



**DRAFT**

**Guidance on Age-verification  
Arrangements**

**Digital Economy Act – Part 3  
Online Pornography**

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## 1. Introduction

1. Part 3 of the Digital Economy Act 2017 (the Act) provides for the regulation, through age-verification, of online pornography. The primary purpose of this Part is the protection of children from pornographic content online.

2. Section 14(1) of the Act provides 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.*

“Pornographic material” is defined in section 15 of the Act (Annex 1)

The Online Pornography (Commercial Basis) Regulations 2018 (Annex 2) determine whether a person is making pornographic material available on a commercial basis.

3. On 21 February 2018 the British Board of Film Classification was designated by the Secretary of State to be the age-verification regulator responsible for:

- identifying and notifying non-compliant providers of online commercial pornography (section 19)
- notifying ancillary service providers and payment-services providers (section 21) and directing internet service providers to block access to non-compliant pornography services (section 23)

4. Under the terms of the Act, a provider of online commercial pornography will be deemed non-compliant if they fail the requirements of section 14(1) of the Act to secure that pornographic material is not normally accessible by those under 18, and/or provide content which is deemed to be extreme pornographic material as defined in the Criminal Justice and Immigration Act 2008 (Annex 3).

5. The BBFC is responsible for assessing and determining whether the arrangements for making pornographic material available online comply with the requirements of section 14(1) of the Act. Section 25(1) requires the BBFC to publish guidance about the types of arrangements that it will treat as complying with the provisions of the Act. Prior to publication, this guidance must be submitted to the Secretary of State and be laid before both Houses of Parliament in accordance with the procedure set out in section

25.

6. Section 27 of the Act provides that the Secretary of State may issue guidance to the Regulator in relation to the exercise of the Regulator's functions. The Secretary of State issued "Guidance from the Secretary of State for Digital Culture Media and Sport to the Age-verification Regulator for Online Pornography" in January 2018<sup>1</sup>. This Guidance on Age-verification Arrangements has been drafted having had regard to the guidance issued by the Secretary of State.
7. This guidance sets out the criteria by which the BBFC will assess that a person has met with the requirements of section 14(1) of the Act, to secure that pornographic material is not normally accessible by those under 18. This guidance also outlines good practice in relation to age-verification to encourage consumer choice and the use of mechanisms which confirm age, rather than identity.
8. This guidance also includes the role and function of the Information Commissioner's Office (ICO), the UK's independent body set up to uphold information rights, and the requirements that age-verification solutions and online pornography providers must adhere to under data protection legislation, which is enforced by the ICO. As set out in 3.6 of the Secretary of State's Guidance to the Regulator, the role of the BBFC is to focus on the ability of arrangements to verify whether someone is 18 or over. The BBFC will not duplicate the role of the ICO, and there is a memorandum of understanding (Annex 4) establishing a framework for co-operation and information sharing.
9. This guidance will have effect from the date on which Part 3 of the Act comes into force. The BBFC may from time to time revise this guidance, in particular in the light of technological developments and experience of the operation of the regulatory regime. Any changes to this guidance will be laid before parliament in line with section 25 of the Act.
10. This guidance adopts and applies the definitions of various terms used in the Act. In the event of any unintended conflict in meaning or interpretation between this guidance and the Act, the Act shall prevail.

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/673425/Guidance\\_from\\_the\\_Secretary\\_of\\_State\\_for\\_Digital\\_Culture\\_Media\\_and\\_Sport\\_to\\_the\\_Age-Verification\\_Regulator\\_for\\_Online\\_Pornography\\_-\\_January\\_2018.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/673425/Guidance_from_the_Secretary_of_State_for_Digital_Culture_Media_and_Sport_to_the_Age-Verification_Regulator_for_Online_Pornography_-_January_2018.pdf)

11. The BBFC will report annually to the Secretary of State on the regulatory regime. In accordance with 7.1 of the Secretary of State's Guidance to the Regulator, these reporting requirements include:

- the impact and effectiveness of the regulatory framework and recommendations for revision of the scope if appropriate
- the number of persons it has investigated and determined to be compliant or non-compliant (including details of the grounds of non-compliance)
- the number of ancillary service providers, payment-services providers and Internet Service Providers it has notified, and responses to such notification

12. In accordance with section 26(2)(b) of the Act the BBFC will, from time to time, carry out research to gain insight into the effectiveness of the regime with particular reference to the protection of children and to determine the effectiveness of age-verification systems.

