

Consultation response form

Consultation title	Guidance for service providers publishing pornographic content
Organisation Name	Scottish Government

Your response

Question	Your response
<p>Question 1: Do you agree with our proposed guidance on scope? If not, please provide any information or evidence in support of your views, including descriptions of services or content where you consider it is unclear whether they fall within the scope of Part 5.</p>	<p>Confidential? – No</p> <p>We note that pornographic content falling outwith Part 5 of the Online Safety Act 2023 (“the 2023 Act”), includes:</p> <ul style="list-style-type: none">• User-generated pornographic content on an internet service (Part 3 sets out obligations for this);• Pornographic content consisting only of text or texts with GIFs, emojis or other symbols;• Paid-for advertisement content;• On demand programme services are not covered (regulated instead under Part 4A of the CA03);• Pornographic content which appears in the search results of a search engine or a combined service (Part 3 sets out obligations for this). <p>It would be helpful to set this out clearly in the guidance over one section under the heading ‘What pornographic content falls outside of Part 5?’</p> <p>Ofcom should confirm whether cartoon images and CGI pornographic content falls within Part 5, and if so, directly reference this position in the guidance.</p> <p>The British Board of Film Classification (BBFC) joint research reveals that children are more exposed to sites specialising in non-photographic pornography, compared to adults (available at: www.bbfc.co.uk). The research also highlights the widespread availability of content featuring characters based on media properties likely to</p>

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	<p>be familiar or appealing to children, such as cartoon characters. Such content can often be easier to access by children and young people.</p>
<p>Question 2: Do you have any comments on how our proposed guidance applies in respect of pornographic content created by generative-AI services within the scope of Part 5? Please provide any information or evidence in support of your views.</p>	<p>Confidential? – No</p> <p>AI generated pornographic content, including a service with an automated tool such as generative AI tool or algorithm in response to a prompt by a user will also be treated as published or displayed, with the provider of the relevant service being the entity or person with control of, making available the tool or algorithm in question.</p> <p>We agree this is a sensible approach to be taken in respect of AI generated pornographic content.</p>
<p>Question 3: Do you have any comments on our proposed guidance in respect of the kinds of age assurance which could be highly effective? If you consider there are other kinds of age assurance which have not been listed that you consider could fulfil the proposed criteria, please identify these with any supporting information or evidence.</p>	<p>Confidential? – No</p> <p>We support this measure in the 2023 Act and the importance of Ofcom ensuring it is implemented by service providers to ensure children are safeguarded from exposure to pornography.</p>
<p>Question 4: Do you agree that service providers should use the proposed criteria to determine whether the age assurance they implement which is highly effective at correctly determining whether or not a user is a child? Please provide any information or evidence in support of your views.</p>	<p>Confidential? No</p>

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<p>Question 5: Do you have any information or evidence on the extent of circumvention risk affecting different age assurance methods and/or on any steps that providers might take to manage different circumvention risks for different methods?</p>	<p>Confidential? No</p>
<p>Question 6: Do you agree with our proposed guidance that providers should consider accessibility and interoperability when implementing age assurance? Please provide any information or evidence in support of your views.</p>	<p>Confidential? – No</p>
<p>Question 7: Do you have comments on the illustrative case study we have set out in the guidance? Do you have any supporting information or evidence relating to additional examples of how the criteria and principles might apply to different age assurance processes?</p>	<p>Confidential? – No</p>
<p>Question 8: Do you agree with our proposed guidance on the record-keeping duties? Please provide any information or evidence in support of your views.</p>	<p>Confidential? – No</p>
<p>Question 9: Do you have any comments on our proposed approach to assessing compliance with the duties on service providers who publish or display pornographic content, including on the proposed examples of non-compliance? Please provide any information or evidence in support of your views.</p>	<p>Confidential? – No</p> <p>It is well documented that viewing pornography is causing harm to our young people and so service providers' effective compliance with these duties at the earliest possible eventuality is extremely important. Taking a robust approach to compliance is key.</p> <p>Barnardo's report that viewing pornography can damage children's mental health, distorting their understanding of healthy relationships, and normalising abusive sexual</p>

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	<p>behaviour (<i>The Online Safety Bill: Impact of Pornography on Children</i> briefing. Available at: www.barnardos.org.uk). There are links between the use of pornography and harmful attitudes and behaviours towards girls and women.</p> <p>Research by the British Board of Film Classification (BBFC) has found that children are coming across pornography online from as young as seven (available at: www.bbfc.co.uk). Their study also shows that half of 11- to 13-year-olds have seen pornography at some point. This rises to two thirds of 14 to 15-year-olds and four in five 16 to 17-year-old.</p> <p>A survey by the NSPCC and the Children's Commissioner for England found that 44% of boys aged between 11 and 16 who regularly viewed pornographic content reported that it gave them ideas about the type of sex that they wanted to try. (<i>A quantitative and qualitative examination of the impact of online pornography on the values, attitudes, beliefs and behaviours of children and young people.</i> Available at: www.childrenscommissioner.gov.uk)</p> <p>Research shows that 88% of scenes in online pornography show physical aggression, and 94% of this is directed at women. This reinforces gender stereotypes and leads to higher rates of gender-related violence amongst young people (<i>Aggression and sexual behavior in best-selling pornography videos: a content analysis update.</i> Bridges et al. 2010. <i>Violence Against Women.</i>)</p> <p>The current approach is not clear on the public/ reporting/ accountability elements of the duties and the accumulative impact of continued non-compliance.</p>
<p>Question 10: Do you have any comments on the impact assessment set out in Annex 1? Please provide any information or evidence in support of your views</p>	<p>Confidential? – No</p> <p>Ofcom should set out what measures it will take to ensure that companies engaging with the guidance are aware of appropriate signposts and resources to share with individuals who raise concerns about content on their platform in order to support them to seek further advice or support. For example, references to support, such as through the Revenge Porn Helpline etc.</p> <p>Ofcom should also set out how the outputs and recommendations of the UK Government's review into</p>

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	<p>the Pornography industry will be taken into account in the guidance for service providers publishing pornographic content.</p>
<p>Question 11: Do you agree that our proposed guidance is likely to have positive effects on opportunities to use Welsh and treating Welsh no less favourably than English?</p> <p>If you disagree, please explain why, including how you consider the proposed guidance could be revised to have positive effects or more positive effects, or no adverse effects or fewer adverse effects on opportunities to use Welsh and treating Welsh no less favourably than English.</p>	<p>Confidential? – No</p>

Please complete this form in full and return to Part5Guidance@ofcom.org.uk.