Protecting people from illegal harms online

Illegal Content Judgements Guidance (ICJG)

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1. Introduction

About this document

1.1 This document is Ofcom's Illegal Content Judgements Guidance ('**ICJG**') for the purposes of section 192 of the Online Safety Act 2023 ("the **'Act'**). The Act introduces a new legal concept of 'illegal content', which is used in the risk assessment duties and safety duties for service providers[1] It may also be relevant for Category 1 services.[2] The guidance is intended to support part 3 service providers[3] in understanding their regulatory obligations when making judgements about whether content is illegal content for the purposes of any of these duties (**'illegal content judgements'**). These concepts are explored below in paragraphs 1.14-20 of this guidance.

1.2 Section 192 of the Act sets out the approach to be taken where either a system or process operated or used by a service provider to comply with the Act, or a risk assessment, involves a judgement by the service provider about whether content is illegal content. The Act requires that service providers make such judgements based on a reasonable inference. The Act states that content will be illegal content where there are reasonable grounds to infer that:

a) the conduct element of a relevant offence is present or satisfied;
b) the state of mind element of that same offence is present or satisfied; *and*
c) there are no reasonable grounds to infer that a relevant defence is present or satisfied.

1.3 This threshold of 'reasonable grounds to infer' is lower than the criminal threshold ('beyond reasonable doubt') that is applied in the UK's criminal justice system.

1.4 Service providers have a duty to have regard to the right to freedom of expression within the law. However, there is nothing in the Act that requires service providers to make illegal content judgments, so long as the application of that service provider's own terms and conditions is sufficient to secure compliance with the duties in the Act in other ways. For example, if the service provider's own terms and conditions of use prohibit content that is wider than the definition of illegal content under the Act, then the service provider would be considered to have fulfilled its legal duties regarding takedown so long as it applied these terms and conditions properly. Ofcom does not have a power under the Act to compel providers to carry content they do not wish to carry. In practice, this means that services may continue to operate with regard to Terms and Conditions which prohibit *more* content than is covered in this Guidance, though they will not be compliant if their Terms and Conditions capture *less*. However, we encourage providers to consider carefully the impacts of their choices on users' opportunities to express themselves.

[1] We use the term 'service provider' interchangeably with 'providers of regulated user-to-user services and regulated search services.'
[2] There are additional duties in relation to Category 1 service providers only which relate to (1) protecting news publisher content and (2) fraudulent adverts. We will be consulting on the requirements of the Act for Category 1 service providers at a later date. If we need to amend this guidance we will consult on proposed amendments if necessary.
[3] Part 3 service providers are regulated user-to-user and search service providers under Part 3 of the Online Safety Act

1.5 Ofcom must produce guidance on the matters dealt with in section 192. This document, the Illegal Content Judgements Guidance (the **Guidance**), fulfils that obligation.

1.6 As a public authority, Ofcom must carry out our functions compatibly with the Human Rights Act 1998, including the rights to freedom of expression and respect for private and family life ('**privacy'**). Any interference with the right to freedom of expression must be prescribed by law, pursue a legitimate aim and be necessary in a democratic society. Any interference with the right to privacy must be in accordance with the law, pursue a legitimate aim and be necessary in a democratic society. In order to be 'necessary', the restriction must correspond to a pressing social need, and it must be proportionate to the legitimate aim pursued.

1.7 Ofcom has had careful regard to these rights in producing this guidance. Both the definition of illegal content and the requirement for Ofcom to prepare this guidance are set out in the Act and pursue the aims of the prevention of crime, the protection of health and morals, and the protection of the rights of others.

1.8 The definition of illegal content in the Act is based on UK criminal offences, which are complex, nuanced and not always fully defined in legislation. They often require consideration of people's state of mind; for example their 'intent'. As such, while we have tried to set out clear signposts and an easy-to-navigate approach, there are limits to how much we can simplify the language and concepts in this document. In addition to the information given in this guidance, service providers should refer to Ofcom's Register of Risks for further detail on how offences may manifest online.

1.9 It is also necessary to discuss topics in this document which some may find very upsetting. We have tried to treat such topics sensitively, and note where a proper reflection of the law requires us to use language which may be seen as controversial or problematic.

1.10 The contents of this document represent an effort by Ofcom to provide service providers with a sound basis on which to make illegal content judgements, rather than an attempt to anticipate every circumstance which may arise during moderation. Context is crucial to determining the nature of content.

1.11 UK criminal law changes and develops over time. This guidance is not a substitute for any regulation or law and is not legal advice. Where required, service providers should seek their own independent advice to enable them to understand and comply with their duties under the Act.

Structure and formatting

1.12 This document is structured as follows:

a) Introductory information, Chapter 1; setting out legal background, key concepts and principles which apply to all illegal content judgements.

b) Offence-specific chapters, Chapters 2-16, giving overviews of offences and guidance as to how to make illegal content judgements in relation to them. N.B. offences are grouped by type as appropriate; see paragraphs 1.71 to 1.76 for more information on how to use this section.

c) Legal annex; setting out more detailed legal information to support the guidance given in offence-specific chapters.

1.13 Where we have used words with a special technical meaning, these are highlighted in '**bold**' and represented in quotation marks in the first instance for ease of comprehension. Summaries or names of offences are also presented in **bold** for ease of identification. Essential messages regarding process and approach are marked with an underline.

Services' duties regarding illegal content

1.14 The Act creates many new legal duties for service providers. These include risk assessment and safety duties in relation to illegal content[4], content reporting, complaints procedures and freedom of expression and privacy.

1.15 This guidance should be used by service providers in all circumstances when they are required to make a judgement on whether content is illegal in order to fulfil their duties under the Act.

1.16 Such judgements may be made in order to conduct illegal content risk assessments (section 9 for user-to user ('**U2U'**) Services and section 26 for search services) ('**illegal content risk assessment duty**') and to implement measures to comply with their safety duties regarding illegal content (section 10 for user-to-user services and section 27 for search services) ('**illegal content safety duty**'). Regarding Category 1 services, judgements around illegality may need to be made in relation to their duties to protect news publisher content and duties in relation to fraudulent advertising. Together, these are the '**illegal content duties**'.

1.17 Within the illegal content duties there are a number of specific duties. As part of the illegal content safety duty at section 10(3)(b) of the Act, there is a duty for a user-to-user service provider to operate the service using proportionate systems and processes designed to "swiftly take down" any illegal content where it is alerted to the presence of such content or is aware of its presence in any other way (the '**takedown duty**'). Search services have a duty to minimise the risk of users encountering search content that is illegal content (section 27(3) of the Act).

1.18 When service providers conduct risk assessments and implement measures in accordance with their safety and other duties, they are likely to be dealing with content in bulk, as opposed to making an assessment on an individual piece of content. Service providers should anticipate that some of the content they hold is likely to be illegal content, but can do this on a probabilistic basis. For example, a service provider which has a livestreaming function should recognise the risk that the function may be used to create child abuse-related illegal content, even if they cannot identify a specific livestream which amounts to such content. Service providers are likely to find this guidance helpful in understanding different types of illegal content which, in turn, will help inform their risk assessment.

1.19 To make decisions for the purposes of the takedown duty or determining what search content is illegal content, service providers will need to take decisions about specific pieces of content. It is here that this guidance will be particularly useful.

1.20 We recognise that service providers are likely to make content moderation judgements in accordance with the laws of each country in which they operate. This guidance is not

[4] Illegal content is defined in the Act as 'content which amounts to a relevant offence.' For more information on relevant offences and illegal content see paragraphs 1.24-34 of this guidance.

intended to override or supersede existing moderation practices, where these practices already meet the duties set out in the Act.

Freedom of expression and privacy

1.21 It remains open to service providers as a commercial matter (and in the exercise of their own right to freedom of expression), to prohibit and take down content that is not or might not be illegal content, so long as they abide by the Act. For example, some service providers use their terms and conditions to prohibit sexual content or nudity of any kind on their services. It is open to them to do this, notwithstanding that such sexual content might not be illegal content. This guidance is intended to help service providers identify when operating in accordance with their duties pursuant to the Act *requires* them to take the content down.

1.22 When assessing conformity with the illegal content duties, Ofcom may consider whether a service provider's illegal content judgements follow the approaches set out in section 192 of the Act and this guidance.

1.23 Service providers should make illegal content judgements in accordance with their duties relating to freedom of expression and protection of privacy, as set out in sections 22 and 33 of the Act. These duties state that, when deciding on and implementing safety measures and policies, service providers should have particular regard to the importance of protecting users' right to freedom of expression within the law, and to the importance of protecting users from the breach of any statutory provision or rule of law concerning privacy. Privacy law includes, but is not limited to, data protection law, which is set out in the UK GDPR and the Data Protection Act 2018. The Privacy and Electronic Communications Regulations (PECR) may also be relevant. These are enforced by the Information Commission's Office (the ICO). The ICO has a range of guidance on data protection and the PECR which service providers may wish to consult.

Illegal content

Box 1: The Act's definitions of content, search content, illegal content, and relevant offences

Content: anything communicated by means of an internet service, whether publicly or privately, including written material or messages, oral communications, photographs, videos, visual images, music and data of any description.

Search content: content that may be encountered in or via search results of a search service, *except*: paid-for advertisements, content on the website of a recognised news publisher, or content that reproduces or links to content originally published by a recognised news publisher.

Illegal content: regulated user-generated content which amounts to a relevant offence. Content is illegal content where there are reasonable grounds to infer that: a) the conduct element of a relevant offence is present or satisfied; b) the state of mind element of that same offence is present or satisfied; *and* there are no reasonable grounds to infer that a relevant defence is present or satisfied.

Relevant offences: comprise the priority offences set out in schedules 5-7 of the Act, as well as any non-priority or 'other' offence within subsection (5) of section 59 of the Act.

1.24 Content is defined as “anything that is communicated by means of an internet service, whether publicly or privately”.[5] This includes written material or messages, photographs, videos, visual images, oral communication, music and data of any description. Comments, titles and descriptions are also considered to be ‘content’, as are livestreaming videos or audio, and hyperlinks.

1.25 Search content is content which may be encountered in or via search results of a search service, following a ‘one click away’ principle, *except* where the content is a paid-for advertisement, content on a website of a news publisher, or content which reproduces an article or video/audio originally published by a news publisher (or links to these).

1.26 Illegal content is defined in the Act as “content which amounts to a relevant offence”. That is, content that amounts to priority offences (see paragraph 1.28 to 31) or any ‘other’ offences where the victim is an individual and the offence does not touch on trading standards or intellectual property rights (see paragraphs 1.32 to 1.34). It is the content itself which must amount to the offence. Content which just depicts an offence (for example, a video of a violent attack on someone) is not necessarily illegal content, although service providers may need to consider carefully whether, for example, it encourages terrorism.

1.27 Content ‘amounts to’ a relevant offence if:

a) the use of the words, images, speech or sounds amounts to a relevant offence,

b) the possession, viewing or accessing of the content constitutes a relevant offence, or

c) the publication or dissemination of the content constitutes a relevant offence.

However, to determine when content ‘amounts to’ a relevant offence, a service provider must make an illegal content judgement.

[5] Section 237 of the Act

Figure 1.1: How 'illegal content' relates to 'relevant offences'[6]



Priority offences

1.28 Relevant offences comprise two types: priority offences, and 'other' offences. The priority offences are listed in schedules 5, 6 and 7 of the Act and cover terrorism, child sexual exploitation and abuse (CSEA), and a number of other areas. More details on priority offences, including the elements of the offence that must be present, can be found in the Legal Annex companying this guidance.

1.29 Within priority offences, there is an additional group of offences which are referred to in UK law as 'inchoate offences.'[7] Inchoate offences happen when someone is involved in an offence, without committing it themself. For example, a person may 'assist' in a robbery if they drive the getaway car. They did not carry out the offence, but they were involved in it.

1.30 There is considerable overlap between the inchoate offences. The inchoate offences are:

a) Conspiring (with one or more others) to commit an offence. A conspiracy is an agreement between two or more people to commit an intended offence (or one or more intended offences).[8]

b) Encouraging (someone) to commit an offence. This overlaps with inciting, counselling or procuring and aiding and abetting the commission of a priority offence.

[6] Priority offences are named in the Act in schedules 5, 6 and 7. For details on 'other' offences, see paragraphs 1.32-4 below.
[7] Inchoate offences are found in schedule 5(4), schedule 6(9 and 13), and schedule 7(39) of the Act.
[8] It should be noted that there is no offence of 'attempting to conspire', so a person trying and failing to engage in a conspiracy will not thereby generate any illegal content.

c) Assisting (someone) to commit a priority offence. This overlaps with aiding and abetting the commission of a priority offence.

d) In Scots law, being involved art and part in committing a priority offence. A person is involved 'art and part' in the commission of an offence if they knowingly engage with someone else in pursuit of a common purpose to commit the offence. This overlaps with conspiring and assisting but can be broader than either.

e) Attempting to commit an offence. The circumstances in which this can take place online are rare.

1.31 Where we believe it is particularly important that conspiring, encouraging, assisting and 'art and part' offences are considered alongside the other priority offences, we have indicated this in the appropriate section in Chapters 2 to 16. The inchoate offences will be particularly important to consider in relation to those priority offences which cannot themselves be committed online.

Relevant non-priority offences ('other' offences)

1.32 'Other' offences are offences that are (1) not priority offences but where (2) the victim or intended victim of the offence is an individual or individuals. For this reason, we refer to them in the rest of this document as **'relevant non-priority offences'**.

1.33 In recognition of the quantity and complexity of offences which could be included within the scope of the definition of 'other' offences, Ofcom has chosen to provide specific guidance on 'other' offences where they appear to us particularly likely to arise online in the form of content, and do not overlap substantially with priority offences. These offences comprise the following:

a) *Epilepsy trolling offence*; that is, the offence of sending a flashing image with the intention that it would be seen by a person with epilepsy or where it was reasonably foreseeable that this would be the case. See section 183 of the Act.

b) *False communications offence*; that is, sending a message which conveys knowingly false information with the intent of causing non-trivial psychological or physical harm to the likely audience (without reasonable excuse for sending). See section 179 of the Act.

c) *Section 127(1) offence;* we have focused on a particular aspect of this offence, to capture content depicting torture or extreme cruelty in such a way as to be obscene.

1.34 Chapter 16 of the ICJG deals with how a service provider should consider content which may amount to a relevant non-priority offence which is not specifically covered in this guidance.

Jurisdictional considerations

1.35 For the purposes of determining whether content is illegal, the Act states that it is not relevant "whether or not anything done in relation to the content takes place in any part of the United Kingdom."[9] This means that, for example:

[9] Section 59(11). See also the Explanatory Notes to the Act, which provide in relation to section 59 of the Act: "Under subsection (11), content does not need to be generated, uploaded or accessed (or have anything else

a) It does not matter whether or not the user uploading the content, the service hosting the content or the person accessing the content are in the United Kingdom. A person outside the United Kingdom using a service outside the United Kingdom to harass a person outside the United Kingdom may still generate illegal content for the purposes of the Act.

b) Content can amount to a Scottish priority offence even if the user posting the content, the service provider itself and the user viewing the content were in England.

1.36 However, where the offence concerned involves an element of offline behaviour, service providers may still need to consider location. Where this is the case, we explain how this should be done in the guidance. If the guidance is silent on this point, location should be taken to be not relevant.

1.37 Due to the significant overlap between laws in the United Kingdom's three legal jurisdictions, England and Wales, Scotland, and Northern Ireland, the practical impact of jurisdictional differences is limited. There are, however, isolated cases where a law in one part of the United Kingdom is different from the other jurisdictions. Where this is the case, we have set out an appropriate approach to be taken which takes account of differences and service providers should consult the appropriate section in Chapters 1 to 16 of this guidance.

Facilitation of relevant offences

1.38 Under section 10(2)(b) of the Act, U2U service providers are required to take or use proportionate measures to ensure that the design or operation of their service mitigates and manages the risk of the service being used for the commission or facilitation of a priority offence. Further information on services' duties in relation to facilitation of offences is set out in the Service Risk Assessment Guidance and evidence of such facilitation has been included in the Register of Risks.

1.39 It is possible for specific items of content to facilitate the commission of an offence without it amounting to illegal content (by reference to the legal definitions explained above). For example, an adult talking to a child online may be preparing or intending to commit an offence, but not yet have done so. The guidance in this document relates to illegal content only and does not touch on content which would amount to the facilitation of an offence. However, if an illegal content judgement as set out in this document does not result in the content in question being taken down, service providers should also consider whether the content in question facilitates an offence and whether the design and operation of their services is effectively mitigating the risk of such content.

done in relation to it) in any part of the United Kingdom to amount to an offence under this provision. This is the case regardless of whether the criminal law would require any relevant action to take place in the United Kingdom (or a particular part of it)".

Illegal content judgements

Reasonable grounds to infer

Background

1.40 In UK criminal law, all offences comprise three elements, each of which needs to be considered in relation to a particular person, the 'defendant' (usually the user who has done something in relation to the content):

a) the action or conduct element of the offence (legally known as the 'actus reus');

b) the state of mind or mental element of the offence; that is, the state of mind required for the offence (legally known as the 'mens rea')[10]; and

c) any relevant defences. In this context, if a defence could be reasonably inferred to be present, the content is not illegal content.

1.41 The three elements of each priority offence are set out in the legal annex accompanying this guidance.

1.42 Content will amount to illegal content for the purposes of the Act when there are reasonable grounds to infer that the conduct and state of mind elements are present and satisfied, unless there are reasonable grounds to infer that a defence is present or satisfied:

1.43 Reasonable grounds to infer is not a criminal threshold, and there are no criminal implications for the user if their content is judged to be illegal content against this threshold. The service is not obliged to report illegal content to law enforcement except where the content in question is subject to requirements to report CSEA content to the NCA, as set out in section 67 of the Act.

1.44 We are aware that some service providers may choose to maintain bilateral relationships with law enforcement or internal processes which allow them to escalate content to law enforcement where appropriate. Nothing within this guidance should be taken as discouragement to maintain such relationships and internal processes.

Establishing reasonable grounds to infer

1.45 If making an illegal content judgement, service providers should ensure that they:

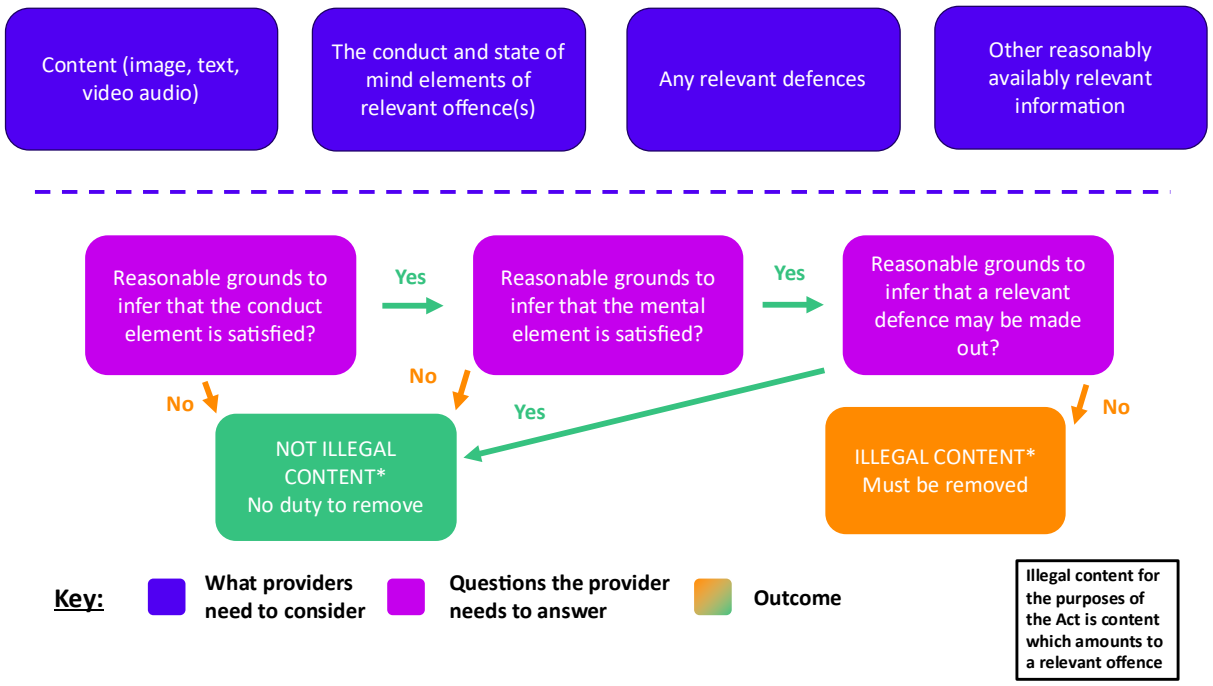
a) Possess sufficient understanding of UK law (see the legal annex accompanying this guidance); and

b) Take into account all relevant 'reasonably available information' (see paragraphs 1.60 to 1.65, below)

1.46 Figure 1.2 sets out how service providers may establish whether reasonable grounds to infer that content is illegal exist in any case. However, when making illegal content judgements service providers should consult the appropriate chapter in this guidance for offence-specific information including a summary of legal and contextual considerations.

[10] Mens rea requirements vary across offences and can include: acting with intent, acting recklessly, acting dishonestly, or acting with knowledge. The mens rea requirement of all priority offences are set out in the legal annex accompanying this guidance.

Figure 1.2: Overview of reasonable grounds to infer



1.47 Chapters 2 to 16 explain (where possible) how each priority offence and select non-priority offences may manifest in illegal content, the action and mental elements that must be present in the content, the defences that must not be present, and the information a service should consider in order to make such a judgement.

