

# Written evidence submitted by CARE (Christian Action Research and Education) (OSB49)

## ONLINE SAFETY BILL

### COMMITTEE STAGE SUBMISSION

- CARE believes the internet offers opportunities for creativity and connection but can also be place of harm for children and adults
- This submission focuses on the regulation of pornographic content within the Online Safety Bill.

#### Introduction to CARE

1. CARE (Christian Action Research and Education) is a well-established mainstream Christian charity providing resources and helping to bring Christian insight and experience to matters of public policy and practical caring initiatives. CARE advised MPs and Peers during the debates on Part 3 of the Digital Economy Act 2017 – the proposals for age verification of commercial pornographic websites.

#### Summary and Recommendations

2. CARE believes that the internet offers opportunities for creativity and connection. However, it can also be a place of harm for children and adults. This submission focuses on the regulation of pornographic content within the Online Safety Bill. CARE makes the following recommendations and has included a list of proposed amendments, in Bill order, in Appendix 1.
  - 2.1. Recommendation 1: Pornography should be defined as primary priority content which children should be prevented from accessing. (Amendment 4).
  - 2.2. Recommendation 2: Pornography should be defined under the Bill, using the definition passed in the Digital Economy Act. This definition should apply to content regulated under parts 3 and 5. (Amendments 5 and 9).
  - 2.3. Recommendation 3: The requirements and obligations placed on providers under Part 3 and Part 5 pertaining to sexually explicit material should be the same. The Bill should be amended to require regulated providers that are subject to obligations solely under part 5 of the Bill to remove certain illegal content namely: offences under Schedule 6 pertaining to child sexual exploitation and abuse and to include schedule 7 priority offences. Illegal material should include content under the Obscene Publications Act. All the reporting/removal requirements on CSEA that apply to Part 3 should apply to Part 5 (Amendments 6-8, 9, 11, 18-23, and 31).<sup>1</sup>
  - 2.4. Recommendation 4: That the Bill be amended to ensure robust minimum standards of age verification in the Bill. These minimum standards must be harmonised and standardised across parts 3 and 5 so that all providers of pornographic content under the Bill are subject to the same regulation. (Amendments 1, 2, 10, 13-15 and 17)
  - 2.5. Recommendation 5: There should be guidance developed, ideally from the British Board of Film Classification who has expertise in this area, to help judge whether material should be considered as falling within the criteria of clause 52(2).

<sup>1</sup> For consistency Schedule 7 should also include the offences in Scotland and Northern Ireland

- 2.6. Recommendation 6: To ensure there is alignment across media, there should be a duty on user-to-user services and commercial pornography websites to not include any prohibited material. CARE has suggested this duty is contained in a Schedule of “Additional Pornography Duties”. (Amendments 12, 32 and 33)
- 2.7. Recommendation 7: Service providers should ensure that pornographic content or sexual photos or film depict only adults and are uploaded by consent. (Amendments 12, 32 and 33)
- 2.8. Recommendation 8: CARE recommends that the Government makes clear the intent on enforcement, including the powers that Ofcom will have if ancillary services or access services are outside of the UK; how payment providers will be able to comply with an ancillary order if the services are free or in a virtual/crypto currency; and what will occur if an order is not complied with. (Amendments 24-28).
- 2.9. Recommendation 9: A commencement clause should be inserted ensuring that guidance for the implementation of Part 5 is commenced within six months of Royal Assent and that Part 3 is commenced no later than one year from the date of Royal Assent. (Amendment 29)
- 2.10. Recommendation 10: In line with our recommendation that pornography should be defined based on section 15 of the Digital Economy Act, 2017, and to ensure parity of regulation section 94 of the DEA as it applies to video on demand should be brought into effect. (Amendment 30)
- 2.11. Recommendation 11: Codes of practice or guidance for age verification standards should be subject to Parliamentary scrutiny and approval on the first occasion through the affirmative resolution and negative resolution on subsequent versions. (Amendments 3 and 16).

### Principles underpinning CARE's submission/amendments

3. The Online Safety Bill is extremely complex. The devil is in the detail of the proposals, the unknowns around future regulations and codes of practice and the impact they will have on providers and consumers. The following principles underpin our response to the Online Safety Bill.
  - 3.1. The online space should be a positive experience for all users and should not be a space that is harmful for any user.
  - 3.2. Ofcom states that the Bill empowers regulating “*the systems in place on platforms.*”<sup>2</sup> This means that providers are being regulated rather than content, yet in other media it is content that is regulated as well as the system. The nature of the content cannot be ignored.
  - 3.3. Pornographic content is pornographic content regardless of who provides it or how that content is delivered. The internet is a fluid dynamic environment where a user can switch the content they consume easily. A user can quickly switch between a regular website, video sharing platform, social media and video-on-demand within a few clicks of a mouse or taps on a tablet screen. What the user seeks is content, not the provider, *per se*.
  - 3.4. CARE believes that pornography is harmful to children and young people. It should be a clear on the face of the Bill that pornography is primary priority content for Part 3 service providers.
  - 3.5. Children and young people have waited far too long for the promised protections from online pornography that were first proposed in the Conservative Election Manifesto of 2015. Swift action is needed to ensure the Online Safety Bill is effective as soon as possible. By making pornography a primary priority content, Ofcom can start work on how it will regulate this material now.

<sup>2</sup> House of Commons, [Committee Stage, 24 May 2022](#), Q1, col 6

- 3.6. Parliament and the public should be clear about the scope of pornographic content regulated under this Bill and there should be parity of regulation with other media.
- 3.7. Pornographic content should be regulated in a consistent manner across the Bill in terms of duties and age verification.
- 3.8. As age verification is a key requirement for protecting children, Parliament should be involved in approving codes of practice/guidance for the requirements for age verification.
- 3.9. Some pornographic content can be harmful to adults. We are especially concerned about the links between violent pornography and sexual abuse of women and girls (rough sex), as debated in the Domestic Violence Act 2021.
- 3.10. What is illegal offline is illegal online, but the potential for lack of clarity about what is illegal material needs to be mitigated so that providers do remove illegal content, the amount of violent pornography is reduced and its impact on women and girls reduced.
- 3.11. Without robust enforcement, the good intentions of this Bill will come to nothing.