13. In some circumstances the BBFC may be willing to respond to requests for additional general guidance on its interpretation of the statutory requirements where such requests raise issues of general concern to stakeholders. Any such additional guidance given is informal only and is without prejudice to the BBFC's powers under the Act. Stakeholders must ensure they comply with their statutory obligations under the Act. They should seek their own legal and technical advice on any issues. The BBFC does not accept liability for any loss or damage alleged to result from reliance placed either on its published guidance or any supplementary informal guidance it may give.

## 2. The BBFC's Approach and Powers under Part 3 of the DEA

1. All providers of online pornography who are making available pornographic material to persons in the United Kingdom on a commercial basis will be required to comply with the age-verification requirement. The method by which an internet connection or access can be obtained is irrelevant.
2. The BBFC will approach the discharge of its functions under the Act in an objective, consistent and transparent manner to achieve the primary purpose of the Act; that is the protection of children.
3. The BBFC will adopt a proportionate regulatory approach in relation to the discharge of its functions under the Act in accordance with section 26 and in accordance with chapter 2 of the Secretary of State Guidance to the regulator.
4. This proportionate approach consists of:
  - deciding which services that provide online pornographic material on a commercial basis it will investigate
  - assessing whether an age-verification arrangement complies with the provisions of section 14(1) of the Act to secure that pornographic material is not normally accessible by those under 18
  - assessing whether the service contains extreme pornographic material
  - determining the most effective course of enforcement action to take
5. When deciding which services to investigate, and in order to allow the BBFC to maintain as its priority the protection of those aged under 18 from accessing pornographic content online, the type of factors it will take into account may include, but will not be limited to, services which:
  - are most frequently visited, particularly by children, in the UK
  - are most likely to be sought out by children (for example because they have attracted media or social media attention)
  - contain extreme pornographic material
  - contain potentially indecent images of children or raise other child protection concerns

6. The BBFC will seek to encourage compliance with s14(1) of the Act before using the powers listed in paragraph 9 below. It will issue a provisional determination of non-compliance before an enforcement notice under section 19(2) of the Act.
7. In accordance with chapter 2.4.a of the Secretary of State's guidance, the BBFC will, in any such provisional determination of non-compliance, specify a prompt timeframe for compliance and, if it considers appropriate, set out the steps that it considers that the person needs to take to comply.
8. If no satisfactory steps are taken following the provisional determination of non-compliance, the BBFC will give a person an enforcement notice where it determines that the person is contravening section 14(1). This is subject to the requirement that the person concerned be given the opportunity to make representations to the BBFC prior to such a determination (section 19(3)).
9. Once an enforcement notice has been issued, the BBFC has available a number of powers:
  - to give notice to any payment-services provider that the BBFC considers that a person is contravening section 14(1) and/or is making extreme pornographic material available on the internet to persons in the UK (section 21)
  - to give notice to any ancillary services provider that the BBFC considers that a person is contravening section 14(1) and/or is making extreme pornographic material available on the internet to persons in the UK (section 21)
  - to give notice to an internet service provider that the BBFC considers that a person is contravening section 14(1) and/or is making extreme pornographic material available on the internet to persons in the UK and require the internet service provider to take further steps as may be specified in order to prevent access to the offending material by persons in the UK (section 23)
  - to institute civil proceedings against a person to whom an enforcement notice has been issued (section 19(11))
10. Before beginning notification action under section 21 and/or section 23, the BBFC will, on a case-by-case basis, determine which notification action or actions to take. When making a determination, the BBFC will be guided by its assessment of which course of action will be most effective in achieving the child protection goals of the legislation, and will consider whether a notice to payment-services providers and/or ancillary

service providers and/or internet service providers will have an effect on the non-compliant person's behaviour.