Attributing conduct and state of mind to individuals

1.48 The Act requires service providers to make a judgement about conduct, state of mind and defences. This means it is necessary first to identify a person in relation to whom these things are being assessed. The person is someone whose actions *in relation to the content* may involve a criminal offence. This will most often be the person posting, uploading or sharing the content, but this may not always necessarily be the case. For example, the offence of collecting information likely to be of use to a terrorist can be committed in several ways, including by viewing or otherwise accessing content by means of the internet. Usually there will be no need for service providers to consider this nuance, but if the user uploading the content had a defence for doing so, the same might not be true of users viewing or accessing it and so the content may still be illegal content.

1.49 Content is not illegal content merely because it depicts a crime. For example, an item of content may depict one person violently attacking another. The service provider does not need to consider whether the attack itself is a criminal offence and as such it does not need to consider the conduct, state of mind or defences available to the person depicted in the content as carrying out the attack. Rather, it needs to consider whether there are reasonable grounds to infer that the person who has posted, uploaded or shared the piece of content has committed an offence by doing so.

1.50 Service providers do not necessarily need to know the identity of the user to draw this inference. For example, if a user says their account has been hacked, that does not necessarily mean that content posted is not illegal content, since the person who hacked it would be the user posting the content.

Conduct and state of mind when content has been posted by a bot

1.51 Bot is an umbrella term that refers to a software application or automated tool that has been programmed by a person to carry out a specific or predefined task without any human intervention. Bots are often employed on services to post content at scale without the need for repeated human intervention. In many cases bots are used for benign purposes; for example, a bot may be used to post automated weather forecasts, to automatically 'cross-post' content across multiple services operated by the same user, or to respond to customer posts on a brand's social media profile speedily out of working hours. However, bots may also be used to spread spam and malicious content, including misinformation and phishing attempts.

1.52 Bots are not alive, so cannot commit offences. However, section 192 of the Act states that, where content has been posted by a bot, inferences about the conduct and the presence of the mental element, and any defences, should be made by considering:

a) the actual person controlling the bot or tool, where this is known to the service; or

b) the person who may be assumed to be controlling the bot, where the actual identity of the person is not known.

1.53 Where we believe that bots play a notable role in the generation of illegal content, we note this in our in-depth guidance in Chapters 2 to 16.

Inferring state of mind

1.54 As a matter of UK law, almost all the priority offences have a 'mental element' or state of mind requirement, which must be satisfied in order for reasonable grounds to infer to exist. These are matters of UK law, and it is not open to Ofcom to change them or put them to one side. The four most common types of mental element relating to the priority offences involve:

a) Acting with intent (for example, intent to cause a person harassment, alarm or distress, or intent to encourage others to commit, prepare or instigate acts of terrorism);

b) Acting recklessly (for example, being reckless as to whether a statement made about a financial promotion is false or misleading). Being reckless means the person recognised the risks of an action but went forward with an action or behaviour anyway. For English, Welsh and Northern Irish offences, recklessness is usually subjective, for example, the test is not whether a reasonable or typical person would have recognised the risk, but whether the actual defendant in question did. For Scottish offences recklessness is usually objective (for example, based on what a reasonable person would have realised);

c) Acting dishonestly (i.e. what was the person's actual state of knowledge or belief relating to the facts and was his conduct dishonest by the standards of ordinary decent people? A person's beliefs as to whether the conduct would be seen as dishonest by others is not relevant.) It is not dishonest to make a mistake, or to make a joke;

d) Acting with knowledge (for example, acting with knowledge or suspicion that a substance being offered for sale is a psychoactive substance). What a person has to know, and the degree to which they must know it, varies from offence to offence.

1.55 It is not possible to give substantial guidance on these concepts in the abstract. What amounts to reasonable grounds to infer will differ from offence to offence and will often be dependent on the context of the content. We recognise that in some cases, particularly where there may be many reasons for a person to do as they have done, it will likely never be possible to reach firm conclusions about a poster's state of mind. However, the Act does not require proof to the criminal standard, and therefore neither will Ofcom when assessing a provider's compliance. When inferring state of mind as part of an illegal content judgement, service providers should rather be seeking to reach a *reasonable inference* based on the information available to them and the circumstances they are aware of, having paid regard to this guidance.

Inferring state of mind when content has been shared, forwarded or reposted

1.56 In cases where the service provider is aware that a piece of content has been shared, forwarded or reposted from another user, either with or without alteration or addition, the reforwarded, reshared or reposted content will be treated as a new piece of content for the purpose of an illegal content judgement. The service provider should make inferences about the state of mind of the user that has re-shared the content, rather than the original author of the post. For some types of offences, particularly extreme pornography and child sexual abuse material (CSAM), the content will remain illegal content. For other priority offences, however, the illegality of the content in each new iteration will depend upon the likely state of mind of the person sharing, forwarding or reposting it.

The importance of context

1.57 We acknowledge that it is likely to be necessary for service providers to make illegal content judgements at scale, without any powers to collect and assess *all* relevant information and without a complete understanding of the contextual circumstances pertinent to each individual piece of content.

1.58 Context is extremely important to a proper understanding of many offences and can be the difference between the reasonable grounds to infer threshold being met or not. For example, out of context, a message or other post containing threatening or abusive language may amount to an offence under section 38 of the Criminal Justice and Licensing (Scotland) Act 2010. However, there are clear cases where context would suggest that an offence has *not* occurred: for example, if the message was sent jokingly between friends, or if a threat was made sarcastically. To make an illegal content judgement, a service provider must consider this context. We recognise that it is not possible to make correct judgements all the time. Appropriately trained and culturally aware content moderators should be empowered to make sensible judgements using the information they have.

1.59 More information on the contextual factors that should be considered in each case is given in the offence-specific guidance in Chapters 2 to 16.

Reasonably available information

1.60 Illegal content judgements should be made with reference to all information that is both relevant and reasonably available to a service provider. Information should only be considered relevant where it helps to infer the presence or absence of any of the three parts of an offence as outlined at paragraph 1.40. Service providers should only process as much personal data as is necessary (having regard to the principle of data minimisation under the UK GDPR, where applicable[11]). The type of information that is relevant to a content judgement will vary depending on the offence being considered.

1.61 The Act states that two factors are particularly relevant in considering the information that is reasonably available to a service provider:

a) "the size and capacity of the provider"; and

b) "whether a judgement is made by human moderators, by means of automated systems or processes or by means of automated systems or processes together with human moderators."

1.62 In our view, the information available for an average or larger service provider that is relevant to an illegal content judgement is also reasonably available to the smallest services. For the time being, based on the evidence available to us, we have taken a 'technology-agnostic' approach to illegal content judgements.

1.63 Ofcom has assessed the availability of information which we believe is relevant to priority offences on an offence-by-offence basis and, where we believe that this information is reasonably available to a service, we have included this as part of the processes set out in Chapters 2 to 16. Underneath each section of our offence-specific guidance, we include a box setting out the information we consider to be reasonably available for the purposes of making judgments in relation to those offences.

1.64 We recognise that content judgments will sometimes be challenging for providers of search services to make based on the relatively limited information available to them in comparison to providers of U2U services. Our ICJG is intended to be used by all services, but where appropriate in this document, we have noted where illegal content is unlikely to be present on search services, and where it is appropriate for search services to draw upon a reduced set of 'reasonably available information' when making content judgements.

1.65 We recognise that service providers may have access to further information beyond what is specified in this guidance. Where such information is relevant to content judgements as set out in this guidance, service providers may and should consider this information, but only so long as it is processed lawfully, including in particular in line with data protection laws. [12] Service providers may not always need to consult all available information in every instance, if it is possible to make an accurate judgement using less information.

[11] The ICO. Principle (c): Data minimisation. [Accessed 20 September, 2023].

[12] As above, information should be considered relevant only where it can be used to infer the presence or absence of the three criteria which must be satisfied in order for reasonable grounds to infer to exist (see paragraph 1.40, above)

Third party flags or reporting

1.66 A provider is not usually required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. Services may also need to have regard to the decisions of experts when compiling hashed lists of child sexual abuse material (CSAM). In all other cases, it will need to take its own view on the evidence, information and any opinions provided. Where a third party only has suspicion that an offence being committed, this is not sufficient *in itself* to reach the reasonable grounds to infer threshold, and service providers should only consider this as part of a wider assessment of the content's illegality.

1.67 We have made one exception to this principle in the case of offences from the Financial Services Markets Act, where we have decided that it is appropriate to steer services to adopt the opinion of the Financial Conduct Authority (FCA) when making judgments about the illegality of content under these offences. This is because these offences are too complicated for a content moderator reasonably to be expected to understand them.

1.68 If any personal data is provided to a service provider from a third party, service providers will need to ensure they comply with data protection law in relation to it. In particular, where applicable, they must have regard to Article 10 of the UK General Data Protection Regulations (GDPR).

Malicious reporting

1.69 In some cases, the existence or details of a user complaint may help service providers to infer the satisfaction of the conduct or behaviour element of an offence. For example, in the case of harassment, the effect of causing alarm or distress is an element of the offence, and a user report may give grounds to infer this.

1.70 When considering reporting information as part of an illegal content judgement in this way, service providers should have regard to the possibility that the report is malicious. A malicious report is one made with the intention of disrupting another user's ability to use a service to post content. Popular accounts by internet personalities or 'influencers' are particularly likely to attract malicious reports, and commercial incentives to disrupt a competitor's business practices may also be a factor. Malicious reports may also be more closely associated with certain harms areas, such as coercive and controlling behaviour (CCB) and harassment, and service providers should be aware that there is a particularly high risk of malicious reporting from any user has previously had content removed (or other action taken) due to breaching terms of service regarding harassment.

How to use the remainder of this document

1.71 The remainder of this document provides descriptions of the priority offences and the non-priority offences we consider likely to occur online. In each chapter, we have considered the offences in order of the likely ease of making reasonable inferences as to whether content amounts to the offence in question.

1.72 To assist service providers, we have included examples of the types of content that may fall into these offences. However, when a service provider is making an illegal content judgement each piece of content will need to be considered on a case-by-case basis with reference to the state of the mind requirements of the offence and any available defences. Service providers should pay particular attention to definitions given, as everyday words often have specific meanings in a legal context. In cases where definitions do not exist, we expect service providers to take a common-sense approach which makes use of the everyday meaning of the terms concerned. This approach is based on what a jury would need to do in a criminal case if terms used in the offence had no legal definition.

1.73 When they have encountered a specific item of potential illegal content, service providers should in the first instance consider whether the content falls within any of the priority offences, other offences considered in this guidance, or any relevant non-priority offence it has reason to suspect may be engaged (referred to in the Act as 'other offences'). Once content has been identified as illegal content under one 'relevant offence', it has met the threshold for removal and there is no need to go on to consider any more offences.

1.74 We have kept the main body of this document as simple as possible, which means we have kept footnotes and legal references out of the drafting. For legal references, and detailed definitions, service providers should refer to the Legal Annex accompanying this document. This is particularly important where our guidance is dealing with multiple overlapping offence from more than one jurisdiction of the UK. The drafting in our main chapters seeks to simplify this for providers as much as possible and will not necessarily correspond to what a lawyer qualified in the law of any one UK jurisdiction will expect to see.

1.75 As noted above, this guidance should not be regarded as a substitute for any regulation or law and is not legal advice. Where required, service providers should seek their own independent advice to enable them to understand and comply with their duties under the Act.

1.76 We recognise that content judgments will sometimes be challenging for providers of search services to make based on the relatively limited information available to them in comparison to providers of U2U services. Our Guidance is intended to be used by all services, but where appropriate in this document, we have noted where illegal content is unlikely to be present on search services, and where it is appropriate for search services to draw upon a reduced set of 'reasonably available information' when making content judgements.

2. Terrorism

Priority terrorism offences

2.1 This chapter considers the following offences, which are priority offences under the Online Safety Act ("**the Act**"):

a) Offences related to information likely to be of use to a terrorist;

b) Offences relating to training for terrorism;

c) A series of offences relating to 'proscribed organisations';

d) Other offences involving encouraging terrorism or disseminating terrorist materials;

e) Miscellaneous, more specific terrorism offences; and

f) Offences relating to financing terrorism.

2.2 Content may need to be considered under more than one of the terrorism offences listed in Schedule 5 of the Act and may also involve other offences such as hate or harassment. In particular, in the event of the livestreaming of a suspected terrorist attack, service providers are unlikely to be in a position to carry out an assessment of the motives of the attacker in sufficient time and it is much more likely that the content would be 'illegal content' under one of the public order offences outlined in Chapter 3 (Threats, abuse and harassment (including hate)).

2.3 Before addressing each of these categories of offences in more detail, this chapter: (i) explains the importance of purpose, meaning and the context of content in making judgements regarding potential terrorism content; (ii) explains what a notice from a police constable is under section 3 of the Terrorism Act 2006; and (iii) sets out the definition of 'terrorism' as a matter of UK law.

Importance of purpose, meaning and context of content

2.4 Service providers should consider the purpose and meaning of content when making illegal content judgements, having regard to the context in which it appears. Providers should note the following.

a) It is *not* an offence to portray terrorism (for example in a video clip from a film or TV show) or to report on terrorism (for example as news or current affairs).
b) It is *not* an offence to make jokes about terrorism, even where these are offensive or in poor taste.

2.5 In this regard, it may be appropriate to consider, for example:

a) The original author of the content (where the content is reshared or reposted or where it has been taken from an external source) and whether profile information (for example, profile picture, username or 'bio' text) shows they are a member of a proscribed organisation (see below);
b) Information readily available to them through taking appropriate steps to be informed of the immediate, publicly known UK state of affairs in which the online content is

published/disseminated (for example, in the aftermath of a particular event, which will most likely be reported by major international media outlets); and

c) The apparent purpose of the person making the statement/downloading the content, including whether they are a member of a proscribed organisation.

Service providers should be particularly aware of a user's right to freedom of expression when making decisions in accordance with their illegal content safety duties.

Notices from police constables

2.6 Service providers should also note section 3 of the Terrorism Act 2006, which provides for a 'constable' (a type of UK police officer) to give notice to service providers that content – defined as "statement or article or record" – is unlawfully terrorism-related. A notice like this has the effect of making the provider itself liable to be prosecuted for a terrorism offence if it does not take appropriate action. This guidance does not address what a provider should do on receipt of such a notice, as that is not a matter for Ofcom. However, where a notice has been given under section 3 of the Terrorism Act 2006, we consider that service providers will have reasonable grounds to infer that the content which is the subject of the notice is illegal, *unless* they have strong evidence to suggest the contrary. Providers should not rely solely on such notices to prompt action on content.

2.7 Notices under section 3 also apply to 'repeat statements' that is, content which "is, or is for all practical purposes, the same or to the same effect as the statement to which the notice related."

The definition of terrorism in UK law

2.8 Many of the terrorism offences in this chapter use the concept of **'**terrorism**'**, so service providers will need an understanding of what terrorism is as a matter of UK law.[13]

2.9 The Terrorism Act 2000 defines terrorism, both in and outside of the UK, as the use or threat of one or more of the following actions:

a) Serious violence against a person;

b) Serious damage to property;

c) Endangering a person's life (other than that of the person committing the action);

d) Creating a serious risk to the health or safety of the public or a section of the public; or

e) Action designed to seriously interfere with or seriously to disrupt an electronic system.

2.10 In addition, in order to be terrorism the use or threat of action must also be:

a) Designed to influence the government, or an international governmental organisation or to intimidate the public or a section of the public; *and*

[13] In relation to the offences relating to 'proscribed organisations' – that is, those terrorist groups or organisations that are banned under UK law – it is not necessary to have a detailed understanding of the legal definition of terrorism, because all that matters is whether or not the organisation involved is on a list of those proscribed.

b) For the purpose of advancing a political, religious, racial or ideological cause.

2.11 The definition of terrorism does not apply to actions during armed conflict between countries or actions by government officials. The terms used in paragraph 2.9 have no special legal meaning, and should therefore be understood to carry their everyday definition.

2.12 A person doesn't have to carry out a terrorist attack to commit a priority terrorism offence. Planning, assisting and collecting information on how to commit terrorist acts are all offences.

2.13 Where the use or threat of action involves the use of firearms or explosives, that action is considered to be terrorism regardless of whether or not the action is designed to influence the government or an international governmental organisation or to intimidate the public or a section of the public. However, the use or threat must still be for the purpose of advancing a political, religious, racial or ideological cause.

2.14 Any action taken for the benefit of a proscribed organisation should also be considered to be an action taken for the purposes of terrorism, even if it does not amount to one of the proscribed organisation offences below.

2.15 The above is the definition of terrorism which is used for many of the terrorism priority offences, but the definition of terrorism on its own is not enough. Service providers need to consider the offences which use the definition, below.

Information likely to be of use to a terrorist

2.16 Service providers should first consider whether the content is information that is likely to provide practical assistance to a person committing or preparing an act of terrorism. It is an offence to collect, make a record of, possess, view or access such information. Therefore, the content may be 'illegal content' because of the conduct either of the person posting the content, or of other users who are viewing such content. For the purposes of making illegal content judgements, providers should focus on information that is, of its very nature, likely to provide practical assistance to a terrorist.

2.17 The Act also covers offences of encouraging and assisting the commission of collecting information likely to be of use to a terrorist, conspiracy to carry out the collection of information likely to be of use to a terrorist and knowingly engaging with someone else in pursuit of a common purpose to commit this offence. We do not consider it necessary to provide detailed guidance on these because other common terrorism offences such as 'dissemination of terrorist publications', 'encouragement of terrorism', 'incitement of terrorism' and 'preparation of terrorist acts' are likely to capture the content concerned.

2.18 Guidance from one user to another about navigating to where a type of information likely to be of practical use to a terrorist is stored or may be obtained, or a link to such content on another service, should itself be considered as 'information likely to be of use to a terrorist.'

2.19 Content that may be useful to a terrorist, but which also has clear innocuous uses – for example a map or public transport information – is not usually in and of itself information 'likely to be of use to a terrorist'. However, if in context such public information is being used specifically for terrorist purposes – for example, if a person posts a map with a target for terrorist attack marked on it, or transport information relating specifically to how to get to a targeted location or person – it becomes information likely to be of use to a terrorist. In order to make judgments about information with clear innocuous uses, providers may need

to consider the immediate, publicly known UK state of affairs in which the online content was published, for example where a map posted shows the location of a place of worship with a reference to current events in the UK which suggests the location might become a target.

2.20 Service providers do not need to consider state of mind separately for this offence except in relation to defences (see below).

Relevant defences

2.21 Information that is, of its very nature, likely to provide practical assistance to a person committing or preparing an act of terrorism should be treated as illegal content. The exception is where the service has reasonable grounds to infer that all of the people collecting it, making a record of it, possessing it, viewing it and accessing it would have a 'reasonable excuse' for doing so.

2.22 Reasonable excuse is unlikely to exist where information has been posted to an online location accessible by the general public, including where it is on a website.[14] In such cases, it is reasonable to infer that a defence does not apply and therefore make a judgement that the information is illegal content.

2.23 When information is *not* posted to a location accessible to the general public, but is posted to a location accessible to a limited and closed group of users, this type of content remains highly likely to be illegal content – in reality terrorist networks are more likely to use private channels than public channels. However, service providers should first consider whether there are any grounds to believe that there may be a reasonable excuse for the content to be available. A potential reasonable excuse may be if the service has positive evidence that the content is being used for journalistic or academic research purposes, and that its dissemination is properly and effectively limited to persons with that purpose. However, if the service provider has no evidence of this, it is reasonable to infer that the content is illegal.

2.24 A non-terrorist but still criminal purpose will not be a reasonable excuse. Nor is it a reasonable excuse that the information that is likely to be of use to a terrorist is being collected in order to target an oppressive foreign government. As a general rule, service providers should have good grounds to believe that there is a 'reasonable excuse' for collecting this type of information if they are to classify the content as not illegal.

Risk assessment for the information likely to be of use to a terrorist offence

2.25 For the purposes of carrying out a risk assessment, providers should be aware that content which amounts to this offence could be in the form of any communication which contains the relevant information. Content amounting to this offence may be found on user-to-user services (including social media services, messaging services, gaming services, file-sharing and file storage services, discussion forums and chat rooms, video-sharing services, marketplaces and listings services, fundraising services, and payment services) and on websites accessed by search services.

2.26 We acknowledge that it will be challenging for services to accurately infer whether users collecting, recording, possessing, viewing or accessing the information have a reasonable

[14] The term 'general public' is here used in its everyday meaning. It should not be considered to have the same meaning as a 'public' channel as defined in the Act.

excuse to do so, though as set out above, we believe this can be reasonably inferred depending on the nature of the location to which the information is posted.

2.27 See the Register of Risks chapter titled 'Terrorism'.

Usage examples

- A bomb-making or poisons manual (for example the Mujahideen's Poisons Handbook, and the Anarchists Cookbook).
- Guides on how to commit and fund terrorism, and avoid detection. For example: the White Resistance Manual and various Al Qaeda or Islamic State articles (such as, 'Inspire' an Al Qaeda publication, or 'How to survive in the West a Mujahid Guide').
- Guides on terrorist tactics such as arson, assassination and low-tech attack, where it is clear on the face of the content that the purpose is terrorist in nature. A 'low-tech' attack is an attack using commonly available items as weapons, such as knives or cars. This tactic has been encouraged by ISIS.

