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Online Safety Act 2023

2023 CHAPTER 50

PART 11

SUPPLEMENTARY AND GENERAL

Other powers to amend Act

VALID FROM 10/01/2024

218 Power to amend section 40

(1) The Secretary of State may by regulations amend section 40 (fraud etc offences).

But the power to add an offence to that section is limited by subsections (2) and (3).

(2) An offence may be added to section 40 only if the Secretary of State considers it appropriate to do so because of—

- (a) the prevalence on Category 1 services of content (other than regulated user-generated content) consisting of paid-for advertisements that amount to that offence, or the prevalence in or via search results of Category 2A services of paid-for advertisements that amount to that offence,
- (b) the risk of harm to individuals in the United Kingdom presented by such advertisements, and
- (c) the severity of that harm.

(3) An offence may not be added to section 40 if—

- (a) the offence concerns—
 - (i) the infringement of intellectual property rights,
 - (ii) the safety or quality of goods (as opposed to what kind of goods they are), or
 - (iii) the performance of a service by a person not qualified to perform it; or

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(b) it is an offence under the Consumer Protection from Unfair Trading Regulations 2008 (S.I. 2008/1277).

(4) In this section—

- (a) “regulated user-generated content” has the same meaning as in Part 3 (see section 55);
- (b) the words “in or via search results” are to be construed in accordance with section 39;
- (c) references to advertisements that amount to an offence are to be construed in accordance with section 59 (see subsections (3), (11) and (12) of that section).

Commencement Information

II S. 218 not in force at Royal Assent, see s. 240(1)

219 Powers to amend sections 61 and 62

- (1) The Secretary of State may by regulations amend—
 - (a) section 61 (primary priority content that is harmful to children);
 - (b) section 62 (priority content that is harmful to children).

But the power to add a kind of content is limited by subsections (2) to (4).
- (2) A kind of content may be added to section 61 only if the Secretary of State considers that, in relation to Part 3 services—
 - (a) there is a material risk of significant harm to an appreciable number of children presented by content of that kind that is regulated user-generated content or search content, and
 - (b) it is appropriate for the duties set out in sections 12(3)(a) and 29(3)(a) (duty in relation to children of all ages) to apply in relation to content of that kind.
- (3) A kind of content may be added to section 62 only if the Secretary of State considers that, in relation to Part 3 services, there is a material risk of significant harm to an appreciable number of children presented by content of that kind that is regulated user-generated content or search content.
- (4) A kind of content may not be added to section 61 or 62 if the risk of harm presented by content of that kind flows from—
 - (a) the content’s potential financial impact,
 - (b) the safety or quality of goods featured in the content, or
 - (c) the way in which a service featured in the content may be performed (for example, in the case of the performance of a service by a person not qualified to perform it).
- (5) The Secretary of State must consult OFCOM before making regulations under this section.
- (6) In this section references to children are to children in the United Kingdom.
- (7) In this section—

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

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

Commencement Information

I2 S. 219 in force at Royal Assent, see [s. 240\(z3\)](#)

VALID FROM 10/01/2024

220 Powers to amend or repeal provisions relating to exempt content or services

- (1) The Secretary of State may by regulations—
 - (a) amend section 55(5), or
 - (b) repeal section 55(2)(d) and (5), and make a consequential amendment of sections 3(6), 5(2)(a) and 55(2)(f),
if the Secretary of State considers that it is appropriate to do so because of the risk of harm to individuals in the United Kingdom presented by one-to-one live aural communications.
- (2) Subject to subsection (3), the Secretary of State may by regulations amend section 55(2)(e), (6) or (7) if the Secretary of State considers that it is appropriate to do so because of the risk of harm to individuals in the United Kingdom presented by comments and reviews on provider content.
- (3) Regulations under subsection (2) may not have the effect that comments and reviews on provider content present on a service of which the provider is a recognised news publisher become regulated user-generated content within the meaning of Part 3.
- (4) The Secretary of State may by regulations amend Part 1 of Schedule 1 to provide for a further description of user-to-user service or search service to be exempt, if the Secretary of State considers that the risk of harm to individuals in the United Kingdom presented by a service of that description is low.
- (5) Regulations under subsection (4) may amend sections 3, 5 and 55 and Schedule 2 in connection with the amendment of Part 1 of Schedule 1.
- (6) The Secretary of State may by regulations amend Schedule 9 to provide for a further description of internet service to be included, if the Secretary of State considers that the risk of harm to children in the United Kingdom presented by regulated provider pornographic content published or displayed on a service of that description is low.
- (7) If the condition in subsection (8) is met, the Secretary of State may by regulations amend or repeal either of the following—
 - (a) paragraph 3 of Schedule 1 (services offering only one-to-one live aural communications);
 - (b) any provision of that Schedule added in exercise of the power conferred by subsection (4).
- (8) The condition is that the Secretary of State considers that it is appropriate to amend or repeal the provision in question (as the case may be) because of the risk of harm

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to individuals in the United Kingdom presented by a service of the description in question.

