

## **Child protection cannot wait**

### **Why the Government must implement compulsory age verification checks for pornography websites now**

A briefing for Parliamentarians

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#### **Summary**

In 2017, Parliament approved the Government's plan to require pornography websites to implement age verification checks. Part 3 of the Digital Economy Act provides for a robust regulatory framework that prevents commercial websites from making pornography available to anyone under the age of 18. This vital child protection measure was backed by the NSPCC, Barnardo's, The Children's Society and the British Board of Film Classification. Yet three years on, the Government has still not implemented these age verification controls.

Commercial pornography websites are continuing to allow, and profit from, the use of their sites by children – with deeply harmful consequences. The Government already has the powers and mechanism to prevent this. Child protection cannot wait. The Government must implement legislation mandating age verification checks for pornography websites now.

## About age verification: A Parliament-approved child protection system ready to be implemented

### - Parliament-approved legislation

On 27<sup>th</sup> April 2017 the Digital Economy Act received Royal Assent<sup>1</sup>. Part 3 of the Digital Economy Act enables the Secretary of State to prohibit pornography websites from making their content available to anyone under the age of 18. The Act sets out a regulatory and enforcement framework that applies to any commercial pornographic website accessed by a UK user.

The key provision in Part 3 of the Digital Economy Act is section 14(1), which states that: “A person contravenes this subsection if the person makes pornographic material available on the internet to persons in the United Kingdom on a commercial basis other than in a way that secures that, at any given time, the material is not normally accessible by persons under the age of 18”<sup>2</sup>.

### - A vital child protection system

The age verification mechanisms contained in the Digital Economy Act represent a vital child protection system. The Act stipulates that before allowing an individual to access their pornographic content, a commercial pornography website must first verify that the user is 18 years old or above. Included in the Digital Economy Act are mechanisms for regulating pornographic websites and penalising those that do not comply with the law:

- Regulator: the British Board of Film Classification (BBFC) was designated as the Age-verification Regulator in February 2018<sup>3</sup>.
- Enforcement mechanisms: Pornography websites that fail to implement age verification controls can be fined, have services that enable their operations – such as payments to the websites – withdrawn, and be blocked to UK users<sup>4</sup>.

### - Fills the online regulation gap

Offline, it is illegal to supply pornographic videos, DVDs and cinema screenings to anyone under the age of 18<sup>i</sup>. Hard copy videos and video games containing ‘strong sexual content’ and rated R18<sup>ii</sup> by the BBFC can only be supplied in a licensed sex shop<sup>5</sup>, and R18 content is prohibited altogether on linear TV<sup>6</sup>. Yet it is currently legal to supply that same pornographic content to children via a website. Enacted, Part 3 of then Digital Economy Act fills this regulation gap, extending existing offline controls to the online realm.

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<sup>i</sup> Hard copy videos are subject to a mandatory classification regime by the BBFC under the Video Recordings Act, while cinema screenings are subject to a similar regime by the BBFC under the Licensing Act 2003. Where content is classified by the BBFC as only suitable for those aged 18 or over, it is a criminal offence to supply the content in breach of this classification.

<sup>ii</sup> The R18 category is “primarily for explicit works of consenting sex or strong fetish material involving adults” – BBFC [Classification Guidelines](#). R18 films can only be shown to adults in specially licensed cinemas, and R18 videos can only be supplied to adults in licensed sex shops. R18 videos cannot be supplied by mail order.

### **- Consistent with controls on other age-restricted activities**

It is already illegal for gambling websites to allow anyone under the age of 18 to use their services<sup>7</sup>. Accordingly, online gambling operators are required to have robust age verification controls in place. Age verification checks are also used to prevent children buying age-restricted goods online<sup>8</sup>, such as tobacco and alcohol. Part 3 of the Digital Economy Act brings the regulation of commercial pornography websites in line with that of gambling websites and other age-restricted online sales and activities.

### **- Widely supported**

There is wide support for age verification controls on pornography websites. 88% of UK parents with children aged 7-17 agree that there should be robust age-verification controls in place to stop children seeing pornography online<sup>9</sup>. Age verification controls are also backed by leading children's charities, including the NSPCC<sup>10</sup>, Barnardo's<sup>11</sup>, The Children's Society<sup>12</sup> and the Children's Charities Coalition on Internet Safety<sup>13</sup> (whose members include Action for Children, Children England and the National Children's Bureau).