Reasonably available information for providers of user-to-user and search services

- The content suspected to be illegal content.
- Only where the information has clear innocuous purposes, information from external sources regarding the immediate, publicly known UK state of affairs in which the online content is published/disseminated.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References:

Legal annex: Section A3 of Annex 1.

Statute: Section 58 of the Terrorism Act 2000.

Caselaw: *R v G; R v J* [2009] UKHL 13; *R v F* [2007] EWCA Crim 243; *R v Ben John* [2022] EWCA Crim 54; *R v Umar Hafeez* [2020] EWCA Crim 453.

Guidance on Content Harmful to Children: Section 8, 'Guidance on violent content'

Terrorist training offences

2.28 This section looks at the offences relating to terrorist training, comprising:

a) providing weapons training;

b) **inviting another to receive weapons training or instruction**; and

c) **training for terrorism**.

The first two of these offences are the easiest to show and should be considered first.

2.29 It is an offence to **provide instruction or training in the making or use of** any of the following, *except where* the provider can prove that it was wholly for a purpose other than assisting, preparing for or participating in terrorism:

a) **firearms**;

b) **radioactive material or weapons designed or adapted for the discharge of any radioactive material**;

c) **explosives**; and

d) chemical, biological or nuclear weapons.

2.30 The provision of blueprints or instructions which allow another person to print ('make') a 3D firearm should be considered illegal content where they have been posted to a location which may be accessed by another user. Proof that such blueprints or instructions have been accessed by a terrorist is *not* necessary to reasonably infer that such content is illegal.

2.31 It is also an offence **to invite someone else to receive such training,** unless the person inviting can prove that it was wholly for a purpose other than assisting, preparing for or participating in terrorism.

2.32 The third offence of training for terrorism relates to the **provision or receiving of instruction or training in the making, handling or use of noxious (i.e. dangerous, hazardous or noxious substances), or the use of any method for doing anything else capable of being done for the purposes of terrorism, when it is for the purposes of terrorism.** However, in contrast to the other 'training' offences, when considering content amounting to instruction or training for these substances, the service would need reasonable grounds to infer that the person being trained has intent to use the skills for terrorism or to assist in terrorism.

2.33 For all three offences, content should *not* be treated as illegal where there are reasonable grounds to infer that the purpose of the training was wholly non-terrorist. Evidence of clear non-terrorist purpose is most likely to arise in relation to firearms. It should be noted that providing weapons training for legal purposes, for example as part of a rifle club, is *not* illegal. However, service providers are not required to ask the person posting and users viewing the content about their purposes, before making an illegal content judgement.

2.34 A person who knowingly engages with someone else in pursuit of a common purpose to commit a training offence is also committing an offence, as is someone who conspires to commit the offence. It is not necessary for the service provider to be able to infer that the offence actually took place.

Risk assessment for terrorist training offences

2.35 For the purposes of carrying out a risk assessment, providers should be aware that (priority) illegal content which amounts to these offences could be in the form of any communication, including teaching style videos, images for example blueprints of 3D weapons, or written instructions. Content amounting to this offence may be found on user-to-user services (including social media services, gaming services, file-sharing and file storage services, discussion forums and chat rooms, and video-sharing services) and search services may be used to seek out terrorist training content.

2.36 See the Register of Risks chapter titled 'Terrorism'.

Usage examples

- A bomb-making video uploaded to a social media service.
- Instructions on how to make a suicide vest.
- Websites containing instructions or blueprints on how to print a 3D gun of any kind.

Reasonably available information for providers of user-to-user and search services

- The content suspected to be illegal content.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A3 of Annex 1.

Legislation: Section 54(1) and 54(3) of the Terrorism Act 2000; section 6 of the Terrorism Act 2006.

Case law: *R v Samata Ullah* [2017] (unreported).[15]

Guidance on Content Harmful to Children: Section 8, 'Guidance on violent content'

[15] BBC, 2017. 'Cufflink terrorist' Samata Ullah jailed for eight years, 2 May [accessed 9 October 2024].

Proscribed organisations offences

2.37 It is an offence to:

a) **be a member of a proscribed organisation**;
b) **invite support for a proscribed organisation**;
c) **express an opinion or belief supportive of a proscribed organisation**;
d) **arrange a meeting supportive of a proscribed organisation**; and
e) **publish an image of a uniform of a proscribed organisation**.

2.38 A list of proscribed terrorist organisations has been published by the Government here. The Secretary of State may amend this list. Service providers should ensure they keep up to date with these developments. It is worth looking at the list closely as some service providers may not be aware of all the terrorist organisations that are proscribed in the UK.

2.39 If content relates to a terrorist organisation, group or movement that is not on the list, service providers should consider the other terrorism offences in this chapter, which are not dependent on the terrorist organisation being proscribed.

2.40 Unless there is strong evidence to suggest the contrary, service providers should generally infer that any organisation going by the name of a proscribed organisation or its listed alias *is* that proscribed organisation. The most common aliases are included in the official list of proscribed organisations cited above.

2.41 For content to amount to a proscribed organisation offence as set out below, it is *not* necessary that it originates from a member of a proscribed organisation or an account controlled by such an organisation.

2.42 Service providers which are aware of logos, flags or other iconography associated with proscribed organisations should factor these into content judgements where appropriate. Service providers may consider engaging with third party organisations that maintain databases of such information. Examples of organisations which maintain such databases include Tech Against Terrorism's Terrorist Content Analytics Platform, Kings' College London Repository of Extremist Aligned Documents and Jihadology.

2.43 Service providers should also have due regard to any evidence about proscribed organisation iconography submitted to them by law enforcement. However, in both cases the mere presence of the insignia of a proscribed organisation in a piece of content should not *in itself* amount to reasonable grounds to infer that content amounts to a proscribed organisation offence (for example, a researcher may be writing about a proscribed organisation). The content must amount to one of the offences set out below.

2.44 Content will be priority illegal content owing to its relation to a proscribed organisation if it does any of the following:

a) *It says or shows that the person posting to the user-to-user service or website is a member of a proscribed organisation*. A service provider should infer that no defence is available unless the content concerned predates the date on which the organisation was proscribed and the person posting concerned has taken steps to distance themself from it since its proscription. Given that the most obvious step to take in this regard would be for the person posting to delete the content themselves, service providers may infer that no defence is available without investigating the matter. If the person posting complains, this may give rise to the inference that the person posting has not in fact distanced themselves from the organisation since its proscription.

b) *It invites support for a proscribed organisation*. The support invited need not be material support, such as the provision of money or other property. It can also include moral support or approval.
c) *It expresses an opinion or belief that is supportive of a proscribed organisation in a way which will encourage others to support a proscribed organisation*. It is very important to note here that expressions of religious beliefs that may be shared by a proscribed organisation are not expressions of support for proscribed organisations. Political beliefs (for example, in the desirability of secession of certain territories, or opposition to the foreign policies of particular governments) should not be taken as support for proscribed organisations merely because they may be shared by proscribed organisations. The state of mind required for this offence is recklessness, which means the person expressing the opinion or belief recognises the risk that it will encourage others to support the organisation. Unless there is evidence to the contrary, we consider it reasonable to infer this from the fact the content has been posted.
d) *It arranges a meeting, gives an agenda for a meeting, or assists in arranging or managing a meeting either to support or further the activities of a proscribed organisation, or to be addressed by a person who belongs or says they belong to a proscribed organisation*. A 'meeting' must involve three or more people and can be virtual or in-person.
e) *It depicts an image of an item of clothing or some other article, such as a flag or logo in a way which would lead the viewer to suspect that the person posting the content is a member or supporter of a proscribed organisation*. Service providers do not need to investigate further whether or not they are a member or supporter of a proscribed organisation – reasonable suspicion is enough. An image used for information purposes such as an academic article about a proscribed organisation, or a news article denouncing a proscribed organisation, would not be considered illegal as it is not supporting the organisation.

2.45 The Act also covers offences of encouraging and assisting the commission of the proscribed organisation offences, conspiracy to commit one of the proscribed organisation offences and knowingly engaging with someone else in pursuit of a common purpose to commit this offence. We do not consider it necessary to provide detailed guidance on these because other priority terrorism offences, in particular 'preparation of terrorist acts' are likely to capture the content concerned.

2.46 The context in which content is posted is crucial to determine the true nature of the content. If the content is clearly a fictional drama (for example, students making a thriller) or a joke (for example, one person expressing their strong disagreement with the views of another person by advising them to join a proscribed organisation) then it is unlikely to amount to illegal content. Cultural context will be particularly important and service providers should be mindful of the use of dark or 'edgy' humour in particular online subcultures.

2.47 However, service providers should also be aware that users seeking to evade content moderation may take steps to disguise illegal content (for example, as a joke). It is important to take the context of a piece of content into account when interpreting its meaning. For example, content which is explicitly supportive of a proscribed organisation and is posted for example, to a far-right chat group will not necessarily fall outside the definition of illegal content merely because the user adds "lol", "joking" or an emoji to the end of it. Content moderators should use their own judgement about what the real meaning of the content is, and whether a suggestion that it is a joke rings true.

2.48 We emphasise that there are public interest reasons for organisations and individuals, such as law enforcement authorities, anti-terrorism organisations, academic researchers, journalists and human rights organisations to post content about proscribed organisations. Therefore, service providers should consider the user profile (for user-to-user services) or apparent website author (for search services) before making an illegal content judgement. If the person posting the content is a body which the service provider is aware does not support the proscribed organisation concerned, then so long as the content does not amount to one of the offences relating to proscribed organisation meetings, it is not reasonable to infer that the content is illegal content.

2.49 Content which does none of the above, but which relates somehow to a proscribed organisation, may still be illegal content. Service providers should consider the offence of preparation of terrorist acts, below.

State of mind

2.50 Other than in determining the true nature of the content, when considering content relating to proscribed organisations, service providers do *not usually* need to think separately about the state of mind of the person who uploaded it. Generally speaking, we consider it reasonable to infer that the person has the appropriate state of mind, based on the fact that they have uploaded the content in circumstances which do not appear to be a joke, news reporting etc.

Risk assessment for the proscribed organisation offences

2.51 For the purposes of carrying out a risk assessment, (priority) illegal content which amounts to any proscribed organisation offence could be in the form of any communication.

2.52 Content amounting to these offences may be found on user-to-user services (including social media services, gaming services, file-sharing and file storage services, discussion forums and chat rooms, video-sharing services, and fundraising services) and search services may be used to seek out such content.

2.53 See the Register of Risks chapter titled ‘Terrorism’.

Usage examples

- A user using the logo, flag or other insignia of a proscribed organisation as their profile picture.
- A message posted on a social media platform or other website requesting viewers to join a proscribed organisation.
- A lecture uploaded as a video, audio, transcript or livestreamed, in which a speaker expresses support for a proscribed organisation or encourages listeners to join.
- A website or user seeking donations in support of a proscribed organisation.

Reasonably available information for providers of user-to-user services

- The content suspected to be illegal content.
- The UK Government-maintained list of proscribed organisations.
- *Where available,* databases of logos, flags or other iconography associated with proscribed organisations.
- A sufficient (but no more than sufficient) number of messages or posts immediately preceding the content to show the nature of the thread in which the content is posted (supportive of proscribed organisations, dark comedy, news reporting etc).
- User profile information of the user posting the content, including their user profile image or 'bio' text or other descriptive text on the account.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

Reasonably available information for search services

- The content suspected to be illegal content.
- The Government-maintained list of proscribed organisations.
- Where available, databases of logos, flags or other iconography associated with proscribed organisations.
- The webpage on which the content is posted, including its URL and any banner/sidebar.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A3 of Annex 1.

Statute: Sections 11, 12 and 13 of the Terrorism Act 2000.

Guidance on Content Harmful to Children: Section 8, 'Guidance on violent content'

Other common terrorism offences

2.54 Where content does not amount to any of the offences mentioned above, the illegal content judgement is likely to be more difficult. There is likely to be a greater need to consider the context in which the content appears. Service providers will need to consider the remaining offences one by one.

2.55 This section covers:

a) **dissemination of terrorist publications;**

b) **encouragement of terrorism** (inside and outside of the UK);

c) **incitement of terrorism overseas**[16]; and

d) **preparation of terrorist acts.**

Dissemination of terrorist publications

2.56 In order for content to amount to this offence there must be reasonable grounds to infer that the content is a publication (see paragraphs 2.59 to 2.61, below) which:

a) either may be understood by a reasonable person as an encouragement (direct or indirect) or other inducement, to the commission, preparation or instigation of acts of terrorism; or
b) is a publication which could be useful in the commission or preparation of terrorism acts, *and* which has been made available either wholly or mainly for that purpose; *and*
c) was posted online in a location where at least one person who could be encouraged or induced to terrorism by the content could access it; *and*
d) was posted with the intention that an effect of the conduct would be to encourage or induce the commission, preparation or instigation of acts of terrorism; or in such a manner that recklessness as to the encouragement of or inducement to terrorism can be reasonably inferred.

2.57 For content to be illegal, there must be reasonable grounds to infer that criteria c) and d) have been met, along with *either* criterion a) *or* criterion b).

2.58 A person who knowingly engages with someone else in pursuit of a common purpose to commit this offence is also committing an offence, as is someone who conspires to commit the offence. However, in practice conduct of this nature is likely to amount to the main offence or other offences in this chapter.

Is it a publication?

2.59 A 'publication' implies some element of a self-contained piece of content that is intended for repeated exposure. It may take the form of text, video, audio or images.

2.60 Where the message conveyed by the content is only understandable in combination with other pieces of content such as a chat between friends, it is unlikely to be a 'publication' and other terrorism offences should be considered.

2.61 Only part of a publication need be terrorist for the whole publication to be terrorist. This means that a pdf document of which one section or chapter is encouraging acts of terrorism could be a terrorist publication. Content may remain potentially illegal content even if the

[16] Incitement of terrorism in a domestic setting is covered by other offences (see above).

person shares it together with a comment disavowing it or implying that it has been circulated as a joke (but see defences, paragraphs 2.72 to 2.73).

Is it terrorist?

2.62 Encouraging terrorism includes the 'glorification' of terrorism. This includes any form of praise or celebration. An example of something that may indirectly encourage terrorism is content which suggests that terrorism (whether past, future or generally) should be emulated now. This could include content which glorifies the preparation of acts of terrorism, for example inspirational or devotional music played over images of someone constructing or putting on a suicide vest, if there is no context which debunks the suggestion that such conduct is something to aspire to. It could also include content referencing people who have carried out acts of terrorism in the past and calling on others to undertake similar acts, or video footage of insurgent attacks with commentary explicitly praising the attacks.

2.63 Both the content of the publication and the circumstances are relevant. This includes the nature of the person or organisation who is posting the content. For example, where information is published on the website of an institution whose job it is to research and combat terrorism, this is unlikely to be a terrorist publication. Where it is published with no such context, or by a person the service provider does not recognise, it is more likely to be a terrorist publication. The test is how a reasonable person would understand the publication.

2.64 Similarly, when considering whether a user or website has disseminated terrorist publications, service providers should also have regard as to whether the content is an encouragement of or useful for terrorism *in context.* If the publication itself is obviously a joke or fictional, such that it would not be likely to be understood by a reasonable person as encouraging or being useful for terrorism, it should *not* be considered illegal content.

2.65 Service providers may need to consider the immediate, publicly known UK state of affairs in which the online content published or disseminated. For example, a publication circulated in a context of high public concern about a particular matter, or in the immediate aftermath of a particular event, may refer to them in a way that may not be understood by a person who is unaware of the context.

Dissemination

2.66 A publication may be 'disseminated' if it is published on a website or posted on a user-to-user service. It may also be 'disseminated' if a person shares a URL which directly links to it.

Inferring access by someone who could be encouraged to commit terrorism

2.67 For a piece of content to be judged illegal under this offence, there must be reasonable grounds to infer that at least one person who could be encouraged by it to commit terrorism may see it.

2.68 In most cases, we consider it reasonable to infer that content *is* likely to be seen by someone who could be encouraged to commit terrorism where the content is posted to a location accessible by at least one other user. This is due to the highly interconnected nature of the internet, and the ability of content such as terrorist publications to spread quickly despite a relatively small original audience. However, service providers should always consider whether a defence applies (see below).

State of mind and relevant defence

2.69 In order for content to be considered illegal under this offence, there must be reasonable grounds to infer that the person posting either intended or at least recognised the risk that (was 'reckless' as to whether) a person seeing it will be encouraged or induced to terrorism.

2.70 Service providers are unlikely to be in a position to infer intent unless the person posting has either:

a) said what they intend, either in the content concerned or in other content (see box for reasonably available information); or

b) taken steps to disguise the nature of the content.

2.71 However, recklessness may be inferred in most cases where content which meets the criteria set out in 2.56 and no defences are inferable (see paragraphs 2.72 to 2.73). In these cases, it should be assumed that the person posting it would have recognised the risk in doing so, *except* where the service has clear evidence that the person did not. Service providers need not actively seek out such evidence before making an illegal content judgement.

Defences

2.72 No defence applies if the publication is published wholly or mainly in order to be practically useful to a terrorist, or if the user intended to encourage terrorism.

2.73 If the content encourages terrorism yet there is no evidence of intent, a defence may be available. If the person posting the content has made it clear that the content does not express their views and that the person posting doesn't endorse the content, then the content will not be illegal. Service providers should carefully assess the likely nature of the person posting, and whether a reasonable person reading the post would consider the way in which the person has distanced themself from the content to be genuine, or whether it is a deliberate attempt to avoid action against the content by service providers.

Risk assessment for dissemination of terrorist publication offences

2.74 For the purposes of carrying out a risk assessment, providers should be aware that (priority) illegal content which amounts to this offence could be in the form of any communication. Content amounting to this offence may be found on user-to-user services (including social media services, gaming services, file-sharing and file storage services, discussion forums and chat rooms, and video-sharing services) and search services may be used to seek out terrorist publications.

2.75 See the Register of Risks chapter titled 'Terrorism'.

Usage examples

- Publishing on the internet publications authored by known terrorists; for example, 'shooter manifestos' such as Anders Behring Breivik's manifesto, except where the context suggests that the publication is non-terrorist (such as a research publication, or anti-terrorism websites).
- Publishing on the internet publications known to be distributed by terrorist network (for example Siege by James Mason), except where the context suggests that the publication is non-terrorist (such as a research publication, or anti-terrorism websites).

- A 'martyrdom video' uploaded to a forum, showing a prospective suicide bomber explaining their rationale, *except where* the context suggests that the publication of such a video is non-terrorist (for example, research).

Reasonably available information for providers of user-to-user services

- The content suspected to be illegal content.
- A sufficient (but no more than sufficient) number of messages or posts immediately preceding the content to show the nature of the thread in which the content is posted (terrorist, dark comedy, news reporting etc).
- Information from external sources regarding the immediate, publicly known UK state of affairs in which the online content is published/disseminated.
- User profile information of the user posting the content, including their user profile image or 'bio' text or other descriptive text on the account.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

Reasonably available information for providers of search services

- The content suspected to be illegal content.
- The webpage on which the content is posted, including its URL and any banner/sidebar.
- Information from external sources regarding the immediate, publicly known UK state of affairs in which the online content is published/disseminated.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A3 of Annex 1.

Statute: Section 2 of the Terrorism Act 2006.

Case law: *R v Gul* [2013] UKSC 64.

Guidance on Content Harmful to Children: Section 8, 'Guidance on violent content'

Encouraging terrorism

2.76 The offence of **encouraging terrorism** refers to publishing statements. Content that has been published to members of the public may be illegal where there are reasonable grounds to infer that it amounts to a direct or indirect encouragement to some or all of the members of the public to the commission, preparation, or instigation of acts of terrorism or **'Convention offences'** (see paragraphs 2.82 to 2.84; referred to in this section as 'an offence of encouragement').

2.77 For content to be illegal, there must be reasonable grounds to infer that the content was posted with the intention that an effect of the conduct would be to the encouragement of or inducement to commit, prepare or instigate acts of terrorism or Convention offences; or did so in such a manner that recklessness as to the encouragement of or inducement can be inferred (see paragraphs 2.85 to 2.88).

2.78 A person who knowingly engages with someone else in pursuit of a common purpose to commit this offence is also committing an offence, as is someone who conspires to commit the offence. However in practice conduct of this nature is likely to amount to the main offence or other offences in this chapter.

Is it a statement published to members of the public?

2.79 A statement, for the purpose of this offence, involves a communication of any description. However, this offence only arises when content has been 'published' to members of the 'public'. For this offence, an online group or forum that is open to any internet user would be considered public.[17]

2.80 A members-only group which may be joined or accessed by any user without prior approval from a user-administrator or user-moderator (rather than the service provider itself) should still be considered accessible to the public. A provider will not usually have reasonable grounds to infer that content is accessible to members of the public where it has been posted to a 'closed', invitation- or prior-approval-only group or to a private social media account where follow requests must be approved.

2.81 If content has not been published to members of the public, service providers need not consider the offence of encouraging terrorism any further, and should go on to consider the offence of inciting terrorism overseas, below.

What is an act of terrorism?

2.82 An 'act of terrorism' is anything done for the purposes of terrorism, as defined in paragraphs 2.8 to 2.15. If it is clear by looking at the content alone that the purpose is terrorist (for example if the content encourages the viewer to 'take revenge for' a particular government policy or 'do some serious damage' to people in order to change the government's stance on an issue), service providers do not need to determine the precise nature of the act being encouraged.

What are Convention offences?