### **Confirmation that pornography will be regulated content for Part 3 providers**

4. The Joint Select Committee Report on the Draft Bill stated, “we recommend that key, known risks of harm to children are set out on the face of the Bill. We would expect these to include (but not be limited to) access to or promotion of age-inappropriate material such as pornography...”<sup>3</sup> The DCMS Select Committee in their report also supported this proposal.<sup>4</sup>
5. The Bill does not state what key harms are to be managed by regulated providers under Part 3. What amounts to a key harm will be determined by the Secretary of State in regulations (clause 53).<sup>5</sup> However, the prevention of children’s access to pornography is, currently, the **only duty** in Part 5 of the Bill. The Impact Assessment implies that pornography will be considered a key harm in Part 3 because Part 5 of the Bill will provide “an equivalent outcome to the duties for user-generated pornography, in preventing children’s access to pornographic content.”<sup>6</sup>
6. Since the definition of primary priority content in clause 55(1) is content whether “there is a material risk of significant harm to an appreciable number of children presented by content of that description that is regulated user generated content or search content, and it is appropriate for the duties set out in sections 11(3)(a) and 26(3)(a) to apply in relation to content of that description”, it is logical for pornography to be added as a primary priority content. It would ensure that children are prevented from accessing pornographic content under 11(3) and allow Ofcom time to prepare for implementation. Moreover, while the ways in which pornographic content is delivered will change over time, the fact that pornography is harmful to children will not change. To amend the Bill to include pornography as primary priority content that children should be prevented from accessing will not prevent the Bill from being future proofed and will send a strong signal of intent that children will be protected online.
7. **Recommendation 1: Pornography should be defined as primary priority content which children should be prevented from accessing. See amendment 4 proposed in Appendix I.**

<sup>3</sup> Para 203 Joint Committee Report, Dec 2021. <https://committees.parliament.uk/publications/8206/documents/84092/default/>

<sup>4</sup> Para 11, DCMS Select Committee, Jan 2022 <https://committees.parliament.uk/publications/8609/documents/86961/default/>

<sup>5</sup> [Delegated Powers Memorandum](#), March 2022, pages 18-20 and [Impact Assessment](#), March 2022, para 78, page 20

<sup>6</sup> [Impact Assessment](#), March 2022, para 80, page 21

### Confirmation of the scope of regulated pornography

8. If CARE's recommendation 1 was inserted into the Bill, pornography would without doubt be content that would require action by all content providers. User-to-user services and search engines under Part 3 would have any doubt removed as to what is their obligation; and pornography would continue to be regulated under Part 5. All these services would need to act to protect children from accessing pornography, but nowhere does the Bill suggest **what** pornography is in scope.
9. This lack of definition is in contrast to the proposals in section 15 of the Digital Economy Act 2017, which defined pornographic content in terms of material that would fall within the classification guidelines of the British Board of Film Classification so that it covered material that either had or would be expected to get an 18, R18 classification or so extreme not to get a classification.<sup>7</sup> The Online Safety Bill would benefit from this more precise definition.
10. **Recommendation 2: Pornography should be defined under the Bill, using the definition in the Digital Economy Act. This definition should apply to content regulated under parts 3 and 5. See amendments 5 and 9 proposed in Appendix 1.**
11. Referring to the BBFC classification scheme in the Online Safety Bill is also justified **since there are similar requirements to prevent access to pornographic content for UK based Video on Demand (VoD) services.**<sup>8</sup>
12. The relevant legislation is Part 4A of the Communications Act 2003, sections 368ZA-368R. Section 368E<sup>9</sup> deals with "Harmful Material" and **defines** two types of material:
  - 12.1. A VoD service **must not contain** any "prohibited material", that is material that has either not been considered suitable for a classification under the Video Recordings Act 1984 (ie stronger than R18) or would be considered not to get a classification on the same grounds.
  - 12.2. A service must ensure that those under the age of 18 do not normally see or hear "specially restricted material" – that is R18 content or "other material that might impair the physical, mental or moral development of persons under the age of 18".
13. Furthermore, **regulation of video sharing platforms (VSPs) like YouTube, TikTok, OnlyFans and Twitch etc** – were added to the scope of the Communications Act in 2020 and will come under Part 3 of the Online Safety Bill.<sup>10</sup> 95% of children aged 3-17 use a VSP.<sup>11</sup> Part 4B of the Communications Act 2003, Section 368Z1<sup>12</sup> imposes a "duty to take appropriate measures" which means protecting persons under the age of 18 from videos and audio-visual commercial communications containing restricted material (that is material considered prohibited or specially restricted as defined by section 368E (as above)).<sup>13</sup>
14. During the debates on the DEA, it was agreed that if commercial pornographic websites had to restrict access to 18 material as well as R18, the same should apply to UK based VoD,<sup>14</sup> but as Part 3 has never come into effect, this requirement has not been implemented. However, **the same principles apply**

<sup>7</sup> [BBFC Classification Guidelines 2019](#)

<sup>8</sup> CARE welcomes the Government's intentions to bring large non-UK based VoDs within Ofcom's jurisdiction as set out in [Government response to the consultation on audience protection standards on video-on-demand services](#), 28 April 2022

<sup>9</sup> <https://www.legislation.gov.uk/ukpga/2003/21/section/368E>

<sup>10</sup> Clause 170 of the OSB repeals Part 4B

<sup>11</sup> Ofcom, [Children and parents: media use and attitudes report 2022](#), March 2022, page 2

<sup>12</sup> <https://www.legislation.gov.uk/ukpga/2003/21/section/368Z1>

<sup>13</sup> Video-sharing platform guidance, Guidance for providers on measures to protect users from harmful material, October 2021, Ofcom, para

<sup>14</sup> <https://www.legislation.gov.uk/ukpga/2017/30/section/94>

**now.** It is important that VoD is not forgotten during the debates on the OSB, **especially as currently the video sharing platforms are regulated in a similar way to VoD but will come within the scope of the OSB** (see below). **There should be a level playing field across all platforms.**

### **Pornographic content should be regulated in a consistent manner across the Bill**

15. On the basis that pornographic content is pornographic content regardless of how, where or who publishes it, our premise is that all pornographic content should be subject to the same duties, that is to remove illegal content (including extreme pornography and any child sexual exploitation and abuse (CSEA) images) and to prevent access to pornographic content to those under 18 in a consistent manner across all parts of the Bill.
16. Currently only services regulated under part 3, are required to remove “priority illegal content” under clause 9 – that is material that is considered to constitute CSEA and other relevant offences listed in Schedule 7, including possession of extreme pornography.<sup>15</sup> Pornography providers, where the material is not user generated, have only one duty under the Bill (clause 68), to ensure that children are not normally able to access pornographic content. Whilst in theory this means that children should not be able to access either CSEA or extreme pornography if age verification is in place, **there is no similar requirement placed on commercial pornography providers to remove that content while there is such a duty placed on social media companies.**
17. CARE raises two gaps to the offences listed in Schedule 7 which we believe need addressing:
  - 17.1. Schedule 7 does not include material which would fall under the offence of publishing obscene material (section 2, Obscene Publications Act 1959 (OPA)). This should be amended since what is illegal offline is also illegal online and the OPA is one of the Acts that is considered when the BBFC decides whether to classify content as sexually explicit material or not.
  - 17.2. Schedule 7 does not reference the relevant offences in Scotland and Northern Ireland.
18. **Recommendation 3: The requirements for providers under Part 3 and Part 5 on sexually explicit material should be the same. The Bill should be amended to require regulated providers that are subject to regulation under part 5 of the Bill only, to remove certain illegal namely: offences under Schedule 6 pertaining to child sexual exploitation and abuse and to include schedule 7 priority offences. Illegal material should include content under the Obscene Publications Act. All the reporting/removal requirements on CSEA that apply to Part 3 should apply to Part 5. See amendments 6-8, 9, 11, 18-23, and 31 in Appendix I.**

### **Consistent Minimum Standards of Age Verification to Protect Children**

19. While age assurance is required under the Bill, CARE is concerned that **there is a lack of clarity as what will constitute minimum standards of age assurance.** The Impact Assessment contains statements only of what “may” be required,<sup>16 17</sup> which falls short of the “robust” age verification checks promised by the Government when the inclusion of Part 5 was announced in February 2022;<sup>18</sup> and