11. When deciding the most effective course of enforcement action, and therefore which notice or notices to issue, the BBFC may, among other considerations, assess whether non-compliant pornographic services have:

- content or services that require payment
- links to the non-compliant service on platforms such as social media
- advertising on or by the pornographic service
- a presence on search engine results
- significant visitor numbers in the UK

12. The BBFC will take a case-by-case approach, and will also consider what enforcement action has proven to encourage compliance in previous cases of non-compliance.

13. If a non-compliant pornographic service becomes compliant by securing that the material is not normally accessible to those under 18 and/or by removing extreme pornographic material, then all enforcement action will cease and any notices will be withdrawn.

14. The BBFC will inform any recipient of a notice under section 21 that the relevant pornographic service has become compliant so that the relevant ancillary services provider or payment-services provider will be aware that there is no longer a request to withdraw services.

15. The BBFC will inform any recipient of a notice under section 23 that the relevant pornographic service has become compliant so that the relevant ISP will be aware that they are no longer required to prevent access to the service by persons in the UK.

16. The BBFC will publish on its website details of notification action taken and the outcome of any appeals. All interested parties should regularly refer to the BBFC's website to keep up to date on action taken.



### 3. Age-verification Standards

1. Under Part 3 of the Digital Economy Act 2017, providers of commercial pornographic material online must adopt effective and robust age-verification arrangements to ensure that the material is not normally accessible to those under 18.
2. The use of age-verification in relation to the sale of age restricted goods and services online is well established. A range of solutions to age-verify online is currently available on UK-hosted pornography services. These solutions draw from numerous datasets including credit card, passport, driving licence and mobile phone age-verification. Age-verification is most frequently supplied through third party providers.
3. The BBFC recognises that age-verification is an evolving and fast changing technology. It expects that advances will improve the capability and variety of systems that will become available. Consequently, the BBFC will adopt a principle-based approach when assessing new age-verification arrangements and shall maintain a dialogue with stakeholders in order to take any developments into consideration and will from time to time update this guidance accordingly.
4. As envisaged in the Secretary of State's Guidance to the Regulator, this guidance does not provide an exhaustive list of approved age-verification solutions, but sets out the criteria by which the BBFC will assess that a person has met the requirements of section 14(1) of the Act to secure that pornographic material is not normally accessible by those under 18. This guidance also outlines good practice in relation to age-verification to encourage consumer choice and the use of mechanisms that confirm age but not identity. The BBFC will actively assess individual age-verification arrangements to test their effectiveness and robustness. Arrangements which do not meet the necessary requirements, as set out below, will be treated as non-compliant.
5. The criteria against which the BBFC will assess that an age-verification arrangement meets the requirement under section 14(1) to secure that pornographic material is not normally accessible by those under 18 are set out below:
  - a. an effective control mechanism at the point of registration or access by the end-user which verifies that the user is aged 18 or over at the point of registration or access

- b. use of age-verification data that cannot be reasonably known by another person, without theft of data or identification documents or readily predicted by another person
  - c. a requirement that either a user age-verify each visit or access is restricted by controls, manual or electronic, such as, but not limited to, password or personal identification numbers
  - d. the inclusion of measures that are effective at preventing use by non-human operators including algorithms
6. The following are features which the BBFC do not consider, in isolation, comply with the section 14(1) requirement:
  - a. relying solely on the user to confirm their age with no cross-checking of information, for example by using a 'tick box' system or requiring the user to only input their date of birth
  - b. using a general disclaimer such as 'anyone using this website will be deemed to be over 18'
  - c. accepting age-verification through the use of online payment methods which may not require a user to be over 18. (For example, the BBFC will not regard confirmation of ownership of a Debit, Solo or Electron card or any other card where the card holder is not required to be 18 or over to be verification that a user of a service is aged 18 or over.)
  - d. checking against publicly available or otherwise easily known information such as name, address and date of birth
7. Although not a requirement under section 14(1) the BBFC recommends that age-verification providers adopt good practice in the design and implementation of their solutions. These include solutions that:
  - collect the minimum data required to establish that the user is aged 18 or above
  - include measures to reduce the potential for improper use, in particular by children, of a verified account
  - provide ease of use for end-users
  - include clear information for end-users on data protection
8. Although not a requirement under section 14(1) the BBFC recommends that online commercial pornography services offer a choice of age-verification solutions for the end-user.