2.83 If the purpose is not clear on the face of the content, service providers should consider whether the act being encouraged is a 'Convention offence'. Convention offences may be committed either in or outside the UK. The majority are acts that a reasonable person would

[17] Again, the term 'public' is here used in its everyday meaning. It should not be considered to have the same meaning as a 'public' channel as defined in the Act.

be likely to consider as terrorist in nature without needing any detailed guidance – for example, offences relating to:

a) causing explosions to hurt people;

b) biological and chemical weapons;

c) importing or using radioactive materials;

d) hijackings and kidnappings; or

e) attacks on heads of state or leaders of international organisations and their families.

2.84 The Convention offences that may be less immediately obvious relate to terrorist funding (for more on this, see the terrorist funding section below). Further detail on Convention offences is provided in the Legal Annex accompanying this document.

Does the content 'encourage'?

2.85 Encouragement may be direct or indirect. Content which is likely to be understood by a reasonable person as indirect encouragement includes every statement which:

a) glorifies the commission or preparation (whether in the past, in the future or generally) of such acts or offences (see paragraph 2.62 above which refers to the 'glorification' of terrorism); and

b) is a statement from which those members of the public could reasonably be expected to infer that what is being glorified is being glorified as conduct that should be emulated by them in existing circumstances (see below).

2.86 Both the content of the statement and the circumstances are relevant. This includes the nature of the person or organisation who is posting the content. For example, where information is published on the website of an institution whose job it is to research and combat terrorism, this is unlikely to encourage terrorism. Where it is published with no such context, or by a person the service provider does not recognise, it is more likely to encourage terrorism. The test is how a reasonable person would understand the content.

2.87 Similarly, service providers should consider whether the content is an encouragement of terrorism *in context.* If the content is obviously a joke or fictional, such that it would not be likely to be understood by a reasonable person as encouraging terrorism, it should *not* be considered illegal content. Surrounding posts or comments may indicate that the content in question cannot reasonably be considered encouragement; for example, if they indicate that the post was intended as a joke (albeit in poor taste) or is news reporting.

2.88 Service providers may need to consider the immediate, publicly known UK state of affairs in which the online content published or disseminated. For example, content circulated in a context of high public concern about a particular matter, or in the immediate aftermath of a particular event, may refer to them in a way that may not be understood by a person who is unaware of the context.

State of mind and relevant defences

2.89 For content to amount to an offence of encouragement there must be reasonable grounds to infer that the person posting:

a) intended members of the public to be encouraged or otherwise induced to commit, prepare or instigate acts of terrorism or Convention offences; *or*

b) was reckless as to whether their post could encourage or otherwise induce members of the public to commit, prepare or instigate acts of terrorism or Convention offences (or in other words, they recognised the risk).

2.90 Service providers are unlikely to be in a position to infer intent unless the person posting has either:

a) said what they intend, either in the content concerned or in other content (see box for reasonably available information); or

b) taken steps to disguise the nature of the content.

2.91 Recklessness may be inferred in most cases where content encourages acts of terrorism or Convention offences and there are no grounds to infer a defence is available (see below). In these cases, it should be assumed that the person posting it would have recognised the risk in doing so, *except* where the service has clear or positive evidence that the person did not. We do not consider that service providers are required to search for such evidence before making an illegal content judgement.

Defences

2.92 No defence applies where it is reasonable to infer that the content was published with the intention of encouraging terrorism.

2.93 If the content encourages terrorism yet there is no evidence of intent, a defence may be available. If the person posting the content has made it clear that the content does not express their views and that they do not endorse the content, then the content will not be illegal. However, service providers should carefully assess the likely nature of the person posting, and whether a reasonable person accessing the post would consider the way in which the person has distanced themself from the content to be genuine, or whether it is a deliberate attempt to avoid action against the content.

Risk assessment for encouraging terrorism

2.94 For the purposes of carrying out a risk assessment, providers should be aware that (priority) illegal content which amounts to this offence could be in the form of any communication. Content amounting to this offence is mostly likely to be found on user-to-user services (including social media services, gaming services, services, discussion forums and chat rooms, and video-sharing services).

2.95 See the Register of Risks chapter titled ‘Terrorism’.

Usage examples

- Content calling on others to emulate, or follow today, the acts of historical figures who used violence for political ends.
- Content which calls on others to use violence or other terrorist means to change, or take ‘revenge’ for, government policy.

Reasonably available information for providers of user-to-user services

- The content suspected to be illegal content.
- A sufficient (but no more than sufficient) number of messages or posts immediately preceding the content to show the nature of the thread in which the content is posted (supportive of terrorism, dark comedy, journalism etc).
- Information from external sources regarding the immediate, publicly known UK state of affairs in which the online content is published.
- User profile information of the user posting the content, including their user profile image or 'bio' text or other descriptive text on the account.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

Reasonably available information for providers of search services

- The content suspected to be illegal content.
- The webpage on which the content is posted, including its URL and any banner/sidebar.
- Information from external sources regarding the immediate, publicly known UK state of affairs in which the online content is published.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A3 of Annex 1.

Statute: Section 1 of the Terrorism Act 2006.

Case law: *R v Hamza Siddiq* [2019] (unreported).

Notes: Service providers should also note the provisions of section 3 of the Terrorism Act 2006, which provide for a constable to give notice to service providers that content is unlawfully terrorism-related.

Guidance on Content Harmful to Children: Section 8, 'Guidance on violent content'

Inciting terrorism overseas

2.96 If the content in question does not amount to dissemination of terrorist publications or encouraging terrorism, service providers should next consider whether the content **incites terrorism overseas** (i.e. outside the UK).

2.97 In this case, there is no need for the content to be made available to members of the public, or for it to be a 'publication'. However, for the content to amount to this offence it must involve more than simple 'encouragement'.

2.98 To be considered illegal under this offence, content must contain words or actions which amount to 'urging' or 'spurring on', that is a positive step (or steps) aimed at inciting another to commit a terrorist act overseas.

2.99 The incitement must relate to an act of terrorism overseas where this act would, if committed, constitute at least one of the following offences:

a) murder;

b) wounding with intent;

c) poison;

d) explosions;

e) endangering life by damaging property; or

f) assault to severe injury or reckless conduct which causes actual injury.

2.100 In order to make an illegal content judgement, service providers need to establish that the person posting the content intended to incite terrorism. Service providers should look at the content in the context in which it appears. They are unlikely to be in a position to infer intent unless the person posting has either:

a) said what they intend, either in the content concerned or in other content they have posted; or

b) taken steps to disguise the nature of the content.

2.101 Service providers may need to consider the immediate, publicly known UK state of affairs in which the online content published or disseminated. For example, content circulated in a context of high public concern about a particular matter, or in the immediate aftermath of a particular event, may refer to them in a way that may not be understood by a person who lacks that contextual information.

Risk assessment for inciting terrorism overseas offence

2.102 For the purposes of carrying out a risk assessment, providers should be aware that content which amounts to this offence could be in the form of any communication. Content amounting to this offence may be found on user-to-user services (including social media services, gaming services, discussion forums and chat rooms, and video-sharing services) and search services may be used to seek out content that incites terrorism.

2.103 See the Register of Risks chapter titled 'Terrorism'.

Usage examples

- Content calling on others to travel overseas and commit violent or terrorist acts for a political purpose (for example, the creation of a new political state).

Reasonably available information for providers of user-to-user services

- The content suspected to be illegal content.
- A sufficient (but no more than sufficient) number of messages or posts immediately preceding the content to show the nature of the thread in which the content is posted (supportive, dark comedy etc.).
- Information from external sources regarding the immediate, publicly known UK state of affairs in which the online content is published/disseminated.
- User profile information of the user posting the content, including their user profile image or 'bio' text or other descriptive text on the account.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

Reasonably available information for providers of search services

- The content suspected to be illegal content.
- The webpage on which the content is posted, including its URL and any banner/sidebar.
- Information from external sources regarding the immediate, publicly known UK state of affairs in which the online content is published/disseminated.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A3 of Annex 1.

Statute: Sections 59-61 of the Terrorism Act 2000.

Guidance on Content Harmful to Children: Section 8, 'Guidance on violent content'

Preparation of terrorist acts

2.104 **Engaging in any conduct in preparation for giving effect to an intention of committing acts of terrorism** or **engaging in any conduct in preparation for assisting others to commit such acts** is an offence.

2.105 The state of mind requirement means that it is difficult to conceive of online content which would be identifiable as amounting to this offence but not also amount to one of the offences above. Clear evidence of intention would be needed, and also evidence of what the conduct was in preparation for doing.

2.106 It should be noted that any action taken for the benefit of a proscribed organisation should also be considered to be an action taken for the purposes of terrorism. This offence may be relevant to service providers when considering content relating to proscribed organisations which does not obviously fall within one of the specific proscribed organisation offences.

2.107 In particular, an account associated with or managed by a proscribed organisation, or a website operated on its behalf is likely to comprise content amounting to this offence. The account or website itself would be set up with a view to posting content for the benefit of the organisation concerned. Therefore any content posted in the course of its creation is likely to comprise content that is in preparation to do other things for the benefit of a proscribed organisation. Content which was not preparatory would be likely to amount to one or more of the other offences considered in this chapter.

2.108 It may not be straightforward to identify such accounts or websites in practice. Relevant factors would include:

a) *Account or website name*: The account name or website name may be, contain, or make reference to that of a proscribed organisation or a known/listed alias for a proscribed organisation.

b) *User profile images such as profile, account or background images, or website images such as banners and logos*: The image contains logos or symbols connected in some way to the proscribed organisation. This may include images which have been edited or otherwise obscured to evade detection by automated systems.

c) *User profile or website information such as 'bio' text, descriptive text on account of a relevant 'about [site]' section and other user profile or website information*: Other information fields or descriptive fields attached to the account or website suggest an allegiance to a proscribed organisation**.** This may include the name of the organisation included in a user 'bio', or another descriptive field such as those describing education, workplace or political beliefs, or in a strapline or banner information on the website's header.

2.109 Reasonable grounds to infer that an account or website is operated by or on behalf of a proscribed group may also arise where a significant proportion of a reasonably sized sample of the content recently posted by the user or published by the website author, amounts to a proscribed group offence.

Risk assessment for preparing terrorist acts offences

2.110 For the purposes of carrying out a risk assessment, providers should be aware that (priority) illegal content which amounts to this offence could be in the form of an account profile or any other communication. Content amounting to this offence may be found on user-to-user services (including social media services, gaming services, file-sharing and file storage services, discussion forums and chat rooms, and video-sharing services) and search services may index or link to such content.

2.111 See the Register of Risks chapter titled 'Terrorism'.

Usage examples

We have not given any usage examples here. Paragraph 2.108 sets out the main factors to be considered when deciding if content amounts to this offence.

Reasonably available information for providers of user-to-user services

- The content suspected to be illegal content.
- User profile information such as username, profile images, 'bio' text or other descriptive text on the account.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

Reasonably available information for providers of search services

- The content suspected to be illegal content.
- The webpage on which the content is posted, including its URL and any banner/sidebar.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A3 of Annex 1.

Statute: Section 5 of the Terrorism Act 2006.

Guidance on Content Harmful to Children: Section 8, 'Guidance on violent content'

Miscellaneous specific terrorism offences

A2.1 The following more specific offences are considered below in order of the ease of reaching reasonable grounds to infer:

a) **publishing information about members of the armed forces etc**.;

b) **threats related to the use of noxious substance or things;**

c) **terrorist threats relating to radioactive devices etc**.; and

d) **directing the activities of a terrorist organisation**.

Publishing information about members of the armed forces etc

2.112 It is an offence to **publish or communicate information about a member of His Majesty's forces** (i.e. the British Army, Royal Air Force and Royal Navy), **a member of any of the intelligence services or a constable**, where the information is of a type likely to be useful to a person committing or preparing an act of terrorism.

2.113 Information on the specific location or activity of military units during a specific current or future time period may meet this criteria.

2.114 However, a defence of reasonable excuse applies. Such a defence may be reasonably inferred where the true purpose of the publication is academic or journalistic. For example, reasonable excuse may exist where a journalist or academic shares information on military exercises or movements in a way that presents them as matters of historical or journalistic record and which could not be reasonably said to risk the safety of the personnel involved.

2.115 The Act also covers offences of encouraging and assisting the publication of information about members of the armed forces etc and conspiracy to carry out the offence of publishing information about members of the armed forces etc. We do not consider it necessary to provide detailed guidance on these. It is difficult to imagine the circumstances in which they would be identifiable by a service provider because it would need to know what the information was in order to infer that it was a type likely to be useful to a person committing or preparing an act of terrorism.

Usage examples

- Content detailing where a military unit will be at a specific (future or regular) time.
- Content allowing an individual constable, intelligence officer or soldier etc. to be located at a given time (for example, through the publication of their home address).

Reasonably available information for providers of user-to-user services

- The content suspected to be illegal content.
- (Only if, on its face, the content appears to contain information of a type likely to be useful to a person committing or preparing an act of terrorism, about a member of His Majesty's forces, a member of any of the intelligence services or a constable), a sufficient (but no more than sufficient) number of messages or posts immediately preceding the content to show the nature of the thread in which the content is posted.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

Reasonably available information for providers of search services

- The content suspected to be illegal content.
- Only if, on its face, the content appears to contain information of a type likely to be useful to a person committing or preparing an act of terrorism, about a member of His Majesty's forces, a member of any of the intelligence services or a constable), the webpage on which the content is posted, including its URL and any banner/sidebar.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A3 of Annex 1.

Statute: Section 58A of the Terrorism Act 2000.

Guidance on Content Harmful to Children: Section 8, 'Guidance on violent content'

Threats: noxious substances or radioactive devices

Noxious substances

2.116 It is an offence for a person to make a **threat of action involving harmful substances (e.g. potentially hazardous materials whether its form is solid, liquid, gas or vapour) for the purpose of influencing the government or an international governmental organisation or to intimidate the public or a section of the public**, where such an action would, anywhere in the world:

a) cause serious violence against a person; or cause serious damage to property;

b) seriously risk public health and safety or endanger human life; or

c) cause *fear* of a risk to public health and safety or danger to human life.

2.117 It is also an offence to make threats to **use radioactive material or a radioactive device, or to damage a nuclear facility so as to release radioactive material**, or to **make any threat coupled with demands for access to radioactive material or devices or nuclear facilities**. Intent to make such threats for terrorist purposes is required in order for content to be considered illegal, as is the existence of a reasonable fear that the threat will be carried out.

2.118 We have not provided detailed guidance on these offences as we believe that any content reaching the threshold for these offences will have already met the threshold for another

offence, notably preparation of terrorist acts or a threats offence. As such, no usage examples or detail on reasonably available information is provided.

References

Legal annex: Section A3 of Annex 1.

Statute: Section 113 of the Anti-Terrorism, Crime and Security Act 2001; section 11 of the Terrorism Act 2006

Guidance on Content Harmful to Children: Section 8, 'Guidance on violent content'

Directing a terrorist organisation

2.119 Content may be illegal content if it involves a person **directing the activities of an organisation which is concerned in the commission of acts of terrorism**. Intent to do so is required in order for content to be considered illegal. This offence relates to terrorist organisations in general, as opposed to the proscribed organisations mentioned at the start of this chapter.

2.120 Reasonable grounds to infer that a different terrorism offence has been made out is likely to occur before the threshold for this offence has been reached.

2.121 When conducting a risk assessment regarding content amounting to this offence, providers should refer to the Register of Risks chapter titled 'Terrorism'.

Usage examples

We have not given any usage examples here, due to the likelihood that the threshold for a different terrorism offence will have been met before this offence is made out.

Reasonably available information for user-to-user and search services

- The content suspected to be illegal content i.e. words, image, context, purpose etc.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A3 of Annex 1.

Statute: Section 56 of the Terrorism Act 2000.

Guidance on Content Harmful to Children: Section 8, 'Guidance on violent content'

Terrorist finance offences

2.122 The Act includes as priority offences a number of offences relating to terrorist fundraising. Of these, the offence of **inviting someone to provide money or other property for terrorism** are most likely to be committed online through the posting of content.

Inviting someone to provide money for terrorism

2.123 In order for content to be considered illegal because of an offence of inviting money or property for terrorism, the person who is inviting must have **'reasonable cause to suspect'** that the money etc. will be used for terrorism. However, they do *not* need to believe that this is the case. Therefore, if the content or anything in the context of the content provides reasonable cause to suspect, the content should be considered to be illegal *except* where a defence applies. Service providers should consider the whole context in making this judgement, including whether the content is clearly a joke.

2.124 Content should not be treated as illegal where there are reasonable grounds to infer that the person posting the content did so with the express authority of the police. This defence should be assumed to be absent except where a service has clear evidence of its presence in the form of a reliable report from the police.

2.125 When conducting a risk assessment regarding content amounting to this offence, providers should refer to the Register of Risks chapter titled 'Terrorism'.

Other terrorist financing offences

2.126 The following offences are also priority offences:

a) **use of money or property for terrorist purposes**;

b) **possession of money or property for terrorist purposes**;

c) **involvement in terrorist funding arrangements**; and

d) **laundering of terrorist property**

2.127 It is unlikely that any of these offences can result in content which would be subject to an illegal content judgement (although evidence of their commission may be found online). Service providers should however consider whether content may be illegal content because it amounts to a conspiracy to commit any of these offences *or* assists in the commission of these offences. However, in order for content to be considered illegal under these offences, there must be reasonable grounds to infer intent to commit them.

2.128 The Act also covers offences of encouraging and assisting the commission of the above offences, conspiracy to carry them out and knowingly engaging with someone else in pursuit of a common purpose to commit them. We do not consider it necessary to provide detailed guidance on these because the offence of 'preparation of terrorist acts' is likely to capture the content concerned.

2.129 When conducting a risk assessment regarding content amounting to this offence, providers should refer to Register of Risks chapter titled 'Terrorism'.

Usage examples

- A post of any type (including a private message) inviting someone to contribute to a group with avowed terrorist purposes which is not yet proscribed.
- A listing on a fundraising website which seeks donations for a group with avowed terrorist purposes which is not yet proscribed.

Reasonably available information for user-to-user and search services

- The content suspected to be illegal content i.e. words, image, context, purpose etc.

- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A3 of Annex 1.

Statute: Sections 15, 16, 17 and 18 of the Terrorism Act 2000.

3. Threats, abuse and harassment (including hate)

Warning: this chapter contains content that may be upsetting or distressing

Offences covered in this section

3.1 The priority offences set out in Schedule 7 of the Online Safety Act ('**the Act**') which relate to threats, abuse and harassment overlap with one another to a significant degree. For the purposes of this chapter, we therefore approach them based on theme, rather than offence by offence. The themes are:

a) Threats (including hate), encompassing:

i) threatening behaviour which is likely to cause *fear or alarm*
ii) threatening behaviour which is likely to cause *harassment or distress*
iii) threats which are likely to stir up racial hatred
iv) threats which are likely to stir up hatred on the basis of religion or sexual orientation
v) threats which may provoke violence

b) Abuse and insults (including hate), encompassing:

i) abusive behaviour which is likely to cause *fear or alarm*
ii) abusive behaviour which is likely to cause *harassment or distress*
iii) abuse which is likely to stir up racial hatred
iv) abuse which may provoke violence

c) Other content likely to amount to harassment (including stalking and controlling or coercive behaviour)

3.2 Suspected illegal content may include more than one of these themes. It may well also need to be considered under other categories of priority offences; in particular: terrorism, CSAM (for example, when a child is being blackmailed), grooming, image-based sexual offences (including intimate image abuse) or foreign interference and the non-priority false communications offence.

Approach to offences

3.3 For the purposes of identifying content as illegal content only, service providers should look at the offences with the simplest criteria for illegality. However, for their risk assessments and in their assessments of the proportionality of steps to be taken, providers may need to go further than this. This is because, unlike the takedown duty, the risk assessment duties take account of harm caused in addition to illegality.

3.4 Looking at the simplest criteria for illegality means that sometimes, even where content may amount to a very serious offence, it may be possible to apply a less serious and simpler offence to determine that content is illegal content. By way of example, section 2 of the Protection from Harassment Act 1997 makes harassment an offence. Section 2A of the same Act makes it an offence if harassment amounts to stalking. These offences have similar state

of mind requirements. If a service provider identifies content which constitutes harassment, the state of mind requirements have been satisfied and there are no defences available, then the content will be illegal content under section 2. Having identified illegal content, providers do not need to go on to consider whether the content is illegal because it also amounts to stalking under section 2A.

3.5 Service providers should refer to Ofcom's Register of Risk for the purposes of understanding the harm potentially caused by this type of conduct, and also for understanding how harassment, stalking and controlling or coercive behaviour may manifest in ways other than content.

3.6 In addition to offences related to threats, abuse and harassment, the Act also includes as priority offences versions of those offences which are racially or religiously aggravated. Showing that content amounts to an illegal threat, for example, is easier than showing it amounts to an illegal threat which is racially or religiously aggravated. Taking the same approach as set out at paragraph 3.4: if a provider has decided that content amounts to an illegal threat causing alarm, it has identified illegal content and therefore does not need to separately consider whether the offence is racially or religiously aggravated. The service provider should apply its illegal content safety duties regardless. However, a proper consideration of risk in a risk assessment, and of the proportionality of safety measures to be taken, might well need to consider such aggravating factors, since the harm done may be greater if it is done to these groups. Similarly, in this section of the guidance we only consider the priority offences set out in the Act. But a proper consideration of risk in a risk assessment, and of proportionality of safety measures to be taken, might well consider other factors, for example, whether the victim has a protected characteristic (for example, if they are disabled or transgender).

3.7 For more information on harms relating to the offences in this chapter see the following chapters of the Register of Risks titled 'Harassment, stalking threats and abuse', 'Hate' and 'Controlling or coercive behaviour'.

Encouraging, assisting, conspiring, common purpose etc.

