

**EXPLANATORY MEMORANDUM TO THE
DRAFT BRITISH BOARD OF FILM CLASSIFICATION (BBFC) GUIDANCE ON
AGE VERIFICATION ARRANGEMENTS**

2018 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Digital, Culture, Media and Sport (DCMS) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This guidance from the British Board of Film Classification (BBFC), for the purposes of Part 3 of the Digital Economy Act 2017 (“the Act”), sets out the criteria by which the BBFC as the age verification regulator will assess that a person has met with requirements of section 14(1) of the Act, to secure that pornographic material is not normally accessible by children and young people under 18.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The guidance from the BBFC is not a statutory instrument but is subject to the affirmative procedure the first time it is laid as required under section 25(11) of the Act.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 The territorial application of this guidance from the BBFC covers the entire United Kingdom.

4. Extent and Territorial Application

- 4.1 The territorial extent of this guidance is the United Kingdom.
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5. European Convention on Human Rights

- 5.1 The Secretary of State for Digital, Culture, Media and Sport has made the following statement regarding Human Rights:
5.2 “In my view the provisions of the draft *BBFC guidance on age verification arrangements* are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Part 3 of the Act concerns age-verification measures for commercial online pornography. Section 14 (1) of the Act states that a person must not make pornographic material available on the internet on a commercial basis to persons in

the United Kingdom except in a way that secures that, at any given time, the material is not normally accessible by persons under the age of 18.

- 6.2 Section 25 (1)(a) requires the age verification regulator to publish guidance about the types of age verification arrangements that it will treat as complying with the provisions of the Act. The regulator's guidance must be laid before Parliament subject to the affirmative procedure for first exercise of the power and the negative procedure thereafter.
- 6.3 This will be the first time that the guidance will be laid under section 25 (3) of the Act.
- 6.4 DCMS intends to bring sections 14, 15 and 19 (partial) fully into force as soon as possible. Within section 19, it is not the intention to bring the power to impose financial penalties into force at this stage.
- 6.5 This guidance is part of a broader legislative package to bring into force the age verification requirement under Part 3 of the Act. The draft BBFC Guidance on Ancillary Service Providers also requires Parliamentary approval (section 25) and is being laid alongside this guidance. Similarly the Online Pornography (Commercial Basis) Regulations 2018 (section 14 (2)) requires Parliamentary approval and is being laid alongside the two pieces of BBFC guidance.

7. Policy background

What is being done and why?

- 7.1 In order to protect children from exposure to pornographic material online, the Act introduced a requirement that a person making available pornographic material online on a commercial basis to persons in the United Kingdom should ensure that the material is not normally accessible by persons under the age of 18.
- 7.2 The BBFC has been designated as the age-verification regulator for certain functions under the Act. Where a person is non-compliant with the requirement in section 14(1), the age-verification regulator can issue an enforcement notice to that person (section 19), notify payment-services providers and ancillary service providers to that person so that those services can be withdrawn (section 21), or require internet service providers to block access to material made available by that person (sections 23 and 24). Although the Act also provides for the age-verification regulator to issue financial penalties to a non-compliant person (section 20), the BBFC has not been designated under this section.
- 7.3 The BBFC's draft guidance sets out the proposed regulatory approach, including the notification and enforcement regime. It also confirms that the BBFC will take a proportionate approach in ensuring compliance by focusing on those services which generate the most traffic by users in the United Kingdom.
- 7.4 The draft guidance states that the BBFC will not provide an exhaustive list of approved age-verification solutions and instead confirms the criteria that the BBFC will use to judge, on a case-by-case basis, whether age verification arrangements are compliant with the Act. This approach is consistent with the Secretary of State's Guidance to the Age-Verification Regulator, which was laid in Parliament in January.
- 7.5 The criteria by which the BBFC will judge whether age verification arrangements are compliant with the Act are set out in paragraph 3.5 of the BBFC's draft guidance.

This includes the use of age verification data that cannot be reasonably known by another person and effective measures to authenticate this data. Paragraph 3.6 of the draft guidance sets out age verification features which the BBFC consider, in isolation, would not be compliant with the Act, for example a ‘tick box’ system or a general disclaimer that ‘anyone using this website will be deemed over-18’.

- 7.6 The BBFC’s draft guidance also recommends best practice in the design and implementation of age verification solutions, such as collecting only the minimum amount of personal data necessary to confirm age. The guidance also recommends that pornographic websites offer a choice of age-verification methods to the end user.
- 7.7 The Guidance on Age-verification Arrangements includes information about the requirements that age-verification solutions and online pornography providers must adhere to under data protection legislation, which is enforced by the Information Commissioner’s Office (ICO). The BBFC and the ICO will agree a [Memorandum of Understanding](#) establishing a framework for co-operation and information sharing. The MOU is not subject to parliamentary scrutiny.
- 7.8 In addition, the BBFC’s draft guidance outlines, at paragraph 3.11, a non-statutory certification scheme for age verification services which will incorporate a third-party assessment of the data security standards within any age verification solution which seeks certification under the scheme.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This guidance does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 This will be the first time that the guidance will be laid under section 25 (3) of the Act.

10. Consultation outcome

- 10.1 In February 2016, the Government published a [Consultation](#) setting out a preferred approach to delivering its manifesto commitment on age verification, and inviting views. The consultation ran for 8 weeks, until 12 April 2016, and received a total 3,764 responses. 3,454 responses were recorded on the online survey platform, 306 submitted via email and 4 responses through the postal system. The consultation document set out the Government’s preferred approach to delivering on the above manifesto commitment, by establishing a new requirement in law for commercial providers to have in place robust age verification controls for online pornographic content in the UK, backed by a new regulatory framework.
- 10.2 Overall, there was a roughly even split between those supporting age verification (44%) and those not in favour (48%). Many of the key organisations involved in online child protection indicated their support for the proposals, and the overriding policy goal of protecting children online. For full details, please see [Government response](#).
- 10.3 The BBFC published a draft of its guidance on age verification arrangements for a public consultation that run for 4 weeks from 26 March - 23 April 2018. The BBFC received a total of 624 responses with the vast majority (584) submitted by

individuals and the remaining 40 from organisations. The BBFC made a number of changes to their draft guidance based on the feedback received from stakeholders, as set out in their consultation response paper. This is the final agreed version of their guidance.

11. Guidance

- 11.1 Section 27 of the Act provides for the Secretary of State to issue guidance to the age-verification regulator in relation to the exercise of the regulator's functions. This guidance must be laid before both Houses of Parliament. The [guidance](#) was made in January 2018.

12. Impact

- 12.1 There is no impact on business, charities or voluntary bodies.
- 12.2 The impact on the public sector is that the functions of Part 3 of the 2017 may be fulfilled and government delivers on its manifesto commitment to introduce age verification controls to prevent children and young people accessing pornography.
- 12.3 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burden on small businesses. Given the nature of the online adult industry and the importance of the overriding child protection aims it would not be appropriate to exempt small companies from the scope of the legislation.

14. Monitoring & review

- 14.1 Section 29 of the Act provides that within 18 months, but not before 12 months, of the coming into force of Part 3 of the Act, the Secretary of State must produce a report on the impact and effectiveness of the regulatory framework provided for in Part 3 of the Act. Before publishing this report, the Secretary of State must consult on the definitions used within this Part and the report must be laid before each House of Parliament.

15. Contact

- 15.1 Basit Ahmed at the Department for Digital, Culture, Media and Sport. Telephone: 07519 292 851 or email: basit.ahmed@culture.gov.uk can answer any queries regarding the designation proposal.
- 15.2 Orla MacRae Deputy Director for Online Harms at the Department for Digital, Culture, Media and Sport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Margot James, Minister for Digital and Creative Industries at the Department for Digital, Culture, Media and Sport can confirm that this Explanatory Memorandum meets the required standard.