9. Age-verification arrangements involve important considerations as to the security and confidentiality of data collected as part of the process of determining that an individual is aged 18 or over. The BBFC's assessment of age-verification effectiveness, to meet the requirement under section 14(1) to secure that pornographic material is not normally accessible by those under 18, is set out in paragraphs 5 and 6 of this chapter. During the course of this age-verification assessment, the BBFC will normally be able to identify the following in relation to data protection compliance concerns: failure to include clear information for end-users on data protection and how data is used; and requesting more data than is necessary to confirm age, for example, physical location information.
10. In accordance with 3.8 and 3.9 of the Secretary of State's Guidance to the Regulator, a memorandum of understanding sets out that the BBFC will inform the Information Commissioner's Office where concerns arise during its assessment of the age-verification effectiveness that the arrangement does not comply with data protection legislation. The ICO will consider if further investigation is appropriate. The BBFC will inform the online commercial pornography provider(s) that it has raised concerns with the ICO.
11. Following formal approval of this guidance by Parliament, the BBFC will assess age-verification arrangements in order to ensure that online commercial pornographic services using those arrangements will meet the requirement under section 14(1). The BBFC will report the results of these assessments on its website.
12. All age-verification arrangements must be fit for purpose and effectively managed so as to ensure that commercial pornographic material online will not normally be accessible by persons under the age of 18. Responsibility for ensuring that any required age-verification arrangement is in place and is operating effectively rests at all times with the person that makes pornographic material available online.

## 4. Data Protection and the Information Commissioner's Office

1. The privacy of adult users of pornographic sites should be maintained and the potential for fraud or misuse of personal data should be safeguarded.
2. The ICO is the UK's independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals.
3. Age-verification services and online pornography providers should have regard to the ICO's guidance on data protection and specifically data minimisation, security and data protection by design and default. Age-verification services and online pornography providers must comply with data protection legislation when processing personal data, including the following requirements:
  - a. age-verification systems must be designed with data protection in mind – ensuring users' privacy is protected by default
  - b. individuals must be told why, when, where and how their personal data is being processed, and by which organisations. Where an organisation processing personal data is based outside the EU, an EU-based representative must be appointed and notified to the individual
  - c. the need to process the minimum personal data necessary to achieve the intended outcome of confirming age; additional personal data should not be collected, irrespective of whether it is subsequently securely deleted. There must be an appropriate lawful basis for the processing of any personal data in line with the requirements of data protection legislation
  - d. the need to process personal data securely in light of the associated risks presented by the processing
  - e. the need to facilitate individuals' rights (including the rights of access, erasure and rectification)
  - f. the need to ensure that personal data is not retained for longer than is necessary to achieve the purposes for which it was originally collected
4. The following is a (non-exhaustive) list of issues which the ICO consider may raise data protection compliance concerns:
  - a. failing to assess, document and mitigate privacy risks
  - b. re-using age-verification data for purposes other than age-verification without the knowledge of the individual concerned

