



Abusive Behaviour and Sexual Harm (Scotland) Act 2016

2016 asp 22

PART 1

ABUSIVE BEHAVIOUR

Disclosure of an intimate photograph or film

2 Disclosing, or threatening to disclose, an intimate photograph or film

- (1) A person (“A”) commits an offence if—
 - (a) A discloses, or threatens to disclose, a photograph or film which shows, or appears to show, another person (“B”) in an intimate situation,
 - (b) by doing so, A intends to cause B fear, alarm or distress or A is reckless as to whether B will be caused fear, alarm or distress, and
 - (c) the photograph or film has not previously been disclosed to the public at large, or any section of the public, by B or with B’s consent.
- (2) For the purposes of this section, a photograph or film is disclosed if it, or any data or other thing which is capable of being converted into it, is given, shown or made available to a person other than B.
- (3) In proceedings for an offence under subsection (1), A has a defence if any of the following facts is established—
 - (a) B consented to the photograph or film being disclosed,
 - (b) A reasonably believed that B consented to the photograph or film being disclosed,
 - (c) A reasonably believed that disclosure of the photograph or film was necessary for the purposes of the prevention, detection, investigation or prosecution of crime, or
 - (d) A reasonably believed that disclosure of the photograph or film was in the public interest.
- (4) For the purposes of subsection (3), consent to the photograph or film being disclosed may be—

Status: This is the original version (as it was originally enacted).

- (a) consent which is specific to the particular disclosure or (as the case may be) the particular threatened disclosure, or
 - (b) consent to disclosure generally where that consent covers the particular disclosure or (as the case may be) the particular threatened disclosure.
- (5) In proceedings for an offence under subsection (1), A has a defence if the following matter is established—
- (a) B was in the intimate situation shown in the photograph or film,
 - (b) B was not in the intimate situation as a result of a deliberate act of another person to which B did not agree, and
 - (c) when B was in the intimate situation—
 - (i) B was in a place to which members of the public had access (whether or not on payment of a fee), and
 - (ii) members of the public were present.
- (6) For the purposes of subsection (3), a fact is established, and for the purposes of subsection (5), the matter is established, if—
- (a) sufficient evidence is adduced to raise an issue as to whether that is the case, and
 - (b) the prosecution does not prove beyond reasonable doubt that it is not the case.
- (7) A person who commits an offence under subsection (1) is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).

3 Interpretation of section 2

- (1) For the purposes of section 2, a person is in an “intimate situation” if—
- (a) the person is engaging or participating in, or present during, an act which—
 - (i) a reasonable person would consider to be a sexual act, and
 - (ii) is not of a kind ordinarily done in public, or
 - (b) the person’s genitals, buttocks or breasts are exposed or covered only with underwear.
- (2) In section 2—
- “film” means a moving image in any form, whether or not the image has been altered in any way, that was originally captured by making a recording, on any medium, from which a moving image may be produced, and includes a copy of the image,
- “photograph” means a still image in any form, whether or not the image has been altered in any way, that was originally captured by photography, and includes a copy of the image.

4 Section 2: special provision in relation to providers of information society services

Schedule 1 makes special provision in connection with the operation of section 2 in relation to persons providing information society services (as defined in paragraph 4(1) of that schedule).