## **Protection stalled**

On 16<sup>th</sup> October 2019, the Secretary of State for the Department for Digital, Culture, Media and Sport announced in a written statement to Parliament that the Government "*will not be commencing Part 3 of the Digital Economy Act 2017 concerning age verification for online pornography.*"<sup>14</sup> This is despite the age verification system being ready to implement<sup>15</sup>.

## **Online Harms White Paper**

When announcing that Part 3 of the Digital Economy Act 2017 would not be commenced, the Secretary of State wrote, "*The Digital Economy Act objectives will therefore be delivered through our proposed online harms regulatory regime.*"<sup>16</sup>

However, the Government has since stated in its response to the Online Harms White Paper consultation on 12<sup>th</sup> February 2020 that the proposed online harms legislation "*will only apply to companies that provide services or use functionality on their websites which facilitate the sharing of user generated content or user interactions*"<sup>17</sup>. This was confirmed by the Minister for Digital and Culture on 21<sup>st</sup> July 2020<sup>18</sup>. Therefore, **the proposed online harms legislation will not apply to all commercial pornography websites**, only those which facilitate the sharing of user generated content or user interactions. Moreover, functionalities enabling the sharing of user generated content or interactions can be removed from a website – therein exempting a pornographic website from the Government's online harms legislation.

Furthermore, **the Online Harms White Paper does not propose mandatory age verification even for commercial pornography websites that facilitate the sharing of user generated content or user interactions.** The Government stated in its response to the Online Harms White Paper consultation (with underline emphasis added):

*“Under our proposals we expect companies to use a proportionate range of tools including age assurance, and age verification technologies to prevent children from accessing age-inappropriate content and to protect them from other harms.” ...*

*“Companies would be able to use a number of methods to protect children, including possibly - but not necessarily - age assurance tools, which we expect will continue to play a key role in keeping children safe online”.<sup>19</sup>*

Yet Part 3 of the Digital Economy Act 2017 was required precisely because pornography websites were failing expectations to prevent children from accessing their content, and compulsory age verification specifically - with an associated enforcement regime – was necessary to deliver child protection.

**The proposed online harms legislation provides an opportunity to expand online child protection measures – not to scrap an indispensable measure that has already been agreed by Parliament.**

## **Why age verification on pornography websites cannot wait**

➤ **Children are accessing and being exposed to online pornography on an alarming scale.**

- Government analysis of statistics from 2015 revealed that in a single month, 1.4 million children visited pornographic websites from their desktop<sup>20</sup>. Approximately half (732,000) of these children were aged between 6-14 years old. This equates to 13% of 6-14-year-old children online having visited a pornographic website in just one month.
- British Board of Film Classification (BBFC) research found:
  - 51% of children aged 11-13 reported they had seen pornography at some point<sup>21</sup>.
  - Over half (55%) of 11- to 13-year-olds who have seen online pornography said they had only ever seen online pornography by accident. 63% of 11- to 13-year-olds who had seen pornography reported that their first exposure had been unintentional.
  - 46% of 14- to 15-year-olds, and 40% of 16- to 17-year-olds who have seen online pornography said it had only ever come up by accident<sup>22</sup>.

- Research by ATVOD<sup>23</sup> revealed:
  - 44,000 primary school age children (6-11 years old) visited a pornographic website from a PC or laptop<sup>iii</sup> in December 2013.
  - 1 in 20 of all UK visitors to a pornographic website in December 2013 was under the age of 18.
  - A single pornographic website – Pornhub.com – was visited by 112,000 UK boys aged between 12-17 years old in December 2013 via a PC or laptop. As ATVOD point out, *“Pornhub.com provides instant, free and unrestricted access to thousands of hardcore pornographic videos featuring explicit images of real sex.”*<sup>24</sup>
  - Research commissioned by NSPCC and the Children’s Commissioner found that 65% of 15-16 year olds report having seen online pornography<sup>25</sup>.