- c. where age-verification is provided by third party providers, failing to ensure appropriate measures are in place to ensure the data is adequately safeguarded
  - d. retaining data for longer than is necessary
  - e. a requirement to provide, and any subsequent retention of, physical location information
  - f. the collection and retention of personal data about site visitors who fail the age-verification check.
  - g. failing to ensure security issues are appropriately addressed
5. Under the General Data Protection Regulations (GDPR) age-verification solutions and online pornography providers processing personal data, have a general obligation to implement technical and organisational measures to show that they have considered and integrated data protection into their processing activities. More information about data protection impact assessments can be found on the ICO's website <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/accountability-and-governance/data-protection-impact-assessments/>
  6. Data protection legislation requires personal data to be processed in a manner that ensures its security. This includes protection against unauthorised or unlawful processing and against accidental loss, destruction or damage. It requires that appropriate technical or organisational measures are used. More information about data security can be found on the ICO's website <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/security/>
  7. More information about these and other requirements of data protection legislation can be found on the ICO's website [www.ico.org.uk](http://www.ico.org.uk).
  8. The ICO will promote good information rights practices in adult content providers by:
    - a. providing support where appropriate to online pornography services regarding questions related to data protection and privacy matters in relation to age-verification
    - b. agreeing a referral process with the BBFC, for use where data protection compliance concerns arise as part of assessment of age-verification effectiveness
    - c. agreeing arrangements with the BBFC in a Memorandum of Understanding to be made publicly available

9. There are a number of tools available to the ICO for taking action to change the behaviour of organisations and individuals that collect, use and keep personal information. In line with the ICO's Regulatory Action Policy, the ICO will take proportionate, appropriate and effective regulatory action, including referring issues to overseas regulators via international cooperation channels if appropriate.

## Annex 1 – Definition of Pornographic Material

Section 15 of the **Digital Economy Act 2017** states that:

(1) In this Part “pornographic material” (except in the expression “extreme pornographic material”) means any of the following—

(a) a video work in respect of which the video works authority has issued an R18 certificate;

(b) material that was included in a video work to which paragraph (a) applies, if it is reasonable to assume from its nature that its inclusion was among the reasons why the certificate was an R18 certificate;

(c) any other material if it is reasonable to assume from its nature that any classification certificate issued in respect of a video work including it would be an R18 certificate;

(d) a video work in respect of which the video works authority has issued an 18 certificate, and that it is reasonable to assume from its nature was produced solely or principally for the purposes of sexual arousal;

(e) material that was included in a video work to which paragraph (d) applies, if it is reasonable to assume from the nature of the material—

(i) that it was produced solely or principally for the purposes of sexual arousal, and

(ii) that its inclusion was among the reasons why the certificate was an 18 certificate;

(f) any other material if it is reasonable to assume from its nature—

(i) that it was produced solely or principally for the purposes of sexual arousal, and

(ii) that any classification certificate issued in respect of a video work including it would be an 18 certificate;

(g) a video work that the video works authority has determined not to be suitable for a classification certificate to be issued in respect of it, if—

(i) it includes material (other than extreme pornographic material) that it is reasonable to assume from its nature was produced solely or principally for the purposes of sexual arousal, and

(ii) it is reasonable to assume from the nature of that material that its inclusion was among the reasons why the video works authority made that determination;

(h) material (other than extreme pornographic material) that was included in a video work that the video works authority has determined not to be suitable for a classification certificate to be issued in respect of it, if it is reasonable to assume from the nature of the material—

(i) that it was produced solely or principally for the purposes of sexual arousal, and

(ii) that its inclusion was among the reasons why the video works authority made that determination;

(i) any other material (other than extreme pornographic material) if it is reasonable to assume from the nature of the material—

(i) that it was produced solely or principally for the purposes of sexual arousal, and

(ii) that the video works authority would determine that a video work including it was not suitable for a classification certificate to be issued in respect of it.