- (9) Subject to subsection (10), the Secretary of State may by regulations amend paragraph 4 of Schedule 1 (limited functionality services) if the Secretary of State considers that it is appropriate because of the risk of harm to individuals in the United Kingdom presented by a service described in that paragraph.
- (10) Regulations under subsection (9) may not have the effect that a service described in paragraph 4 of Schedule 1 of which the provider is a recognised news publisher is no longer exempt under that paragraph.
- (11) Regulations under subsection (7) may amend or repeal a provision of Schedule 2 in connection with the amendment or repeal of a provision of Part 1 of Schedule 1.
- (12) Regulations under subsection (7)(b) may amend or repeal a provision of sections 3, 5 and 55 in connection with the amendment or repeal of a provision of Part 1 of Schedule 1.
- (13) The Secretary of State may by regulations amend or repeal any provision of Schedule 9 added in exercise of the power conferred by subsection (6), if the Secretary of State considers that it is appropriate to do so because of the risk of harm to children in the United Kingdom presented by regulated provider pornographic content published or displayed on a service of that description.
- (14) In this section—
- “comments and reviews on provider content” and “one-to-one live aural communications” have the meaning given by section 55;
 - “recognised news publisher” has the meaning given by section 56;
 - “regulated provider pornographic content” and “published or displayed” have the same meaning as in Part 5 (see section 79).

Commencement Information

I3 S. 220 not in force at Royal Assent, see [s. 240\(1\)](#)

221 Powers to amend Part 2 of Schedule 1

England

- (1) The Secretary of State may by regulations amend the part of the list in Part 2 of Schedule 1 which relates to England—
- (a) if there has been an amendment or repeal of legislation, or of a provision of legislation, by reference to which a description of education or childcare is framed;
 - (b) to add a further description of education or childcare, if the Secretary of State considers that it is appropriate to do so because of the application of enactments other than this Act, or guidance or requirements (however referred to) produced under enactments other than this Act, to persons providing education or childcare of that description;
 - (c) to omit a description of education or childcare, if the Secretary of State considers that it is appropriate to do so because of the risk of harm to

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individuals in England presented by services provided by persons providing education or childcare of that description which are provided for the purposes of such education or childcare (other than a service described in paragraph 7 of Schedule 1).

- (2) In subsection (1)(b), “enactment” includes an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978).

Scotland

- (3) The Scottish Ministers may by regulations amend the part of the list in Part 2 of Schedule 1 which relates to Scotland—
- (a) if there has been an amendment or repeal of legislation, or of a provision of legislation, by reference to which a description of education or childcare is framed;
 - (b) to add a further description of education or childcare, if the Scottish Ministers consider that it is appropriate to do so because of the application of enactments other than this Act, or guidance or requirements (however referred to) produced under enactments other than this Act, to persons providing education or childcare of that description;
 - (c) to omit a description of education or childcare, if the Scottish Ministers consider that it is appropriate to do so because of the risk of harm to individuals in Scotland presented by services provided by persons providing education or childcare of that description which are provided for the purposes of such education or childcare (other than a service described in paragraph 7 of Schedule 1).
- (4) In subsection (3)(b), “enactment” includes an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament.

Wales

- (5) The Welsh Ministers may by regulations made by statutory instrument amend the part of the list in Part 2 of Schedule 1 which relates to Wales—
- (a) if there has been an amendment or repeal of legislation, or of a provision of legislation, by reference to which a description of education or childcare is framed;
 - (b) to add a further description of education or childcare, if the Welsh Ministers consider that it is appropriate to do so because of the application of enactments other than this Act, or guidance or requirements (however referred to) produced under enactments other than this Act, to persons providing education or childcare of that description;
 - (c) to omit a description of education or childcare, if the Welsh Ministers consider that it is appropriate to do so because of the risk of harm to individuals in Wales presented by services provided by persons providing education or childcare of that description which are provided for the purposes of such education or childcare (other than a service described in paragraph 7 of Schedule 1).
- (6) In subsection (5)(b), “enactment” includes an enactment contained in, or in an instrument made under, a Measure or Act of Senedd Cymru.

