



Cyberflashing and the Online Safety Bill
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Proposed Amendments to section 167 of the Online Safety Bill, March 2023

CONSENT-BASED CYBERFLASHING OFFENCE

3 changes to bring the cyberflashing offence into line with the Government's proposal for a revised sharing of intimate images without consent offence:

- Consent-based offence with no requirement to prove specific motives;
- Reasonable excuse defence to cover justified cases of sharing genital images without consent such as for medical purposes
- Reduced sentencing threshold of 6 months' imprisonment.

Sending etc photograph or film of genitals

In the Sexual Offences Act 2003, after section 66 insert—

"66A Sending etc photograph or film of genitals

- (1) A person (A) who intentionally sends or gives a photograph or film of any person's genitals to another person (B) commits an offence if –
 - (a) *B does not consent to the sending or giving of the photograph or film, and*
 - (b) *A does not reasonably believe that B consents.*
- (2) *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.*

~~(a) A intends that B will see the genitals and be caused alarm, distress or humiliation, or~~

~~(b) A sends or gives such a photograph or film for the purpose of obtaining sexual gratification and is reckless as to whether B will be caused alarm, distress or humiliation.~~

- (3) References to sending or giving such a photograph or film to another person include, in particular
 - (a) sending it to another person by any means, electronically or otherwise,
 - (b) showing it to another person, and
 - (c) placing it for a particular person to find.
- (4) "Photograph" includes the negative as well as the positive version.
- (5) "Film" means a moving image.
- (6) References to a photograph or film also include—
 - (a) an image, whether made by computer graphics or in any other way, which appears to be a photograph or film,
 - (b) a copy of a photograph, film or image within paragraph (a), and

(c) data stored by any means which is capable of conversion into a photograph, film or image within paragraph (a).

(7) It is a defence for a person charged with an offence under this section to prove that they -

(a) reasonably believed that the sharing was necessary for the purposes of preventing, detecting, investigating or prosecuting crime;

(b) reasonably believed that the sharing was necessary for the purposes of legal or regulatory proceedings;

(c) reasonably believed that the sharing was necessary for the administration of justice;

(d) reasonably believed that the sharing was necessary for a genuine medical, scientific or educational purpose; and

(e) reasonably believed that the sharing was in the public interest.

(8) A person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine to the general limit in a magistrates' court or both.

~~(6) A person who commits an offence under this section is liable~~_____

~~(a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine (or both)~~

~~(b) on conviction on indictment, to imprisonment for a term not exceeding two years.~~

~~(7) In relation to an offence committed before paragraph 24(2) of Schedule 22 to the Sentencing Act 2020 comes into force, the reference in subsection (6)(a) to 12 months is to be read as a reference to six months."~~