(2) In this section—

“18 certificate” means a classification certificate which—

(a) contains, pursuant to section 7(2)(b) of the Video Recordings Act 1984, a statement that the video work is suitable for viewing only by persons who have attained the age of 18 and that no video recording containing that work is to be supplied to any person who has not attained that age, and

(b) does not contain the statement mentioned in section 7(2)(c) of that Act that no video recording containing the video work is to be supplied other than in a licensed sex shop;

“classification certificate” has the same meaning as in the Video Recordings Act 1984 (see section 7 of that Act);

“material” means—

(a) a series of visual images shown as a moving picture, with or without sound;

(b) a still image or series of still images, with or without sound; or



(c) sound;

“R18 certificate” means a classification certificate which contains the statement mentioned in section 7(2)(c) of the Video Recordings Act 1984 that no video recording containing the video work is to be supplied other than in a licensed sex shop;

“the video works authority” means the person or persons designated under section 4(1) of the Video Recordings Act 1984 as the authority responsible for making arrangements in respect of video works other than video games;

“video work” means a video work within the meaning of the Video Recordings Act 1984, other than a video game within the meaning of that Act.

## Annex 2 – The Draft Online Pornography (Commercial Basis) Regulations 2017

The Draft Online Pornography (Commercial Basis) Regulations 2017 can be found at the following link:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/600735/Draft\\_Online\\_Pornography\\_Commercial\\_Basis\\_Regulations\\_2017.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/600735/Draft_Online_Pornography_Commercial_Basis_Regulations_2017.pdf)

## Annex 3 – Definition of Extreme Pornographic Material

Section 22 of the **Digital Economy Act 2017** states that:

- (1) In this Part “extreme pornographic material” means (subject to subsection (3)) material—
  - (a) whose nature is such that it is reasonable to assume that it was produced solely or principally for the purposes of sexual arousal, and
  - (b) which is extreme.
- (2) For the purposes of subsection (1)(b), material is extreme if—
  - (a) its content is as described in section 63(7) or (7A) of the Criminal Justice and Immigration Act 2008, and
  - (b) it is grossly offensive, disgusting or otherwise of an obscene character.
- (3) Material to which paragraphs (a) and (b) of subsection (1) apply is not “extreme pornographic material” if it is or was included in a classified video work, unless it is material to which subsection (4) applies.
- (4) This subsection applies to material—
  - (a) which has been extracted from a classified video work, and
  - (b) whose nature is such that it is reasonable to assume that it was extracted (with or without other material) solely or principally for the purposes of sexual arousal.
- (5) In this section—
  - (a) “classified video work” means a video work in respect of which a video works authority has issued a classification certificate;
  - (b) “video work” means a video work within the meaning of the Video Recordings Act 1984;
  - (c) “video works authority” means a person designated under section 4(1) of the Video Recordings Act 1984;
  - (d) “classification certificate” has the same meaning as in the Video Recordings Act 1984 (see section 7 of that Act);
  - (e) “material” means—
    - (i) a still image or series of still images, with or without sound; or
    - (ii) a series of visual images shown as a moving picture, with or without sound.

Section 63 of the **Criminal Justice and Immigration Act (2008)** states that:

(7)An image falls within this subsection if it portrays, in an explicit and realistic way, any of the following—

- (a) an act which threatens a person's life,
- (b) an act which results, or is likely to result, in serious injury to a person's anus, breasts or genitals,
- (c) an act which involves sexual interference with a human corpse, or
- (d) a person performing an act of intercourse or oral sex with an animal (whether dead or alive),

and a reasonable person looking at the image would think that any such person or animal was real.

(7A)An image falls within this subsection if it portrays, in an explicit and realistic way, either of the following—

- (a) an act which involves the non-consensual penetration of a person's vagina, anus or mouth by another with the other person's penis, or
- (b) an act which involves the non-consensual sexual penetration of a person's vagina or anus by another with a part of the other person's body or anything else,

and a reasonable person looking at the image would think that the persons were real.

