



Online Safety Act 2023

2023 CHAPTER 50

PART 9

SECRETARY OF STATE'S FUNCTIONS IN RELATION TO REGULATED SERVICES

Strategic priorities

172 Statement of strategic priorities

- (1) The Secretary of State may designate a statement for the purposes of this section if the requirements set out in section 173 (consultation and parliamentary procedure) are satisfied.
- (2) The statement is a statement prepared by the Secretary of State that sets out strategic priorities of His Majesty's Government in the United Kingdom relating to online safety matters.
- (3) The statement may, among other things, set out particular outcomes identified with a view to achieving the strategic priorities.
- (4) This section does not restrict the Secretary of State's powers under any other provision of this Act or any other enactment.
- (5) A statement designated under subsection (1) must be published in such manner as the Secretary of State considers appropriate.
- (6) A statement designated under subsection (1) may be amended (including by replacing the whole or a part of the statement with new material) by a subsequent statement designated under that subsection, and this section and sections 92 and 173 apply in relation to any such subsequent statement as they apply in relation to the original statement.
- (7) Except as provided by subsection (8), no amendment may be made under subsection (6) within the period of five years beginning with the day on which a statement was most recently designated under subsection (1).

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- (8) An earlier amendment may be made under subsection (6) if—
- (a) since that day—
 - (i) a Parliamentary general election has taken place, or
 - (ii) there has been a significant change in the policy of His Majesty's Government affecting online safety matters, or
 - (b) the Secretary of State considers that the statement, or any part of it, conflicts with any of OFCOM's general duties (within the meaning of section 3 of the Communications Act).

173 Consultation and parliamentary procedure

- (1) This section sets out the requirements that must be satisfied in relation to a statement before the Secretary of State may designate it under section 172.
- (2) The Secretary of State must consult—
 - (a) OFCOM, and
 - (b) such other persons as the Secretary of State considers appropriate, on a draft of the statement.
- (3) The Secretary of State must allow OFCOM a period of at least 40 days to respond to any consultation under subsection (2)(a).
- (4) After that period has ended the Secretary of State—
 - (a) must make any changes to the draft that appear to the Secretary of State to be necessary in view of responses to the consultation, and
 - (b) must then lay the draft before Parliament.
- (5) The Secretary of State must then wait until the end of the 40-day period and may not designate the statement if, within that period, either House of Parliament resolves not to approve it.
- (6) "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 on the same day, the later of the days on which it is laid).
- (7) 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.

Directions to OFCOM

174 Directions about advisory committees

- (1) The Secretary of State may give OFCOM a direction requiring OFCOM to establish a committee to provide them with advice about online safety matters of a kind specified in the direction.
- (2) The Secretary of State must consult OFCOM before giving or varying such a direction.
- (3) A committee required to be established by a direction is to consist of the following members, unless the direction specifies otherwise—
 - (a) a chairman appointed by OFCOM, and

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- (b) such number of other members appointed by OFCOM as OFCOM consider appropriate.
- (4) A committee required to be established by a direction must, unless the direction specifies otherwise, publish a report within the period of 18 months after being established, and after that must publish periodic reports.
- (5) The Secretary of State may vary or revoke a direction given under this section.

175 Directions in special circumstances

- (1) The Secretary of State may give a direction to OFCOM under subsection (2) or (3) if the Secretary of State has reasonable grounds for believing that circumstances exist that present a threat—
 - (a) to the health or safety of the public, or
 - (b) to national security.
- (2) A direction under this subsection is a direction requiring OFCOM, in exercising their media literacy functions, to give priority for a specified period to specified objectives designed to address the threat presented by the circumstances mentioned in subsection (1).
- (3) A direction under this subsection is a direction requiring OFCOM to give a public statement notice to—
 - (a) a specified provider of a regulated service, or
 - (b) providers of regulated services generally.
- (4) A “public statement notice” is a notice requiring a provider of a regulated service to make a publicly available statement, by a date specified in the notice, about steps the provider is taking in response to the threat presented by the circumstances mentioned in subsection (1).
- (5) OFCOM may, by a public statement notice or a subsequent notice, require a provider of a regulated service to provide OFCOM with such information as they may require for the purpose of responding to that threat.
- (6) If a direction under subsection (2) or (3) is given on the ground mentioned in subsection (1)(a), the Secretary of State must publish the reasons for giving the direction.
- (7) The Secretary of State may vary or revoke a direction given under subsection (2) or (3).
- (8) If the Secretary of State varies or revokes a direction given under subsection (3), OFCOM may, in consequence, vary or revoke a public statement notice that they have given by virtue of the direction.
- (9) In subsection (2) “media literacy functions” means OFCOM’s functions under section 11 of the Communications Act (duties to promote media literacy), so far as functions under that section relate to regulated services.
- (10) In subsections (2) and (3) “specified” means specified in a direction under this section.

