



Department for  
Digital, Culture  
Media & Sport



Home Office

The Baroness Benjamin DBE OBE  
House of Lords  
London  
SW1A 0PW

MC2021/05003/DC  
8 March 2021

Dear Baroness Benjamin

### **Domestic Abuse Bill: Online Pornography**

During the debate in Committee on 10 February on amendment 177A which you tabled on the impact of online pornography on domestic abuse, we committed to write to you about the reason for the delay in publishing the Government Equalities Office (GEO) commissioned research into the relationship between pornography use and harmful sexual behaviours; and other issues which you felt had not been addressed in the letter you received on 26 January following Second Reading.

The reports on 'The Relationship Between Pornography Use and Harmful Sexual Behaviours' were commissioned by a previous administration. Publication was delayed as the new Government established its priorities and as you are aware, the reports are now available on [gov.uk](https://www.gov.uk).

The reports make it clear that there is not one single factor that leads someone to engage in harmful sexual behaviour, rather it is a combination of factors which interact with one another to differing effects on each individual. The literature review highlights that a direct causal link cannot be established between pornography and harmful sexual behaviour as this would require impractical and unethical study conditions (forced exposure to pornography). However, the government shares your concern that a large amount of pornography is available on the internet, often for free, with little or no protection to ensure that those accessing it are old enough to do so. This, in turn, is changing the way young people understand healthy relationships, sex and consent. That is why the government has committed to ensuring the objectives of Part 3 of the Digital Economy Act 2017 (the 2017 Act) will be delivered by the online harms framework.

During the debate in Committee, in your letter of 18 February and in the meeting on this issue on 25 February, you raised concerns about the government's proposed approach to protecting children from online pornography through the forthcoming online harms legislation and Ofcom's enforcement powers, and called for Part 3 of the 2017 Act to be commenced as an interim measure to protect children. We will set out in some detail the reasons for our decision below.

First, we are confident that the proposed Online Safety Bill will provide much greater protection to children than would have been the case with Part 3 of the 2017 Act. Unlike that Act, the online harms regime will capture both the most visited pornography sites and pornography on social media, therefore covering the vast majority of sites where children are most likely to be exposed to pornography. One of the criticisms of the 2017 Act was that its scope did not cover social media companies, where a considerable quantity of pornographic material is available to children. Research by the British Board of Film Classification (BBFC) published in 2020 found that across the same group of children aged 11 to 17, 44% intentionally accessed pornography via a social media site, compared to 43% for dedicated pornography websites and 53% via an image or video search engine. Implementing the 2017 Act would therefore leave a significant gap in meeting the government's objective to prevent children from accessing pornography. Our online harms proposals will achieve a more comprehensive approach and avoid 'displacement', namely moving children from one more regulated area of the internet to another less regulated one. The BBFC's research is available at: <https://www.revealingreality.co.uk/work/young-people-pornography-age-verification/>.

Secondly, recent technological changes could render Part 3 of the 2017 Act ineffective in protecting children if it were introduced as an interim measure. One of the Act's enforcement powers was the power to require Internet Service Providers to block access to material on non-compliant services. Changes to the architecture of the internet may make this power obsolete. These potential enforcement challenges could make age verification very difficult to enforce via the 2017 Act, even as an interim measure. To future-proof this sanction, in the Online Safety Bill we are taking an actor-neutral approach. The regulator will be able to require any organisation that facilitates access to a non-compliant service to restrict access.

Thirdly, it would also not be a quick solution to commence Part 3 as an interim measure. The government would need to designate a new regulator, and that regulator would need to produce statutory guidance and consult publicly on this, and the government would then need to lay regulations before Parliament ahead of any new regime coming into force. As an indication of the potential timescales involved, the implementation period for Part 3 of the 2017 Act took over two years, following Royal Assent in April 2017 to the proposed commencement date of 15 July 2019. Such a two-year lead in time would run into the Online Safety legislative process, which will have been significantly progressed and any benefits of an interim measure would be minimal at best.