<sup>15</sup> Defined in clause 52. Schedule 6 sets out the relevant child sexual exploitation and abuse. Schedule 7 sets out other priority offences including possession of extreme pornographic images (para 17)

<sup>16</sup> “...some high risk services which are likely to be accessed by children will be required to know the age of their users to provide them with appropriate protections, and therefore may choose to implement age assurance technologies to do this. In addition, as part of the pornography provision, services that publish pornography will likely have to verify the age of their users to ensure that children are not able to access this type of content.” (emphasis added). [Impact Assessment](#), March 2022, para 173, page 41; para 178, bullet 1, page 43

<sup>17</sup> Footnote 124 states “It should be noted that the codes of practice are unknown; however, at primary stage, it is reasonable to believe that some platforms may be required to introduce age assurance systems which could include age verification (if they do not operate them already) under this part of the duty of care.” [Impact Assessment](#), March 2022, page 41

<sup>18</sup> [World-leading measures to protect children from accessing pornography online - GOV.UK \(www.gov.uk\)](#)

indeed previous statements that “we expect companies to use age verification technologies to prevent children from accessing services which pose the highest risk of harm to children, such as online pornography”.<sup>19</sup> What is needed is greater certainty, within the Bill as to what will constitute minimum standards for age verification.

20. Given these vague statements, it is confusing that the Impact Assessment estimates the costs of age verification to be between £17.9 million and £89.6 million (central estimate = £35.8 million).<sup>20</sup> To arrive at that figure would require assumptions as to what minimum age verification or age assurance standards would be, which sites would need it and how it would operate. The Bill needs to be clearer in setting out the expectations that are placed on regulated providers with respect to age verification and what standards the systems to protect children should attain to meet the requirements of the Bill.
21. Some providers may seek to argue that a check box meets the minimum standards of the Bill for some content, but this clearly would not be robust age verification provisions. We note that the Ofcom Guidance for VoD services is clear that this sort of approach is “not appropriate” for pornographic content classified as 18 or R18 and sets out clear expectations of what is acceptable.<sup>21</sup> It will be for Ofcom to ensure that there is appropriate enforcement of standards, otherwise age verification to access pornographic content will be meaningless.
22. While the Bill is focused on outcomes, CARE is concerned that minimum standards will not be met unless there is clarity on the face of the Bill which can be clearly tied to the policy objectives of the Bill. CARE is also concerned that there are contradictions as to how guidance for age verification requirements will be determined between Part 3 (Codes of Practice) which will set out the minimum age assurance standards and the recommended steps that service providers can take to comply with the relevant duties and Part 5 (Guidance), which potentially make the system unworkable if different requirements are placed between the two Parts of the Bill, especially if a provider falls under both Parts of the Bill.
23. **Recommendation 4: That the Bill be amended to ensure robust minimum standards of age verification in the Bill. These minimum standards must be harmonised and standardised across parts 3 and 5 so that all providers of pornographic content under the Bill are subject to the same regulation. See amendments 1, 2, 10, 13-15 and 17 in Appendix 1.**

### The Impact of Pornography on Adults

24. CARE is concerned about pornography as a contributing factor in violence against women, which has been raised by contributors to the Government’s consultation on Violence Against Women and Girls. In 2018, the Select Committee on Women and Equality said, “There is significant research suggesting that there is a relationship between the consumption of pornography and sexist attitudes and sexually aggressive behaviours, including violence.”<sup>22</sup> The Home Office Minister referred in oral evidence on the Draft Online Safety Bill to the links between pornography and “developing, in some cases, very unhealthy attitudes and approaches”.<sup>23</sup> The Prime Minister said on 17 November 2021, that “people are coarsened and degraded by this stuff” when asked about regulation of pornography.<sup>24</sup>

<sup>19</sup> [PO UJIN 199](#), answered 17 May 2021. See also Caroline Dineage MP on 11 May 2021, [Q226](#) in evidence given the House of Lords Communication and Digital Committee

<sup>20</sup> [Impact Assessment](#), March 2022, para 190, page 45 and Table 16, page 46

<sup>21,21</sup> [On-demand programme services \(“ODPS”\) guidance, Guidance for ODPS providers on measures to protect users from harmful material](#), Ofcom, December 2021, paras 5.23 and 5.21, page 12

<sup>22</sup> Women and Equalities Select Committee on Sexual harassment of women and girls in public places, [Report](#) published 23 Oct 2018, para 101

<sup>23</sup> Oral evidence to the Joint Committee on the Online Safety Bill from [DCMS and the Home Office](#), 4 November 2021, Q284, page 33

<sup>24</sup> House of Commons Liaison Committee, [Oral Evidence from the Prime Minister](#), HC 835, 17 November 2021, Q49

25. A Savanta ComRes poll commissioned by CARE in 2021 found that 6 in 10 UK adults agree with the statement: “I am concerned that pornography is inspiring sexual violence against women and girls.” Only 1 in 10 adults disagreed. 70% of respondents agreed that “The government should stop websites publishing extreme pornography that portrays violence or non-consensual sex.” It is clear that public support exists for online content to be strictly controlled to ensure offline safety for women and girls.<sup>25</sup>

### The Need for a Clear Boundary Between Illegal and Legal Material

26. While the Bill would require removal of some illegal pornographic content, there are several identifiable gaps in this requirement, which we have set out above. However, there is a further difficulty with this content as the boundaries between illegal and legal material can be blurry. For instance, the offence of possessing extreme pornography is only applicable in certain instances so that pornography involving choking, might not be covered unless it was considered life-threatening. If it were considered as causing an injury but not life threatening, it would be outside of the scope of the extreme pornography offence, because it would not involve injury to the relevant body parts. However, it may come under obscene material if it were considered actual bodily harm. If not, this material would be considered lawful pornography. Furthermore, to be removed as illegal content, a service provider will have to judge whether the content “amounts to a criminal offence” as required under clause 52(2). **Therefore, it is not clear how much of this material will actually get removed from the internet as a consequence of the Bill.** Ofcom in evidence to the Committee on 24 May said, “We feel it is really important...that the definition of “illegal content” is really clear for platforms, and particularly the area of intent of illegality, which at the moment might be quite tricky for the platforms to pick up on.”<sup>26</sup>
27. **There is clearly a grey area with no real guidance as to where the line is drawn between legal and illegal content. While the uncertainty can never be fully dealt with in legislation, the gap needs to be as narrow as possible, to ensure clarity for providers as to what content must be removed.**
28. **Recommendation 5: There should be guidance developed, ideally from the British Board of Film Classification who has expertise in this area, to help judge whether material should be considered as falling within the criteria of clause 52(2).**

### Legal but Harmful and Parity Across Other Media

29. Furthermore, there is an area of content that is not addressed in this Bill: so-called prohibited material that VoD services must not include (referred to above) and which retailers must not supply if the content is on physical media under the Video Recordings Act 1984.<sup>27</sup> This is material which the BBFC describes as “not acceptable”:<sup>28</sup>
- material which is in breach of the criminal law, including material judged to be obscene under the current interpretation of the Obscene Publications Act 1959
  - material (including dialogue) likely to encourage an interest in sexually abusive activity which may include adults role-playing as non-adults

