



# Online Safety Act 2023

## 2023 CHAPTER 50

### PART 10

#### COMMUNICATIONS OFFENCES

##### *Offences of sending or showing flashing images*

#### **183 Offences of sending or showing flashing images electronically**

- (1) A person (A) commits an offence if—
  - (a) A sends a communication by electronic means which consists of or includes flashing images (see subsection (13)),
  - (b) either condition 1 or condition 2 is met, and
  - (c) A has no reasonable excuse for sending the communication.
- (2) Condition 1 is that—
  - (a) at the time the communication is sent, it is reasonably foreseeable that an individual with epilepsy would be among the individuals who would view it, and
  - (b) A sends the communication with the intention that such an individual will suffer harm as a result of viewing the flashing images.
- (3) Condition 2 is that, when sending the communication—
  - (a) A believes that an individual (B)—
    - (i) whom A knows to be an individual with epilepsy, or
    - (ii) whom A suspects to be an individual with epilepsy, will, or might, view it, and
  - (b) A intends that B will suffer harm as a result of viewing the flashing images.
- (4) In subsections (2)(a) and (3)(a), references to viewing the communication are to be read as including references to viewing a subsequent communication forwarding or sharing the content of the communication.

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*Status: This is the original version (as it was originally enacted).*

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- (5) The exemptions contained in section 180 apply to an offence under subsection (1) as they apply to an offence under section 179.
- (6) For the purposes of subsection (1), a provider of an internet service by means of which a communication is sent is not to be regarded as a person who sends a communication.
- (7) In the application of subsection (1) to a communication consisting of or including a hyperlink to other content, references to the communication are to be read as including references to content accessed directly via the hyperlink.
- (8) A person (A) commits an offence if—
- (a) A shows an individual (B) flashing images by means of an electronic communications device,
  - (b) when showing the images—
    - (i) A knows that B is an individual with epilepsy, or
    - (ii) A suspects that B is an individual with epilepsy,
  - (c) when showing the images, A intends that B will suffer harm as a result of viewing them, and
  - (d) A has no reasonable excuse for showing the images.
- (9) An offence under subsection (1) or (8) cannot be committed by a healthcare professional acting in that capacity.
- (10) A person who commits an offence under subsection (1) or (8) is liable—
- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates’ court or a fine (or both);
  - (b) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both);
  - (c) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).
- (11) It does not matter for the purposes of this section whether flashing images may be viewed at once (for example, a GIF that plays automatically) or only after some action is performed (for example, pressing play).
- (12) In this section—
- (a) references to sending a communication include references to causing a communication to be sent;
  - (b) references to showing flashing images include references to causing flashing images to be shown.
- (13) In this section—
- “electronic communications device” means equipment or a device that is capable of transmitting images by electronic means;
  - “flashing images” means images which carry a risk that an individual with photosensitive epilepsy who viewed them would suffer a seizure as a result;
  - “harm” means—
    - (a) a seizure, or
    - (b) alarm or distress;
  - “individual with epilepsy” includes, but is not limited to, an individual with photosensitive epilepsy;

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“send” includes transmit and publish (and related expressions are to be read accordingly).