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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

A person contravenes section 14(1) of the Digital Economy Act 2017 (“the 2017 Act”) if the person makes pornographic material available on the internet to persons in the United Kingdom on a commercial basis other than in a way that secures that, at any given time, the material is not normally accessible by persons under the age of 18.

These Regulations set out, for the purposes of Part 3 of the 2017 Act, the circumstances in which pornographic material is to be regarded as made available on a commercial basis.

Pornographic material is to be regarded as made available on a commercial basis if access to that material is available only upon payment (regulation 2(2)).

Pornographic material that is made available free of charge is to be regarded as made available on a commercial basis if the person making it available receives a payment, reward or other benefit in connection with making it available on the internet (regulation 2(3)). However, the material will not be considered to be made available on a commercial basis if it is reasonable for the age-verification regulator to assume that pornographic material makes up less than one-third of the content of the internet site or other means of accessing the internet (such as an application program) on or via which the material is made available (regulation 2(4)). There is an exception to this in regulation 2(5), which provides that regulation 2(4) does not apply if the internet site or other means of accessing the internet is marketed as making available pornographic material to persons in the United Kingdom.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from the Department for Digital, Culture, Media and Sport at 100 Parliament Street, London SW1A 2BQ and is published with the Explanatory Memorandum alongside the instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).