<sup>25</sup> [Public fears porn inspiring sexual violence - new poll | CARE](#)

<sup>26</sup> House of Commons, [Committee Stage, 24 May 2022](#), Q7, col 8 and repeated at col 9

<sup>27</sup> An offence under section 9 of the Video Recordings Act 1984, <https://www.legislation.gov.uk/ukpga/1984/39/section/9>

<sup>28</sup> [BBFC Classification Guidelines 2019](#), page 28

- *the portrayal of sexual activity which involves real or apparent lack of consent. Any form of physical restraint which prevents participants from indicating a withdrawal of consent*
  - *the infliction of pain or acts which are likely to cause serious physical harm, whether real or (in a sexual context) simulated. Some allowance may be made for non-abusive, consensual activity*
  - *penetration by any object likely to cause physical harm*
  - *sexual threats, humiliation or abuse which do not form part of a clearly consenting role-playing game.*
30. While material in bullet point 1 is likely to be covered to under the Bill's Schedule 7 (especially if that is amended to include the OPA), the rest of the material above is likely to be legal but harmful on the basis of the BBFC ratings. **The Bill currently fails to address this material.** Evidence of the links between pornography that could be legal, and the prevalence of rough sex is in Appendix 2.
31. **Recommendation 6: To ensure there is alignment across media, there should be a duty on user-to-user services and commercial pornography websites to not include any prohibited material. CARE has suggested this duty is contained in a Schedule of "Additional Pornography Duties". See amendments 12, 32 and 33 in Appendix 1.**
32. The schedule recommended above should also include requirements that the service provider has verified the age and consent of any persons who are depicted in the content and that a person can appeal to have the content removed. These actions are already required by Mastercard as part of their payment provider agreement.<sup>29</sup> The need for action on content that has been uploaded without consent was raised by a Committee of the Canadian Parliament in June 2021.<sup>30</sup>
33. **Recommendation 7: Service providers should ensure that pornographic content or sexual photos or film depict only adults and are uploaded by consent. See amendments 12, 32 and 33 in Appendix 1.**
34. CARE recognises there are other concerns about legal but harmful material in the Bill, particularly in relation to speech. CARE is concerned that, in the same way providers of pornographic content will utilise their terms and conditions to legitimise whatever content they want on their platform, social media and other large tech companies will utilise their terms and conditions to regulate speech as they see fit. The Bill does not remove the power of Silicone Valley to decide what is appropriate speech online. CARE would urge that the Bill be amended to ensure that free speech is fully protected.
35. It should be for Parliamentarians and regulators to determine what is appropriate speech, not executives of tech companies. What is illegal speech offline should be made illegal online, what is legitimate discourse offline, should be legitimate speech online.<sup>31</sup>

## Enforcement

36. Part 7 of the Bill sets out the enforcement powers granted to Ofcom for the wide list of actions that are considered enforceable under the Bill (clause 111). The provisions are complex and unwieldy and cover 25,100 platforms in the UK<sup>32</sup> and the 4-5 million pornographic websites worldwide. Without effective enforcement, there will be no incentive for organisations to invest in robust age verification

<sup>29</sup> <https://www.commercegate.com/blog/mastercard-issued-an-updated-set-of-rules-and-requirements-for-adult-merchants/>

<sup>30</sup> Canadian House of Commons Standing Committee on Access to Information, Privacy and Ethics published a report *Ensuring the Protection of Privacy on Platforms Such as Pornhub*

<sup>31</sup> CARE shares the concerns of the Christian Institute who have briefed the committee separately. For further information please see [Online Safety Bill - The Christian Institute](#)

<sup>32</sup> [Impact Assessment](#), March 2022, para 73, page 19



technology.<sup>33</sup> Para 73 of the Impact Assessment says 30-40 platforms will be designated I, 2A or 2B, which raises questions about the impact of enforcement on these many other platforms and websites.<sup>34</sup>

37. The enforcement process is similar to that under the DEA, although exactly how it will work is unknown because clause 129 requires Ofcom “to consult and produce guidance setting out how it will use its enforcement powers”.<sup>35</sup> The guidance is not subject to Parliamentary scrutiny.<sup>36</sup>
- 37.1. A notice will be given for non-compliance with the duties (clause 110) and confirmed (clause 112). If non-compliance continues clause 118 allows a penalty up to £18m fine or 10% of “qualifying worldwide revenue”, whichever is the greater, but it is expected these fines will be used “rarely”.<sup>37</sup>
- 37.2. If these procedures do not lead to change, Ofcom may apply to a court (clauses 123-126) for a business disruption measure, which are intended for “the most serious instances of non-compliance”, “used as a last resort”<sup>38</sup> and expected to be “rare”.<sup>39</sup> The two levels of orders are firstly a “service restriction order” to direct an ancillary service provider (payment provider etc) to take action against a service (clause 123).<sup>40</sup> If this is not sufficient, Ofcom can ask the court for an “access restriction order” (clause 125), but there is not much information as to what this might mean.<sup>41</sup>
38. Ofcom’s approach to enforcement is unknown as it will set out its principles in guidance after the Bill receives Royal assent. There are inherent weaknesses within the enforcement provisions.
- 38.1. While the Bill provides extraterritorial powers that were absent in the DEA, it is not clear how the Government would be able to collect fines from organisations outside the UK.
- 38.2. It is not clear how using payment providers as a source of enforcement would be effective if the site is free – i.e. there are no payments – nor if the payments were made with virtual/crypto currencies; or if the ancillary service is outside of the UK.
- 38.3. Clause 125 provides for Access Restriction Orders to be granted if regulated services are not complying with their obligations and that these can be imposed whether the access provider is in the UK or in another jurisdiction. These Orders would force ISPs to block regulated services and content. However, the Government has argued that internet service providers do not want to be involved in blocking sites so it needs to be clear how this will work.<sup>42</sup> Access Restriction Orders are typically granted after a Service Restriction Order has not been sufficient to ensure a regulated service complies with their obligations under the Bill, given the vast majority of regulated providers subject to the Bill will be situated outside the UK, Access Restriction Orders should not be considered a last resort. Consideration could be given to swiftly seeking interim Access Restriction Orders for services located outside the UK. This would ensure that the owners of content providers would be forced to engage with UK courts to resume service, once they are compliant with UK law. But it is also not clear if Ofcom will have sufficient powers to ensure that a provider will act if they are outside of the UK.
- 38.4. It is not clear what happens if an ancillary service or an access facility fails to comply with an order.

<sup>33</sup> Nash V et al, University of Oxford, [Effective age verification techniques](#): Lessons to be learnt from the online gambling industry, Final Report, December 2012-December 2013, page 27

<sup>34</sup> [Impact Assessment](#), March 2022, para 240, page 59

<sup>35</sup> [Impact Assessment](#), March 2022, para 240, page 59

<sup>36</sup> [Delegated Powers Memorandum](#), March 2022, paras 216-223, pages 47-48

<sup>37</sup> [Impact Assessment](#), March 2022, Table 25, page 60

<sup>38</sup> [Impact Assessment](#), March 2022, Table 25, page 60

<sup>39</sup> [Impact Assessment](#), March 2022, para 241, page 61

<sup>40</sup> These include requiring third parties to withdraw key ancillary services (like payment or advertising services) to make it less commercially viable for non-compliant businesses.

