



# Online Safety Act 2023

## 2023 CHAPTER 50

### PART 7

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

### CHAPTER 6

#### ENFORCEMENT POWERS

##### *Provisional notices and confirmation decisions*

#### **130 Provisional notice of contravention**

- (1) OFCOM may give a notice under this section (a “provisional notice of contravention”) relating to a regulated service to the provider of the service if they consider that there are reasonable grounds for believing that the provider has failed, or is failing, to comply with any enforceable requirement (see section 131) that applies in relation to the service.
- (2) OFCOM may also give a provisional notice of contravention to a person on either of the grounds in subsection (3).
- (3) The grounds are that—
  - (a) the person has been given an information notice and OFCOM consider that there are reasonable grounds for believing that the person has failed, or is failing, to comply with either of the duties set out in section 102(8) (duties in relation to information notices), or
  - (b) the person is required by a skilled person appointed under section 104 to give assistance to the skilled person, and OFCOM consider that there are reasonable grounds for believing that the person has failed, or is failing, to comply with the duty set out in subsection (7) of that section to give such assistance.

---

*Status: This is the original version (as it was originally enacted).*

---

- (4) A provisional notice of contravention given to a person must—
  - (a) specify the duty or requirement with which (in OFCOM's opinion) the person has failed, or is failing, to comply, and
  - (b) give OFCOM's reasons for their opinion that the person has failed, or is failing, to comply with it.
- (5) A provisional notice of contravention may also contain details as mentioned in subsection (6) or (7), or both.
- (6) A provisional notice of contravention may specify steps that OFCOM consider the person needs to take in order to—
  - (a) comply with the duty or requirement, or
  - (b) remedy the failure to comply with it.
- (7) A provisional notice of contravention may state that OFCOM propose to impose a penalty on the person, and in such a case the notice must—
  - (a) state the reasons why OFCOM propose to impose a penalty,
  - (b) state whether OFCOM propose to impose a penalty of a single amount, a penalty calculated by reference to a daily rate, or both penalties (see section 137(1)),
  - (c) indicate the amount of a penalty that OFCOM propose to impose, including (in relation to a penalty calculated by reference to a daily rate) the daily rate and how the penalty would be calculated,
  - (d) in relation to a penalty calculated by reference to a daily rate, specify or describe the period for which OFCOM propose that the penalty should be payable, and
  - (e) state the reasons for proposing a penalty of that amount, including any aggravating or mitigating factors that OFCOM propose to take into account.
- (8) A provisional notice of contravention given to a person must—
  - (a) state that the person may make representations to OFCOM (with any supporting evidence) about the matters contained in the notice, and
  - (b) specify the period within which such representations may be made.
- (9) A provisional notice of contravention may be given in respect of a failure to comply with more than one enforceable requirement.
- (10) Where a provisional notice of contravention is given in respect of a continuing failure, the notice may be given in respect of any period during which the failure has continued, and must specify that period.
- (11) Where a provisional notice of contravention is given to a person in respect of a failure to comply with a duty or requirement (“the first notice”), a further provisional notice of contravention in respect of a failure to comply with that same duty or requirement may be given to the person only—
  - (a) in respect of a separate instance of the failure after the first notice was given,
  - (b) where a period was specified in the first notice in accordance with subsection (10), in respect of the continuation of the failure after the end of that period, or
  - (c) if the first notice has been withdrawn (without a confirmation decision being given to the person in respect of the failure).

### 131 Requirements enforceable by OFCOM against providers of regulated services

- (1) References in this Chapter to “enforceable requirements” are to—
- (a) the duties or requirements set out in the provisions of this Act specified in the table in subsection (2), and
  - (b) the requirements mentioned in subsection (3).
- (2) Here is the table—

<i>Provision</i>	<i>Subject matter</i>
Section 9	Illegal content risk assessments
Section 10	Illegal content
Section 11	Children’s risk assessments
Section 12	Children’s online safety
Section 14	Assessments related to duty in section 15(2)
Section 15	User empowerment
Section 17	Content of democratic importance
Section 18	News publisher content
Section 19	Journalistic content
Section 20	Content reporting
Section 21	Complaints procedures
Section 22	Freedom of expression and privacy
Section 23	Record-keeping and review
Section 26	Illegal content risk assessments
Section 27	Illegal content
Section 28	Children’s risk assessments
Section 29	Children’s online safety
Section 31	Content reporting
Section 32	Complaints procedures
Section 33	Freedom of expression and privacy
Section 34	Record-keeping and review
Section 36	Children’s access assessments
Section 38	Fraudulent advertising
Section 39	Fraudulent advertising
Section 64	User identity verification
Section 66	Reporting CSEA content to NCA
Section 71	Acting against users only in accordance with terms of service
Section 72	Terms of service

---

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

---

<i>Provision</i>	<i>Subject matter</i>
Section 75	Information about use of service by deceased child users
Section 77(3) and (4)	Transparency reports
Section 81	Provider pornographic content
Section 83	Fees: notification of OFCOM
Section 102(8)	Information notices
Section 104(7)	Assistance to skilled person
Section 105(1)	Co-operation with investigation

- (3) The requirements referred to in subsection (1)(b) are—
- (a) requirements of a notice under section 104(5)(a) to appoint a skilled person;
  - (b) requirements of a notice given by virtue of section 175(3) (duty to make public statement);
  - (c) requirements of a notice under section 175(5) (information in connection with circumstances presenting a threat);
  - (d) requirements imposed by a person acting—
    - (i) in the exercise of powers conferred by paragraph 2 of Schedule 12 (entry and inspection without warrant), or
    - (ii) in the execution of a warrant issued under paragraph 5 of that Schedule.

