



Online Safety Act 2023

2023 CHAPTER 50

PART 10

COMMUNICATIONS OFFENCES

Offences to be inserted into Sexual Offences Act 2003

188 Sharing or threatening to share intimate photograph or film

In the Sexual Offences Act 2003, after section 66A (inserted by section 187), insert—

“66B Sharing or threatening to share intimate photograph or film

- (1) A person (A) commits an offence if—
 - (a) A intentionally shares a photograph or film which shows, or appears to show, another person (B) in an intimate state,
 - (b) B does not consent to the sharing of the photograph or film, and
 - (c) A does not reasonably believe that B consents.
- (2) A person (A) commits an offence if—
 - (a) A intentionally shares a photograph or film which shows, or appears to show, another person (B) in an intimate state,
 - (b) A does so with the intention of causing B alarm, distress or humiliation, and
 - (c) B does not consent to the sharing of the photograph or film.
- (3) A person (A) commits an offence if—
 - (a) A intentionally shares a photograph or film which shows, or appears to show, another person (B) in an intimate state,
 - (b) A does so for the purpose of A or another person obtaining sexual gratification,
 - (c) B does not consent to the sharing of the photograph or film, and

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- (d) A does not reasonably believe that B consents.
- (4) A person (A) commits an offence if—
- (a) A threatens to share a photograph or film which shows, or appears to show, another person (B) in an intimate state, and
 - (b) A does so—
 - (i) with the intention that B or another person who knows B will fear that the threat will be carried out, or
 - (ii) being reckless as to whether B or another person who knows B will fear that the threat will be carried out.
- (5) Subsections (1) to (4) are subject to section 66C (exemptions).
- (6) For the purposes of subsections (1) to (3) and section 66C(3)(b)—
- (a) “consent” to the sharing of a photograph or film includes general consent covering the particular act of sharing as well as specific consent to the particular act of sharing, and
 - (b) whether a belief is reasonable is to be determined having regard to all the circumstances including any steps A has taken to ascertain whether B consents.
- (7) Where a person is charged with an offence under subsection (4), it is not necessary for the prosecution to prove—
- (a) that the photograph or film mentioned in the threat exists, or
 - (b) if it does exist, that it is in fact a photograph or film which shows or appears to show a person in an intimate state.
- (8) It is a defence for a person charged with an offence under subsection (1) to prove that the person had a reasonable excuse for sharing the photograph or film.
- (9) A person who commits an offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding the maximum term for summary offences or a fine (or both).
- (10) A person who commits an offence under subsection (2), (3) or (4) is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding the general limit in a magistrates’ court or a fine (or both);
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years.
- (11) In subsection (9) “the maximum term for summary offences” means—
- (a) if the offence is committed before the time when section 281(5) of the Criminal Justice Act 2003 comes into force, six months;
 - (b) if the offence is committed after that time, 51 weeks.
- (12) If on the trial of a person charged with an offence under subsection (2) or (3) a magistrates’ court or jury finds the person not guilty of the offence charged, the magistrates’ court or jury may find the person guilty of an offence under subsection (1).
- (13) The Crown Court has the same powers and duties in relation to a person who is by virtue of subsection (12) convicted before it of an offence under subsection (1) as a magistrates’ court would have on convicting the person of the offence.

66C Sharing or threatening to share intimate photograph or film: exemptions

- (1) A person (A) who shares a photograph or film which shows, or appears to show, another person (B) in an intimate state does not commit an offence under section 66B(1), (2) or (3) if—
 - (a) the photograph or film was taken in a place to which the public or a section of the public had or were permitted to have access (whether on payment or otherwise),
 - (b) B had no reasonable expectation of privacy from the photograph or film being taken, and
 - (c) B was, or A reasonably believes that B was, in the intimate state voluntarily.
- (2) For the purposes of subsection (1)(b), whether a person had a reasonable expectation of privacy from a photograph or film being taken is to be determined by reference to the circumstances that the person sharing the photograph or film reasonably believes to have existed at the time the photograph or film was taken.
- (3) A person (A) who shares a photograph or film which shows, or appears to show, another person (B) in an intimate state does not commit an offence under section 66B(1), (2) or (3) if—
 - (a) the photograph or film had, or A reasonably believes that the photograph or film had, been previously publicly shared, and
 - (b) B had, or A reasonably believes that B had, consented to the previous sharing.
- (4) A person (A) who shares a photograph or film which shows, or appears to show, another person (B) in an intimate state does not commit an offence under section 66B(1) if—
 - (a) B is a person under 16,
 - (b) B lacks, or A reasonably believes that B lacks, capacity to consent to the sharing of the photograph or film, and
 - (c) the photograph or film is shared—
 - (i) with a healthcare professional acting in that capacity, or
 - (ii) otherwise in connection with the care or treatment of B by a healthcare professional.
- (5) A person who shares a photograph or film which shows, or appears to show, a child in an intimate state does not commit an offence under section 66B(1) if the photograph or film is of a kind ordinarily shared between family and friends.
- (6) A person who threatens to share a photograph or film which shows, or appears to show, another person in an intimate state does not commit an offence under section 66B(4) if, by reason of this section, the person would not commit an offence under section 66B(1), (2) or (3) by sharing the photograph or film in the circumstances conveyed by the threat.

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66D Sharing or threatening to share intimate photograph or film: interpretation

- (1) This section applies for the purposes of sections 66B and 66C.
- (2) A person “shares” something if the person, by any means, gives or shows it to another person or makes it available to another person.
- (3) But a provider of an internet service by means of which a photograph or film is shared is not to be regarded as a person who shares it.
- (4) “Photograph” and “film” have the same meaning as in section 66A (see subsections (3) to (5) of that section).
- (5) Except where a photograph or film falls within subsection (8), a photograph or film shows, or appears to show, another person in an intimate state if it shows or appears to show—
 - (a) the person participating or engaging in an act which a reasonable person would consider to be a sexual act,
 - (b) the person doing a thing which a reasonable person would consider to be sexual,
 - (c) all or part of the person’s exposed genitals, buttocks or breasts,
 - (d) the person in an act of urination or defecation, or
 - (e) the person carrying out an act of personal care associated with the person’s urination, defecation or genital or anal discharge.
- (6) For the purposes of subsection (5)(c) the reference to all or part of a person’s “exposed” genitals, buttocks or breasts includes—
 - (a) a reference to all or part of the person’s genitals, buttocks or breasts visible through wet or otherwise transparent clothing,
 - (b) the case where all or part of the person’s genitals, buttocks or breasts would be exposed but for the fact that they are covered only with underwear, and
 - (c) the case where all or part of the person’s genitals, buttocks or breasts would be exposed but for the fact that they are obscured, provided that the area obscured is similar to or smaller than an area that would typically be covered by underwear worn to cover a person’s genitals, buttocks or breasts (as the case may be).
- (7) In subsection (6)(c) “obscured” means obscured by any means, other than by clothing that a person is wearing, including, in particular, by an object, by part of a person’s body or by digital alteration.
- (8) A photograph or film falls within this subsection if (so far as it shows or appears to show a person in an intimate state) it shows or appears to show something, other than breastfeeding, that is of a kind ordinarily seen in public.
- (9) For the purposes of subsection (8) “breastfeeding” includes the rearranging of clothing in the course of preparing to breastfeed or having just finished breastfeeding.”