<sup>41</sup> [Impact Assessment](#), March 2022, Table 25, page 60

<sup>42</sup> Suggests “blocking” in para 240 and Table 25 “restricting access to a non-compliant platform’s service” [Impact Assessment](#), March 2022.

<sup>42</sup> See comments made by Lord Parkinson of Whitley Bay, [17 March 2021, col 344](#)

- 38.5. Consideration should be given to grant a power to sanction companies in the UK that advertise or benefit in some other way from regulated services that are not complying with their obligations under the Bill.
- 38.6. Given the scale of regulated services and providers that fall under the scope of the Bill, consideration should be given to granting Ofcom the power to delegate enforcement in part or in whole for aspects of the Bill to a 3<sup>rd</sup> party which has capacity and expertise in that particular area, for example, an organisation that has specialist knowledge or expertise in CESA, such as the Internet Watch Foundation,<sup>43</sup> or extreme pornography or age assurance could be delegated power to enforce some or all of those parts of the Bill.
- 38.7. **Recommendation 8: CARE recommends that the Government makes clear the intent on enforcement, including the powers that Ofcom will have if ancillary services or access services are outside of the UK; how payment providers will be able to comply with an ancillary order if the services are free or in a virtual/crypto currency; and what will occur if an order is not complied with. A power should be included in the Bill to enable Ofcom to delegate enforcement powers. See amendments 24-28 in Appendix I**

### Commencement

39. Currently, there will be a divergence in how and when Parts 3 and 5 can be commenced once the Bill receives Royal Assent. Part 5 will require no secondary legislation, but will require guidance from Ofcom, whereas Part 3 will require Regulations and Codes of Practice. Given the experience of the DEA and the decision of Government not to implement Part 3 of that Act, it would be preferable if specific dates for commencement for Parts 3 and 5 were on the face of the Bill in clause 193.
40. Under clause 193, only chapter 1 of Part 3 is commenced upon Royal Assent, all other parts of the Bill come into force upon the making of Regulations by the Secretary of State. However, it is worth considering that:
- 40.1. Part 5 requires no secondary legislation and is largely what was passed in the DEA. Given the level of public support for the implementation of age verification, Ofcom could be working on the guidance for the implementation of Part 5 while the Bill progresses through Parliament. This guidance could be put out for consultation immediately following Royal Assent and then laid before Parliament. This would allow for that part to commence reasonably quickly following the passage of the Bill.
- 40.2. Due to the timetable for this Bill slipping, it could be 2025 or later before protection for children is brought into force. Children who were aged 10 in 2017, will have lived their entire teenage years without any protection from online harm; any further delay would be unconscionable. While it is preferable for all content to be regulated at the same time, under the circumstance, steps which can be pursued swiftly should be taken. This will give certainty that they will be commenced and give Government and Ofcom time to prepare the Regulations and guidance and time for Parliament to debate their contents.
41. **Recommendation 9: A commencement clause should be inserted ensuring that guidance for the implementation of Part 5 is commenced within six months of Royal Assent and that Part 3 is commenced no later than one year from the date of Royal Assent. See amendment 29 in Appendix I.**

<sup>43</sup> House of Commons, [Committee Stage, 26 May 2022](#), Q151, col 92 and Q161, col 97-98

42. **Recommendation 10:** In line with our recommendation that pornography should be defined based on section 15 of the Digital Economy Act, 2017, and to ensure parity of regulation section 94 of the DEA as it applies to video on demand should be brought into effect. See amendment 30 in Appendix I.

### The Role of Parliament in Scrutinising the Regulatory Framework

43. As stated above, part 3 services will be subject to codes of practice<sup>44</sup> issued by Ofcom under clause 37, which will be laid before Parliament and subject to the negative resolution. By contrast, for Part 5, under clause 69, it will be for Ofcom to determine through guidance what will be acceptable age verification, without any Parliamentary scrutiny but after consultation, including consultation with groups representing adult users.
44. During the passage of the Digital Economy Act 2017 (DEA), the lack of detail as to what constituted age verification was raised as a key point of concern for Parliament. The Constitution Committee said, “We question whether the House can effectively scrutinise the Bill when its scrutiny is impeded by the absence from the face of the Bill of any detail about the operation of the proposed age-verification regime. Nor is it the case that there will be subsequent opportunities for parliamentary scrutiny of delegated legislation on this matter, since the details of the regime will be set out in due course not by Ministers (or others) exercising regulation-making powers”.<sup>45</sup> The DEA was amended to allow for guidance to be presented to Parliament for scrutiny through the affirmative resolution on the first instance and negative resolution on subsequent versions.<sup>46</sup> It would be wrong if the Bill was not amended to allow Parliamentary scrutiny and users of adult pornography were given more say in how age verification operates than Members of Parliament.
45. **Recommendation 11:** Codes of practice or guidance for age verification standards should be subject to Parliamentary scrutiny and approval on the first occasion through the affirmative resolution and negative resolution on subsequent versions. See amendments 3 and 16 in Appendix I.

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<sup>44</sup> [Explanatory Notes](#), March 2022, para 216 page 40. These must comply with the principles, objectives and content of a code as set out in Schedule 4 (see clause 38), including being “proportionate” (Sch 4, para 2(c), 4(a)(i), 5(a)(i)) and require a higher standard of protection for children than for adults and adequate controls over access to the service by children (Sch 4, para 4(a)(vi) & (ix))

<sup>45</sup> House of Lords, Select Committee on the Constitution, 17 January 2017, [HL 96](#), para 12, page 3

<sup>46</sup> [Section 25](#), Digital Economy Act 2017

## APPENDIX I: DRAFT AMENDMENTS TO THE ONLINE SAFETY BILL

Amendment Number	Area of concern	Recommendation Number	Purpose	Where in the Bill
1	Implementation of AV	4	Requirement for robust age verification for Part 3	Clause 11(3)
2	Implementation of AV	4	Requires codes of practice must set out minimum standards for age verification/age assurance which are binding on providers	New subclause 37(3A)
3	Parliamentary scrutiny	11	First version of codes of practice issued under Part 3 must be agreed by affirmative resolution	New sub-clauses in Clause 39
4	Scope of regulation of pornography	1	Adds pornographic content to the definition of primary priority content	Clause 53(2)
5	Scope of regulation of pornography	2	New clause to define pornographic content based on definition in Digital Economy Act	New Clause ( <i>Meaning of "pornographic content"</i> )
6	Consistent requirements across Bill	3	Requirement on Part 5 service to report CSEA	New Clause ( <i>Requirement on Part 5 service to report CSEA (regulated provider pornographic content)</i> )
7 and 8	Consistent requirements across Bill	3	Additional duties on commercial pornography websites to report CSEA content. Consequential on amendment 6	Clause 60(1) and 62(1)
9	Scope of regulation of pornography	2	Amends current definition of pornographic content in Part 5. Consequential on amendment 4	Clause 66(2)
10	Implementation of AV	4	Requirement for robust age verification for Part 5	Clause 68(2)
11	Consistent requirements across Bill	3	Additional duties on commercial pornography websites to remove illegal material	New sub-clause (2A) in clause 68.
12	Scope of regulation of pornography/ Legal but harmful to adults	6 and 7	Requires services in Part 5 to meet the conditions in the New Schedule. Consequential on amendment 32	New sub-clause (2B) in clause 68.
13-15	Implementation of AV	4	Change references to guidance in Part 5 to code of practice	Amendments to title of clause 69 and 69(1), (2) and (3).