### **132 Confirmation decisions**

- (1) This section applies if—
- (a) OFCOM have given a provisional notice of contravention to a person in relation to a failure to comply with a duty or requirement (or with duties or requirements), and
  - (b) the period allowed for representations has expired.
- A duty or requirement to which the provisional notice of contravention relates is referred to in this section as a “notified requirement”.
- (2) If, after considering any representations and evidence, OFCOM decide not to give the person a notice under this section, they must inform the person of that fact.
- (3) If OFCOM are satisfied that the person has failed, or has been failing, to comply with a notified requirement, OFCOM may give the person a notice under this section (a “confirmation decision”) confirming that that is OFCOM’s opinion.
- (4) A confirmation decision and a notice under section 121(1) may be given in respect of the same failure.
- (5) A confirmation decision given to a person may—
- (a) require the person to take steps as mentioned in section 133;
  - (b) require the person to pay a penalty as mentioned in section 137;
  - (c) require the person to do both those things (or neither of them).

- (6) See sections 134 and 135 for further provision which a confirmation decision may include in cases of failure to comply with duties about risk assessments or children's access assessments.

### **133 Confirmation decisions: requirements to take steps**

- (1) A confirmation decision may require the person to whom it is given to take such steps as OFCOM consider appropriate (including steps relating to the use of a system or process) for either or both of the following purposes—
- (a) complying with a notified requirement;
  - (b) remedying the failure to comply with a notified requirement.
- (2) But see section 136 in relation to OFCOM's power to include in a confirmation decision requirements as described in subsection (1) relating to the use of proactive technology.
- (3) A confirmation decision may impose requirements as described in subsection (1) only in relation to the design or operation of a regulated service—
- (a) in the United Kingdom, or
  - (b) as it affects United Kingdom users of the service.
- (4) A confirmation decision that includes requirements as described in subsection (1) must—
- (a) specify the steps that are required,
  - (b) give OFCOM's reasons for their decision to impose those requirements,
  - (c) specify which of those requirements (if any) have been designated as CSEA requirements (see subsections (6) and (7)),
  - (d) specify each notified requirement to which the steps relate,
  - (e) specify the period during which the failure to comply with a notified requirement has occurred, and whether the failure is continuing,
  - (f) specify a reasonable period within which each of the steps specified in the decision must be taken or, if a step requires the use of a system or process, a reasonable period within which the system or process must begin to be used (but see subsection (5) in relation to information duties),
  - (g) (if relevant) specify the period for which a system or process must be used,
  - (h) contain details of the rights of appeal under section 168, and
  - (i) contain information about the consequences of not complying with the requirements included in the decision (including information about the further kinds of enforcement action that it would be open to OFCOM to take).
- (5) A confirmation decision that requires a person to take steps for the purpose of complying with an information duty may require the person to take those steps immediately.
- (6) If the condition in subsection (7) is met in relation to a requirement imposed by a confirmation decision which is of a kind described in subsection (1), OFCOM must designate the requirement as a "CSEA requirement" for the purposes of section 138(3) (offence of failure to comply with confirmation decision).
- (7) The condition referred to in subsection (6) is that the requirement is imposed (whether or not exclusively) in relation to either or both of the following—

---

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

---

- (a) a failure to comply with section 10(2)(a) or (3)(a) in respect of CSEA content, or in respect of priority illegal content which includes CSEA content;
  - (b) a failure to comply with section 10(2)(b) in respect of an offence specified in Schedule 6 (CSEA offences), or in respect of priority offences which include such an offence.
- (8) A person to whom a confirmation decision is given has a duty to comply with requirements included in the decision which are of a kind described in subsection (1).
- (9) The duty under subsection (8) is enforceable in civil proceedings by OFCOM—
- (a) for an injunction,
  - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or
  - (c) for any other appropriate remedy or relief.
- (10) In this section—
- “CSEA content”, “priority illegal content” and “priority offence” have the same meaning as in Part 3 (see section 59);
  - “information duty” means a duty set out in section 102(8);
  - “notified requirement” has the meaning given by section 132.

### **134 Confirmation decisions: risk assessments**

- (1) This section applies if—
- (a) OFCOM are satisfied that a provider of a Part 3 service has failed to comply with a risk assessment duty,
  - (b) based on evidence resulting from OFCOM’s investigation into that failure, OFCOM have identified a risk of serious harm to individuals in the United Kingdom arising from a particular aspect of the service (“the identified risk”), and
  - (c) OFCOM consider that the identified risk is not effectively mitigated or managed.
- (2) A confirmation decision given to the provider of the service—
- (a) if the identified risk relates to matters required to be covered by an illegal content risk assessment, may include a determination that the duty set out in section 10(2)(b) or (c) or 27(2) (as the case may be) applies as if an illegal content risk assessment carried out by the provider had identified that risk;
  - (b) if the identified risk relates to matters required to be covered by a children’s risk assessment, may include a determination that the duty set out in section 12(2)(a) or 29(2)(a) (as the case may be) applies as if a children’s risk assessment carried out by the provider had identified that risk.
- (3) A confirmation decision which includes a determination as mentioned in subsection (2) must—
- (a) give details of the identified risk,
  - (b) specify the duty to which the determination relates, and
  - (c) specify the date by which measures (at the provider’s discretion) to comply with that duty must be taken or must begin to be used.
- (4) A determination as mentioned in subsection (2) ceases to have effect on the date on which the provider of the service complies with the risk assessment duty with which

the provider had previously failed to comply (and accordingly, from that date the duty to which the determination relates applies without the modification mentioned in that subsection).