3.8 The Act's priority offences also include offences of encouraging and assisting the commission of threats, abuse and harassment offences, conspiracy to carry out these offences and knowingly engaging together with someone else in pursuit of a common purpose to commit them. In all these cases, the content will only be illegal content to the extent that the underlying offence is sufficiently linked to the UK – the question is whether the UK would prosecute the people involved. The rules which decide whether or not there is a sufficient link are very complicated and content moderators cannot be expected to understand them in detail. However, for the purposes of this guidance, content should be considered illegal if either:

a) the threats, abuse or harassment offence concerned is clearly taking place in the UK, or
b) the threats, abuse or harassment offence is clearly to be committed by someone who is British.

3.9 Encouraging could include words urging another person to carry out the offence. Assisting could include providing substantive help in carrying out the offence. There must either be intent to encourage/assist the offence, or belief that the offence will be committed. For conspiracy, there must be an agreement between two people and intent to carry out the offence. For a common purpose, both parties must knowingly share the purpose. It is also

necessary that the offence concerned not already be in the past when the conduct takes place. For example, if a user reacts positively to content which depicts the offence, they will not necessarily be encouraging that offence because it will have already happened before the user did anything. The moderator will also need to consider whether what the content shows is really encouragement, assistance, agreement, or common purpose, or whether it is a joke.

3.10 An example of where content is likely to be illegal because it encourages or assists the commission of an offence is where the content consists of instructional information about, or encouragement of, intimate partner surveillance, such as monitoring an intimate partner's electronic communications or movements. This is likely to amount to an offence of encouraging and/or assisting the commission of a harassment, stalking, or controlling or coercive behaviour offence.

Context, nuance and humour

3.11 In considering the offences in this section, service providers will need to be particularly mindful of context and nuance. Content is not illegal merely because it is offensive, shocking or disturbing; nor because it is rude. Lawful content may express unpopular or unfashionable opinions about serious or trivial matters. Banter and humour, even if in poor taste to some or painful to those subjected to it, is not necessarily unlawful.

Freedom of expression

3.12 Freedom of expression considerations are particularly pertinent in relation to the offences covered in this section. Any limitation on the right to freedom of expression must be prescribed by law, pursue a legitimate aim and be necessary in a democratic society. In order to be 'necessary', the restriction must correspond to a pressing social need, and it must be proportionate to the legitimate aim pursued. Both the definition of illegal content and the requirement for Ofcom to prepare this guidance are set out in the Act and pursue the aims of the prevention of crime, the protection of health and morals, and the protection of the rights of others. Ofcom has had careful regard to these rights in producing this guidance.

Language

3.13 The language used in posts amounting to these offences is highly likely to involve colloquialisms, slang (including profanity) and may also involve 'code switching' (when a speaker or writer alternates between two or more dialects, languages or registers) and the use of terms from languages other than English. Where providers are aware of non-standard language which may be used in an offence cited in this chapter, they should factor this into their content judgements.

Threats including hate

3.14 This section considers all the offences which can be committed through a threat. Although some of the priority offences refer to 'threats' and others to 'threatening behaviour', in practice this makes little difference - text and other communications can be threatening behaviour. A threat may be contained in any sort of content, including text, video or audio content and images.

3.15 Service providers should always consider the immediate context in which content was posted, and whether the circumstances suggest that the content in question was threatening. They should pay particular attention to the possibility of humour (including humour in poor taste), and the impact that a close or otherwise friendly relationship can have on the acceptability of certain communication. Threats are sometimes made as jokes, and the language associated with threats is commonly used in many other contexts too. This offence captures behaviour consisting of a single act, or a course of conduct.

Discrete content vs patterns of behaviour generating content

3.16 A complaint may be made about a specific item of content, or about a general pattern of behaviour which generates content. For example, high-profile individuals may be targeted with threats by a range of different people. In these cases, it may be possible to identify threats without separate complaints about each specific item of content.

Risk assessment and illegal content relating to threats (including hate)

3.17 For the purposes of carrying out a risk assessment, providers should be aware that (priority) illegal content which amounts to offences relating to threats (including hate) could be in the form of any communication.

3.18 Content amounting to these offences may be found on user-to-user services (including social media services, online gaming services, private messaging services, online dating services, and video-sharing services (for threats relating to hate). Such content may also be discoverable through search services.

3.19 See Chapter 6E on 'Harassment, abuse, threats, stalking and threatening communications offences', and Chapter 6F on 'Hate offences.'

Threats and threatening behaviour likely to cause fear or alarm

3.20 This section covers all the priority offences which can be committed through **a threat where the threat is likely to cause 'fear' or 'alarm'**. The analysis below focuses on the priority offence in section 38 (threatening or abusive behaviour) of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13). We focus on this offence first because it is the broadest of the priority offences on threats and threatening behaviour.

3.21 Threatening behaviour will amount to illegal content if it is likely to cause a reasonable person to suffer fear or alarm.

Meaning of 'likely to cause fear or alarm'

3.22 It is not necessary that a person actually suffered fear or alarm from content being posted, only that it was *likely* to cause a 'reasonable person' to suffer fear or alarm. A 'reasonable person' is someone who is not of abnormal sensitivity. However, the characteristics of the person targeted are relevant. A reasonable person who is threatened because of

characteristics they have (for example, race, sexuality, religion, gender identity or disability) is more likely to feel threatened.

3.23 The mere fact that a person has complained about content is not sufficient to show that a reasonable person would be likely to suffer fear or alarm. In considering whether a reasonable person would be likely to suffer fear or alarm, the following factors are relevant:

a) *The precise nature of any threat*. For example, it may be more reasonable to infer that a reasonable person would suffer fear or alarm if the threat could realistically be carried out.

b) *The context in which the threat appears*. This may include the communication conventions and expectations of a particular platform, the relationship between people communicating with one another, the nature of the conversation of which the potential threat makes up a part, etc. We recognise that service providers will not always have access to such information, but encourage them to consider it where it has already been identified.

3.24 Service providers will often need to consider the threat offences rather than the terrorism offences when it comes to a livestreamed terrorist attack, because the motive of the attacker is often not knowable until later. The behaviour of the user may nevertheless cause viewers to fear that a violent attack is about to be or is being carried out. The 'threat' offences considered in this section are more likely to be how a service would identify such content in real time as illegal content.

State of mind

3.25 Where there are reasonable grounds to infer that a reasonable person would be likely to suffer fear or alarm (as set out above), there will be reasonable grounds to infer that the maker of the threat had the required state of mind.

Relevant defences

3.26 The only specific defence to this offence is that the threatening behaviour was 'reasonable' in the particular circumstances in which it happened**.**

3.27 Service providers should take a common-sense approach to considering whether the behaviour displayed in the content could be considered reasonable. For example, it is likely to be reasonable to threaten to go to court to collect a debt, when a debt is owed.

Usage examples

- A specific threat of violence made to a person online, where it is evident from the circumstances that the maker of the threat knows the location of the threatened person".
- A livestream of a person preparing to carry out or actually carrying out murder or extreme violence against another person.

Reasonably available information for user-to-user services

- The content suspected to be illegal content.
- A number of the messages or posts immediately preceding the content to show the nature of the thread in which the content is posted (dark comedy etc). The number

viewed should be sufficient to judge this, but (in keeping with the principle of data minimisation) no more than sufficient.

- Where already identified, the particular communication conventions and expectations of this service or part of the service to which the content is posted.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.* This could include any information provided by a complainant regarding the relevant characteristics of a potential victim, or the relationship between potential victim and poster.

Reasonably available information for search services

- The content suspected to be illegal content.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.* This could include any information provided by a complainant regarding the relevant characteristics of a potential victim, or the relationship between potential victim and poster.

* A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A4 of Annex 1.

Statute: Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13).

Caselaw: *Paterson v Harvie* [2014] HCJAC 87.

Notes: The following offences are not considered separately. For the purposes of making illegal content judgments, they overlap in whole or in part with Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13): section 4 of the Public Order Act 1986 (fear or provocation of violence) so far as it relates to fear of violence; section 4A of the Public Order Act 1986 (intentional harassment) so far as it relates to conduct causing alarm; section 5 of the Public Order Act 1986 (harassment, alarm or distress) so far as it relates to conduct causing alarm; section 16 of the Offences against the Person Act 1861 (threats to kill); section 31 of the Crime and Disorder Act 1998 so far as it relates to conduct causing alarm.

Guidance on Content Harmful to Children: Section 6, 'Guidance on Abuse and Hate Content, Section 7, 'Guidance on Bullying Content' and Section 8, 'Guidance on violent content'

Threatening behaviour which is likely to cause *harassment or distress*

3.28 This section covers all the priority offences which can be committed through a threat where the threat is likely to cause 'harassment' or 'distress'. The analysis below focuses on the priority offence in section 5 of the Public Order Act 1986. This offence is narrower than the Scottish offence, but could encompass behaviour not caught by the Scottish offence, which is why we deal with it second.

3.29 Where content involves behaviour which is threatening but there are *not* reasonable grounds to infer that it could cause fear or alarm, service providers should consider whether there are reasonable grounds to infer that it is likely to cause harassment or distress.

3.30 It is an offence to **use threatening words or behaviour**, or **disorderly behaviour** or **display any writing, sign or other visible representation which is threatening** where it may be heard or seen by a person likely to be caused harassment, or distress by it. This offence may be committed in a public or private place, but no offence is committed where the words or behaviour are used, distributed or displayed inside a dwelling and the other person is also inside that or another dwelling. We consider it reasonable to infer that content will be displayed to people outside a dwelling, since online content is routinely viewed in places other than dwellings, for example on smart phones.

3.31 For content to be judged to be illegal, it is not necessary to infer that a person has actually suffered harassment or distress, only that they were *likely* to. However, a complaint from a user who has been negatively affected by a piece of content is the most likely way providers will be able to identify content of this kind. Service providers will need to consider the immediate context of the content and any information contained in a user complaint in order to determine whether the conduct of the person carrying out the behaviour was reasonable.

3.32 In order to be judged illegal, the content in question does not have to be targeted at a particular person. It only needs to be likely to cause harassment or distress to someone.

What is 'harassment or distress'?

3.33 Distress involves an element of real emotional disturbance or upset. The same is not necessarily true of harassment. A person may be harassed, without experiencing any emotional disturbance or upset. However, although the harassment does not have to be grave, it should also not be trivial. When the UK courts are considering these offences, this is the test a jury is asked to apply, and so it is right for providers to take a common-sense view of whether they have reasonable grounds to infer that the content they are considering meets this test.

3.34 Service providers should consider any information they hold about what any complainant has said about the emotional impact of the content in question and take a common-sense approach about whether it is likely to cause harassment or distress. If the content expresses racial hatred or hatred on the basis of other protected characteristics, it is far more likely to cause harassment or distress. Certain words carry greater force depending on who they are used against. The volume of the content concerned, or repetition of the conduct, may make it more likely content will cause harassment or distress. Offences which involve repeated instances of behaviour are also considered in this chapter; see paragraphs 3.107-3.108.

State of mind

3.35 In order to judge that content is illegal, a service must also have reasonable grounds to infer that the person posting the content concerned was aware that that the behaviour may be threatening. Such awareness may reasonably be inferred if the threatening behaviour is very obviously likely to be seen as threatening by most people and is posted somewhere with wide reach.

3.36 Awareness is less likely to be reasonably inferred if content is posted to a place where, for example, only persons sharing similar sorts of content themselves are likely to see it.

Relevant defences

3.37 Content meeting the criteria above should not be considered illegal where it could be reasonably inferred that the conduct of the person in question was reasonable. Service providers should take a common-sense approach when making judgements about this.

3.38 Judgements about whether content is likely to cause harassment or distress, and whether the defence of reasonable behaviour is available, are likely to be particularly difficult when providers are considering content that has political or religious purposes and relates to religion, sexual orientation or gender identity. Content which is 'gratuitously offensive' is not protected by the right to freedom of expression and is unlikely to be reasonable. However, the context should be taken into account carefully. Political speech and journalistic speech should be subject to particularly careful consideration against the European Convention on Human Rights Article 10 right to freedom of expression.

3.39 There are two further defences:

a) It is a defence if it is reasonable to infer that the person posting the potential illegal content had no reason to believe that there was any person within hearing or sight who was likely to be caused harassment or distress. This is most likely to be relevant where a user is challenging a moderation decision (but of course if the person becomes aware as a result of the moderation decision that such a person was within hearing or sight, the content would become illegal content and would therefore not be reinstated).
b) It is a defence if the person was inside a dwelling and had no reason to believe that the words or behaviour used, or the writing, sign or other visible representation displayed, would be heard or seen by a person outside that or any other dwelling. We do not consider this is likely to be relevant for online services, since content is routinely viewed outside of dwellings for example, on smart phones.

Note on usage examples

We have not given any usage examples here, due to the particularly strong importance of context to these judgements.

Reasonably available information for user-to-user services

- The content suspected to be illegal content, including metadata accompanying this content where appropriate and information.
- A number of the messages or posts immediately preceding the content to show the nature of the thread in which the content is posted (dark comedy etc) and make inferences about patterns of behaviour. The number viewed should be sufficient to

judge this, but (in keeping with the principle of data minimisation) no more than sufficient.

- Where already identified, the particular communication conventions and expectations of the service, or part of the service, to which the content is posted.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.* This could include any information provided by a complainant regarding the emotional impact of the content and any relevant characteristics of the target of the threatening behaviour, or regarding the relationship between the user targeted and the user posting content.

Reasonably available information for search services

- The content suspected to be illegal content.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.* This could include any information provided by a complainant regarding the emotional impact of the content and any relevant characteristics of the target of the threatening behaviour, or regarding the relationship between the user targeted and the user posting content.

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A4 of Annex 1.

Statute: Section 5 of the Public Order Act 1986.

Caselaw: *S v DPP* [2008] EWHC 438 (Admin); *Southard v DPP* [2006] EWHC 3449 (Admin); *The Queen (on the application of R) v Director of Public Prosecutions* [2006] EWHC 1375 (Admin); *Abdul v DPP* [2011] EWHC 247 (Admin).

Notes: The following offences are not considered separately. For the purposes of making illegal content judgments, they overlap in whole or in part with Section 5 of the Public Order Act 1986: Sections 4A of the Public Order Act 1986; section 31 of the Crime and Disorder Act 1998 (racially or religiously aggravated public order offences).

Guidance on Content Harmful to Children: Section 6, 'Guidance on Abuse and Hate Content, Section 7, 'Guidance on Bullying Content' and Section 8, 'Guidance on violent content'

Threats which are likely to stir up racial hatred

3.40 If content is threatening but has not met the threshold for illegal content under the offences above, service providers should next consider whether it can be reasonably inferred to be **a threat likely to stir up racial hatred.**

3.41 Content in the following forms will meet the criteria for these offences:

a) Threatening words, behaviour or displays of any such written material, which can include captions and cartoon speech bubbles.

b) Threatening recordings of visual images or sounds (for example video or audio uploads). A recording is *any* record from which visual images or sounds may, by any means, be reproduced.

3.42 In the case of displays of written material or threatening words or behaviour, it will be an offence if visible outside a dwelling. Given that the internet is routinely accessed via a smartphone or other device outside dwellings, this can be presumed to be the case. In all other cases, the content will be an offence if it is accessible to the public. However, in one case, distribution privately to a few hundred people who were not prevented from sharing it to the public was held to be accessible to the public.

What is 'stirring up racial hatred'?

3.43 Race refers to a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins. The courts have held that it includes, for example, Romany gypsies, Irish travellers, and those who are not of British origin. Notwithstanding the existence of a separate set of offences for religious hatred, hatred against both Sikhs and Jews should be considered to be included within the scope of racial hatred offences.

3.44 In light of the above, it may be appropriate to consider non-specific references to racial or national groups as denoting a race or nationality. For example, referring to 'immigrants' or 'foreigners' or 'non-British' rather than specifying one specific racial, religious or national origin may still be considered to be stirring up hatred, where the other elements of this offence are made out.

3.45 For content to be considered illegal under these offences, it must be likely to stir up racial hatred. It is not enough that the words or material in the content express dislike, contempt or hatred for a particular race, or that they are generally offensive or what most people would consider 'racist'. The focus is on the capacity of the words or material to incite hatred in others. Conduct or material which only stirs up ridicule or dislike, or which simply causes offence, would not meet the threshold.

3.46 In practice, these offences may well overlap to some extent with those set out in the first two sub-sections of this chapter. Content which stirs up racial hatred is also likely to cause a reasonable person to feel fear, alarm, harassment or distress.

State of mind

3.47 If, having regard to all the circumstances, racial hatred is likely to be stirred up by the content, the service provider should infer that the state of mind element of the offence is met. However, state of mind is relevant to whether a defence may be available, so we consider that in the next paragraph.

Defences

3.48 A defence exists for content which stirs up racial hatred, but only if the person posting the content did not *intend* to stir up racial hatred and was not aware that the content might be threatening, abusive or insulting. Reasonable grounds to infer intent may arise in relation to the most egregious and provocative instances of such content. A defence that the person posting the content was not aware that the content might be threatening, abusive or insulting should only be inferred where positive grounds to infer this are available to the service.

3.49 Another defence exists for certain types of content if they are only likely to be viewed inside a dwelling. We do not consider this is likely to be relevant for online services, since content is routinely viewed on smart phones.

Note on usage examples

We have not given any usage examples here, due to the particular importance of context to these judgments.

Reasonably available information for user-to-user services

- The content suspected to be illegal content.
- A number of the messages or posts immediately preceding the content to show the nature of the thread in which the content is posted (dark comedy etc). The number viewed should be sufficient to judge this, but (in keeping with the principle of data minimisation) no more than sufficient.
- Where already identified, the particular communication conventions and expectations of the service, or part of the service, to which the content is posted.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.* This may include information about relevant protected characteristics of the target of the threat.

Reasonably available information for search services

- The content suspected to be illegal content.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.* This may include information about relevant protected characteristics of the target of the threat.

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A4 of Annex 1.

Statute: Sections 18, 19 and 21 of the Public Order Act 1986.

Caselaw: *R v Sheppard (Simon Guy)* [2010] EWCA Crim 65; *R v Burns* [2017] EWCA Crim 1466; *R v Davison* [2020] EWCA Crim 665.

Guidance on Content Harmful to Children: Section 6, 'Guidance on Abuse and Hate Content, Section 7, 'Guidance on Bullying Content' and Section 8, 'Guidance on violent content'

Threats which stir up religious hatred or hatred on grounds of sexual orientation

3.50 If content is threatening but has not met the threshold for illegal content under the offences above, services should next consider whether it can be reasonably inferred to be **a threat intended to stir up religious hatred or hatred on grounds of sexual orientation.**

3.51 These threats should be considered in the same way as threats which stir up racial hatred, except in terms of state of mind.

Religious hatred

3.52 Religious hatred includes hatred against people defined by their religious belief, and hatred against people without religious belief (for example, atheists and humanists).

3.53 The existence of this offence does not and should not be considered to prohibit or restrict discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of any particular religions or the beliefs or practices of their adherents, any other belief system or the beliefs or practices of its adherents. Nor should it be taken to prohibit or restrict proselytising, efforts to convert others, or urging adherents of a different religion or belief system to cease practising their religion or belief system.

Hatred on the grounds of sexual orientation

3.54 Hatred on the grounds of sexual orientation means hatred against a group of persons defined by reference to sexual orientation (whether that orientation is towards persons of the same sex, the opposite sex or both).

3.55 The following are examples of content which should *not* be considered to meet the threshold for stirring up hatred:

a) The discussion or criticism of sexual conduct or practices or the urging of persons to refrain from acting upon their sexual orientation;

b) The expression of beliefs that a particular sexual orientation is 'unnatural', 'forbidden' or 'against God';

c) Any discussion or criticism of marriage between people of a particular sex.

State of mind

3.56 For these offences, the person posting the content must intend to stir up hatred. The content itself or other content in its immediate context may indicate that there are reasonable grounds to infer that the person posting the content intended to stir up hatred, but clear words are needed (even if such words are clear only in context). Intent to stir up disapproval is not intent to stir up hatred.

Defence

3.57 A defence exists for certain types of content if they are only likely to be viewed inside a dwelling. We do not consider this is likely to be relevant for online services, since content is routinely viewed on smart phones.

Usage examples

- A post calling for members of the public to commit violence against people because of their sexuality or religion.
- A post stating that challenges in society could be 'solved' by discriminatory or violent treatment of certain religious groups (excluding positive discrimination).

Reasonably available information for user-to-user services

- The content suspected to be illegal content.
- A number of the messages or posts immediately preceding the content to show the nature of the thread in which the content is posted (dark comedy etc). The number viewed should be sufficient to judge this, but (in keeping with the principle of data minimisation) no more than sufficient.
- Where already identified, the particular communication conventions and expectations of the service, or part of the service, to which the content is posted.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.* This may include information about relevant protected characteristics of the target of the threat.

Reasonably available information for search services

- The content suspected to be illegal content.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.* This may include information about relevant protected characteristics of the target of the threat.

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A4 of Annex 1.

Statute: Section 29B, 29C and 29E of the Public Order Act 1986.

Guidance on Content Harmful to Children: Section 6, 'Guidance on Abuse and Hate Content, Section 7, 'Guidance on Bullying Content' and Section 8, 'Guidance on violent content'

Threats which may provoke violence

3.58 It is also an offence for a person to **use towards another person threatening words or behaviour, or distribute or display to another person any writing, sign or other visible representation which is threatening** where:

a) They have intent to provoke the immediate use of unlawful violence by that person or another; *or*

b) It is likely that such violence will be provoked.