Northern Ireland

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- (7) The relevant Department may by regulations amend the part of the list in Part 2 of Schedule 1 which relates to Northern Ireland—
- (a) if there has been an amendment or repeal of legislation, or of a provision of legislation, by reference to which a description of education or childcare is framed;
 - (b) to add a further description of education or childcare, if the relevant Department considers that it is appropriate to do so because of the application of enactments other than this Act, or guidance or requirements (however referred to) produced under enactments other than this Act, to persons providing education or childcare of that description;
 - (c) to omit a description of education or childcare, if the relevant Department considers that it is appropriate to do so because of the risk of harm to individuals in Northern Ireland presented by services provided by persons providing education or childcare of that description which are provided for the purposes of such education or childcare (other than a service described in paragraph 7 of Schedule 1).
- (8) In subsection (7), “the relevant Department” means—
- (a) where the amendment relates to childcare, primary education or secondary education, the Department of Education in Northern Ireland;
 - (b) where the amendment relates to further education or higher education, the Department for the Economy in Northern Ireland with the concurrence of the Department of Agriculture, Environment and Rural Affairs in Northern Ireland, or the Department of Agriculture, Environment and Rural Affairs in Northern Ireland with the concurrence of the Department for the Economy in Northern Ireland;
 - (c) where the amendment relates to education in agriculture and related subjects, the Department of Agriculture, Environment and Rural Affairs in Northern Ireland.
- (9) In subsection (7)(b), “enactment” includes an enactment contained in, or in an instrument made under, Northern Ireland legislation.

Interpretation

- (10) In this section, the following terms have the same meaning as in Schedule 1—
- “childcare”;
 - “education”;
 - “education in agriculture and related subjects”;
 - “further education”;
 - “higher education”;
 - “primary education”;
 - “secondary education”.

Commencement Information

I4 S. 221 in force at Royal Assent, see [s. 240\(z4\)](#)

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222 Powers to amend Schedules 5, 6 and 7

- (1) The Secretary of State may by regulations amend—
 - (a) Schedule 5 (terrorism offences);
 - (b) Part 1 of Schedule 6 (child sexual exploitation and abuse offences).
- (2) The Scottish Ministers may by regulations amend Part 2 of Schedule 6.
- (3) The Secretary of State may by regulations amend Schedule 7 (priority offences).

But an offence may be added to that Schedule only on the grounds in subsection (4) or (5), and subsection (6) limits the power to add an offence.
- (4) The first ground for adding an offence to Schedule 7 is that the Secretary of State considers it appropriate to do so because of—
 - (a) the prevalence on regulated user-to-user services of regulated user-generated content that amounts to that offence, or the prevalence on regulated search services and combined services of search content that amounts to that offence,
 - (b) the risk of harm to individuals in the United Kingdom presented by regulated user-generated content or search content that amounts to that offence, and
 - (c) the severity of that harm.
- (5) The second ground for adding an offence to Schedule 7 is that the Secretary of State considers it appropriate to do so because of—
 - (a) the prevalence of the use of regulated user-to-user services for the commission or facilitation of that offence,
 - (b) the risk of harm to individuals in the United Kingdom presented by the use of such services for the commission or facilitation of that offence, and
 - (c) the severity of that harm.
- (6) An offence may not be added to Schedule 7 if—
 - (a) the offence concerns—
 - (i) the infringement of intellectual property rights,
 - (ii) the safety or quality of goods (as opposed to what kind of goods they are), or
 - (iii) the performance of a service by a person not qualified to perform it; or
 - (b) it is an offence under the Consumer Protection from Unfair Trading Regulations 2008 ([S.I. 2008/1277](#)).
- (7) The Secretary of State must consult the Scottish Ministers before making regulations under subsection (3) which—
 - (a) add an offence that extends only to Scotland, or
 - (b) amend or remove an entry specifying an offence that extends only to Scotland.
- (8) The Secretary of State must consult the Department of Justice in Northern Ireland before making regulations under subsection (3) which—
 - (a) add an offence that extends only to Northern Ireland, or
 - (b) amend or remove an entry specifying an offence that extends only to Northern Ireland.
- (9) In this section—
 - (a) “regulated user-generated content” has the same meaning as in Part 3 (see section 55);

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- (b) “search content” has the same meaning as in Part 3 (see section 57);
- (c) references to content that amounts to an offence are to be construed in accordance with section 59 (see subsections (3), (11) and (12) of that section).

Commencement Information

I5 S. 222 in force at Royal Assent, see [s. 240\(z4\)](#)

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