# Annex 4 – DRAFT Memorandum of Understanding: The Information Commissioner and The British Board of Film Classification

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## Memorandum of Understanding

### The Information Commissioner and The British Board of Film Classification

#### **Introduction**

1. This Memorandum of Understanding (MoU) establishes a framework for co-operation and information sharing between the British Board of Film Classification (the BBFC) and the Information Commissioner (the Commissioner) in connection with the sharing of relevant information and intelligence, set out below insofar as this is permitted by relevant legislation. It sets out the roles of each organisation and documents the practical working level arrangements between the Commissioner and the BBFC.
2. The Commissioner and the BBFC will monitor the operation of this memorandum and will review it, initially after one year from the date of this document, and subsequently from time to time as necessary.
3. Any changes to this memorandum identified between reviews may be agreed in writing between the parties.
4. Any issues arising in relation to this memorandum will be notified to the point of contact for each organisation (referred to in 36 below).
5. This memorandum is a statement of intent that does not give rise to legally binding obligations on the part of either the Commissioner or the BBFC.

#### **Functions and powers of Commissioner**

6. The Commissioner is a corporation sole appointed by Her Majesty the Queen under the Data Protection Acts 1984 and 1998 to act as the UK's independent regulator promoting public access to official information and protecting personal data.
7. The Commissioner regulates the Data Protection Act 1998 (DPA), the Freedom of Information Act 2000 (FOIA), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR), the

Environmental Information Regulations 2004 (EIR) and the INSPIRE Regulations 2009. The Commissioner is also the supervisory authority responsible for Regulation (EU) 2016/679 (the European General Data Protection Regulation), which will apply directly and in full as of 25 May 2018.

8. Section 51 of the DPA places a duty on the Commissioner to promote the following of good practice by data controllers and the observance of the requirements of the DPA by organisations.
9. Where the Commissioner is satisfied that any of the data protection principles or certain provisions of PECR have been breached, an Enforcement Notice can be served, requiring that an organisation takes specific steps to ensure compliance. Failure to comply with an Enforcement Notice is an offence. A person on whom an Enforcement Notice is served may appeal to the First Tier Tribunal (Information Rights).
10. Where the Commissioner is satisfied that there has been a serious contravention of the data protection principles or certain provisions of PECR the Commissioner may serve a data controller with a monetary penalty notice.
11. The Commissioner may also prosecute those who commit criminal offences under the DPA.

### **Functions of the British Board of Film Classification**

12. The BBFC is an independent, not-for-profit company designated by the Secretary of State to be the age-verification Regulator under Part 3 of the Digital Economy Act 2017 (the Act) with responsibility for regulating the requirement in the Act that online pornographic material made available to persons in the UK on a commercial basis should not normally be accessible by persons under the age of 18.
13. The BBFC is responsible pursuant to the Act for assessing and determining whether the arrangements for making pornographic material available online comply with the requirements of section 14(1) of the Act.
14. The BBFC is also responsible pursuant to the Act for assessing and determining whether a person is making extreme pornographic material available on the internet to persons in the United Kingdom.
15. The BBFC is responsible for identifying and notifying non-compliant providers of online commercial pornography of any contravention of the Act, and notifying ancillary service providers and payment-services providers of the same. The BBFC may also direct internet service providers to block

access to the material being made available in contravention of the Act by non-compliant providers of online commercial pornography.

16. Where the BBFC is satisfied that the requirements of section 14(1) of the Act have been breached, an enforcement notice may be served on the non-compliant person requiring them to end the contravention of section 14(1). A person on whom an enforcement notice has been served may appeal to the Independent Appeals Panel.