(5) In this section—

“children’s risk assessment” has the meaning given by section 11 or 28 (as the case may be);

“illegal content risk assessment” has the meaning given by section 9 or 26 (as the case may be);

“risk assessment duty” means a duty set out in—

- (a) section 9,
- (b) section 11,
- (c) section 26, or
- (d) section 28.

### **135 Confirmation decisions: children’s access assessments**

(1) This section applies if OFCOM are satisfied that a provider of a Part 3 service has failed to comply with a duty set out in section 36 (duties about children’s access assessments).

(2) If OFCOM include in a confirmation decision a requirement to take steps relating to the carrying out of a children’s access assessment of a service, they must require that assessment to be completed within three months of the date of the confirmation decision.

(3) OFCOM may vary a confirmation decision which includes a requirement as mentioned in subsection (2) to extend the deadline for completion of a children’s access assessment.

(4) Subsection (5) applies if, based on evidence that OFCOM have about a service resulting from their investigation into compliance with a duty set out in section 36, OFCOM consider 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.

(5) OFCOM may include in the confirmation decision given to the provider of the service—

- (a) a determination that the duties set out in sections 11 and 12, or (as the case may be) sections 28 and 29, must be complied with—
  - (i) from the date of the confirmation decision, or
  - (ii) from a later date specified in that decision;
- (b) provision about the circumstances in which that determination may be treated as no longer applying in relation to the service.

(6) Subsection (4) is to be interpreted consistently with section 35.

(7) In this section, “children’s access assessment” has the meaning given by section 35.

### 136 Confirmation decisions: proactive technology

- (1) This section sets out what powers OFCOM have to include in a confirmation decision a requirement to take steps to use a kind, or one of the kinds, of proactive technology specified in the decision (a “proactive technology requirement”).
- (2) A proactive technology requirement may be imposed in a confirmation decision if—
  - (a) the decision is given to the provider of an internet service within section 80(2), and
  - (b) the decision is imposed for the purpose of complying with, or remedying the failure to comply with, the duty set out in section 81(2) (provider pornographic content).
- (3) The following provisions of this section set out constraints on OFCOM’s power to include a proactive technology requirement in a confirmation decision in any case not within subsection (2).
- (4) A proactive technology requirement may be imposed in a confirmation decision only if the decision is given to the provider of a Part 3 service.
- (5) A proactive technology requirement may be imposed in a confirmation decision only for the purpose of complying with, or remedying the failure to comply with, any of the duties set out in—
  - (a) section 10(2) or (3) (illegal content),
  - (b) section 12(2) or (3) (children’s online safety),
  - (c) section 27(2) or (3) (illegal content),
  - (d) section 29(2) or (3) (children’s online safety), or
  - (e) section 38(1) or 39(1) (fraudulent advertising).
- (6) Proactive technology may be required to be used on or in relation to any Part 3 service or any part of such a service, but if and to the extent that the technology operates (or may operate) by analysing content that is user-generated content in relation to the service, or metadata relating to such content, the technology may not be required to be used except to analyse—
  - (a) user-generated content communicated publicly, and
  - (b) metadata relating to user-generated content communicated publicly.
- (7) Before imposing a proactive technology requirement in relation to a service in a confirmation decision, OFCOM must particularly consider the matters mentioned in subsection (8), so far as they are relevant.
- (8) The matters are as follows—
  - (a) the kind of service it is;
  - (b) the functionalities of the service;
  - (c) the user base of the service;
  - (d) the prevalence of relevant content on the service and the extent of its dissemination by means of the service, or (as the case may be) the prevalence of search content of the service that is relevant content;
  - (e) the level of risk of harm to individuals in the United Kingdom presented by relevant content present on the service, or (as the case may be) search content of the service that is relevant content, and the severity of that harm;
  - (f) the degree of accuracy, effectiveness and lack of bias achieved by the kind of technology specified in the decision;



---

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

---

- (g) the extent to which the use of the kind of proactive technology specified in the decision would or might result in interference with users' right to freedom of expression within the law;
  - (h) the level of risk of the use of the kind of proactive technology specified in the decision resulting in a breach of any statutory provision or rule of law concerning privacy that is relevant to the use or operation of the service (including, but not limited to, any such provision or rule concerning the processing of personal data);
  - (i) whether the use of any less intrusive measures than the proactive technology specified in the decision would be likely to result in compliance with, or would be likely to effectively remedy the failure to comply with, the duty in question.
- (9) A confirmation decision that imposes a proactive technology requirement on a provider may also impose requirements about review of the technology by the provider.
- (10) A confirmation decision relating to a service which requires the use of technology of a kind mentioned in subsection (6) must identify the content, or parts of the service that include content, that OFCOM consider is communicated publicly on that service (see section 232).
- (11) In this section—
- “content that is harmful to children” has the same meaning as in Part 3 (see section 60);
  - “fraudulent advertisement” has the meaning given by section 38 or 39 (depending on the kind of service in question);
  - “illegal content” has the same meaning as in Part 3 (see section 59);
  - “relevant content” means illegal content, content that is harmful to children or content consisting of fraudulent advertisements, or any or all of those kinds of content (depending on the duties (as mentioned in subsection (5)) for the purposes of which the proactive technology requirement is imposed);
  - “search content” has the same meaning as in Part 3 (see section 57);
  - “user-generated content” has the meaning given by section 55 (see subsections (3) and (4) of that section).

### **137 Confirmation decisions: penalties**

- (1) A confirmation decision may require the person to whom it is given to do either or both of the following, depending on what was proposed in the provisional notice of contravention (see paragraph 3 of Schedule 13)—
- (a) pay to OFCOM a penalty of a single amount in sterling determined by OFCOM (a “single penalty”) and specified in the confirmation decision;
  - (b) if the confirmation decision includes a requirement of the kind described in section 133(1)(a) in respect of a continuous failure to comply with a notified requirement, pay a daily rate penalty to OFCOM if that same failure continues after the compliance date.
- (2) A “daily rate penalty” means a penalty of an amount in sterling determined by OFCOM and calculated by reference to a daily rate.
- (3) A confirmation decision may impose separate single penalties for failure to comply with separate notified requirements specified in the decision.

---

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

---

- (4) Where a provisional notice of contravention is given in respect of a period of continuing failure to comply with a notified requirement, no more than one single penalty may be imposed by a confirmation decision in respect of the period of failure specified in the provisional notice of contravention.
- (5) A confirmation decision that imposes a penalty must—
- (a) give OFCOM's reasons for their decision to impose the penalty,
  - (b) specify each notified requirement to which the penalty relates,
  - (c) specify the period during which the failure to comply with a notified requirement has occurred, and whether the failure is continuing,
  - (d) state the reasons for the amount of the penalty, including any aggravating or mitigating factors that OFCOM have taken into account,
  - (e) specify a reasonable period within which the penalty must be paid,
  - (f) contain details of the rights of appeal under section 168, and
  - (g) 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).
- (6) The period specified under subsection (5)(e) for the payment of a single penalty must be at least 28 days beginning with the day on which the confirmation decision is given.
- (7) If a confirmation decision imposes a single penalty and a daily rate penalty, the information mentioned in subsection (5)(a), (b), (d) and (e) must be given in respect of each kind of penalty.
- (8) As well as containing the information mentioned in subsection (5), a confirmation decision that imposes a daily rate penalty in respect of a continuous failure to comply with a notified requirement must—
- (a) state the daily rate of the penalty and how the penalty is calculated;
  - (b) state that the person will be liable to pay the penalty if that same failure continues after the compliance date;
  - (c) state the date from which the penalty begins to be payable, which must not be earlier than the day after the compliance date;
  - (d) provide for the penalty to continue to be payable at the daily rate until—
    - (i) the date on which the notified requirement is complied with,
    - (ii) if the penalty is imposed in respect of a failure to comply with more than one notified requirement, the date on which the last of those requirements is complied with, or
    - (iii) an earlier date specified in the confirmation decision.
- (9) In this section—
- “compliance date”, in relation to a notified requirement, means—
- (a) in a case where the confirmation decision requires steps to be taken immediately to comply with that requirement (see section 133(5)), the date of the confirmation decision;
  - (b) in any other case, the last day of the period specified in the confirmation decision in accordance with section 133(4)(f) for compliance with that requirement;
- “notified requirement” has the meaning given by section 132.

### **138 Confirmation decisions: offences**

- (1) A person to whom a confirmation decision is given commits an offence if, without reasonable excuse, the person fails to comply with a requirement imposed by the decision which—
  - (a) is of a kind described in section 133(1), and
  - (b) is imposed (whether or not exclusively) in relation to a failure to comply with a children's online safety duty.
- (2) A "children's online safety duty" means a duty set out in—
  - (a) section 12(3)(a),
  - (b) section 12(3)(b),
  - (c) section 81(2), or
  - (d) section 81(4).
- (3) A person to whom a confirmation decision is given commits an offence if, without reasonable excuse, the person fails to comply with a CSEA requirement imposed by the decision (see section 133(6) and (7)).
- (4) A person who commits an offence under this section is liable—
  - (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates' court or a fine (or both);
  - (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both);
  - (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both);
  - (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).

#### *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

---

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

---

- (b) giving the person an opportunity to make representations (with any supporting evidence).
- (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—
  - (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

---

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

---

- (b) a notice under section 141(2) stating that OFCOM propose to impose a penalty.
- (2) Such a notice must—
- (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))

---

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

---

- 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.

*Amount of penalties etc*

**143 Amount of penalties etc**

Schedule 13 contains provision about the amount of penalties that OFCOM may impose under this Chapter, and makes further provision about such penalties.

*Business disruption measures*

**144 Service restriction orders**

- (1) OFCOM may apply to the court for an order under this section (a “service restriction order”) in relation to a regulated service where they consider that—
  - (a) the grounds in subsection (3) apply in relation to the service, or
  - (b) in the case of a Part 3 service, the grounds in subsection (4) apply in relation to the service.
- (2) A service restriction order is an order imposing requirements on one or more persons who provide an ancillary service (whether from within or outside the United Kingdom) in relation to a regulated service (see subsection (11)).
- (3) The grounds mentioned in subsection (1)(a) are that—
  - (a) the provider of the regulated service has failed to comply with an enforceable requirement that applies in relation to the regulated service,
  - (b) the failure is continuing, and
  - (c) any of the following applies—
    - (i) the provider has failed to comply with a requirement imposed by a confirmation decision that is of a kind described in section 133(1) relating to the failure;
    - (ii) the provider has failed to pay a penalty imposed by a confirmation decision relating to the failure (and the confirmation decision did not impose any requirements of a kind described in section 133(1));
    - (iii) the provider would be likely to fail to comply with requirements imposed by a confirmation decision if given;
    - (iv) the circumstances of the failure or the risks of harm to individuals in the United Kingdom are such that it is appropriate to make the application without having given a provisional notice of contravention, without having given a confirmation decision, or (having given a confirmation decision imposing requirements) without waiting to ascertain compliance with those requirements.
- (4) The grounds mentioned in subsection (1)(b) are that—
  - (a) the provider of the Part 3 service has failed to comply with a notice under section 121(1) that relates to the service (notices to deal with terrorism content and CSEA content), and
  - (b) the failure is continuing.