Fourthly, commencing Part 3 of the 2017 Act as an interim measure would also create a confusing and fragmented regulatory landscape. The regulatory regime under Part 3 of the 2017 Act focuses on a specific requirement on industry to address a specific harm, rather than the wider, more holistic approach to systems and processes under our online harms proposals. It would also require aligning two different enforcement regimes. Given the timeframes for implementing the regulatory framework under the 2017 Act, it is also possible that we would be asking industry to prepare to comply with the provisions of Part 3 at the same time as the forthcoming online safety legislation, which could distract and divert company resources away from preparing for the new legislation which will deliver better outcomes for children.

We are clear that companies should not wait for legislation to take action to protect children from accessing online pornography, and are encouraging companies to take steps ahead of the legislation to do so. To help achieve this, we are working closely with stakeholders across industry to establish the right conditions for the market to deliver age assurance and age verification technical solutions ahead of the legislative requirements coming into force. In addition, alongside the full government response, the government published an interim code of practice on the steps companies can take to tackle online child sexual exploitation and abuse.

We can reassure you that we are working at pace to develop online harms legislation and the Online Safety Bill will be ready this year, and we will continue to work closely with parliamentarians and stakeholders over the coming months as we prepare this vital legislation. We are already working closely with Ofcom to ensure that the implementation period following passage of the legislation will be as short as possible.

You have also raised concerns about Ofcom's ability to block non-compliant sites and take enforcement action on companies based overseas. Ofcom will have a robust range of enforcement powers available to use against companies who fail to fulfil the duty of care, or fail to put in place appropriate measures after being alerted to an issue, no matter where companies are based. This is essential given the global nature of the internet. Ofcom will be able to issue fines and take business disruption measures against them. This may include removing access to key services to limit the commercial effectiveness of the organisation. For the most serious and egregious of failures, Ofcom will be able to significantly restrict access to the services from the UK. Ofcom will have the flexibility to take the most effective enforcement action depending on the circumstances. We anticipate that as other countries introduce similar laws Ofcom will be able to work with its counterparts overseas to support compliance.

During the debate, Lord Paddick made reference to the importance of comprehensive and mandatory, healthy relationship education, to combat what children might see when accessing online pornography. The government strongly agrees with Lord Paddick that education plays a vital role in supporting children to navigate the online world safely. In England, the Department for Education introduced the statutory relationships, sex and health education curriculum (in September 2020), alongside the computing curriculum (in September 2014). Both support children's online safety. The secondary school component of the relationships, sex and health curriculum includes teaching that specifically sexually explicit material, for example pornography, presents a distorted picture of sexual behaviours, and can damage the way people see themselves in

relation to others and negatively affect how they behave towards sexual partners. The Department for Education has also brought in new national standards for essential digital skills that set out the skills needed to operate effectively in life and work; 'Being safe and responsible online' is one of the 5 skill areas. As part of the health education curriculum, which became statutory in all state funded schools from September 2020, pupils should also be taught about the similarities and differences between the online world and the physical world, including the impact of unhealthy or obsessive comparison with others online. This may cover setting unrealistic expectations for body image and how people may curate a specific image of their life online.

Finally, we want to be clear that where content is illegal under any criminal law this will be captured by the duty of care. As the possession of extreme pornography imagery is illegal under existing legislation, it will fall within the duty of care in the Online Harms regime. Our new approach will be more robust than the 2017 Act, as it will capture extreme pornography as well as other illegal pornography (including non-photographic child sexual abuse content) that is not included in the definition of extreme pornography referred to in the 2017 Act. Companies will need to ensure that illegal content is removed expeditiously and that the risk of it appearing is minimised through effective systems.

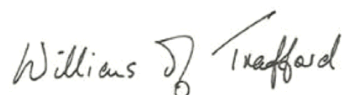
We look forward to continuing to work together as we prepare this vital legislation. We would be very happy to arrange a meeting with senior officials in the Security and Online Harms team in DCMS to discuss any further concerns you may have with our approach.

We are copying this letter to Lord Alton of Liverpool, Lord McColl of Dulwich, Baroness Massey of Darwen, Baroness Eaton, Lord Morrow, Lord Paddick and Lord Ponsonby of Shulbrede. We will also place a copy in the library of the House.

Yours sincerely,



**Baroness Barran MBE**



**Baroness Williams of Trafford**