➤ **The most popular pornography sites provide instant, free access to violent, hardcore pornography.**

- Research by ATVOD found that 23 of the top 25 pornography websites visited by individuals in the UK provide instant, free and unrestricted access to hardcore pornographic videos and images. ATVOD confirm: *“The videos were equivalent to, or stronger than, those passed R18 by the British Board of Film Classification for DVD release. R18 DVDs can only be sold to adults who visit a licensed sex shop, yet the websites made equivalent (and stronger) material available to any visitor, of any age.”*<sup>26</sup>
- The Department for Culture, Media and Sport confirm that many pornography websites feature content that would be refused classification under BBFC Guidelines and may be in breach of the Obscene Publications Act 1959, including *“content that depicts, for example, abuse or rape, including sex between purported family members, scenarios involving non-consensual activity, actors presented to appear under the age of consent, and aggressive and violent sex.”*<sup>27</sup>
- A content analysis of top selling pornography films found 88% of scenes featured physical aggression such as gagging, slapping, hair pulling and choking. 94% of all the physical and verbal aggression was directed at women. The analysis also revealed that 95% of performers were portrayed as responding with either neutral or pleasurable expressions when aggressed against<sup>28</sup>.

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<sup>iii</sup> ATVOD note: *“for technical reasons, the research measures only online activity through a PC or laptop and excludes access through a smartphone, tablet or other device: the results are therefore likely to underestimate significantly the number of underage visits.”* Source: [https://www.basw.co.uk/system/files/resources/basw\\_35413-10\\_0.pdf](https://www.basw.co.uk/system/files/resources/basw_35413-10_0.pdf)

- The UK's biggest open access pornography website, Pornhub (owned by Mindgeek), allows any individual to anonymously upload pornographic footage to the site. Pornhub has been found hosting videos of rape and sexual abuse<sup>29</sup>.

➤ **Viewing online pornography can have a deeply harmful impact on children.**

- A survey by the Institute for Public Policy Research found 70% of 18-year-olds felt that pornography can have a damaging impact on young people's views of sex and relationships<sup>30</sup>.
- A poll by NSPCC's Childline of 12-13-year-olds found one in five had seen pornographic images that had shocked or upset them<sup>31</sup>.
- British Board of Film Classification (BBFC) research found that 29% of children who said that most of the pornography they had seen was intentionally viewed believed that consent wasn't needed if "you knew the person really fancies you". In comparison, only 5% of children whose interaction with pornography had mostly been by accident believed the same<sup>32</sup>.

*"...existing research indicates that pornography, and its proliferation on the internet, is a concern amongst young people, as well as their parents and carers. Longitudinal studies have also established possible links between the viewing of hard-core or violent pornography by younger people and increased sexually aggressive behaviour later in life. ...One controlled longitudinal study found that male adolescents' pornography use predicted their perpetration of sexual harassment two years later."*

**- Department for Culture, Media and Sport, 2016<sup>33</sup>**

*"Adolescent pornography use is associated with stronger beliefs in gender stereotypes, particularly for males. Male adolescents who view pornography frequently are more likely to view women as sex objects and to hold sexist attitudes such as women "leading men on".*

*Pornography may strengthen attitudes supportive of sexual violence and violence against women. There is evidence of an association between consuming pornography and perpetrating sexual harassment for boys.*

*Adolescents who consumed violent pornography were six times more likely to be sexually aggressive compared to those who viewed non-violent pornography or no pornography."*

**- Australian Institute of Family Affairs, Australian Government, 2017<sup>34</sup>**

*“[E]specially among boys and young men who are frequent consumers of pornography, including of more violent materials, consumption intensifies attitudes supportive of sexual coercion and increases their likelihood of perpetrating assault”*

*“A wide range of studies on the effects of pornography have been conducted among young people aged 18 to 25, as well as older populations. Across these, there is consistent and reliable evidence that exposure to pornography is related to male sexual aggression against women.”*

- Dr Michael Flood, QUT, in ‘The Harms of Pornography Exposure Among Children and Young People’<sup>35</sup>

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**Right now the Government is allowing children to have unfettered access to hardcore, violent pornography websites, despite having a Parliament-approved tool to prevent this.**

**Child protection cannot wait.**

**The Government must implement age verification checks for pornography websites now.**

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**About UK Feminista:** UK Feminista supports individuals and organisations to take action for equality between women and men. Our work involves conducting research, supporting schools and training teachers on how to tackle gender inequality among young people: [www.ukfeminista.org.uk](http://www.ukfeminista.org.uk)

**Contact:** For further enquiries contact Kat Banyard, Director of UK Feminista: [kat@ukfeminista.org.uk](mailto:kat@ukfeminista.org.uk)

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