Amendment Number	Area of concern	Recommendation Number	Purpose	Where in the Bill
16	Implementation of AV/Parliamentary scrutiny	11	Guidance in Part 5 must be agreed by same procedure as in clause 39	Leave out clauses 69(4)-(6) and insert new (4)
17	Implementation of AV	4	The codes of practice issued under Parts 3 and 5 on age verification for access to pornographic content must have the same requirements.	New clause
18-23	Consistent requirements across Bill	3	To allow Ofcom to require Part 5 services to remove CSEA content	Amends clause 103(1) through two amendments (lines 6 and 7) Adds a new subclause 103(4A) Amends clause 103(5) and clause 104(3)
24	Enforcement	8	To probe how fines will be imposed on providers outside of the UK.	Clause 118(1)(a)
25	Enforcement	8	To probe the scope of where court orders on ancillary services can be imposed.	Clause 123(2)
26	Enforcement	8	To probe the scope of where court orders on access providers can be imposed.	Clause 125(2)
27	Enforcement	8	To probe Ofcom's enforcement powers in their guidance on enforcement	New sub-clause (3A) in clause 129
28	Enforcement	8	Power for Ofcom to delegate functions	New Clause ( <i>Power to delegate functions</i> )
29	Timing	9	Commencement of Part 3 within 12 months of Royal Assent & Commencement of Part 5 within 6 months	New sub-clauses in Clause 193
30	Implementation/Timing	10	Commencement of section 94 (on-demand programme services: specially restricted material) of the Digital Economy Act 2017 Consequential on amendment 4	New Clause ( <i>Commencement of Section 94 of the Digital Economy Act 2017</i> )
31	Scope of Regulation of sexually explicit material	3	Add Obscene Publications Act 1959 to Schedule 7	New paragraph 16A in Schedule 7
32	Scope of regulation of pornography/ Legal but harmful to adults	6 and 7	Add a new schedule of Duties related to pornographic content	New Schedule
33	Scope of regulation of pornography/ Legal but harmful to adults	6 and 7	Requires user-to-user services in Part 3 to meet the conditions in the New Schedule	New clause

### **Amendment 1: Requirement for robust age verification for Part 3**

Clause 11, page 10, line 15, leave out “(for example, by using” and insert “by robust”.

#### **Member’s explanatory statement**

*This amendment requires robust age verification to be used to prevent children from encountering primary priority content.*

### **Amendment 2: Code of practice for age verification must set out binding minimum standards**

Clause 37, page 35, line 35, at end insert—

“(3A) In preparing the codes of practice under subsection (3), Ofcom must set out the minimum standards which providers must follow in meeting a duty through the provision of age verification or age assurance.”

#### **Member’s explanatory statement**

*This amendment requires that the codes of practice issued by Ofcom must set out minimum standards for age verification/age assurance which are binding on providers.*

### **Amendment 3: Codes of practice must be subject to affirmative resolution on first time before Parliament**

Clause 39, page 37, line 43, at end insert—

“(7A) But subsection (7B) applies, instead of subsection (3), when a draft code of practice is laid before Parliament under subsection (2) and no previous code of practice has been issued under subsection (4)(a) by Ofcom.

(7B) Ofcom must not issue a code of practice guidance in the form of the draft laid before Parliament unless the draft has been approved by a resolution of each House of Parliament.”

#### **Member’s explanatory statement**

*This amendment requires that the first time codes of practice are issued by Ofcom they must be agreed by both House of Parliament.*

### **Amendment 4: Add pornography as primary priority content**

Clause 53, page 49, line 43, at end insert ‘and content that meets the definition of pornographic material in clause [definition of pornographic content]’.

#### **Member’s explanatory statement**

*This amendment ensures that pornography is considered primary priority content that is harmful to children and allows Ofcom to bring in regulation of this material sooner than if it is defined in regulations.*

## Amendment 5: New Clause – Definition of pornographic content

To move the following Clause—

### **“Meaning of “pornographic content”**

(1) In this Act “pornographic content” means any of the following—

- (a) a video work in respect of which the video works authority has issued an R18 certificate;
- (b) content 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;
- © any other content 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 I8 certificate, and that it is reasonable to assume from its nature was produced solely or principally for the purposes of sexual arousal;
- © content that was included in a video work to which paragraph (d) applies, if it is reasonable to assume from the nature of the content—
  - (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 I8 certificate;
- (f) any other content 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 I8 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 content 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 content that its inclusion was among the reasons why the video works authority made that determination;
- (h) content 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 content—
  - (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 content if it is reasonable to assume from the nature of the content—
  - (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);

“content” 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
- © sound;

“R18 certificate” means a classification certificate which contains the statement mentioned in section 7(2)© 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.”

### **Member’s explanatory statement**

*This amendment defines pornographic content for the purposes of the Act and would apply to user-to-user services and commercial pornographic content.*

### **Amendment 6: Requirement on Part 5 providers to report CSEA content**

To move the following Clause—

#### **“Requirement on Part 5 service to report CSEA (regulated provider pornographic content)**

- “(1) This section sets out a requirement which applies in relation to internet services within section 67(2).
- (2) A UK service must operate the service using systems and processes which secure (so far as possible) that the provider reports all detected and unreported CSEA content present on the service to the NCA.



- (3) A non-UK service must operate the service using systems and processes which secure (so far as possible) that the provider reports all detected and unreported UK-lined CSEA content present on the service to the NCA (and does not report to the NCA CSEA content which is not UK-linked).
- (3) Providers' reports under this section—
  - (a) must meet the requirements set out in regulations under section 60, and
  - (b) must be sent to the NCA in the manner, and within the time frames, set out in those regulations.
- (4) Terms used in this section are defined in section 63.
- (5) This section applies only in relation to CSEA content detected on or after the date on which this section comes into force.

### **Member's explanatory statement**

*This new clause requires commercial pornographic websites to follow the same requirements as services in Part 3 on notification of child sexual abuse content.*

### **Amendments 7 and 8: Consequential amendments on Requirement on Part 5 providers to report CSEA content**

Clause **60**, page **54**, line **26**, after “59” insert “and section (Requirement on Part 5 service to report CSEA (regulated provider pornographic content))”

Clause **62**, page **55**, line **7**, after “59” insert “and section (Requirement on Part 5 service to report CSEA (regulated provider pornographic content))”

### **Member's explanatory statement**

*These amendments are consequential on the amendment to require Part 5 service to report CSEA content.*

### **Amendment 9: Amend definition of pornographic content in Part 5**

Clause **66**, page **58**, line **34**, leave out ‘means’ to end of line 36 and insert ‘has the same meaning as section [definition of pornographic content]’.