---

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

---

- (5) An application by OFCOM for a service restriction order must—
- (a) specify the regulated service in relation to which the application is made (“the relevant service”),
  - (b) specify the provider of that service (“the non-compliant provider”),
  - (c) specify the grounds on which the application is based, and contain evidence about those grounds,
  - (d) specify the persons on whom (in OFCOM’s opinion) the requirements of the order should be imposed,
  - (e) contain evidence as to why OFCOM consider that the persons mentioned in paragraph (d) provide an ancillary service in relation to the relevant service, and specify any such ancillary service provided,
  - (f) specify the requirements which OFCOM consider that the order should impose on such persons, and
  - (g) in the case of an application made without notice having been given to the non-compliant provider, or to the persons mentioned in paragraph (d), state why no notice has been given.
- (6) The court may make a service restriction order imposing requirements on a person in relation to the relevant service if the court is satisfied—
- (a) as to the grounds in subsection (3) or the grounds in subsection (4) (as the case may be),
  - (b) that the person provides an ancillary service in relation to the relevant service,
  - (c) that it is appropriate to make the order for the purpose of preventing harm to individuals in the United Kingdom, and the order is proportionate to the risk of such harm,
  - (d) in the case of an application made on the ground in subsection (3)(c)(iii) or (iv), that it is appropriate to make the order before a provisional notice of contravention or confirmation decision has been given, or before compliance with requirements imposed by a confirmation decision has been ascertained (as the case may be), and
  - (e) if no notice of the application has been given to the non-compliant provider, or to the persons on whom requirements are being imposed, that it is appropriate to make the order without notice.
- (7) When considering whether to make a service restriction order in relation to the relevant service, and when considering what provision it should contain, the court must take into account (among other things) the rights and obligations of all relevant parties, including those of—
- (a) the non-compliant provider,
  - (b) the person or persons on whom the court is considering imposing the requirements, and
  - (c) United Kingdom users of the relevant service.
- (8) A service restriction order made in relation to the relevant service must—
- (a) identify the non-compliant provider,
  - (b) identify the persons on whom the requirements are imposed, and any ancillary service to which the requirements relate,
  - (c) require such persons to take the steps specified in the order, or to put in place arrangements, that have the effect of withdrawing the ancillary service to the extent that it relates to the relevant service (or part of it), or preventing



---

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

---

- the ancillary service from promoting or displaying content that relates to the relevant service (or part of it) in any way,
- (d) specify the date by which the requirements in the order must be complied with, and
  - (e) specify the date on which the order expires, or the period for which the order has effect.
- (9) The steps that may be specified or arrangements that may be required to be put in place—
- (a) include steps or arrangements that will or may require the termination of an agreement (whether or not made before the coming into force of this section), or the prohibition of the performance of such an agreement, and
  - (b) are limited, so far as that is possible, to steps or arrangements relating to the operation of the relevant service as it affects United Kingdom users.
- (10) OFCOM must inform the Secretary of State as soon as reasonably practicable after a service restriction order has been made.
- (11) For the purposes of this section, a service is an “ancillary service” in relation to a regulated service if the service facilitates the provision of the regulated service (or part of it), whether directly or indirectly, or displays or promotes content relating to the regulated service (or to part of it).
- (12) Examples of ancillary services include—
- (a) services, provided (directly or indirectly) in the course of a business, which enable funds to be transferred in relation to a regulated service,
  - (b) search engines which generate search results displaying or promoting content relating to a regulated service,
  - (c) user-to-user services which make content relating to a regulated service available to users, and
  - (d) services which use technology to facilitate the display of advertising on a regulated service (for example, an ad server or an ad network).
- (13) In this section “the court” means—
- (a) in England and Wales, the High Court or the county court,
  - (b) in Scotland, the Court of Session or a sheriff, and
  - (c) in Northern Ireland, the High Court or a county court.

## **145 Interim service restriction orders**

- (1) OFCOM may apply to the court for an interim order under this section (an “interim service restriction order”) in relation to a regulated service where they consider that—
- (a) the grounds in subsection (3) apply in relation to the service, or
  - (b) in the case of a Part 3 service, the grounds in subsection (4) apply in relation to the service.
- (2) An interim service restriction order is an interim order imposing requirements on one or more persons who provide an ancillary service (whether from within or outside the United Kingdom) in relation to a regulated service (see subsection (9)).
- (3) The grounds mentioned in subsection (1)(a) are that—
- (a) it is likely that the provider of the regulated service is failing to comply with an enforceable requirement that applies in relation to the regulated service, and