3.59 In the case of a), the unlawful violence likely to be provoked must be 'immediate'. For the most part this is likely to be very difficult to infer reasonably, because the service provider will not usually be in a position to make inferences about whether the person provoked is in a position to act violently. However, there may be some occasions where it would be reasonable to make such an inference, for example where the content was posted in the course of ongoing public disorder.

3.60 In the case of b), the person posting the content must also be at least aware that it may be threatening. Reasonable grounds to infer this may exist if, on the face of the content and in context, a reasonable person would consider it threatening, unless there is evidence to show the person concerned was not aware.

Note on usage examples

We have not given any usage examples here, due to the particularly strong importance of context to these judgements.

Reasonably available information for user-to-user services:

- The content suspected to be illegal content.
- A number of the messages or posts immediately preceding the content to show the nature of the thread in which the content is posted (dark comedy etc). The number viewed should be sufficient to judge this, but (in keeping with the principle of data minimisation) no more than sufficient.
- Where already identified, the particular conventions and expectations of the service, or part of the service, to which the content is posted.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

Reasonably available information for search services:

- The content suspected to be illegal content.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A4 of Annex 1.

Statute: Section 4 of the Public Order Act 1986 (to the extent not already covered by the offences in section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) and section 5 of the Public Order Act 1986 etc above).

Guidance on Content Harmful to Children: Section 6, 'Guidance on Abuse and Hate Content, Section 7, 'Guidance on Bullying Content' and Section 8, 'Guidance on violent content'

Abuse and insults, including hate

3.61 This section considers '**abuse**' and '**insults**'. For reasons of practicality, these terms are not considered separately in this chapter. Although some of the Act's priority offences refer to 'abuse' and others to 'abusive behaviour', in practice this makes little difference. Abuse communicated through text or other online means of communication can constitute threatening behaviour. Abuse may be contained in any sort of online content, including text, audio, video and images.

3.62 Differentiating between abuse amounting to illegal content and friendly 'banter' which appears abusive, or robust debate, is likely to be particularly difficult in the absence of a user complaint providing more context to frame the content in question.

3.63 Providers should always consider the immediate context in which content was posted, and whether the circumstances suggest that the content in question was abusive or, where relevant, insulting. They should pay particular attention to the possibility of humour (including humour in poor taste), and the impact that a close or otherwise friendly relationship can have on the acceptability of certain communication. Abuse and insults can sometimes be made as jokes, and the language associated with abuse and insult is commonly used in many other contexts too.

3.64 Providers should also have careful regard to the possibility that the content, however misjudged it may be, is part of a robust and legitimate debate. The right to freedom of expression includes a right to express ideas in a way which is vulgar or offensive. However, ideas which are contrary to fundamental human rights are not protected by the right to freedom of expression. For example, there is no right to spread ideas which incite racial hatred.

Discrete content vs patterns of behaviour

3.65 A complaint may be made about a specific item of content, or about a general pattern of content. For example, some high-profile individuals are more likely to be targeted with abuse by a range of different people. In these cases, it may be possible to identify abuse without separate complaints about each specific item of content.

Risk assessment and illegal content relating to abuse and insults (including hate)

3.66 For the purposes of carrying out a risk assessment, providers should be aware that (priority) illegal content which amounts to offences relating to abuse and insults (including hate) could be in the form of any communication.

3.67 Content amounting to these offences may be found on user-to-user services (including social media services, online gaming services, private messaging services, online dating services,

and video-sharing services (for abuse and insults relating to hate). Such content may also be discoverable through search services.

3.68 See Chapter 6E on 'Harassment, abuse, threats, stalking and threatening communications offences' and Chapter 6F on 'Hate offences.'

Abusive behaviour which is likely to cause *fear or alarm*

3.69 This section covers the priority offences as they relate to abuse and insults where the abuse or insult is likely to cause fear or alarm. The analysis below focuses on the priority offence in section 38 (threatening or abusive behaviour) of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13). For content which constitutes abusive behaviour likely to cause harassment or distress, please refer to the below section A3.69-A3.81.

3.70 Abusive behaviour may amount to illegal content if it is likely to cause a reasonable person to suffer fear or alarm.

3.71 The word 'abusive' has no special legal definition and should be considered to carry its natural meaning.

3.72 Words or messages which are critical, (purposefully or unintentionally) annoying or otherwise unpleasant or inconvenient are unlikely be illegal (absent other offences) because they could not be reasonably considered 'abusive'.

Meaning of 'likely to cause fear or alarm'

3.73 It is not necessary to be able to infer that a person *actually* suffered fear or alarm from content being posted, only that it was *likely* to cause a 'reasonable person' to suffer fear or alarm. A 'reasonable person' is someone who is not of abnormal sensitivity. However, the characteristics of the person targeted are relevant. A reasonable person who is abused because of characteristics they have is more likely to feel fear or alarm. However, it is less likely for a reasonable person to feel fear or alarm as a result of abuse than it is as a result of threats.

3.74 The mere fact that a person has complained about content is not sufficient to show that a reasonable person would be likely to suffer fear or alarm. In considering whether a reasonable person would be likely to suffer fear or alarm, the following factors are relevant:

a) *The precise nature of any abuse*. For example, it may be more reasonable to infer that a reasonable person would suffer fear or alarm if the abuse appeared to be targeting them personally.

b) *The context in which the content appears*. This may include the conventions and expectations of a particular platform, the relationship between people communicating with one another, the nature of the conversation which the potential abuse makes up a part, etc.

State of mind

3.75 Where there are reasonable grounds to infer that a reasonable person would be likely to suffer fear or alarm (as set out above), there will be reasonable grounds to infer that the person carrying out the abuse had the required state of mind.

Relevant defences

3.76 The only specific defence to this offence is that the abusive behaviour was 'reasonable' in the particular circumstances in which it happened.

3.77 Services should take a common-sense approach to considering whether the behaviour displayed in the content could be considered reasonable. For example, it may be reasonable (even if unwise) to abuse someone in response to abuse.

Usage examples

We have not given any usage examples here, due to the particularly strong importance of context to these judgements.

Reasonably available information for user-to-user services:

- The content suspected to be illegal content.
- A number of the messages or posts immediately preceding the content to show the nature of the thread in which the content is posted (dark comedy etc). The number viewed should be sufficient to judge this, but (in keeping with the principle of data minimisation) no more than sufficient.
- Where already identified, the particular communication conventions and expectations of the service, or part of the service, to which the content is posted.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.* This may include information about relevant protected characteristics of the target of the abuse.

Reasonably available information for search services:

- The content suspected to be illegal content.
- Information provided by any complainant in a free text box, including information from any person the provider considers to be a trusted flagger*. This may include information about relevant protected characteristics of the target of the abuse.

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A4 of Annex 1.

Statute: Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13)).

Caselaw: *Patterson v Harvie* [2015] JC 118.

Notes: The following offences are not considered separately. For the purposes of making illegal content judgements, they overlap in whole or in part with Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13): section 4 of the Public Order Act 1986 (fear or provocation of violence); section 4A of the Public Order Act 1986 (Intentional harassment, alarm or distress); section 5 of the Public Order Act 1986 (Harassment, alarm or

distress); section 31 of the Crime and Disorder Act 1998 so far as it relates to conduct causing alarm.

Guidance on Content Harmful to Children: Section 6, 'Guidance on Abuse and Hate Content and Section 7, 'Guidance on Bullying Content'

Abusive behaviour which is likely to cause *harassment or distress*

3.78 This section covers the priority offences which relate to abuse or insults where the abuse or insult is likely to cause harassment or distress. The analysis below focuses on the priority offence in section 5 of the Public Order Act 1986.

3.79 Where content involves behaviour which is abusive but there are *not* reasonable grounds to infer that it could cause fear or alarm, services should consider whether there are reasonable grounds to infer that it is likely to cause harassment or distress.

3.80 It is an offence to **use abusive words or behaviour, or disorderly behaviour or display any writing, sign or other visible representation which is abusive where it may be heard or seen by a person likely to be caused harassment or distress by it**. This offence may be committed in a public or private place, but no offence is committed where the words or behaviour are used, distributed or displayed inside a dwelling and the other person is also inside that or another dwelling. We consider it reasonable to infer that online content will be displayed to people outside a dwelling, since such content is routinely viewed on smart phones.

3.81 For content to be judged to be illegal, it is not necessary to infer that a person has actually suffered harassment or distress, only that they were *likely* to. However, a complaint from a user who has been negatively affected by a piece of content is the most likely way services will be able to identify content of this kind. Services will need to consider the immediate context of the content and any information contained in a user complaint in order to determine whether the conduct of the person carrying out the behaviour was reasonable.

3.82 In order to be judged illegal, the content in question does not have to be targeted at a particular person. It only needs to be likely to cause alarm or distress to someone.

What is 'harassment or distress'?

3.83 'Distress' involves an element of real emotional disturbance or upset. The same is not necessarily true of 'harassment'. A person may be harassed, without experiencing any emotional disturbance or upset. That said, although the harassment does not have to be grave, it should also not be trivial. When the UK courts are considering these offences, this is the test a jury is asked to apply, and so it is right for services to take a common-sense view of whether they have reasonable grounds to infer that the content they are considering meets this test.

3.84 Services should consider any information they hold about what any complainant has said about the emotional impact of the content in question, and take a common-sense approach about whether it is likely to cause harassment or distress. If the content expresses hatred on the basis of a protected characteristic, it is far more likely to cause harassment or distress. Certain words carry greater force depending on who they are used against. The volume of the content concerned, or repetition of the conduct, may make it more likely content will

cause harassment or distress. Offences involving repeated behaviour are also considered below (see paragraphs A3.97-A3.98).

3.85 More information that may aid service providers in inferring harassment, alarm, or distress can be found in Ofcom's Register of Risk chapter titled 'Harassment, stalking, threats and abuse.'

State of mind

3.86 In order for content to be judged as illegal, it must also be reasonable for a service provider to draw an inference that the person posting the content concerned was at least aware that their behaviour may be abusive. Such awareness may reasonably be inferred if the abusive behaviour is very obviously likely to be considered abusive by most people and is posted somewhere with wide reach. It is less likely to be reasonably inferred if content is posted to a place where, for example, only persons sharing similar sorts of content themselves are likely to see it.

Relevant defences

3.87 Content meeting the criteria outlined in paragraphs 3.80 to 3.86 should not be considered illegal where it could be reasonably inferred that the conduct of the user in question was reasonable. Services should take a common-sense approach when making judgements about this.

3.88 Judgements about whether content is likely to cause harassment or distress, and whether the defence of reasonable behaviour is available, are likely to be particularly difficult when platforms are considering content that has political or religious purposes and relates to religion, sexual orientation or gender identity. Content that is only abusive and does not have any political or religious meaning, (that is 'gratuitously offensive') is not protected by the right to freedom of expression and is unlikely to be reasonable. However, the context should be considered carefully, since abusive content may also carry political or religious meaning and will be more likely to be a reasonable exercise of the right to freedom of expression if it is.

3.89 There are two further defences first, it is a defence if it is reasonable to infer that the person had no reason to believe that there was any person within hearing or sight who was likely to be caused harassment or distress. This is most likely to be relevant where a user is challenging a moderation decision (but of course if the person becomes aware as a result of the moderation decision that such a person was within hearing or sight, the content would become illegal content and therefore not be reinstated).

3.90 Another defence exists if the person was inside a dwelling and had no reason to believe that the words or behaviour used, or the writing, sign or other visible representation displayed, would be heard or seen by a person outside that or any other dwelling. We do not consider this is likely to be relevant for online services, since content is routinely viewed on smart phones.

Note on usage examples

We have not given any usage examples here, due to the particularly strong importance of context to these judgements.

Reasonably available information for user-to-user services:

- The content suspected to be illegal content, including metadata accompanying this content where appropriate.
- A number of the messages or posts immediately preceding the content to show the nature of the thread in which the content is posted (dark comedy etc) and make inferences about patterns of behaviour. The number viewed should be sufficient to judge this, but (in keeping with the principle of data minimisation) no more than sufficient.
- Where already identified, the particular communication conventions and expectations of this service or part of the service to which the content is posted.
- The existence of a complaint/report from the user who is the object of the harassment.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.* This could include any information provided by a complainant regarding the emotional impact of the content and any relevant characteristics of the target of the threatening behaviour, or regarding the relationship between the user targeted and the user posting content.

Reasonably available information for search services:

- The content suspected to be illegal content.
- The existence of a complaint/report from the user who is the object of the harassment.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.* This could include any information provided by a complainant regarding the emotional impact of the content and any relevant characteristics of the target of the threatening behaviour, or regarding the relationship between the user targeted and the user posting content.

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A4 of Annex 1.

Statute: 5 of the Public Order Act 1986.

Caselaw: *S v DPP* [2008] EWHC 438 (Admin); *Southard v DPP* [2006] EWHC 3449 (Admin); *The Queen (on the application of R) v Director of Public Prosecutions* [2006] EWHC 1375 (Admin); *Abdul v DPP [2011]* EWHC 247 (Admin).

Notes: The following offences are not considered separately. For the purposes of making illegal content judgments, they overlap in whole or in part with Section 5 of the Public Order Act 1986: Sections 4A of the Public Order Act 1986; section 31 of the Crime and Disorder Act 1998 (racially or religiously aggravated public order offences).

Guidance on Content Harmful to Children: Section 6, 'Guidance on Abuse and Hate Content and Section 7, 'Guidance on Bullying Content'

Abuse and insults which are likely to stir up racial hatred

3.91 If content is abusive or insulting but has not met the threshold for illegal content under the offences above, services should next consider whether it can be reasonably inferred to be abuse and insults likely to stir up racial hatred.

3.92 Only content in the following forms will meet the criteria for these offences:

a) Abusive or insulting words, behaviour or displays of any such written material, including captions and cartoon speech bubbles.

b) Abusive or insulting recordings of visual images or sounds (for example video of audio uploads). A recording is any record from which visual images or sounds may, by any means, be reproduced.

3.93 In the case of displays of written material or threatening words or behaviour, it will be an offence if visible outside a dwelling (given that internet can be accessed via mobile phone this can be presumed to be the case). In all other cases, the content will be an offence if it is accessible to the public. However, in one case distribution privately to a few hundred people who were not prevented from sharing it to the public has been held to be sufficient for this.

What is 'stirring up racial hatred'?

3.94 Race refers to a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins. The courts have held that it includes, for example, Romany gypsies, Irish travellers, and those who are not of British origin. Notwithstanding the existence of a separate set of offences for religious hatred, hatred against both Sikhs and Jews should also be considered to be included within the scope of racial hatred offences.

3.95 In light of the above, it may be appropriate to consider non-specific references to racial or national groups as denoting a race or nationality: for example, referring to 'immigrants' 'foreigners' or 'non British' rather than specifying one specific racial, religious or national origin may still be considered to be stirring up hatred, *where the other elements of this offence are made out*.

3.96 For content to be considered illegal under these offences it must be likely to stir up racial hatred. It is not enough that the words or material in the content express dislike, contempt or hatred for a particular race, or that they are generally offensive or what most people would consider 'racist'. The focus is on the capacity of the words or material to incite hatred in others. Conduct or material which only stirs up ridicule or dislike, or which simply causes offence, would not meet the threshold.

3.97 In practice, these offences may well overlap to some extent with those set out in the first two sub-sections of this chapter. Content which stirs up racial hatred is also likely to cause a reasonable person to feel fear or alarm.

State of mind

3.98 If, having regard to all the circumstances, racial hatred is likely to be stirred up by the content, the service provider should infer that the state of mind element of the offence is met. However, state of mind is relevant to whether a defence may be available, so we consider that below.

Defences

3.99 A defence exists for content which stirs up racial hatred, but only if the person posting the content did not *intend* to stir up racial hatred and was not aware that the content might be insulting or abusive. Reasonable grounds to infer intent may arise in relation to the most egregious and provocative instances of such content. A defence that a user was not aware that the content might be insulting or abusive will only be available where positive grounds to infer that this is the case are available to the service.

3.100 Another defence exists for certain types of content if they are only likely to be viewed inside a dwelling. We do not consider this is likely to be relevant for online services, since content is routinely viewed on smart phones.

Note on usage examples

We have not given any usage examples here, due to the particularly strong importance of context to these judgements.

Reasonably available information for user-to-user services

- The content suspected to be illegal content.
- A number of the messages or posts immediately preceding the content to show the nature of the thread in which the content is posted (dark comedy etc). The number viewed should be sufficient to judge this, but (in keeping with the principle of data minimisation) no more than sufficient.
- Where already identified, the particular communication conventions and expectations of the service, or part of the service, to which the content is posted.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

Reasonably available information for search services

- The content suspected to be illegal content.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A4 of Annex 1.

Statute: Sections 18, 19 and 21 of the Public Order Act 1986.

Caselaw: *R v Sheppard (Simon Guy)* [2010] EWCA Crim 65; *R v Burns* [2017] EWCA Crim 1466.

Guidance on Content Harmful to Children: Section 6, 'Guidance on Abuse and Hate Content and Section 7, 'Guidance on Bullying Content'

Abuse and insults which may provoke violence

3.101 It is also an offence for a **person to use towards another person abusive or insulting words or behaviour, or distribute or display to another person any writing, sign or other visible representation which is threatening either**:

a) with intent to provoke the immediate use of unlawful violence by that person or another, or

b) if it is likely that such violence will be provoked.

3.102 The unlawful violence likely to be provoked must be 'immediate'. It would be reasonable to make such an inference, for example where the content was posted in the course of ongoing public disorder. The person posting the content must be at least aware that it is abusive. Reasonable grounds to infer this may exist if, on the face of the content and in context, a reasonable person would consider it abusive, unless there is evidence to show the user concerned was not aware.

Note on usage examples

We have not given any usage examples here, due to the particularly strong importance of context to these judgements.

Reasonably available information for user-to-user services

- The content suspected to be illegal content.
- A number of the messages or posts immediately preceding the content to show the nature of the thread in which the content is posted (dark comedy etc). The number viewed should be sufficient to judge this, but (in keeping with the principle of data minimisation) no more than sufficient.
- Where already identified, the particular communication conventions and expectations of the service, or part of the service, to which the content is posted.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

Reasonably available information for search services

- The content suspected to be illegal content.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A4 of Annex 1.

Statute: Section 4 of the Public Order Act 1986.

Guidance on Content Harmful to Children: Section 6, 'Guidance on Abuse and Hate Content, Section 7, 'Guidance on Bullying Content' and Section 8, 'Guidance on violent content'

Other content likely to amount to harassment (including stalking and controlling or coercive behaviour)

3.103 Unlawful harassment occurs when an individual engages in a course of conduct (a minimum of two instances), which amounts to harassment of another, and which a reasonable person in possession of the same information would know amounts to harassment. For the purposes of determining the illegality of content, harassment is the easiest to identify of a range of related and potentially serious offences, including stalking and controlling or coercive behaviour ('**CCB**'). However, as is set out in the Register of Risk, although related these offences are distinct and can be perpetrated and experienced in many different ways.

3.104 Given that content moderators will have already considered the offences set out above which relate to threatening, abusive and insulting content, providers are most likely to need to consider this offence when they receive a complaint about content which is not necessarily problematic on its face.

3.105 This type of content will only appear on user-to-user services where inferences can be made about intention, the reasonableness of the behaviour and the relationship with the individual at which it was targeted. Content amounting to these offences is unlikely to appear on search services except to the extent that content from user-to-user services appears in search results. The guidance below therefore applies to user-to-user services only.

What is harassment?

3.106 For the purposes of this offence, harassment can be characterised as conduct targeted at an individual which is calculated to produce alarm or distress and which is oppressive and unreasonable. The threshold for this offence is relatively high. In order for content to be illegal there must be reasonable grounds to infer that the conduct has crossed the boundary between conduct which is unattractive, even unreasonable, and conduct which is oppressive and unacceptable. When the UK courts are considering these offences, this is the test a jury is asked to apply, and so it is right for providers to take a common-sense view of whether they have reasonable grounds to infer that the content they are considering meets this test.

3.107 Content amounting to an offence of harassment may include aspects such as the following:

a) Conduct which is committed partially offline as well as online. It is not necessary for a provider to identify multiple items of content in order to make this offence relevant. They only need reasonable grounds to believe that content posted online is part of a course of conduct generally, potentially including offline conduct. However, the acts must be related in some way.

b) Repeated attempts to impose unwanted communications and contact upon a victim in a manner that could be expected to cause distress or fear in any reasonable person.

c) Repeated making of false allegations (even where such allegations can easily be rebutted).

d) 'Collective harassment', that is harassment of a closely connected group. The primary intention of this type of harassment is not generally directed at an

individual but rather at members of a group. This could include: members of the same family; residents of a particular neighbourhood; groups sharing a protected characteristic, trade or profession, organisations, or institutions.

e) Harassment conducted through proxy, or 'stalking through proxy'. This occurs when the harassment of an individual is pursued by harassing others connected with the individual. Family members, friends and employees of the victim may be subjected to this.

3.108 In situations where the user posting the content is or has been in an abusive relationship with the person to whom they are posting the content, content which does not immediately appear to be problematic may be a code which may cause alarm or distress. For example, a picture of a front door may cause alarm or distress if it indicates that the user knows where a former partner is. Information from the targeted user or on behalf of the user is likely to be needed for a provider to make a reasonable inference that this is the case.

3.109 There is no timeframe set on the period over which harassment can take place. Providers should take a common-sense approach.

