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STATUTORY INSTRUMENTS

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**2019 No. 23**

**The Online Pornography (Commercial Basis) Regulations 2019**

**Circumstances in which pornographic material is to be regarded as made available on a commercial basis**

2.—(1) Pornographic material<sup>(1)</sup> is to be regarded as made available on the internet to persons in the United Kingdom on a commercial basis for the purposes of Part 3 of the Digital Economy Act 2017 if either paragraph (2) or (3) are met.

(2) This paragraph applies if access to that pornographic material is available only upon payment.

(3) This paragraph applies (subject to paragraph (4)) if the pornographic material is made available free of charge and the person who makes it available receives (or reasonably expects to receive) a payment, reward or other benefit in connection with making it available on the internet.

(4) Subject to paragraph (5), paragraph (3) does not apply in a case where it is reasonable for the age-verification regulator to assume that pornographic material makes up less than one-third of the content of the material made available on or via the internet site or other means (such as an application program) of accessing the internet by means of which the pornographic material is made available.

(5) Paragraph (4) does not apply if the internet site or other means (such as an application program) of accessing the internet (by means of which the pornographic material is made available) is marketed as an internet site or other means of accessing the internet by means of which pornographic material is made available to persons in the United Kingdom.

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(1) “Pornographic material” is defined in section 15(1) of the Digital Economy Act 2017. “Material” is defined in section 15(2) of that Act.