



Online Safety Act 2023

2023 CHAPTER 50

PART 3

PROVIDERS OF REGULATED USER-TO-USER SERVICES AND REGULATED SEARCH SERVICES: DUTIES OF CARE

CHAPTER 5

DUTIES ABOUT FRAUDULENT ADVERTISING

38 Duties about fraudulent advertising: Category 1 services

- (1) A provider of a Category 1 service must operate the service using proportionate systems and processes designed to—
 - (a) prevent individuals from encountering content consisting of fraudulent advertisements by means of the service;
 - (b) minimise the length of time for which any such content is present;
 - (c) where the provider is alerted by a person to the presence of such content, or becomes aware of it in any other way, swiftly take down such content.
- (2) A provider of a Category 1 service must include clear and accessible provisions in the terms of service giving information about any proactive technology used by the service for the purpose of compliance with the duty set out in subsection (1) (including the kind of technology, when it is used, and how it works).
- (3) In relation to a Category 1 service, an advertisement is a “fraudulent advertisement” if—
 - (a) it is a paid-for advertisement (see section 236),
 - (b) it amounts to an offence specified in section 40 (construed in accordance with section 59: see subsections (3), (11) and (12) of that section), and
 - (c) it is not regulated user-generated content (see section 55) in relation to the service.

Status: Point in time view as at 10/01/2024.

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- (4) If a person is the provider of more than one Category 1 service, the duties set out in this section apply in relation to each such service.
- (5) In determining what is proportionate for the purposes of this section, the following factors, in particular, are relevant—
 - (a) the nature, and severity, of potential harm to individuals presented by different kinds of fraudulent advertisement, and
 - (b) the degree of control a provider has in relation to the placement of advertisements on the service.
- (6) In the case of a Category 1 service which is a combined service, the duties set out in this section do not extend to—
 - (a) fraudulent advertisements that may be encountered in search results of the service or, following a search request, as a result of subsequent interactions with internet services, or
 - (b) anything relating to the design, operation or use of the search engine.

But if the service is also a Category 2A service, the duties set out in section 39 apply as well as the duties set out in this section.
- (7) The duties set out in this section extend only to the design, operation and use of a Category 1 service in the United Kingdom.
- (8) For the meaning of “Category 1 service”, see section 95 (register of categories of services).

Commencement Information

- I1** S. 38 not in force at Royal Assent, see [s. 240\(1\)](#)
I2 S. 38 in force at 10.1.2024 by [S.I. 2023/1420](#), [reg. 2\(l\)](#)

39 Duties about fraudulent advertising: Category 2A services

- (1) A provider of a Category 2A service must operate the service using proportionate systems and processes designed to—
 - (a) prevent individuals from encountering content consisting of fraudulent advertisements in or via search results of the service;
 - (b) if any such content may be encountered in or via search results of the service, minimise the length of time that that is the case;
 - (c) where the provider is alerted by a person to the fact that such content may be so encountered, or becomes aware of that fact in any other way, swiftly ensure that individuals are no longer able to encounter such content in or via search results of the service.
- (2) A provider of a Category 2A service must include clear and accessible provisions in a publicly available statement giving information about any proactive technology used by the service for the purpose of compliance with the duty set out in subsection (1) (including the kind of technology, when it is used, and how it works).
- (3) In relation to a Category 2A service, an advertisement is a “fraudulent advertisement” if—
 - (a) it is a paid-for advertisement (see section 236), and

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- (b) it amounts to an offence specified in section 40 (construed in accordance with section 59: see subsections (3), (11) and (12) of that section).
- (4) The references to encountering fraudulent advertisements “in or via search results” of a search service—
 - (a) are references to encountering fraudulent advertisements—
 - (i) in search results of the service, or
 - (ii) as a result of interacting with a paid-for advertisement in search results of the service (for example, by clicking on it);
 - (b) do not include references to encountering fraudulent advertisements as a result of any subsequent interactions with an internet service other than the search service.
- (5) If a person is the provider of more than one Category 2A service, the duties set out in this section apply in relation to each such service.
- (6) In determining what is proportionate for the purposes of this section, the following factors, in particular, are relevant—
 - (a) the nature, and severity, of potential harm to individuals presented by different kinds of fraudulent advertisement, and
 - (b) the degree of control a provider has in relation to the placement of advertisements on the service.
- (7) The duties set out in this section extend only to the design, operation and use of a Category 2A service in the United Kingdom.
- (8) For the meaning of “Category 2A service”, see section 95 (register of categories of services).

Commencement Information

I3 S. 39 not in force at Royal Assent, see **s. 240(1)**

I4 S. 39 in force at 10.1.2024 by **S.I. 2023/1420, reg. 2(1)**

40 Fraud etc offences

- (1) This section specifies offences for the purposes of this Chapter (see sections 38(3)(b) and 39(3)(b)).
- (2) An offence under any of the following provisions of the Financial Services and Markets Act 2000—
 - (a) section 23 (contravention of prohibition on carrying on regulated activity unless authorised or exempt);
 - (b) section 24 (false claims to be authorised or exempt);
 - (c) section 25 (contravention of restrictions on financial promotion).
- (3) An offence under any of the following provisions of the Fraud Act 2006—
 - (a) section 2 (fraud by false representation);
 - (b) section 4 (fraud by abuse of position);
 - (c) section 7 (making or supplying articles for use in frauds);
 - (d) section 9 (participating in fraudulent business carried on by sole trader etc).

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- (4) An offence under any of the following provisions of the Financial Services Act 2012—
 - (a) section 89 (misleading statements);
 - (b) section 90 (misleading impressions).
- (5) An offence of attempting or conspiring to commit an offence specified in subsection (2), (3) or (4).
- (6) An offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting) in relation to an offence specified in subsection (2), (3) or (4), or (in Scotland) inciting a person to commit such an offence.
- (7) An offence of aiding, abetting, counselling or procuring the commission of an offence specified in subsection (2), (3) or (4), or (in Scotland) being involved art and part in the commission of such an offence.

Commencement Information

- I5** S. 40 not in force at Royal Assent, see [s. 240\(1\)](#)
- I6** S. 40 in force at 10.1.2024 by [S.I. 2023/1420](#), [reg. 2\(I\)](#)

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