



Online Safety Act 2023

2023 CHAPTER 50

PART 11

SUPPLEMENTARY AND GENERAL

Offences

199 Information offences: supplementary

- (1) Proceedings against a person for an offence under section 109(1) or paragraph 18(1)(b) of Schedule 12 may be brought only if—
 - (a) OFCOM have given the person a provisional notice of contravention in respect of the failure to comply with the requirements of an information notice or the requirements imposed by a person acting under Schedule 12 (as the case may be),
 - (b) OFCOM have given the person a confirmation decision in respect of that failure imposing requirements of a kind described in section 133(1) and the time allowed for compliance with the decision has expired without those requirements having been complied with,
 - (c) OFCOM have not imposed a penalty on the person in respect of that failure,
 - (d) a service restriction order under section 144 has not been made in relation to a regulated service provided by the person in respect of that failure, and
 - (e) an access restriction order under section 146 has not been made in relation to a regulated service provided by the person in respect of that failure.
- (2) Proceedings for an offence under section 110(2) (failure by named senior manager to prevent offence under section 109(1)) may be brought only if the conditions in subsection (1) are met in respect of the offence under section 109(1).
- (3) Where a penalty has been imposed on a person in respect of an act or omission constituting an offence under section 69 or 109 or paragraph 18 of Schedule 12, no proceedings may be brought against the person for that offence.

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- (4) Where a penalty has been imposed on an entity in respect of an act or omission constituting an offence under section 109, no proceedings for an offence under section 110 may be brought against an individual in respect of a failure to prevent that offence.
- (5) A penalty may not be imposed on a person in respect of an act or omission constituting an offence under section 69 or 109 or paragraph 18 of Schedule 12 if—
 - (a) proceedings for the offence have been brought against the person but have not been concluded, or
 - (b) the person has been convicted of the offence.
- (6) In this section “penalty” means a penalty imposed by—
 - (a) a confirmation decision (see sections 132(5)(b) and 137), or
 - (b) a penalty notice under section 139.

200 Offence of failure to comply with confirmation decision: supplementary

- (1) Where a penalty has been imposed on a person by a penalty notice under section 139 in respect of a failure constituting an offence under section 138 (failure to comply with certain requirements of a confirmation decision), no proceedings may be brought against the person for that offence.
- (2) A penalty may not be imposed on a person by a penalty notice under section 139 in respect of a failure constituting an offence under section 138 if—
 - (a) proceedings for the offence have been brought against the person but have not been concluded, or
 - (b) the person has been convicted of the offence.
- (3) Where a service restriction order under section 144 or an access restriction order under section 146 has been made in relation to a regulated service provided by a person in respect of a failure constituting an offence under section 138, no proceedings may be brought against the person for that offence.

201 Defences

- (1) Subsection (2) applies where a person relies on a defence under section 109 or 110.
- (2) If evidence is adduced which is sufficient to raise an issue with respect to the defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

202 Liability of corporate officers for offences

- (1) In this section a “relevant entity” means an entity that is—
 - (a) the provider of a regulated service, and
 - (b) a legal person under the law under which it is formed.
- (2) If an offence is committed by a relevant entity and it is proved that the offence—
 - (a) has been committed with the consent or connivance of an officer of the entity, or
 - (b) is attributable to any neglect on the part of an officer of the entity,

the officer (as well as the entity) commits the offence and (subject to section 199(1)) is liable to be proceeded against and punished accordingly.

- (3) In relation to an entity which is a body corporate, “officer” means—
- (a) a director, manager, associate, secretary or other similar officer, or
 - (b) a person purporting to act in any such capacity.

In paragraph (a) “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

- (4) In relation to a partnership which is not regarded as a body corporate under the law under which it is formed, “officer” means—
- (a) a partner, or
 - (b) a person purporting to act as a partner.

- (5) In this section—

“body corporate” includes an entity incorporated outside the United Kingdom;

“offence” means an offence under this Act, except under Part 10.

203 Application of offences to providers that are not legal persons

- (1) In this section a “relevant entity” means an entity that—
- (a) is the provider of a regulated service, and
 - (b) is not a legal person under the law under which it is formed.
- (2) Proceedings for an offence alleged to have been committed by a relevant entity must be brought against the entity in its own name (and not in that of any of its officers or members).
- (3) For the purposes of such proceedings—
- (a) rules of court relating to the service of documents have effect as if the entity were a body corporate; and
 - (b) the following provisions apply as they apply in relation to a body corporate—
 - (i) section 33 of the Criminal Justice Act 1925 and Schedule 3 to the Magistrates’ Courts Act 1980;
 - (ii) section 18 of the [Criminal Justice Act \(Northern Ireland\) 1945 \(c. 15 \(N.I.\)\)](#) and Article 166 of, and Schedule 4 to, the Magistrates’ Courts (Northern Ireland) Order 1981 ([S.I. 1981/1675 \(N.I. 26\)](#)).
- (4) A fine imposed on a relevant entity on its conviction of an offence must be paid out of the entity’s funds.
- (5) If an offence is committed by a relevant entity and it is proved that the offence—
- (a) has been committed with the consent or connivance of an officer of the entity, or
 - (b) is attributable to any neglect on the part of an officer of the entity,
- the officer (as well as the entity) commits the offence and (subject to section 199(1)) is liable to be proceeded against and punished accordingly.
- (6) In relation to a partnership, “officer” means—
- (a) a partner, or

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- (b) a person purporting to act as a partner.
- (7) In relation to a relevant entity other than a partnership, “officer” means—
- (a) an officer of the entity or a person concerned in the management or control of the entity, or
 - (b) a person purporting to act in such a capacity.
- (8) Subsection (2) is not to be read as prejudicing any liability of an officer under subsection (5).
- (9) In this section “offence” means an offence under this Act, except under Part 10.