

# REVIEW OF PORNOGRAPHY REGULATION, LEGISLATION AND ENFORCEMENT

## TERMS OF REFERENCE

### Context

As the way we consume media and access content rapidly changes, the government is committed to ensuring the legislation, regulation and law enforcement response to online pornography is fit for purpose to tackle exploitative, abusive and illegal content online. This independent Review is separate to, but builds on, the Online Safety Act, which will hold social media companies and pornography services accountable for ensuring children cannot view pornography, with a new higher standard on the age verification or age estimation tools they must use.

Pornographic material is subject to several distinct regimes in terms of regulation and criminal offences. These fulfil different functions and are designed to complement each other to provide protection for victims while ensuring freedom of speech and expression.

Firstly, there are regulatory regimes aimed at regulating how pornography is commercially produced and distributed to ensure that it does not lead to behaviour which is harmful to society. This includes regulations which commercial producers/distributors of all material distributed offline, including pornography, must meet to be able to sell their products. These regimes include specific “breach” offences which producers/distributors can commit if they breach their obligations under the regulations.

Separately, there are currently several criminal offences which can be committed in relation to pornographic material, which apply equally online and offline. There is also a very robust regime of offences tackling the possession, taking and making of indecent images of children.

The government wants to ensure any legislation and regulation operates appropriately for all pornographic content, and to ensure that there is an effective regulatory, criminal justice system and law enforcement response to illegal pornographic content online. The Review will take an evidence-based approach to developing a range of recommendations for the government on how to best to achieve this.

### Objectives

The Review will:

- assess the available evidence base on the prevalence and harmful impact of illegal pornography online, and the impact of other forms of legal pornography online on viewers including emerging AI-generated pornography, and on viewer's attitudes to violence against women and girls.
- assess the public's awareness and understanding of existing regulation and legislation of pornography.
- review obligations on online pornography providers, including new rules included in the Online Safety Act, and how this compares to existing physical and broadcast media regulation, to assess the case for options for aligning the online and offline regulation of pornographic content
- consider whether the criminal justice system and law enforcement agencies' response to illegal pornographic content is sufficient, and what changes to enforcement or the criminal law may be needed

- assess the prevalence of modern slavery/human trafficking and pornography to better understand the links between the two, and what can be done to enable the reporting and identification of exploitation and trafficking in the pornography industry
- consider what preventative and information resources can be provided to children, their parents and carers, and adults on the impact of pornography.

## **Purpose and Scope**

The Review will undertake an independent assessment of the legislation, regulation and enforcement of online pornography. This will respond to calls to further align the online and offline regulation of pornography services, and to ensure that existing criminal offences for the possession, distribution and publication of adult pornography are being adequately enforced online. The Review will have a particular focus on:

- the current regulatory landscape, including relevant regimes such as the Video Recordings Act 1984, the Communications Act 2003 and the Licensing Act 2003. The Review will also assess international comparisons, and, depending on the Review's findings, consider how to achieve better alignment of online and offline regulation of pornographic content
- the effectiveness and the challenges law enforcement face in responding to incidents including:
  - those which may breach the current criminal offences for the possession, distribution and publication of adult pornography, including but not limited to extreme pornography and non-consensual pornographic content. This could also include consideration of the experiences of victims, which could help inform regulation and help direct the scope of the Review as it progresses;
  - modern slavery and human trafficking offences under the Modern Slavery Act 2015 which relate to adults in pornographic content; and
  - child sexual exploitation and abuse (CSEA) material on pornography sites. Although CSEA is not pornography, the Review will consider learning from the existing robust legal and enforcement framework for CSEA which also applies to content on pornography sites. This aspect could include considering if changes to the criminal law would address any law enforcement challenges
- understanding the links between trafficking and exploitation and pornography services, and what the criminal justice system and enforcement response can do to prevent this;
- the potential role of prevention and information resources in relation to adults and children's access to pornography, including the value of further advice and guidance for children, parents and carers

## **Timing**

The Review will aim to be completed by Summer 2024.

## **Governance**

- The Review will be led by an independent Lead Reviewer, Baroness Gabby Bertin.

- The Lead Reviewer will be supported by a secretariat within the Department for Science, Innovation and Technology, and will include close engagement with key experts and stakeholders from across government, the Crown Prosecution Service, law enforcement, relevant regulators, industry and civil society representatives, and others with expertise in this area.
- The Review will involve cross-government input, including from the Home Office, Department for Science, Innovation and Technology, Ministry of Justice, Department for Culture Media and Sport, Department for Education, Department of Health and Social Care and Equality Hub,
- In conducting assessments and making recommendations to government, the Review will take account of the requirements of the Public Sector Equality Duty.