate, specify or describe the period for which OFCOM propose that the amount should be payable,
  - (e) state the reasons for proposing a penalty of that amount, including any aggravating or mitigating factors that OFCOM propose to take into account, and
  - (f) specify the period within which representations in relation to the proposed penalty may be made.
- (3) A penalty notice under section 140(5) or 141(6) must—
- (a) give OFCOM's reasons for their decision to impose the penalty,
  - (b) state whether the penalty consists of a single amount, an amount calculated by reference to a daily rate, or a combination of the two, and how it is calculated,
  - (c) in relation to a single amount, state that amount,
  - (d) in relation to an amount calculated by reference to a daily rate, state the daily rate,
  - (e) state the reasons for the amount of the penalty, including any aggravating or mitigating factors that OFCOM have taken into account,
  - (f) specify a reasonable period within which the penalty must be paid,
  - (g) contain details of the rights of appeal under section 168, and
  - (h) contain information about the consequences of not paying the penalty (including information about the further kinds of enforcement action that it would be open to OFCOM to take).
- (4) A penalty notice under section 141(6) must also specify the amount of the fee that is (in OFCOM's opinion) due to be paid to OFCOM.
- (5) The period specified under subsection (3)(f) for the payment of a single amount must be at least 28 days beginning with the day on which the penalty notice is given.
- (6) Subsection (7) applies in relation to a penalty notice under section 140(5) or 141(6) that includes a requirement to pay an amount calculated by reference to a daily rate.
- (7) Such a notice must—
- (a) state the date from which the amount begins to be payable, which must not be earlier than the day after the day on which the notice is given;
  - (b) provide for the amount to continue to be payable at the daily rate until—
    - (i) (in the case of a notice under section 140(5)) the date on which OFCOM are satisfied that the provider is complying with the notice under section 121(1), or (in the case of a notice under section 141(6)) the date on which the full amount of the fee (as specified in the penalty notice) has been paid to OFCOM, or
    - (ii) an earlier date specified in the penalty notice.