Guidance

176 Secretary of State's guidance

- (1) The Secretary of State may issue guidance to OFCOM about—
 - (a) OFCOM's exercise of their functions under this Act,
 - (b) OFCOM's exercise of their powers under section 1(3) of the Communications Act (functions and general powers of OFCOM) to carry out research in connection with online safety matters or to arrange for others to carry out research in connection with such matters, and
 - (c) OFCOM's exercise of their functions under section 11 of the Communications Act (media literacy) in relation to regulated services.
- (2) In the rest of this section, "the guidance" means any such guidance as is mentioned in subsection (1), except that it does not include guidance under section 87 (guidance to OFCOM about fees).
- (3) The Secretary of State must consult OFCOM before issuing, revising or replacing the guidance.
- (4) The guidance may not be revised or replaced more frequently than once every three years unless—
 - (a) the guidance needs to be corrected because of an amendment, repeal or modification of any provision of this Act or of section 11 of the Communications Act, or
 - (b) the revision or replacement is by agreement between the Secretary of State and OFCOM.
- (5) The guidance must be issued as one document.
- (6) The Secretary of State must lay the guidance (including revised or replacement guidance) before Parliament.
- (7) The Secretary of State must publish the guidance (and any revised or replacement guidance).
- (8) In exercising any functions to which the guidance relates, or deciding whether to exercise them, OFCOM must have regard to the guidance for the time being published under this section.

Annual report

177 Annual report on the Secretary of State's functions

In section 390 of the Communications Act (annual report on the Secretary of State's functions), in subsection (2), after paragraph (e) insert—

“(f) the Online Safety Act 2023.”

Review

178 Review

- (1) The Secretary of State must review the operation of—

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

- (a) the regulatory framework provided for in this Act, and
 - (b) section 11 of the Communications Act, to the extent that that section relates to regulated services.
- (2) The review—
 - (a) must not be carried out before the end of the period of two years beginning with the day on which the last of the provisions of Part 3 comes into force, but
 - (b) must be carried out before the end of the period of five years beginning with that day.
- (3) The review must, in particular, consider how effective the regulatory framework provided for in this Act is at—
 - (a) securing that regulated services are operated using systems and processes that, so far as relevant—
 - (i) minimise the risk of harm to individuals in the United Kingdom presented by content on regulated services,
 - (ii) provide higher levels of protection for children than for adults,
 - (iii) provide transparency and accountability to users in relation to actions taken to comply with duties set out in Chapter 2, 3, 4 or 5 of Part 3, Chapter 1, 3 or 4 of Part 4, or Part 5,
 - (iv) protect the right of users and (in the case of search services or combined services) interested persons to freedom of expression within the law, and
 - (v) protect users from a breach of any statutory provision or rule of law concerning privacy that is relevant to the use or operation of a regulated service (including, but not limited to, any such provision or rule concerning the processing of personal data); and
 - (b) ensuring that regulation of services is proportionate, having regard to the level of risk of harm presented by regulated services of different kinds and to the size and capacity of providers.
- (4) The review must also, in particular, consider—
 - (a) the effectiveness of—
 - (i) the information gathering and information sharing powers available to OFCOM, and
 - (ii) the enforcement powers available to OFCOM; and
 - (b) the extent to which OFCOM have had regard to the desirability of encouraging innovation by providers of regulated services.
- (5) In carrying out the review, the Secretary of State must consult—
 - (a) OFCOM, and
 - (b) such other persons as the Secretary of State considers appropriate.
- (6) In carrying out the review, the Secretary of State must take into account any report published by OFCOM under section 158 (reports about news publisher content and journalistic content).
- (7) The Secretary of State must produce and publish a report on the outcome of the review.
- (8) The report must be laid before Parliament.
- (9) In subsection (3) “content on regulated services” means—

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- (a) regulated user-generated content present on regulated services,
- (b) search content of regulated services,
- (c) fraudulent advertisements present on regulated services, and
- (d) regulated provider pornographic content published or displayed on regulated services.

(10) In subsection (9)—

“fraudulent advertisement” has the meaning given by section 38 or 39 (depending on the kind of service in question);

“regulated user-generated content” has the same meaning as in Part 3 (see section 55);

“regulated provider pornographic content” and “published or displayed” have the same meaning as in Part 5 (see section 79);

“search content” has the same meaning as in Part 3 (see section 57).