User reports

3.110 User reports, flags or complaints are likely to be particularly important in bringing attention to content involving harassment, and in making judgements about their illegality. Service providers should be particularly alert to complaints which suggest that the complainant or target and the user posting have previously been in an intimate personal relationship, especially if it is suggested that this relationship was or is abusive. The content to which this report relates may well amount to CCB.

3.111 Complaints need not always come directly from the victim themselves. Where the complaint is made by the user affected or by a representative from an appropriate organisation (for example, of a domestic abuse shelter or domestic abuse organisation), providers are usually entitled to place weight on the complaint itself in determining whether they have reasonable grounds to infer that the content is illegal.

3.112 Providers should also consider the nature of the content complained about. If, for example, one person is complaining about another person's business-related messages, or about pictures of that other person with another person, service providers should have due regard to the risk of a malicious, commercially-motivated or jealousy-motivated complaint. Providers should be cautious about placing weight on assertions made by other third parties whose motivations may not be honest or whose assessment of the situation may not be accurate.

Relevant defences

3.113 Content should not be considered illegal under this offence where there are reasonable grounds to infer that the conduct in question was reasonable. It is not possible to give specific guidance on what may be reasonable in any given situation and providers should take a common-sense approach.

3.114 A defence is also likely to be available if there is some other obviously lawful reason for one person repeatedly to contact another. This may be relevant where the target of the harassment is a public figure, but providers should bear in mind that the right to free expression does not protect content which is 'gratuitously offensive'.

Risk assessment and illegal content relating to other harassment content

3.115 For the purposes of carrying out a risk assessment, providers should be aware that (priority) illegal content which amounts to the offences discussed in this section could be in the form of any communication.

3.116 Content amounting to these offences may be found on user-to-user services (including social media services, online gaming services, private messaging services and online dating services). Content amounting to other harassment offences is unlikely to appear on search services except to the extent that content from user-to-user services appears in search results.

3.117 See the Register of Risk chapter titled 'Harassment, stalking, threats and abuse.'

Risk assessment and illegal content relating to controlling and coercive behaviour

3.118 For the purposes of carrying out a risk assessment, providers should be aware that (priority) illegal content which amounts to the CCB offence could be in the form of any communication.

3.119 Content amounting to these offences may be found on user-to-user services (including social media services, messaging services and online dating services and user-to-user pornography services). Content amounting to CCB offences is unlikely to appear on search services except to the extent that content from user-to-user services appears in search results. There may be an elevated risk of CCB where a particular users' account has been hacked, or attempted to be hacked, where a user is the target of multiple, unfounded or unsuccessful complaints, and where a user has been the victim of an intimate image abuse offence.

3.120 Service providers are particularly likely to receive information regarding CCB via complaints. A large proportion of content which is not obviously harassment or CCB may nevertheless be illegal content if the provider sees evidence via a free text box that users were previously in an intimate personal relationships, especially where this relationship was abusive.

3.121 See the Register of Risk chapter titled 'Controlling and coercive behaviour.'

Risk assessment and illegal content relating to stalking

3.122 For the purposes of carrying out a risk assessment, providers should be aware that (priority) illegal content which amounts to the offences discussed in this section could be in the form of any communication.

3.123 Content amounting to these offences may be found on user-to-user services (including social media services, online gaming services, private messaging services and online dating services). Content amounting to stalking offences is unlikely to appear on search services except to the extent that content from user-to-user services appears in search results.

3.124 See the Register of Risk chapter titled 'Harassment, stalking, threats and abuse.'

Note on usage examples

We have not given any usage examples here, due to the particularly strong importance of context to these judgements.

Reasonably available information for user-to-user services

- The content suspected to be illegal content.
- A number of the messages or posts immediately preceding the content to show the nature of the thread in which the content is posted and whether this suggests a risk of CCB. The number viewed should be sufficient to judge this, but (in keeping with the principle of data minimisation) no more than sufficient.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.
- Information provided by a complainant regarding the relationship between the user targeted and the user posting content.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A4 of Annex 1.

Statute: Section 2 of the Protection from Harassment Act 1997.

Caselaw: Thomas v News Group Newspapers Limited [2001] EWCA Civ 1233; Majrowski v Guy's and St Thomas's NHS Trust [2006] UKHL 34; Plavelil v Director of Public Prosecutions [2014] EWHC 736 (Admin).

Notes: The following offences are not considered separately. For the purposes of making illegal content judgments, they overlap in whole or in part with Section 2 of the Protection from Harassment Act 1997: Article 4 of the Protection from Harassment (Northern Ireland) Order 1997 (S.I. 1997/1180 (N.I. 9)) (Harassment); section 2A of the Protection from Harassment Act 1997 (Stalking); section 4 of the Protection from Harassment Act 1997 (putting people in fear of violence); article 6 of the Protection from Harassment (Northern Ireland) Order 1997 (S.I. 1997/1180 (N.I. 9)) (putting people in fear of violence); section 4A of the Protection from Harassment Act 1997 (Stalking involving fear of violence or serious alarm or distress); section 39 of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) (Stalking); section 32 of the crime and disorder act 1998 (racially or religiously aggravated harassment); section 76 of the Serious Crime Act 2015 (Controlling or coercive behaviour in an intimate or family relationship).

Guidance on Content Harmful to Children: Section 6, 'Guidance on Abuse and Hate Content, Section 7, 'Guidance on Bullying Content'

4. Child sexual exploitation and abuse (CSEA): Offences relating to child sexual abuse material (CSAM)

Warning: this chapter contains content that may be upsetting or distressing

4.1 This chapter considers the priority offences relating to child sexual abuse material. For offences relating to grooming and sexual exploitation of children, see Chapter 5 of this guidance.

4.2 It should be noted that the bar for a reasonable inference that content amounts to a child sexual abuse material (CSAM) offence is relatively low. The most important question that service providers should consider is whether they have reasonable grounds to infer that the subject of an image is under 18 (see paragraphs 4.26 to 4.31 for further information).

4.3 If the subject of the image is over 18 and there are reasonable grounds to suspect that the image might amount to an offence of sharing an intimate image without consent or possession of extreme pornography, providers should consider the priority offences which relate to this. Guidance on these offences is set out in Chapter 10 of the ICJG ('Image-based adult sexual offences').

What is child sexual abuse material (CSAM)?

4.4 The term 'child sexual abuse' means abuse which involves forcing or enticing a child or young person to take part in sexual activities, whether or not the child is aware of what is happening.[18] The term covers many different experiences, but this chapter specifically focuses on child sexual abuse material. Child sexual abuse material ('**CSAM**') refers to indecent or prohibited images of children (including still and animated images, and videos, and including photographs, pseudo-photographs and non-photographic images such as drawings). CSAM also includes other material which contains advice about grooming or abusing a child sexually or which is an obscene article encouraging the commission of other child sexual exploitation and abuse offences. Furthermore, it includes content which links or otherwise directs users to such material, or which advertises the distribution or showing of CSAM.

Duty to report detected but unreported CSEA content to the National Crime Agency

4.5 The Online Safety Act ('**the Act**') contains a duty on providers to report all detected but unreported illegal CSEA (Child sexual exploitation and abuse) content to the National Crime Agency ('**NCA**') (see section 66). CSEA content refers to any content which amounts to a CSEA offence, whether relating to CSAM or to grooming and sexual exploitation of children.

[18] Independent Inquiry into Child Sexual Abuse.

Risk assessment and illegal CSAM content

4.6 For the purposes of carrying out a risk assessment, providers should be aware that (priority) illegal content which amounts to a relevant CSAM offence may take the form of videos, images (including those which have been digitally manipulated such as deep fakes) or files (including compressed files), or links to these same videos or images or files.

4.7 Content amounting to these offences may be found on user-to-user services (including file-storage and file-sharing series, social media service, video-sharing services, discussion forums and chat rooms, messaging services, user-to-user pornography services and dating services). Search services may also be used to search for and access such content, for example via video or image viewing facilities.

4.8 Service providers should note that when a child is sharing self-generated indecent imagery, there may also be a risk of intimate image abuse offences manifesting on the service, in addition to the CSAM offences.

4.9 See the chapter of the Register of Risks titled 'Child sexual exploitation and abuse (CSEA): Child sexual abuse material (CSAM).'

Priority CSAM offences

4.10 The priority offences relating to CSAM comprise:

a) Offences relating to the making, showing, distributing or possessing of an indecent image or film of a child;

b) An offence of possession of a prohibited image of a child;

c) Linking to or directing a user to CSAM;

d) An offence of possession of a paedophile manual; and

e) An offence of publishing an obscene article.

4.11 In the final part of this chapter, we discuss situations where we consider it is reasonable to infer that one or more of these offences is being committed, without necessarily being certain which.

Offences relating to indecent images of a child

4.12 When making a judgement regarding potential CSAM content, providers should first consider whether the content in question amounts to an indecent image or film and whether the subject of the image (or any *one of* the subjects of the image) is a child. 'Child' is here defined as any person who is under the age of 18 years old. For more information on what type of images should be considered and how providers should infer the age of the subject in an image, see below.

4.13 The criteria of 'making' an image should be considered to be satisfied by the fact of the image being present on a service, irrespective of the means by which it got there. It is not relevant whether the content is present on a public or semi-private forum where it can be accessed by others, or a private account or space where it can be accessed by the user only.

4.14 The age of the person posting the content is not relevant. Where the action is made out, content should still be considered illegal even when it has been posted by a child, including the subject of the image itself (self-generated indecent imagery).

4.15 Content should also be considered illegal where it does not in itself contain an indecent image but contains a link to a location where such an image may be found.

4.16 The Act also covers offences of encouraging and assisting the commission of CSAM offences, conspiracy to carry out CSAM offences, and knowingly engaging together with someone else in pursuit of a common purpose to commit CSAM offences. Very often, conduct of this nature would amount to one of the priority offences (for example, the priority CSEA offences relating to encouragement, the offences relating to facilitating and the offences relating to arranging of CSEA). However, for completeness, we note that encouraging could include words urging another person to carry out the offence. Assisting could include providing substantive help in carrying out the offence. There must either be intent to encourage/assist the offence, or belief that the offence will be committed. For conspiracy, there must be an agreement between two people and intent to carry out the offence. For a common purpose, both parties must knowingly share the purpose.

What are indecent images or films?

4.17 Indecent images include indecent photographs or pseudo-photographs, and include indecent films (and photographs comprised in films), as explained further below.

Photographs

4.18 References to a photograph include:

a) the negative as well as the positive version;

b) data stored on a computer disc or by other electronic means which is capable of conversion into a photograph;

c) a tracing or other image, whether made by electronic or other means (of whatever nature) —

i) which is not itself a photograph or pseudo-photograph, but
ii) which is derived from the whole or part of a photograph or pseudo-photograph (or a combination of either or both); and

d) data stored on a computer disc or by other electronic means which is capable of conversion into an image —

iii) which is not itself a photograph or pseudo-photograph, but
iv) which is derived from the whole or part of a photograph or pseudo-photograph (or a combination of either or both).

4.19 For the avoidance of doubt, this captures digital photographs found online.

Film

4.20 References to a film include any form of video-recording.

Pseudo-photograph

4.21 A pseudo-photograph is an image or video made by computer-graphics or otherwise which appears to be a photograph or film.

4.22 In Ofcom's view, AI-generated imagery, deep fakes and other manipulated media would fall under the category of a 'pseudo-photograph'. If the impression conveyed by a pseudo-photograph is that the person shown is a child, then the photo should be treated as showing a child.

4.23 Drawings and cartoons which depict children in a way that would be considered indecent are *not* caught under this offence, but may still be illegal where they amount to a 'prohibited image of a child'. The same is true of AI-generated images which are cartoon-like or highly stylised in a way which makes them easily distinguishable from a photograph or film. Providers should refer to paragraphs 4.37 to 4.44 of this chapter as appropriate.

'Indecent'

4.24 The word **'indecent'** has no special legal meaning in this context, but it should be understood as meaning "indecent by reference to recognised standards of propriety," that is according to norms of society.

4.25 Any content depicting a child engaging in penetrative or non-penetrative sexual activity should be considered indecent. Content depicting a child in erotic poses without sexual activity should also be considered indecent.

4.26 If a photograph or pseudo-photograph shows a child and is indecent, it should be treated as an indecent image of a child. This would include where the inference is that the child is performing or participating in a sexual act or is associated with something sexually suggestive.

Inferring the age of the subject

Inferring age from the content, captions and comments alone

4.27 The age of a subject in an image should be inferred based on the general appearance of the subject(s) in the content itself and any contextual information that is available. Such contextual information may include captions to the image or comments, or other relevant indicators within the image itself.

4.28 Where there is no hard evidence of the subject's age, but a reasonable person would assume from the appearance of the subject that they are under the age of 18, the age criteria should be assumed to be met and a provider should proceed on the basis that the content is an image of a child.

Inferring age from account information and supporting evidence

4.29 There may be instances where it is difficult to infer the age of a subject in an image as under 18. In these instances, reasonable grounds to infer that the subject of the image is under 18 may exist where:

a) Information from age estimation or age verification measures ('age assurance measures') indicate that the subject in the image is aged under 18.

b) The subject in the image itself states in a report or complaint that they are aged under 18 or were aged under 18 at the time when the potentially illegal content was posted.

c) Account information indicates that the subject in the image is aged under 18, except where the subject concerned has been using the service for more than 18 years.

d) A person *other* than the subject of the image itself states in a report or complaint that the subject is aged under 18 or was aged under 18 at the time when the potentially illegal content was posted. This applies *unless*:

i. information from age estimation or age verification measures ('age assurance measures') indicate that the subject is aged *18 or over;* or

ii. the subject in the image itself stated in a report or complaint that they were aged 18 or over at the time the potentially illegal content was posted.

4.30 In instances where a person *other* than the subject of the image itself states in a report or complaint that the subject is aged under 18 (or was aged under 18 at the time when the image was taken), service providers are encouraged to check this information with the subject of the image itself, where appropriate and if they have the ability to do so.

4.31 Providers should have regard to the privacy implications of reviewing a user's account information (including information derived from age verification, age assurance and age estimation technologies) in order to determine their age. This is likely to amount to a very significant interference with their privacy and that of the other users they interact with. Providers should have regard to their obligations under the laws relating to data protection. For more information, see the 'Information Commission's opinion on age assurance.

Inferring age in the case of pseudo-photographs

4.32 A pseudo-photograph should be considered to be of a child where the impression or predominant impression conveyed by it is that the person shown is a child. This would include where the pseudo-photograph is clearly representing a child, such as a fictional character who is a child. It would also include where some of the physical characteristics of the person shown are those of an adult.

Consideration of other offences

4.33 If the subject of the image is over the age of 18 and there are reasonable grounds to suspect that the image might amount to an offence of sharing an intimate image without consent or possession of extreme pornography, providers should consider the priority offences which relate to this. Guidance on these offences is set out in Chapter 10 of the ICJG ('Image-based adult sexual offences').

State of mind

4.34 It is reasonable for providers to infer that the state of mind requirements are met by virtue of the content having been posted. Content which meets the criteria set out above should be treated as illegal, absent defences set out below.

Relevant defences

4.35 We describe below the relevant defences to the offence of 'making' an indecent image.

4.36 A defence is available when an image is made for the purposes of prevention, detection, or investigation of a crime, or for the purpose of criminal proceedings (this does *not* include where an image has been posted by a vigilante group). It is most unlikely that anyone who can lawfully rely on these defences will be using a regulated service for those purposes. Providers should therefore assume that this defence does *not* apply, absent very strong evidence to the contrary. A statement by the user concerned is not sufficient.

4.37 Defences are also available if the user is a member of the security services or GCHQ[19], and it was necessary for the user to make the content as part of their job. Providers should not

[19] GCHQ refers to the Government Communications Headquarters and to any unit or part of a unit of the armed forces of the Crown which is for the time being required by the Secretary of State to assist the Government Communications Headquarters in carrying out its functions.

infer that this defence is available unless the security services or GCHQ provide independent confirmation that this is the case. A statement by the user concerned is not sufficient.[20]

Usage examples

- A video recording, still from a video recording or photograph depicting a child engaging in any form of sexual activity (penetrative or otherwise).
- A computer-generated image which appears to be photographic, depicting any of the above for example, a deep fake.

Reasonably available information for user-to-user services

- The content suspected to be illegal content.
- Information from age estimation or age verification measures ('age assurance measures').
- Other account information which establishes the age of the user.
- Captions to the image or comments which establish the age of the user.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger*.

Reasonably available information for search services

- The content suspected to be illegal content.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A5 of Annex 1.

Statute: Section 1 of the Protection of Children Act 1978; Section 160 of the Criminal Justice Act 1988, Article 3 of the Protection of Children (Northern Ireland) Order 1978, and Section 52 and 52A of the Civic Government (Scotland) Act 1982.

Case law: *R v Jayson [*2002*]*; *Regina v Smith* [2002] EWCA Crim 683.

Prohibited images of a child (non-photographic)

4.38 If the content in question has been judged *not* to contain an indecent image of a child as set out above, providers should next consider whether the content contains a **prohibited image of a child**. A child is again defined as any person under the age of 18.

[20] There is an additional defence if the photograph or pseudo-photograph was of a child aged 16 or over and the user making the content and the child were either married or civil partners of each other; or lived together as partners in an enduring family relationship. In these cases, the content would not be illegal content unless it is proved that the child did not so consent and that the user did not reasonably believe that the child so consented. This defence only applies when the photograph or pseudo-photograph shows the child alone or with the person posting the content. In Ofcom's view, this defence should not be considered to be available in respect of images present on a regulated service, except in very exceptional circumstances.

What is a 'prohibited' image of a child?

4.39 A **'prohibited image'** is a non-photographic or non-pseudo-photographic image. Examples of such images include cartoons or manga images, drawings, and CGI-generated images that are not lifelike in character. To be considered prohibited an image must be:

a) Pornographic[21] in nature; that is, of such a nature that it must reasonably be assumed to have been produced either solely or principally for the purpose of sexual arousal;

b) Grossly offensive, disgusting or otherwise obscene in character; *and*

c) An image that depicts solely or principally,

i. a child's genital or anal region; or

ii. portrays any of the acts mentioned below:

- the performance by a person of an act of intercourse or oral sex with or in the presence of a child;
- penetration of the vagina or anus of a child with a part of a person's body or with anything else;
- penetration, in the presence of a child, of the vagina or anus of a person with a part of a person's body or with anything else;
- masturbation by, of, involving or in the presence of a child; or
- intercourse or oral sex with an animal (whether alive, dead or imaginary) with or in the presence of a child.

4.40 All three criteria set out in paragraph 4.38 *must* be satisfied in order for content to be considered a prohibited image of a child. Even if an image is pornographic, it will not be a prohibited image unless it also satisfies all the other aspects of the offence. Where a non-photographic or non-pseudo-photographic image does *not* meet all the criteria in 4.38, it is *not* a prohibited image and should not be considered illegal content except where it meets the criteria for another offence.

4.41 **'Obscene'** has no special legal meaning and should therefore be given its natural meaning.

Inferring the age of the subject

4.42 When inferring the age of the child depicted in the content, providers should make a common-sense judgement as to whether the subject of the image is under 18, using the general appearance of the subject and any contextual factors. Where additional information is available to suggest that the subject is under or over 18, this should be taken into account in the same manner as is set out above in relation to indecent images.

Relevant defences and exemptions

4.43 One of the relevant defences to the offence of possessing a prohibited image of a child is that the user had a 'legitimate reason' for possessing such content. 'Legitimate reason' has no special legal definition in this case, and takes its natural meaning. However, these are very serious offences and it is most unlikely that law enforcement or any other person using this content with a legitimate reason would be doing so on a regulated service. Providers

[21] We acknowledge that the use of this word in relation to child sexual abuse offences is problematic and refer to it here only to properly reflect the law.

should therefore assume that this defence does *not* apply, absent very strong evidence to the contrary. A statement by the user concerned is not sufficient. Providers should refer to the Legal Annex for the additional defences.

Exemption for 'classified works'

4.44 There is an exception to the offence for images classified by the British Board of Film Classification (BBFC). An excluded image is one that forms part of a series of images contained in a recording of the whole or part of a classified work. All images contained within a classified work are not necessarily exempt, the exception ceases to apply if the content has been 'extracted' in such a way that it must be reasonably assumed to be solely or principally for the purposes of sexual arousal.

4.45 Where the content is taken from a classified work but focuses entirely or almost entirely on a part of the work which depicts a child in a way which meets the criteria in 4.38, it is reasonable to infer that the exception does not apply.

Usage examples

- Drawn or animated content depicting children engaging in penetrative or non-penetrative sexual activity, for example, manga cartoons or anime.
- Computer-generated content of a fictional character with human features from popular media normally depicted as under the age of 18, engaging in penetrative or non-penetrative sexual activity.

Reasonably available information for user-to-user services

- The content suspected to be illegal content.
- Information from age estimation or age verification measures ('age assurance measures').
- Other account information which establishes the age of the user.
- Captions to the image or comments which establishes the age of the user.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

Reasonably available information for search services

- The content suspected to be illegal content.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A5 of Annex 1.

Statute: Section 62 of the Coroners and Justice Act 2009.

Linking to, directing to or advertising indecent images of children or paedophile manual/obscene article

4.46 Content should also be considered illegal where it does not in itself contain an indecent image or a paedophile manual/obscene article (see below), but contains a link to a location where such materials may be found, or otherwise directs other users about how such material may be found or created.