---

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

---

- (b) the level of risk of harm to individuals in the United Kingdom relating to the likely failure, and the nature and severity of that harm, are such that it would not be appropriate to wait to establish the failure before applying for the order.
- (4) The grounds mentioned in subsection (1)(b) are that—
- (a) it is likely that the provider of the Part 3 service is failing to comply with a notice under section 121(1) that relates to the service (notices to deal with terrorism content and CSEA content), and
  - (b) the level of risk of harm to individuals in the United Kingdom relating to the likely failure, and the nature and severity of that harm, are such that it would not be appropriate to wait to establish the failure before applying for the order.
- (5) An application by OFCOM for an interim service restriction order must—
- (a) specify the regulated service in relation to which the application is made (“the relevant service”),
  - (b) specify the provider of that service (“the non-compliant provider”),
  - (c) specify the grounds on which the application is based, and contain evidence about those grounds,
  - (d) specify the persons on whom (in OFCOM’s opinion) the requirements of the order should be imposed,
  - (e) contain evidence as to why OFCOM consider that the persons mentioned in paragraph (d) provide an ancillary service in relation to the relevant service, and specify any such ancillary service provided,
  - (f) specify the requirements which OFCOM consider that the order should impose on such persons, and
  - (g) in the case of an application made without notice having been given to the non-compliant provider, or to the persons mentioned in paragraph (d), state why no notice has been given.
- (6) The court may make an interim service restriction order imposing requirements on a person in relation to the relevant service if the court is satisfied—
- (a) as to the ground in subsection (3)(a) or the ground in subsection (4)(a) (as the case may be),
  - (b) that the person provides an ancillary service in relation to the relevant service,
  - (c) that there are prima facie grounds to suggest that an application for a service restriction order under section 144 would be successful,
  - (d) that the level of risk of harm to individuals in the United Kingdom relating to the likely failure mentioned in subsection (3)(a) or (4)(a) (whichever applies), and the nature and severity of that harm, are such that it is not appropriate to wait for the failure to be established before making the order, and
  - (e) if no notice of the application has been given to the non-compliant provider, or to the persons on whom requirements are being imposed, that it is appropriate to make the order without notice.
- (7) An interim service restriction order ceases to have effect on the earlier of—
- (a) the date specified in the order, or the date on which the period specified in the order expires (as the case may be), and
  - (b) the date on which the court makes a service restriction order under section 144 in relation to the relevant service that imposes requirements on the same persons on whom requirements are imposed by the interim order, or dismisses the application for such an order.

---

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

---

- (8) Subsections (7) to (10) of section 144 apply in relation to an interim service restriction order under this section as they apply in relation to a service restriction order under that section.
- (9) In this section, “ancillary service” and “the court” have the same meaning as in section 144 (see subsections (11), (12) and (13) of that section).

## **146 Access restriction orders**

- (1) OFCOM may apply to the court for an order under this section (an “access restriction order”) in relation to a regulated service where they consider that—
- (a) the grounds in section 144(3) or (4) apply in relation to the service, and
  - (b) either—
    - (i) a service restriction order under section 144 or an interim service restriction order under section 145 has been made in relation to the failure, and it was not sufficient to prevent significant harm arising to individuals in the United Kingdom as a result of the failure, or
    - (ii) the likely consequences of the failure are such that if a service restriction order or an interim service restriction order were to be made, it would be unlikely to be sufficient to prevent significant harm arising to individuals in the United Kingdom as a result of the failure, and in this paragraph, “the failure” means the failure mentioned in section 144(3)(a) or (4)(a) (as the case may be).
- (2) An access restriction order is an order imposing requirements on one or more persons who provide an access facility (whether from within or outside the United Kingdom) in relation to a regulated service (see subsection (10)).
- (3) An application by OFCOM for an access restriction order must—
- (a) specify the regulated service in relation to which the application is made (“the relevant service”),
  - (b) specify the provider of that service (“the non-compliant provider”),
  - (c) specify the grounds on which the application is based, and contain evidence about those grounds,
  - (d) specify the persons on whom (in OFCOM’s opinion) the requirements of the order should be imposed,
  - (e) contain evidence as to why OFCOM consider that the persons mentioned in paragraph (d) provide an access facility in relation to the relevant service, and specify any such access facility provided,
  - (f) specify the requirements which OFCOM consider that the order should impose on such persons, and
  - (g) in the case of an application made without notice having been given to the non-compliant provider, or to the persons mentioned in paragraph (d), state why no notice has been given.
- (4) The court may make an access restriction order imposing requirements on a person in relation to the relevant service if the court is satisfied—
- (a) as to the grounds in subsection (1),
  - (b) that the person provides an access facility in relation to the relevant service,

---

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

---

- (c) that it is appropriate to make the order for the purpose of preventing significant harm to individuals in the United Kingdom, and the order is proportionate to the risk of such harm,
  - (d) in the case of an application made on the ground in subsection (3)(c)(iii) or (iv) of section 144 (by virtue of subsection (1)(a)), that it is appropriate to make the order before a provisional notice of contravention or confirmation decision has been given, or before compliance with requirements imposed by a confirmation decision has been ascertained (as the case may be), and
  - (e) if no notice of the application has been given to the non-compliant provider, or to the persons on whom requirements are being imposed, that it is appropriate to make the order without notice.
- (5) When considering whether to make an access restriction order in relation to the relevant service, and when considering what provision it should contain, the court must take into account (among other things) the rights and obligations of all relevant parties, including those of—
  - (a) the non-compliant provider,
  - (b) the person or persons on whom the court is considering imposing the requirements, and
  - (c) United Kingdom users of the relevant service.
- (6) An access restriction order made in relation to the relevant service must—
  - (a) identify the non-compliant provider,
  - (b) identify the persons on whom the requirements are imposed, and any access facility to which the requirements relate,
  - (c) require such persons to take the steps specified in the order, or to put in place arrangements, to withdraw, adapt or manipulate the access facility in order to impede users' access (by means of that facility) to the relevant service (or to part of it),
  - (d) specify the date by which the requirements in the order must be complied with, and
  - (e) specify the date on which the order expires, or the period for which the order has effect.
- (7) The steps that may be specified or arrangements that may be required to be put in place—
  - (a) include steps or arrangements that will or may require the termination of an agreement (whether or not made before the coming into force of this section), or the prohibition of the performance of such an agreement,
  - (b) are limited, so far as that is possible, to steps or arrangements that impede the access of United Kingdom users, and
  - (c) are limited, so far as that is possible, to steps or arrangements that do not affect such users' ability to access any other internet services.
- (8) OFCOM must inform the Secretary of State as soon as reasonably practicable after an access restriction order has been made.
- (9) Where a person who provides an access facility takes steps or puts in place arrangements required by an access restriction order, OFCOM may, by notice, require that person to (where possible) notify persons in the United Kingdom who attempt to access the relevant service via that facility of the access restriction order (and where a

---

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

---

confirmation decision has been given to the non-compliant provider, the notification must refer to that decision).

- (10) For the purposes of this section, a facility is an “access facility” in relation to a regulated service if the person who provides the facility is able to withdraw, adapt or manipulate it in such a way as to impede access (by means of that facility) to the regulated service (or to part of it) by United Kingdom users of that service.
- (11) Examples of access facilities include—
- (a) internet access services by means of which a regulated service is made available, and
  - (b) app stores through which a mobile app for a regulated service may be downloaded or otherwise accessed.
- (12) In this section—
- “the court” means—
    - (a) in England and Wales, the High Court or the county court,
    - (b) in Scotland, the Court of Session or a sheriff, and
    - (c) in Northern Ireland, the High Court or a county court;
  - “facility” means any kind of service, infrastructure or apparatus enabling users of a regulated service to access the regulated service;
  - “internet access service” means a service that provides access to virtually all (or just some) of the end points of the internet.

## **147 Interim access restriction orders**

- (1) OFCOM may apply to the court for an interim order under this section (an “interim access restriction order”) in relation to a regulated service where they consider that—
- (a) the grounds in section 145(3) or (4) apply in relation to the service, and
  - (b) either—
    - (i) a service restriction order under section 144 or an interim service restriction order under section 145 has been made in relation to the likely failure, and it was not sufficient to prevent significant harm arising to individuals in the United Kingdom as a result of the failure, or
    - (ii) the likely consequences of such a failure would be such that if a service restriction order or an interim service restriction order were to be made, it would be unlikely to be sufficient to prevent significant harm arising to individuals in the United Kingdom as a result of the failure,
- and in this section, “the likely failure” means the likely failure mentioned in section 145(3)(a) or (4)(a) (as the case may be).
- (2) An interim access restriction order is an interim order imposing requirements on one or more persons who provide an access facility (whether from within or outside the United Kingdom) in relation to a regulated service (see subsection (8)).
- (3) An application by OFCOM for an interim access restriction order must—
- (a) specify the regulated service in relation to which the application is made (“the relevant service”),
  - (b) specify the provider of that service (“the non-compliant provider”),

---

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

---

- (c) specify the grounds on which the application is based, and contain evidence about those grounds,
  - (d) specify the persons on whom (in OFCOM's opinion) the requirements of the order should be imposed,
  - (e) contain evidence as to why OFCOM consider that the persons mentioned in paragraph (d) provide an access facility in relation to the relevant service, and specify any such access facility provided,
  - (f) specify the requirements which OFCOM consider that the order should impose on such persons, and
  - (g) in the case of an application made without notice having been given to the non-compliant provider, or to the persons mentioned in paragraph (d), state why no notice has been given.
- (4) The court may make an interim access restriction order imposing requirements on a person in relation to the relevant service if the court is satisfied—
- (a) that the ground in section 145(3)(a) or (4)(a) (as the case may be) applies in relation to the service,
  - (b) as to the ground in subsection (1)(b)(i) or (ii),
  - (c) that the person provides an access facility in relation to the relevant service,
  - (d) that there are prima facie grounds to suggest that an application for an access restriction order under section 146 would be successful,
  - (e) that the level of risk of harm to individuals in the United Kingdom relating to the likely failure, and the nature and severity of that harm, are such that it is not appropriate to wait for the failure to be established before making the order, and
  - (f) if no notice of the application has been given to the non-compliant provider, or to the persons on whom requirements are being imposed, that it is appropriate to make the order without notice.
- (5) An interim access restriction order ceases to have effect on the earlier of—
- (a) the date specified in the order, or the date on which the period specified in the order expires (as the case may be), and
  - (b) the date on which the court makes an access restriction order under section 146 in relation to the relevant service that imposes requirements on the same persons on whom requirements are imposed by the interim order, or dismisses an application for such an order.
- (6) Subsections (5) to (8) of section 146 apply in relation to an interim access restriction order under this section as they apply in relation to an access restriction order under that section.
- (7) Where a person who provides an access facility takes steps or puts in place arrangements required by an interim access restriction order, OFCOM may, by notice, require that person to (where possible) notify persons in the United Kingdom who attempt to access the relevant service via that facility of the interim access restriction order.
- (8) In this section, “access facility” and “the court” have the same meaning as in section 146 (see subsections (10), (11) and (12) of that section).

## **148 Interaction with other action by OFCOM**

- (1) Where OFCOM apply for a business disruption order in respect of a failure by a provider of a regulated service to comply with an enforceable requirement, nothing in sections 144 to 147 is to be taken to prevent OFCOM also giving the provider—
  - (a) a confirmation decision in respect of the failure, or
  - (b) a penalty notice under section 139 in relation to a confirmation decision in respect of the failure.
- (2) Where OFCOM apply for a business disruption order in respect of a failure by a provider of a Part 3 service to comply with a notice under section 121(1) (notices to deal with terrorism content and CSEA content), nothing in sections 144 to 147 is to be taken to prevent OFCOM also giving the provider either or both of the following—
  - (a) a further notice under section 121(1) (see section 126);
  - (b) a penalty notice under section 140(5).
- (3) In this section, a “business disruption order” means—
  - (a) a service restriction order under section 144,
  - (b) an interim service restriction order under section 145,
  - (c) an access restriction order under section 146, or
  - (d) an interim access restriction order under section 147.