### **Member's explanatory statement**

*This amendment defines pornographic content for the purposes of the Part 5 and ensures that the same definition would apply to user-to-user services and commercial pornographic content.*

### **Amendment 10: Requirement for robust age verification for Part 5**

Clause **68**, page **60**, line **12**, leave out “(for example, by using” and insert “by robust”.

### **Member's explanatory statement**

*This amendment requires robust age verification to be used to prevent children from encountering pornographic content on commercial pornographic websites.*

**Amendment 11: Additional duties under Part 5**

Clause 68, page 60, line 13, at end insert—

- “(2A) A duty to operate an internet service using proportionate systems and processes designed to—
- (a) prevent individuals from encountering priority illegal content that amounts to an offence in either Schedule 6 or paragraphs 17 and 18 of Schedule 7 by means of the service;
  - (b) minimise the length of time for which the priority illegal content referred to in subsection (a) is present;
- Ⓞ where the provider is alerted by a person to the presence of the illegal content referred to in subsection (a), or becomes aware of it in any other way, swiftly take down such content.

**Member’s explanatory statement**

*These amendments ensures that commercial pornographic websites have the same duties as services in Part 3 to remove child sexual abuse content, extreme pornographic content and private sexual photographs*

**Amendment 12: Additional duties under Part 5**

Clause 68, page 60, line 13, at end insert—

- “(2B) A duty to meet the conditions set out in Schedule (*Additional duties on pornographic content*).”

**Member’s explanatory statement**

*These amendments ensures that commercial pornographic websites must meet the new duties set out in the Schedule Additional duties on pornographic content).*

**Amendments 13-15: Guidance under Part 5 should be referred to as code of practice to bring consistency across the Act**

Clause 69, page 60, line 25, leave out “produce guidance” and insert “prepare and issue a code of practice”.

Clause 69, page 60, line 28, leave out “guidance” and insert “code of practice”.

Clause 69, page 60, line 37, leave out both instances of “guidance” and insert “code of practice”.

**Member’s explanatory statement**

*These amendments ensures that Ofcom issues a code of practice under Part 5 in a similar way to Part 3.*

**Amendment 16: Guidance/Code of Practice under Part 5 should be required to go through the same Parliamentary scrutiny as the Codes under Part 3.**

Clause 69, page 61, line 5, leave out lines 5 to 14 and insert—

- “(4) The procedure for issuing the code of practice under this section shall be the same as the procedure in section 39.”

**Member’s explanatory statement**

*This amendment ensures that Ofcom issues a code of practice under Part 5 in the same way to codes of practice issued under Part 3.*

**Amendment 17: Guidance/Code of Practice needs to consistent on requirement to prevent access to children to pornographic material.**

To move the following Clause—

**“Consistent codes of practice for pornographic material**

The code of practices issued under sections 39 and 69 must be consistent on the requirements to meet the relevant duties that children should be prevented from encountering pornographic content.”

**Member’s explanatory statement**

*This amendment ensures that providers under Parts 3 and 5 of the Bill will be required to prevent children from accessing to pornographic content in the same way.*

**Amendment 18-23: Consequential amendments to allow Ofcom to require Part 5 services to remove CSEA content**

Clause **103**, page **87**, line **6**, after “(4)” insert “or (4A)”

Clause **103**, page **87**, line **7**, after the second “service” insert “or an internet service within section 67(2)”

Clause **103**, page **87**, line **36**, at end insert—

“(4A) A notice under subsection (1) that relates in an internet service within section 67(2) is a notice requiring the provider of the service to use accredited technology CSEA content, whether communicated publicly or privately by means of the service, and to swiftly take down that content.”

Clause **103**, page **87**, line **38**, after “(3)” insert “and (4A)”

Clause **104**, page **89**, line **18**, at end insert—

“© in the case of an internet service within section 67(2), relevant content present on the service.”

Clause **106**, page **90**, line **25**, after “3” insert “or Part 5”

**Member’s explanatory statement**

*These amendments are consequential on the amendment to require Part 5 services to remove CSEA content and allow Ofcom to direct Part 5 service to remove CSEA content*

### **Amendment 24: Scope of where fines can be imposed**

Clause 118, page 101, line 4, at end insert “in the UK”

#### **Member’s explanatory statement**

*The amendment would explore whether Ofcom will be able to impose fines outside of the UK.*

### **Amendment 25: Scope of where court orders on ancillary services can be imposed**

Clause 123, page 104, line 37, leave out “whether from within or outside” and insert “in”

#### **Member’s explanatory statement**

*The amendment would explore whether Ofcom will be able to seek court orders on an ancillary service outside of the UK.*

### **Amendment 26: Scope of where court orders on persons who provide an access facility can be imposed**

Clause 125, page 109, line 4, leave out “whether from within or outside” and insert “in”

#### **Member’s explanatory statement**

*The amendment would explore whether Ofcom will be able to seek court orders on persons who provide an access facility outside of the UK.*

### **Amendment 27: Ofcom’s guidance about enforcement action**

Clause 129, page 113, line 40, at end insert—

“(3A)The guidance must cover—

- (a) what ancillary services OFCOM will use for a service restriction order under section 123 if the service is either free, uses cryptocurrency or virtual currency,
- (b) the role of internet service providers in access restriction orders,
- (c) the action that can be taken if an ancillary service provider fails to act on a service restriction order under section 123 or an interim service restriction order under section 124, and
- (d) the action that can be taken if a person who provides an access facility fails to act on an access restriction order under section 125 or an interim access restriction order under section 126.”

#### **Member’s explanatory statement**

*The amendment explores how Ofcom enforcement powers will operate.*

### **Amendment 28: Power to allow Ofcom to designate regulation to another organisation**

To move the following Clause—

#### **“Power to delegate functions**

- (1) OFCOM may designate any body corporate to carry out the duties of this section in whole or in part.
- (2) OFCOM may not designate a body under subsection (1) unless, as respects that designation, they are satisfied that the body—
  - (a) is a fit and proper body to be designated;
  - (b) has consented to being designated;
  - (c) has access to financial resources that are adequate to ensure the effective performance of its functions under this section; and
  - (d) is sufficiently independent of providers regulated by this Act.”

#### **Member’s explanatory statement**

*The amendment allows Ofcom to delegate some of its regulatory powers to another body.*

### **Amendment 29: Commencement**

Clause 193, page 161, line 1, at beginning insert—

- ‘(IA) Part 3 comes into force no later than twelve months after the Act is passed.  
 (IB) Part 5 comes into force no later than twelve months after the Act is passed.’

#### **Member’s explanatory statement**

*The amendment sets a timetable for the implementation of Parts 3 and 5.*

### **Amendment 30: New Clause – Commencement of section 94 of the Digital Economy Act 2017**

To move the following Clause—

#### **“Commencement of Section 94 of the Digital Economy Act 2017**

The Secretary of State must make regulations under section 118(6) (commencement) of the Digital Economy Act 2017 (“the 2017 Act”) to ensure that when Part 5 of this Act comes into force, section 94 (on-demand programme services: specially restricted material) of the 2017 Act come into force at the same time.”