### **Cooperation between the Commissioner and the British Board of Film Classification**

17. Chapter 3.6 of the Secretary of State Guidance to the Regulator states:  
*The role of the Regulator should be to focus on the ability of arrangements to verify whether someone is over 18. The Regulator should not duplicate the role of the Information Commissioner's Office (ICO), the UK's independent body set up to uphold information rights.*
18. The requirement for age-verification services and online pornography providers to comply with data protection legislation and information about the ICO's regulatory role are set out in Chapter 4 of the Guidance on Age-verification Arrangements published by the BBFC.
19. As set out in Chapter 3 of the Guidance on Age-verification Arrangements, subject to any legal restrictions on the disclosure of information (whether imposed by statute or otherwise) and at its discretion, the BBFC agrees that it should inform the Commissioner where concerns arise during its assessment of the age-verification effectiveness that the arrangement does not comply with data protection legislation.
20. The BBFC will inform any online commercial pornography provider that it has raised concerns with the Commissioner.
21. The Commissioner may investigate any such concerns in line with her established investigative procedures.
22. Subject to any legal restrictions on the disclosure of information (whether imposed by statute or otherwise) and at her discretion, the Commissioner agrees that she should inform the BBFC, where concerns arise during her regulation of the legislation set out in paragraph 7, to any potential breaches, or information relevant to the BBFC's duties set out above.
23. Subject to any legal restrictions on the disclosure of information (whether imposed by statute or otherwise) and at their discretion, both parties will:
  - a) Communicate regularly to discuss matters of mutual interest (including participating in multi-agency groups to address common

issues and threats).

- b) Consult one another on any issues which might have significant implications for the other organisation.
- c) Notify one another of the outcome of a case before it is made public in those cases in which the other body has an interest.
- d) Share in confidence internal guidance and draft external guidance relevant to the functions of both bodies.

### **Sharing information**

- 24. Subject to any disclosure restrictions applicable to the BBFC, it may disclose confidential information to the Commissioner to facilitate the carrying out any required function of the BBFC or a statutory function of the Commissioner, as set out in 6 to 11 and 12 to 16 above.
- 25. Where the BBFC wishes to disclose to the Commissioner information necessary for the discharge by the Commissioner of her functions under the DPA (or under FOIA), Section 58 of the Data Protection Act provides that no enactment or rule of law prohibiting or restricting the disclosure of information shall preclude the BBFC from furnishing such information to the Commissioner.
- 26. In respect of information obtained by or furnished to the Commissioner for the purposes of her functions under the Information Acts, it is an offence under Section 59 of the Data Protection Act for any current or former member of the Commissioner's staff or her agent to disclose such information without lawful authority.
- 27. Section 59(2)(e) DPA provides that a disclosure by the Commissioner of information obtained by or furnished to her is made with lawful authority where, having regard to the rights and freedoms or legitimate interests of any person, the disclosure is necessary in the public interest.
- 28. In addition, section 59(2)(d) DPA provides that a disclosure of information by the Commissioner is made with lawful authority where the disclosure is made for the purposes of any proceedings, whether criminal or civil.
- 29. Section 59(2)(c) of the DPA provides that a disclosure by the Information Commissioner of information obtained by or furnished to her is made with lawful authority where the disclosure is made for the purposes of, and necessary for, the discharge of any functions under the Information Acts (in this case the DPA).
- 30. The Commissioner may, at her discretion and in accordance with sub-sections 59(2)(c), (d) and/or (e) DPA, disclose confidential information to the BBFC, where this is necessary for performing the functions set out in 6 to 11 and/or 12 to 16 above.



31. If information to be disclosed by the Commissioner was received by her in the course of discharging her functions as a designated enforcer under the Enterprise Act 2002, any disclosure shall be made in accordance with the restrictions set out in Part 9 of that Act.
32. Where a request for information is received by either party under the DPA or FOIA, the recipient of the request will seek the views of the other party as described in the FOIA section 45 Code of Practice, where the information being sought under the request includes information obtained from, or shared by, the other party. However the decision to disclose or withhold the information remains with the party in receipt of the request.
33. Subject to paragraph 32, unless required by law to do so, the BBFC and the Commissioner agree that there will be no further dissemination of exchanged information without the express consent in writing of the party that disclosed the information.
34. Whilst this Memorandum is written with current legislative requirements in mind, the broad principles will continue to apply until reviewed in line with paragraph 2.

**Points of contact**

35.

British Board of Film Classification	Information Commissioner

**Chief Executive**

**Information Commissioner**

.....  
 David Austin  
 Date:

.....  
 Elizabeth Denham  
 Date: