

Online Safety Bill

AMENDMENTS
TO BE MOVED
ON REPORT

Clause 170

LORD PARKINSON OF WHITLEY BAY

Page 149, line 25, after “made” insert “or altered”

Member’s explanatory statement

This amendment provides that “photograph” and “film” in the new offence of sending a photograph or film of genitals (and, by extension the new offences of sharing an intimate photograph or film) includes an image which has been altered and which appears to be a photograph or film.

After Clause 170

LORD PARKINSON OF WHITLEY BAY

Insert the following new Clause –

“Sharing or threatening to share intimate photograph or film

In the Sexual Offences Act 2003, after section 66A (inserted by section 170), 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,

After Clause 170 - continued

- (c) B does not consent to the sharing of the photograph or film, and
 - (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.

*After Clause 170 - continued***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.

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.

After Clause 170 - continued

- (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.””

Member’s explanatory statement

This amendment provides for new offences of sharing or threatening to share intimate photographs or films.

After Clause 171

LORD PARKINSON OF WHITLEY BAY

Insert the following new Clause –

“Repeals in connection with offences under section (*Sharing or threatening to share intimate photograph or film*)

Sections 33 to 35 of the Criminal Justice and Courts Act 2015 (disclosing or threatening to disclose private sexual photographs and films with intent to cause distress) are repealed.”

Member’s explanatory statement

This amendment is consequential on the new clause creating offences of sharing or threatening to share intimate photographs or films.

Clause 172

LORD PARKINSON OF WHITLEY BAY

Page 150, line 15, leave out “section 170” and insert “sections 170 and (*Sharing or threatening to share intimate photograph or film*)”

Member’s explanatory statement

This amendment provides that Part 3 of Schedule 14 also makes consequential amendments on the new clause creating offences of sharing and threatening to share intimate photographs or films.

Page 150, line 15, at end insert –

“(4) Part 4 of Schedule 14 contains amendments consequential on section (*Repeals in connection with offences under section (Sharing or threatening to share intimate photograph or film)*).”

Member’s explanatory statement

This amendment introduces a new Part of Schedule 14 which makes consequential amendments on the new clause in my name repealing sections 33 to 35 of the Criminal Justice and Courts Act 2015.

Clause 214

LORD PARKINSON OF WHITLEY BAY

Page 182, line 9, at end insert –

“(aa) section (*Sharing or threatening to share intimate photograph or film*);
(ab) section 171(2);
(ac) section (*Repeals in connection with offences under section (Sharing or threatening to share intimate photograph or film)*);”

Member’s explanatory statement

This amendment revises the extent clause so that the provisions mentioned extend to England and Wales only.

Schedule 14

LORD PARKINSON OF WHITLEY BAY

Page 240, line 24, after first “the” insert “first”

Member’s explanatory statement

This is a technical amendment ensuring that the amendments made under Schedule 14 to Schedule 1 to the Children and Young Persons Act 1933 are inserted in the correct place in that Act.

Page 240, line 25, after “66A” insert “, 66B”

Member’s explanatory statement

This amendment adds a reference to the new offences of sharing and threatening to share an intimate photograph or film to Schedule 1 to the Children and Young Persons Act 1933 (offences to which certain provisions of that Act apply).

Page 240, line 25, at end insert –

“13A In section 65A of the Police and Criminal Evidence Act 1984 (“qualifying offences” for the purposes of Part 5 of that Act), in subsection (2)(p) after “61 to” insert “66A, 66B(2) and (3),”.”

Member’s explanatory statement

This amendment adds a reference to certain of the new offences of sharing an intimate photograph or film to section 65A(2) of the Police and Criminal Evidence Act 1984 (meaning of “qualifying offence” for the purposes of Part 5 of that Act).

Page 240, line 25, at end insert –

“13A In section 6 of the Sexual Offences (Amendment) Act 1992 (interpretation), after subsection (2A) insert –

“(2B) For the purposes of this Act, where it is alleged or there is an accusation that an offence under section 66B(4) of the Sexual Offences Act 2003 (threatening to share intimate photograph or film) has been committed, the person against whom the offence is alleged to have been committed is to be regarded as –

- (a) the person to whom the threat mentioned in that subsection is alleged to have been made, and
- (b) (if different) the person shown, or who appears to be shown, in an intimate state in the photograph or film that is the subject of the threat.””

Member’s explanatory statement

This amendment has the effect of applying the provisions of the Sexual Offences (Amendment) Act 1992 to the person shown or who appears to be shown in an intimate photograph or film where a threat to share the photograph or film is made to a person other than that person.

Page 240, line 27, at end insert –

“(1A) In section 78 (meaning of “sexual”), after “15A” insert “, 66B to 66D ”.”

Member's explanatory statement

This amendment provides that the existing definition of "sexual" in section 78 of the Sexual Offences Act 2003 does not apply to the new offences of sharing and threatening to share an intimate photograph or film (on account of a separate definition applying to those offences).

Page 240, line 29, after "66A" insert ", 66B(2) and (3)"

Member's explanatory statement

This amendment adds a reference to certain of the new offences of sharing an intimate photograph or film to section 136A(3A) of the Sexual Offences Act 2003 (offences specified as child sex offences for the purposes of Part 2A of that Act when committed against a person under 18).

Page 241, line 4, at end insert –

- “33B An offence under section 66B(3) of this Act (sharing intimate photograph or film for purpose of obtaining sexual gratification) if –
- (a) where the offender was under 18, the offender is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
 - (b) in any other case –
 - (i) the victim was under 18, or
 - (ii) the offender, in respect of the offence or finding, is or has been –
 - (a) sentenced to a term of imprisonment,
 - (b) detained in a hospital, or
 - (c) made the subject of a community sentence of at least 12 months.””

Member's explanatory statement

This amendment adds a reference to the new offence of sharing an intimate photograph or film for the purpose of obtaining sexual gratification to Schedule 3 to the Sexual Offences Act 2003 (offences to which certain provisions of that Act apply).

Page 241, line 10, at end insert –

- “149B An offence under section 66B(2) or (3) of that Act (sharing intimate photograph or film with intent to cause alarm, distress or humiliation or for purpose of obtaining sexual gratification).””

Member's explanatory statement

This amendment adds a reference to certain of the new offences of sharing an intimate photograph or film to Schedule 15 to the Criminal Justice Act 2003 (specified sexual offences for the purposes of section 325 of that Act).

Page 241, line 12, after "66A" insert ", 66B(2) or (3)"

Member's explanatory statement

This amendment adds a reference to certain of the new offences of sharing an intimate photograph or film to Schedule 34A to the Criminal Justice Act 2003 (child sex offences for the purposes of section 327A of that Act).

Page 241, line 12, at end insert “, and

- (b) after “exposure” insert “, sending etc photograph or film of genitals, sharing intimate photograph or film with intent to cause alarm, distress or humiliation or for purpose of obtaining sexual gratification”.”

Member’s explanatory statement

This amendment is consequential on the other amendment to Schedule 34A to the Criminal Justice Act 2003 made in my name.

Page 241, line 17, after “66A” insert “, 66B(2) and (3)”

Member’s explanatory statement

This amendment adds a reference to certain of the new offences of sharing an intimate photograph or film to section 116 of the Anti-social Behaviour, Crime and Policing Act 2014 (conduct constituting offence amounting to “child sexual exploitation” when committed against a person under 18 for the purposes of that section).

Page 241, line 17, at end insert “, and

- (b) after “exposure” insert “, sending etc photograph or film of genitals, sharing intimate photograph or film with intent to cause alarm, distress or humiliation or for purpose of obtaining sexual gratification”.”

Member’s explanatory statement

This amendment is consequential on the other amendment to section 116 of the Anti-social Behaviour, Crime and Policing Act 2014 made in my name.

Page 241, line 22, at end insert –

- “section 66B(2) (sharing intimate photograph or film with intent to cause alarm, distress or humiliation)
- section 66B(3) (sharing intimate photograph or film for purpose of obtaining sexual gratification)”.”

Member’s explanatory statement

This amendment adds a reference to certain of the new offences of sharing an intimate photograph or film to paragraph 33 of Schedule 4 to the Modern Slavery Act 2015 (offences to which the defence in section 45 does not apply).

Page 241, line 27, at end insert –

- “(axb) section 66B(2) (sharing intimate photograph or film with intent to cause alarm, distress or humiliation);
- (axc) section 66B(3) (sharing intimate photograph or film for purpose of obtaining sexual gratification);”.”

Member’s explanatory statement

This amendment adds a reference to certain of the new offences of sharing an intimate photograph or film to Part 2 of Schedule 18 to the Sentencing Act 2020 (specified sexual offences for the purposes of section 306 of that Act).

Page 241, line 32, at end insert –

“PART 4

AMENDMENTS CONSEQUENTIAL ON SECTION (*REPEALS IN CONNECTION WITH
OFFENCES UNDER SECTION (SHARING OR THREATENING TO SHARE INTIMATE
PHOTOGRAPH OR FILM)*)

Criminal Justice and Courts Act 2015

20 (1) The Criminal Justice and Courts Act 2015 is amended as follows.

- (2) In section 96 (extent), in subsection (6), omit paragraphs (c) and (g).
- (3) Omit Schedule 8 (disclosing or threatening to disclose private sexual photographs or films: providers of information society services).

Domestic Abuse Act 2021

21 (1) The Domestic Abuse Act 2021 is amended as follows.

- (2) Omit section 69 (threats to disclose private sexual photographs and films with intent to cause distress) and the italic heading before it.
- (3) In section 85 (power to make consequential provision), in subsection (1)(b), omit “69,”.
- (4) In section 86 (power to make transitional or saving provision), in subsection (1)(b), omit “69,”.

Overseas Operations (Service Personnel and Veterans) Act 2021

22 In Part 1 of Schedule 1 to the Overseas Operations (Service Personnel and Veterans) Act 2021 (“excluded offences” for the purposes of section 6 of that Act), omit paragraph 11.

Criminal Justice (Electronic Commerce) (Amendment) (EU Exit) Regulations 2021 (S.I. 2021/835)

23 In the Criminal Justice (Electronic Commerce) (Amendment) (EU Exit) Regulations 2021, omit regulation 8 (amendment of the Criminal Justice and Courts Act 2015).”

Member’s explanatory statement

This amendment inserts a new Part into Schedule 14 consequential on the new clause in my name repealing sections 33 to 35 of the Criminal Justice and Courts Act 2015.

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26 June 2023
