

Sharing photographs or film of people in an intimate state

Understanding amendments to the Sexual Offences Act as part of the Online Safety Act.

First published 15 May 2024

Introduction

The Online Safety Act (OSA) 2023 includes amendments to the Sexual Offences Act (SOA) 2003, creating offences to address an increase in the number of incidents of sharing intimate images and film of others without their consent. The offences cover the sharing of images of:

- genitals
- people engaged in a sexual act
- intimate areas of someone's body

This includes the sharing of up-skirting, down-blousing and breastfeeding images. It also covers the non-consensual sharing of intimate photos or film that may have been taken with consent at the time or shared with the perpetrator voluntarily.

Amendments

There are two amendments to the SOA 2003.

1. The first introduces an offence that is known as virtual or online indecent exposure. This is the unsolicited sharing of pictures or film of someone's genitals. This is often done via mobile technology such as airdrop and social media apps.
2. The second replaces the offence that has been colloquially known as 'revenge pornography'. These offences are sharing, or threatening to share, intimate images or film of, or appearing to be of, someone without their consent. By including images or film that appear to show someone, the offence covers deepfakes (artificially created digital manipulations of someone's likeness).

Offences

The [Online Safety Act 2023, s 187](#) and [s 188](#) have created offences, which are inserted as s 66(a) and 66(b) of the SOA 2003. These changes came into force on 31 January 2024.

The **Sexual Offences Act 2003, s 66(a)** states that it is an offence where someone intentionally sends or gives someone else a photograph or film of anybody's genitals if they do so either with the intention of that person seeing it and being caused alarm, distress or humiliation; or for the purposes of their own sexual gratification and being reckless about whether it will cause alarm, distress or humiliation.

The **Sexual Offences Act 2003, s 66(b)** details the offence of sharing or threatening to share an intimate photograph or film of, or appearing to be of, someone. This section brings in three offences of sharing intimate images.

1. A person intentionally shares a photograph or film that shows, or appears to show, someone in an intimate state without their consent.
2. A person intentionally shares a photograph or film that shows, or appears to show, someone in an intimate state with the intention of causing alarm, distress or humiliation to that person and without their consent.
3. A person intentionally shares a photograph or film that shows, or appears to show, someone in an intimate state with the purpose of their own or someone else's sexual gratification, without the consent of the person in the photograph or film, and without the reasonable belief that they consent.

It also brings in a fourth offence of threatening to share intimate images.

4. A person threatens to share a photograph or film that shows, or appears to show, someone in an intimate state. They either intend that the person in that intimate state, or someone who knows them, will fear the threat being carried out, or they are reckless about that person's fear of it being carried out.

The OSA 2023 repealed the **Criminal Justice and Courts Act (CJCA) 2015, s 33** which created the offence of disclosing or threatening to disclose private sexual photographs and films with intent to cause distress. It replaced it with the other offences under s 66(b).

The offence under CJCA 2015, s 33, remains for offences committed on or after 13 April 2015 but before the start date of commencement of part 10 of the OSA 2023, which was 31 January 2024. For more information, there is guidance available on **disclosing or threatening to disclose intimate photographs or film**.

It is important to gather digital evidence quickly and with as little intrusion into a victim's life as possible. The victim or witness also needs to give consent, and the extraction of evidence must be done in accordance with the Data Protection Act 2018 to comply with general data protection regulations. More information about digital evidence gathering is available in the [Extraction of Information from Electronic Devices: Code of Practice \(2022\)](#).

Exemptions

Section 66c sets out the exemptions from the offences in s 66b. The offences are considered exempt in some circumstances.

- The photograph was taken in a public place, the subject had no reasonable expectation of privacy from the photo or film being taken, and they were in an intimate state voluntarily – or the person who took the photo or film had a reasonably held belief that they were. The expectation of privacy should be determined by referring 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.
- The photograph or film had, or was reasonably believed to have, been previously shared publicly, and it was reasonably believed that the subject had previously given consent for it to be shared.
- The photograph or film is of someone under 16 who lacks, or is reasonably believed to lack, capacity to consent, and it is shared with a medical professional for healthcare purposes.
- The photograph or film is of a child in an intimate state of the kind normally shared with a family member or friend.
- In the case of threatening to share photographs or film, the circumstances of doing so would meet the exemptions above.

Definitions

Sending or sharing

A person shares something if they, by any means, give or show it to another person or make it available to another person. This includes:

- sending it by any means, electronically or otherwise
- showing it to another person

- placing it for a person to find

Intimate state

An image shows or appears to show a person in an intimate state if:

- (a) the person is participating or engaging in an act which a reasonable person would consider to be a sexual act
- (b) the person is doing a thing which a reasonable person would consider to be sexual
- (c) all or part of the person's genitals, buttocks or breasts are exposed (including where they are visible through wet or transparent clothing, where they are covered only by underwear, and where they are covered only by being obscured to the amount similar to what would be covered by underwear, but not by clothing)
- (d) the person is in an act of urination or defecation
- (e) the person is carrying out an act of personal care associated with the person's urination, defecation or genital or anal discharge

Images of someone breastfeeding or rearranging clothing before or after breastfeeding, may be considered as showing them in an intimate state if they fall within the definition in point (c).

Officers should think about the motivation behind the offence and the history of the offender when considering the risk they may pose. Similar to in-person indecent exposure, these offences may be indicators of further, more serious offending in future. Indecent exposure is often graded as low priority when considering the risk of harm. This means allegations may not be taken seriously or investigated as effectively as other types of sexual offending that include physical contact.

Research studies and recent cases such as R v Couzens 2021 demonstrate that these offenders can present a higher risk of repeat and more serious offending than the initial offence suggests. So, each incident must be robustly investigated and the impact on the victim fully documented.

Intention to cause alarm, distress or humiliation

Crown Prosecution Service (CPS) guidance on proving intention also indicates that a key element is the victim impact statement, which details the effect the action had on them. The statement

should set out any evidence that the event was targeted at them specifically, for example if the image was sent to their personal account or that of their friends or family.

Evidence of targeting should be gathered, such as messages related to the release of personal photographs or film, threats to do so and any indication of the purpose of the action.

Indication of the perpetrator's response should be included in the victim's statement, such as:

- their body language
- facial expression
- any words exchanged (if the offence was committed in their presence)
- any message exchanges before and/or after the event

Crown Prosecution Service (CPS) guidance

Guidance for prosecutors covering these offences is available: [Communications Offences | The Crown Prosecution Service \(cps.gov.uk\)](https://www.cps.gov.uk/publications/communications-offences)

Guidance on exposure, outraging public decency, up-skirting and voyeurism is available: [Public Order Offences incorporating the Charging Standard | The Crown Prosecution Service \(cps.gov.uk\)](https://www.cps.gov.uk/publications/public-order-offences-incorporating-the-charging-standard)

Other relevant offences

Section 66 of the SOA 2003 (indecent exposure) states that 'a person is guilty of an offence if he intentionally exposes his genitals with the intent that someone else will see them and be caused alarm or distress'.

Other acts containing offences that may be relevant to this behaviour include:

- Protection from Harassment Act 1997
- Protection of Children Act 1978
- Communications Act 2003
- Malicious Communications Act 1988, s 1
- Theft Act 1968, s 21

- Serious Crime Act 2015, s 76

Further information, including information on protective orders, can be found in the [Violence against women and girls toolkit | College of Policing](#).

Tags

Digital intelligence and investigation