### *Publication of enforcement action*

## **149 Publication by OFCOM of details of enforcement action**

- (1) Subsections (2) and (3) apply where OFCOM have given a person (and not withdrawn) any of the following—
  - (a) a confirmation decision;
  - (b) a penalty notice under section 139;
  - (c) a penalty notice under section 140(5);
  - (d) a penalty notice under section 141(6).
- (2) OFCOM must publish details identifying the person and describing—
  - (a) the failure (or failures) to which the decision or notice relates, and
  - (b) OFCOM’s response.
- (3) But OFCOM may not publish anything that, in OFCOM’s opinion—
  - (a) is confidential in accordance with subsections (4) and (5), or
  - (b) is otherwise not appropriate for publication.
- (4) A matter is confidential under this subsection if—
  - (a) it relates specifically to the affairs of a particular body, and
  - (b) publication of that matter would or might, in OFCOM’s opinion, seriously and prejudicially affect the interests of that body.
- (5) A matter is confidential under this subsection if—
  - (a) it relates to the private affairs of an individual, and
  - (b) publication of that matter would or might, in OFCOM’s opinion, seriously and prejudicially affect the interests of that individual.

---

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

---

- (6) Where OFCOM have given a person a provisional notice of contravention but have not given the person a confirmation decision, OFCOM may publish details identifying the person and describing the reasons for the provisional notice.
- (7) OFCOM must notify the person concerned that information has been published under this section.

## **150 Publication by providers of details of enforcement action**

- (1) This section applies where—
  - (a) OFCOM have given a person (and not withdrawn) any of the following—
    - (i) a confirmation decision;
    - (ii) a penalty notice under section 139;
    - (iii) a penalty notice under section 140(5);
    - (iv) a penalty notice under section 141(6), and
  - (b) the appeal period in relation to the decision or notice has ended.
- (2) OFCOM may give to the person a notice (a “publication notice”) requiring the person to—
  - (a) publish details describing—
    - (i) the failure (or failures) to which the decision or notice mentioned in subsection (1)(a) relates, and
    - (ii) OFCOM’s response, or
  - (b) otherwise notify users of the service to which the decision or notice mentioned in subsection (1)(a) relates of those details.
- (3) A publication notice may require a person to publish details under subsection (2)(a) or give notification of details under subsection (2)(b) or both.
- (4) A publication notice must—
  - (a) specify the decision or notice mentioned in subsection (1)(a) to which it relates,
  - (b) specify or describe the details that must be published or notified,
  - (c) specify the form and manner in which the details must be published or notified,
  - (d) specify a date by which the details must be published or notified, and
  - (e) contain information about the consequences of not complying with the notice.
- (5) Where a publication notice requires a person to publish details under subsection (2)(a) the notice may also specify a period during which publication in the specified form and manner must continue.
- (6) Where a publication notice requires a person to give notification of details under subsection (2)(b) the notice may only require that notification to be given to United Kingdom users of the service (see section 227).
- (7) A publication notice may not require a person to publish or give notification of anything that, in OFCOM’s opinion—
  - (a) is confidential in accordance with subsections (8) and (9), or
  - (b) is otherwise not appropriate for publication or notification.
- (8) A matter is confidential under this subsection if—
  - (a) it relates specifically to the affairs of a particular body, and



---

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

---

- (b) publication or notification of that matter would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that body.
- (9) A matter is confidential under this subsection if—
  - (a) it relates to the private affairs of an individual, and
  - (b) publication or notification of that matter would or might, in OFCOM's opinion, seriously and prejudicially affect the interests of that individual.
- (10) A person to whom a publication notice is given has a duty to comply with it.
- (11) The duty under subsection (10) is enforceable in civil proceedings by OFCOM—
  - (a) for an injunction,
  - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or
  - (c) for any other appropriate remedy or relief.
- (12) For the purposes of subsection (1)(b) “the appeal period”, in relation to a decision or notice mentioned in subsection (1)(a), means—
  - (a) the period during which any appeal relating to the decision or notice may be made, or
  - (b) where such an appeal has been made, the period ending with the determination or withdrawal of that appeal.

### *Guidance*

#### **151 OFCOM's guidance about enforcement action**

- (1) OFCOM must produce guidance for providers of regulated services about how OFCOM propose to exercise their functions under this Chapter.
- (2) The guidance must, in particular, give information about the factors that OFCOM would consider it appropriate to take into account when taking, or considering taking, enforcement action relating to a person's failure to comply with different kinds of enforceable requirements.
- (3) In relation to any enforcement action by OFCOM which relates to a failure by a provider of a regulated service to comply with a relevant duty, the guidance must include provision explaining how OFCOM will take into account the impact (or possible impact) of such a failure on children.
- (4) Before producing the guidance (including revised or replacement guidance), OFCOM must consult—
  - (a) the Secretary of State,
  - (b) the Information Commissioner, and
  - (c) such other persons as OFCOM consider appropriate.
- (5) OFCOM must publish the guidance (and any revised or replacement guidance).
- (6) Guidelines prepared by OFCOM under section 392 of the Communications Act (amount of penalties) may, so far as relating to penalties imposed under this Chapter, be included in the same document as guidance under this section.

---

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

---

- (7) In exercising their functions under this Chapter, or deciding whether to exercise them, OFCOM must have regard to the guidance for the time being published under this section.
- (8) In this section, a “relevant duty” means—
- (a) a duty set out in section 10 or 27 (illegal content),
  - (b) a duty set out in section 12 or 29 (children’s online safety), or
  - (c) a duty set out in section 81(2) (children’s access to provider pornographic content).