#### **Member’s explanatory statement**

*This amendment ensures that the definition of pornographic content that would apply to user-to-user services and commercial pornographic content would also apply to video on demand content by bringing into force the relevant section of the Digital Economy Act 2017.*

**Amendment 31: Addition of an offence in Obscene Publications Act 1959 to Schedule 7**

Schedule 7, page 185, line 10, at beginning insert—

‘(16A) An offence under section 2 of the Obscene Publications Act 1959 (prohibition of publication of obscene matter).’.

**Member’s explanatory statement**

*This amendment adds an offence under the Obscene Publications Act 1959 to the Schedule of Priority Offences.*

**Amendment 32: New Schedule of Requirements for pornographic content**

To move the following Schedule—

**“ADDITIONAL DUTIES ON PORNOGRAPHIC CONTENT”**

1. All user-to-user services and an internet service which provides regulated provider pornographic content must meet the following conditions for pornographic content and content that includes sexual photographs and films (“relevant content”)
2. The conditions are—
  - (a) The service must not contain any prohibited material,
  - (b) The service must verify the identity and age of all persons depicted in the content to ensure that all persons depicted are aged 18 or over,
  - (c) The service must be able to provide evidence of the identity under sub-paragraph © on request,
  - (d) The service must obtain and keep on record written consent from all persons depicted in the content,
  - (e) The service must review all relevant content before publication,
  - (f) The service must offer the ability for any person depicted in the content to appeal to remove the content in question.

3. In this Schedule—

“photographs and films” has the same meaning as section 34 of the Criminal Justice and Courts Act 2015 (meaning of “disclose” and “photograph or film”)

“prohibited material” has the same meaning as section 368E(3) of the Communications Act 2003 (harmful material).

**Member’s explanatory statement**

*The amendment sets out additional duties for pornographic content which apply to user-to-user services under Part 3 and commercial pornographic websites under Part 5.*

## APPENDIX 2: LEGAL MATERIAL: EVIDENCE OF LINKS BETWEEN PORNOGRAPHY AND PREVALENCE OF ROUGH SEX

1. The Bill does not address the impact of pornographic material that is legal but can still be harmful to some adults. If we assume that some of the material portraying choking and suffocation is legal, there is cause for concern about the links between seeing this material and the actions that result.
  - I.1. In 2021, the Government published frontline research and a literature review into the use of legal pornography and its influence on harmful behaviours and attitudes towards woman and girls, which concluded “... there is substantial evidence of an association between the use of pornography and harmful sexual attitudes and behaviours towards women” and “The view that pornography played a role in their clients’ harmful attitudes and/or behaviours was undisputed.”<sup>47</sup>
  - I.2. The Frontline workers reported on harmful sexual attitudes and behaviours that they have observed including:<sup>48</sup>
    - I.2.1. unrealistic expectations for sex including “physical aggression during sex (including choking, slapping, hair pulling)” – ie rough sex. In another place in the report, a worker is quoted saying, “**On Pornhub, you don’t have to look in the rough sex category to get rough sex, there are just standard videos of men having sex with women and grabbing them by the throat.**”<sup>49</sup>
    - I.2.2. lack of awareness/concerns consent including acts of sexual harassment.
    - I.2.3. verbal or physical coercion: “rape, forcing women to perform sexual acts, or obtaining sex /sexual acts by gradual wearing down through repeated requests, manipulative language and/or unbalanced power dynamics.” In another place in the report, it says workers “highlighted concerns of the widespread depiction of sex under conditions that constitute rape.”<sup>50</sup>
  - I.3. The Government’s 2021 Tackling Violence against Women and Girls Strategy reported that their “Call for Evidence showed a widespread consensus about the harmful role of violent pornography can play in violence against women and girls, with most respondents to the open public surveys and many respondents to the nationally representative survey agreeing that an increase in violent pornography has led to more people being asked to agree to violent sex acts...and to more people being sexually assaulted.”<sup>51</sup>
  - I.4. The British Board of Film Classification reported in January on their 2019 findings of young people’s use of pornography. They found that “Beyond creating unrealistic expectations of sex, some young people felt pornography had actually affected their expectations of, and behaviour during, sex, particularly in the copying of “rough” or “forceful” sex seen in pornography.”<sup>52</sup>
  - I.5. A US survey of 2,227 men and women aged 18-60 years old published in 2020 found “the associations between pornography use and sexual behaviours was statistically significant” and recommended that “Clinicians need to be aware of recent potential shifts in sexual behaviours, particularly those such as choking that may lead to harm.” The authors also said, “we were struck that one-fifth of women...reported having been choked as part of sex.”<sup>53</sup>

<sup>47</sup> [The relationship between pornography use and harmful sexual behaviours A primary research report prepared for the Government Equalities Office](#), 20 February 2020, pages 8 and 12

<sup>48</sup> *Ibid*, page 14

<sup>49</sup> *Ibid*, page 20

<sup>50</sup> *Ibid*, page 19

<sup>51</sup> [Tackling Violence against Women and Girls Strategy](#), HM Government, July 2021, page 35

<sup>52</sup> Young people, Pornography & Age-verification, BBFC, January 2020, page 46. <https://www.revealingreality.co.uk/wp-content/uploads/2020/01/BBFC-Young-people-and-pornography-Final-report-2401.pdf> Note that this research contains graphic sexual content and pornographic language

<sup>53</sup> Herbenick D et al, Diverse Sexual Behaviors and Pornography Use: Findings From a Nationally Representative Probability Survey of Americans Aged 18 to 60 Years, [J Sex Med 2020;17:623-633](#)

1.6. In a 2019 survey of 2002 women conducted for Radio 5 Live, women reported differing levels of violence during sex,<sup>54</sup> set out in the table below. Of these incidents **53% were reported as unwanted** some, most or all of the time they occurred; **20% reported that the experiences left them feeling upset or frightened** at least once; **42% of the women felt pressured, coerced or forced some, most or all of the time they occurred.**<sup>55</sup> In February 2020, a similar survey was conducted with 2049 men asking them similar questions. **57% of the men said that they were influenced by pornography** either to some extent or a great deal. 20% said “a great deal”.<sup>56 57</sup>

Action	Women experienced	Men performed
Slapping where a partner strikes you with open hand on any part of body	59%	55%
Choking where a partner places their hands around your neck and applies pressure	38%	35%
Gagging where your mouth or airway is blocked or partially blocked with a body part or item	34%	34%
Spitting where a partner spits on you during sexual intercourse	20%	24%
Hair-pulling where a partner pulls your hair during sexual intercourse	63%	58%
Biting where a partner bites your skin during sexual intercourse	59%	53%

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<sup>54</sup> 'A man tried to choke me during sex without warning', 28 November 2019 <https://www.bbc.com/news/uk-50546184>

<sup>55</sup> See Q1, Q2, Q3, Q4, from data tables <https://comresglobal.com/polls/bbc-radio-5-live-womens-poll-november-2019/>

<sup>56</sup> See Q1\_1, Q1\_2, Q1\_3, Q1\_4, Q1\_5, Q5, from data tables <https://comresglobal.com/polls/bbcs-disclosure-and-radio-5live-survey-of-men/>

<sup>57</sup> See also 'I thought he was going to rear chunks out of my skin', BBC News, 23 March 2020