



2016 CHAPTER 21

PART 3

Miscellaneous

Pornographic or other sexual images

Possession of pornographic images of rape and assault by penetration

50.—(1) The Criminal Justice and Immigration Act 2008 is amended as follows.

(2) In section 63(6) (possession of extreme pornographic images) after “subsection (7)” insert “or (7A)”.

(3) In section 66 (defence: participation in consensual acts)—

(a) in subsection (1)(b) for the words from “within” to the end substitute “within subsection (7)(a) to (c) or (7A) of that section (but does not portray an act within subsection (7)(d) of that section).”;

(b) in subsection (2) after paragraph (c) insert “; and

(d) if the image portrays an act within section 63(7A), that what is portrayed as non-consensual penetration was in fact consensual.”.

(4) In section 67 (penalties for possession of extreme pornographic images) in subsection (5)(b) at the end add “or (7A)(a) or (b).”.

Disclosing private sexual photographs and films with intent to cause distress

51.—(1) It is an offence for a person to disclose a private sexual photograph or film if the disclosure is made—

- (a) without the consent of an individual who appears in the photograph or film, and
 - (b) with the intention of causing that individual distress.
- (2) But it is not an offence under this section for the person to disclose the photograph or film to the individual mentioned in subsection (1)(a) and (b).
- (3) It is a defence for a person charged with an offence under this section to prove that he or she reasonably believed that the disclosure was necessary for the purposes of preventing, detecting or investigating crime.
- (4) It is a defence for a person charged with an offence under this section to show that—
- (a) the disclosure was made in the course of, or with a view to, the publication of journalistic material, and
 - (b) he or she reasonably believed that, in the particular circumstances, the publication of the journalistic material was, or would be, in the public interest.
- (5) It is a defence for a person charged with an offence under this section to show that—
- (a) he or she reasonably believed that the photograph or film had previously been disclosed for reward, whether by the individual mentioned in subsection (1)(a) and (b) or another person, and
 - (b) he or she had no reason to believe that the previous disclosure for reward was made without the consent of the individual mentioned in subsection (1)(a) and (b).
- (6) A person is taken to have shown the matters mentioned in subsection (4) or (5) if—
- (a) sufficient evidence of the matters is adduced to raise an issue with respect to it, and
 - (b) the contrary is not proved beyond reasonable doubt.
- (7) For the purposes of subsections (1) to (5)—
- (a) “consent” to a disclosure includes general consent covering the disclosure, as well as consent to the particular disclosure, and
 - (b) “publication” of journalistic material means disclosure to the public at large or to a section of the public.
- (8) A person charged with an offence under this section is not to be taken to have disclosed a photograph or film with the intention of causing distress merely because that was a natural and probable consequence of the disclosure.
- (9) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both), and

(b) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both).

(10) Schedule 4 makes special provision in connection with the operation of this section in relation to persons providing information society services.

Meaning of “disclose” and “photograph or film”

52.—(1) The following apply for the purposes of section 51, this section and section 53.

(2) A person “discloses” something to a person if, by any means, he or she gives or shows it to the person or makes it available to the person.

(3) Something that is given, shown or made available to a person is disclosed —

(a) whether or not it is given, shown or made available for reward, and

(b) whether or not it has previously been given, shown or made available to the person.

(4) “Photograph or film” means a still or moving image in any form that—

(a) appears to consist of or include one or more photographed or filmed images, and

(b) in fact consists of or includes one or more photographed or filmed images.

(5) The reference in subsection (4)(b) to photographed or filmed images includes photographed or filmed images that have been altered in any way.

(6) “Photographed or filmed image” means a still or moving image that—

(a) was originally captured by photography or filming, or

(b) is part of an image originally captured by photography or filming.

(7) “Filming” means making a recording, on any medium, from which a moving image may be produced by any means.

(8) References to a photograph or film include—

(a) a negative version of an image described in subsection (4), and

(b) data stored by any means which is capable of conversion into an image described in subsection (4).

Meaning of “private” and “sexual”

53.—(1) The following apply for the purposes of section 51.

(2) A photograph or film is “private” if it shows something that is not of a kind ordinarily seen in public.

(3) A photograph or film is “sexual” if—

(a) it shows all or part of an individual’s exposed genitals or pubic area,

- (b) it shows something that a reasonable person would consider to be sexual because of its nature, or
 - (c) its content, taken as a whole, is such that a reasonable person would consider it to be sexual.
- (4) Subsection (5) applies in the case of—
- (a) a photograph or film that consists of or includes a photographed or filmed image that has been altered in any way,
 - (b) a photograph or film that combines two or more photographed or filmed images, and
 - (c) a photograph or film that combines a photographed or filmed image with something else.
- (5) The photograph or film is not private and sexual if—
- (a) it does not consist of or include a photographed or filmed image that is itself private and sexual,
 - (b) it is only private or sexual by virtue of the alteration or combination mentioned in subsection (4), or
 - (c) it is only by virtue of the alteration or combination mentioned in subsection (4) that the person mentioned in section 51(1)(a) and (b) is shown as part of, or with, whatever makes the photograph or film private and sexual.