4.47 If the content concerned is a link to an indecent or prohibited image of a child or a paedophile manual/obscene article, providers will have reasonable grounds to infer that this amounts to a priority offence. It is also very likely to amount to an offence if the content is a link to a link to an indecent or prohibited image of a child or a paedophile manual/obscene article.[22]

4.48 Content should also be considered illegal where it is likely to be understood as conveying that the advertiser distributes or shows indecent images or pseudo-photographs (as defined in paragraphs 4.23 to 4.25 and 4.20 to 4.22 respectively), or intends to do so, so long as it can be reasonably inferred that the images being advertised are indecent and depict a child under the age of 18.

4.49 In circumstances where the content an advertiser suggests they distribute or show does not relate to indecent images or pseudo-photographs, but the advertiser is advertising the distribution or showing of other prohibited images or a paedophile manual, this may *encourage* the commission of an offence. The person posting the content must either believe that the offence *will* be committed and the act of posting the content *will* encourage or assist in its commission; or *intend* the offence to be committed. This is fact specific, and providers should consider the nature of the advertisement. In many cases, providers will have reasonable grounds to infer that the advertisement is encouraging the commission of an offence, for example where it is clear from the advertisement that the provider distributes or shows indecent images or pseudo-photographs. For the avoidance of doubt, advertising in this context relates to an advertisement of any kind including, but not limited to, a paid for provider or promoting content of this nature.

Generative artificial intelligence

4.50 Where generative AI has been used to create an indecent or a prohibited image of child this should be considered illegal content as set out above at paragraphs 4.11 to 4.36 and 4.37 to 4.44 respectively. Discussion of how to use generative AI for this purpose may also be illegal content if it amounts to encouraging or assisting the creation of such an image.

4.51 For example, if one user sends to another user a link to a generative AI model in a context which shows that the user intends for it to be used to generate indecent images of children then they are likely to be encouraging or assisting the substantive offence. The user sending the link must either intend that the commission of the offence will be encouraged or assisted or believe that an offence will be committed and that the act will encourage or assist its commission.

[22] In cases of links to links where services do not consider that they have reasonable grounds to infer this, U2U services may nevertheless wish to take the content down on the basis it is content which facilitates the commission of an offence.

Usage examples

- Hyperlinks to one or more indecent or prohibited images of a child.
- Sharing of a hyperlink that takes users to another webpage that contains a hyperlink to one or more indecent or prohibited images of a child.
- A post advertising indecent images of a child for sale.

Reasonably available information for user-to-user services

- The content suspected to be illegal content.
- A number of the messages or posts immediately preceding the content which can help moderators determine whether the link posted leads to a location where indecent images or a paedophile manual can be found. The number viewed should be sufficient to judge this, but (in keeping with the principle of data minimisation) no more than sufficient.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

Reasonably available information for search services

- The content suspected to be illegal content.
- The webpage on which the content is posted, including its URL and any banner/sidebar.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A5 of Annex 1.

Statute: Section 1 of the Protection of Children Act 1978; section 62 of the Coroners and Justice Act 2009; Article 3 of the Protection of Children (Northern Ireland) Order 1978, section 69 of the Serious Crime Act 2015; sections 52 and 52A of the Civic Government (Scotland) Act 1982.

Offences related to 'paedophile manuals' and obscene articles

Possession of a paedophile manual

4.52 A paedophile manual is defined as 'any item that contains advice or guidance about abusing children sexually'. Paedophile manuals are illegal content unless a defence applies.

4.53 'Abusing a child sexually' means doing anything that constitutes an offence under Part 1 of the Sexual Offences Act 2003, or Parts 2, 3 and 4 of the Sexual Offences (Northern Ireland) Order 2008 (where these acts are carried out against a person under the age of 16) or an offence under section 1 of the Protection of Children Act 1978 or under Article 3 of the Protection of Children (Northern Ireland) Order 1978, involving indecent photographs or under Section 2 of the Modern Slavery Act 2015 (human trafficking) committed with a view

to exploitation that consists of or includes behaviour with section 3(3) (sexual exploitation) of the Modern Slavery Act 2015.[23]

4.54 In practice, this covers everything a common-sense understanding of abusing children sexually would cover, including sexual assaults, causing or inciting a child to engage in sexual activity, causing a child to watch a sexual act, arranging or facilitating commission of a child sex offence, sexual communication with a child, meeting a child following sexual grooming, and the offences relating to indecent images of children.

4.55 Content which provides advice or guidance on how to abuse children sexually in a country other than the UK should be regarded as illegal content.

Relevant defences

4.56 One of the defences available to the person posting the content and where content may not be illegal is where there are reasonable grounds to infer that the poster had a legitimate reason to be in possession of the item. We are unaware of any legitimate reason for possession which would arise in relation to this type of content on a regulated service. Providers should therefore assume that this defence does *not* apply, absent very strong evidence to the contrary. A statement by the poster concerned is not sufficient to show this.

Obscene articles

4.57 An obscene article on the internet which encourages others to carry out any of the CSAM offences, grooming/child sexual exploitation or sexual activity offences[24] is illegal content unless one of the defences below arises. An article is any kind of content and includes for example, chat messages and webpages. (It also includes images but if so, providers should consider the offences relating to indecent and prohibited images or films of children first). One of the ways this offence can be committed is for a poster to 'publish' an obscene article. Publishing means to an individual or a wider group of people.

4.58 For the purposes of this offence, the article shall be deemed to be obscene if its effect or (where the article comprises two or more distinct items) the effect of any one of its items is, if taken as a whole, such as to *tend to deprave and corrupt* persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it. The important part of this test is the tendency to deprave and corrupt.

4.59 By way of example only, this offence may be relevant to messages as part of a chat room conversations involving explicit internet conversations concerning sadistic paedophile sex acts on children, encouraging these acts to be carried out.

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[23] It also includes doing anything outside England and Wales or Northern Ireland that would constitute such an offence if done in England and Wales or Northern Ireland.

[24] The child sex offences specified in the Act are as follows: Section 1 of the Protection of Children Act 1978 (indecent photographs of children); Section 160 of the Criminal Justice Act 1988 (possession of indecent photograph of a child); Section 62 of the Coroners and Justice Act 2009 (possession of a prohibited image of a child); Section 69 of the Serious Crime Act 2015 (possession of a paedophile manual); and the following offences under the Sexual Offences Act 2003: Section 8 (causing or inciting a child under 13 to engage in sexual activity), Section 10 (causing or inciting a child to engage in sexual activity), Section 11 (engaging in sexual activity in the presence of a chid), Section 12 (causing a child to watch a sexual act), Section 13 (child sex offences committing by children or young persons), Section 14 (arranging or facilitating commission of a child sex offence), Section 15 (meeting a child following sexual grooming etc.), Section 15A (sexual communication with a child), Section 47 (paying for sexual services of a child), Section 48 (causing or inciting sexual exploitation of a child), Section 49 (controlling a child in relation to sexual exploitation) and Section 50 (arranging or facilitating sexual exploitation of a child).

Relevant defences

4.60 There is a defence if the article concerned is 'justified as being for the **public good** on the grounds that it is in the interests of science, literature, art or learning, or of other objects of general concern'.

4.61 The defence of 'public good' does not apply to moving picture films or soundtracks however, instead in relation to these articles there is a defence of public good 'on the ground that it is in the interests of drama, opera, ballet or any other art, or of literature or learning'.

4.62 This defence is not at all likely to arise in relation to an obscene article which encourages the commission of any of the CSAM offences, grooming/child sexual exploitation or sexual activity offences, and providers should be sceptical of claims that it has.

Usage examples

- A message which explains how to cause or incite a child to engage in sexual activity.
- A post on a webpage which includes details about how a child was sexually abused, where carrying out such or similar acts is encouraged.

Reasonably available information for user-to-user services

- The content suspected to be illegal content.
- A number of the messages or posts immediately preceding the content to show whether the content contains advice or guidance about abusing children sexually. The number viewed should be sufficient to judge this, but (in keeping with the principle of data minimisation) no more than sufficient.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

Reasonably available information for search services

- The content suspected to be illegal content.
- The webpage on which the content is posted, including its URL and any banner/sidebar.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Annex: Section A5 of Annex 1.

Statute: Section 69 of the Serious Crime Act 2015 (paedophile manuals); section 2 of the Obscene Publications Act 1959 (obscene articles).

Case law: *R v Perrin* [2002] EWCA Crim 747; *R v GS* [2012] EWCA Crim 398 (on obscene articles).

CSAM in messaging, group chats and forums

4.63 Perpetrators use messaging, group chats and forums for the commission of priority CSAM offences. For example, a perpetrator may commit a CSAM priority offence by showing

and/or distributing an indecent image or film of a child, linking or directing a user to CSAM or publishing an obscene article by messaging another potential perpetrator. A perpetrator may also commit a priority CSAM offence by coming into the possession of an indecent/prohibited image of a child or a paedophile manual through messaging with other perpetrators. A perpetrator may also use messaging, group chats and discussions on forums to encourage or assist another user to commit a priority CSAM offence, for example by encouraging the making of an indecent image or film of a child.

Inferring CSAM content in messaging, group chats and forums where it is not technically feasible for the service to review the content

4.64 For some service providers it may not be technically feasible to access and review all or part of this content.

4.65 However, service providers may become aware (through third party databases, the use of technology as part of content moderation, or through police reports or user complaints) of connected content which:

a) it is technically feasible for the provider to review, and

b) indicates the presence of CSAM content within messages, group chats or forums which it is not technically feasible for the provider to review.[25]

4.66 We have identified three scenarios in which content that it is technically feasible for a provider to review may, either on its own or when considered together with other reasonably available information, provide reasonable grounds to infer that the content of the message thread, group chat or forum amounts to a conspiracy to commit CSAM offences. We set these scenarios out below.

Scenario one - inferring illegality based on content alone

4.67 In certain circumstances, content which it is technically feasible to review may on its own give providers grounds to infer that other content within messages, group chats or forums (which it is not technically feasible to review) is illegal CSAM content.

4.68 It is reasonable to infer that content which it is not technically feasible to review is illegal content where:

a) the image or icon for the messages, group chat or forum is CSAM;

b) the image or icon for the messages, group chat or forum is a still from a known CSAM video; or

c) the bio or heading for the messages, group chat or forum explicitly indicates that the contents are CSAM;

unless the provider is aware of evidence to the contrary.

4.69 Using CSAM as the image or icon for messages, a group chat or a forum is illegal. We are aware of no likely legitimate reason to use CSAM (whether a CSAM image or a CSAM URL) or a still from a known CSAM video as the image, icon or bio for messages, a group chat or a forum.

[25] In many cases the content within messages, group chats or forums will be privately communicated, and the connected content which is used to indicate the presence of CSAM will be publicly communicated, although this depends on the circumstances. See our Guidance on content communicated 'publicly' and 'privately' under the Online Safety Act for further detail.

Nor are we aware of any likely legitimate reason to create a bio or heading that explicitly indicates that the contents are CSAM. In this scenario, it is likely that the image, icon, bio or heading is being used as a signal to other perpetrators. Therefore, where such content is used, this provides a reasonable basis to infer that the contents of the messages, group chat or forum amount to CSAM.

4.70 We consider that a provider will be able to identify some CSAM images on sight. However, it may be less obvious when the child is older. We expect some providers, to whom our recommendations on CSAM hash-matching and URL detection apply, to have a database of such information available to them and as such that is "reasonably available information" for the purposes of the ICJG. Providers to whom we do not recommend the use of hash-matching may still become aware of the nature of such images through complaints or contact with law enforcement.

Scenario two - inferring illegality based on coded terms strongly associated with CSAM in combination with a police report

4.71 In other cases, the bio or heading relating to a message, group chat or forum may indicate that the content of the chat is CSAM through coded terms strongly associated with CSAM (in the absence of any clear evidence to the contrary about the intended meaning). Where it is technically feasible for providers to review the bio or heading, and where a provider has received a police report relating to that message, group chat or forum, providers should consider those factors in combination when inferring whether the content within the message, group chat or forum (which it is not technically feasible for them to review) is CSAM. We explain this in more detail below.

4.72 As coded terms may also have other meanings and legitimate uses, they do not on their own provide a sufficient basis to infer that the content within a message, group chat or forum is CSAM. However, when combined with a police report this indicates a high likelihood that the purpose of the relevant message thread, group chat or forum is to commit CSAM offences. We consider it is reasonable in these circumstances for a provider to take appropriate moderation action, including removal of the relevant message thread, group chat or forum.

Coded terms strongly associated with CSAM

4.73 In this guidance 'coded terms strongly associated with CSAM' are phrases, keywords or other hints which are commonly used by perpetrators to indicate or signpost the presence of CSAM within message threads, group chats or forums without stating this explicitly. A provider may identify such coded terms through its own moderation processes, intelligence from law enforcement agencies, information-sharing arrangements with other providers for the purposes of detecting and removing CSAM and information from trusted child safety organisations such as the Internet Watch Foundation, Thorn, and the National Center for Missing & Exploited Children, which identify words, phrases and codes used to conceal CSAM online.[26] This information should be accessible to the provider's content moderation function to support its assessment of the message threads, group chats or forums identified in the police report.

[26] The IWF Keyword Detection List compiles words, phrases and codes commonly associated with CSAM and makes them available to their members to support the detection and removal of CSAM on their services. See IWF (2026), Keywords [accessed 13 May 2026], for more details.

Police report

4.74 In this guidance, a "police report" means a report from a competent UK law enforcement authority identifying a specific message thread, group chat or forum and providing written confirmation that the authority has identified specific content within it, which, in its opinion, amounts to CSAM. Generic statements that particular coded terms, signals or indicators are associated with CSAM, or general warnings about CSEA offences unconnected to specific content or users, will not constitute a police report for the purposes of this guidance. Where a service provider has received a police report the information should be made available to its content moderation function for the purposes of moderating a relevant message thread, group chat or forum.

Scenario three – inferring illegality based on coded terms strongly associated with CSAM, a user complaint, and at least one other piece of information (that is not a police report)

4.75 Where coded terms strongly associated with CSAM are present in the bio or heading relating to a message thread, group chat or forum, but there is no police report as described in scenario two, providers may also have reasonable grounds to infer that the content within the message thread, group chat or forum amounts to CSAM where those coded terms are supported by:

a) a user complaint containing a copy or screenshot of the relevant message, image or video, where that evidence shows that the content complained about is CSAM; and
b) at least one of the following additional pieces of information in relation to the user accounts of the users on the chat:
    i) metadata of the type described in paragraph 4.81; or
    ii) usernames, user profile images or user bio text containing a coded term or indicator strongly associated with CSAM as described in paragraphs 4.73 and 4.83-85.

4.76 There must be information from each of the three required categories: coded terms, a user complaint, and one additional category of reasonably available information. Individually these categories of information do not provide a sufficient basis for inference, but where a user complaint and information from one other category is present alongside coded terms strongly associated with CSAM, it provides a sufficiently robust basis for a provider to have reasonable grounds on which to infer that content within a message thread, group chat or forum is CSAM. We explain the information further below.

4.77 We acknowledge that providers may have access to further information beyond what is specified in this guidance. This guidance does not prevent a provider from having regard to further information which is relevant.

User complaints

4.78 The Act requires providers to operate a complaints procedure and to take appropriate action in response to complaints. In most cases this will involve reviewing the content complained of. However, where the content of messages, group chats or forums cannot be accessed directly, a provider may need to rely on information provided through a complaint. To comply with the Act (and the Codes of Practice), providers should secure that their complaints processes enable them to have regard to the content complained of. A complaint can include

a copy or screen shot of the content complained of. This enables the service provider to judge with a high degree of accuracy whether the content complained of is CSAM.

4.79 For the purposes of this guidance, a user complaint should only be relied on in making an illegal content judgement where it contains a copy or screenshot of a message, image or video that enables the provider to assess the content and where the provider has judged that the content is CSAM.

4.80 We recognise that complaints may be used adversarially, including through hacking, manipulation of group settings, or false reporting. For example, a malicious actor may apply a coded term to a message, group chat or forum and report it with the intention of prompting an incorrect illegal content judgement. In light of these considerations, a coded term on its own combined with a user complaint will not always provide a sufficient basis for an illegal content judgement relating to the entire contents of the message thread, chat or forum. In combination with a third indicator, there are reasonable grounds for the inference.

Account metadata

4.81 Metadata relating to the accounts of any of the users of the message thread, chat, or forum will also provide a relevant contextual indicator. To the extent that the service provider collects and retains this information for any purpose, it should also use it to support judgements about whether content within a message thread, group chat or forum is CSAM. The type of account metadata that will be relevant for this purpose relates to a user account's participation in other message groups, chats or forums associated with the sharing or distribution of CSAM.

4.82 We recognise that providers may have access to additional categories of account metadata relevant in this context beyond that specified in paragraph 4.81. Providers should consider such metadata where they have robust evidence showing that it is strongly linked to CSAM content and behaviour, and not to lawful activity. The information reviewed should be sufficient to make that judgement, but in keeping with the principle of data minimisation, no more than is necessary for that purpose.

Usernames, user profile images or user bio text of any user of the chat, message thread or forum, containing a coded term or indicator strongly associated with CSAM

4.83 Users' account usernames, user profile images or user bio text can include coded terms or indicators strongly associated with CSAM, such as victims' or survivors' names, titles of known CSAM series or non-CSAM stills from known CSAM videos (including a clothed image of a child). These provide contextual indicators that a particular user account is associated with CSAM offending and therefore, in combination with other indicators, support an inference that a message thread, chat or forum to which that user is party amounts to a conspiracy to commit CSAM offences.

4.84 We recognise that account usernames containing CSAM related terms may also be ambiguous and not consistently an indicator of CSAM being present in a message thread, group chat or forum. In particular, we consider the use of victims' or survivors' names could produce a significant number of false positives for service providers, which presents a risk to users' rights. There will be legitimate reasons why victims and survivors use their own names when they participate online. For this reason, we recommend that providers only have regard to victims' and survivors' names in this scenario if those names are included in recognised established keyword lists compiled by trusted organisations, such as the Internet Watch Foundation, which identify words, phrases and codes used to conceal CSAM online.

4.85 We recognise that providers' ability to view or review usernames, user profile images and user bio text varies depending on the type of service. We consider that this information is reasonably available where it is technically feasible for a service provider to review usernames, user profile images and user bio text of the users on the message thread, chat or forum in question.

Usage examples

- A group chat where the group image consists of a photograph depicting a child engaging in sexual activity.
- A message forum with a heading containing a coded term included in the IWF's keyword list, where the provider has also received a police report identifying that forum and confirming that one or more of the users on that forum has posted indecent images of a child within it.
- The provider receives a user complaint containing a copy of CSAM from a message group. The group heading contains a coded term which the provider has identified as being used on its service to refer to CSAM. The provider also identifies that one of the users in the group is on another message group that the provider has detected is associated with sharing CSAM.

Reasonably available information for user-to-user services

- Identifying information for the message thread, group chat or forum in question (i.e. its name, icon, bio or description).
- The IWF Keyword Detection List or an equivalent list from a trusted child safety organisation containing words, phrases or hints associated with child sexual abuse images and videos.
- For providers to which a Code recommendation to use an appropriate set of hashes to identify CSAM content is applicable, the appropriate set of hashes; and for providers to which a Code recommendation to use another form of proactive technology to identify CSAM content is applicable, the content identified using that technology, provided that the level of assurance provided by that technology and any other systems and processes is near certain.
- A police report*.
- A user complaint containing evidence that the message thread, group chat or forum contains CSAM.
- To the extent that the service provider collects and retains this information for any purpose, any determination by the provider that other message threads, chats or forums used by that user are associated with the sharing or distribution of CSAM.
- Where technically feasible for the provider to review: usernames, user profile images or user bio text of each member of the message thread, group chat or forum that includes CSAM related terms.

* For the purposes of this guidance a "police report" means a report from a competent UK law enforcement authority identifying a specific message thread, group chat or forum and providing written confirmation that the authority has identified specific content within it, which, in its opinion, amounts to CSAM.

A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

5. Child sexual exploitation and abuse (CSEA): Grooming and exploitation of children

Warning: this chapter contains content that may be upsetting or distressing

Priority child sexual exploitation and abuse offences

5.1 This chapter focuses on behavioural child sexual exploitation and abuse (‘**CSEA’**) offences. It considers the priority offences of grooming and sexual exploitation which are listed in Schedule 6 of the Online Safety Act (**‘the Act’**). We recognise that the CSEA offences are complex and that a particular instance of exploitation or abuse may involve the commission of a number of these specific offences**.** Where content appears to relate to child sexual abuse material (CSAM)[27] offences, services should refer to Chapter 4 first.

5.2 This chapter provides guidance on how services should identify content which amounts to grooming. This is to ensure that at a minimum, service providers remove illegal content which amounts to grooming. However, service providers are free to take down content above and beyond what is illegal under the Act. To read more about how grooming offences manifest or are facilitated online, please see the chapter of the Register of Risks titled ‘Child sexual exploitation and abuse (CSEA): Grooming.’

5.3 We consider that the bar for it to be reasonable to infer that content amounts to a grooming offence is relatively low. The most important question is the age of the child, and whether this age means a grooming offence has occurred (see paragraphs 5.23 to 5.26 for further information).

Structure of the chapter

5.4 In order to assist service providers, we have structured this section by looking at what the provider is required to know in order to make an illegal content judgement. We have grouped the most relevant priority offences with the lowest requirements first, rather than dealing with them individually. We begin with the offences in relation to which the provider only needs to be able to draw inferences about the age of the potential victim. Service providers should in the first instance consider whether the communication involves sexual activity with a child (under 16). We then turn to offences in relation to which providers need to consider the age of both the potential victim and the potential perpetrator. This involves considering whether the content constitutes an offence of an adult engaging in sexual communications with a child under the age of 16. Service providers should consider whether

[27] Child sexual abuse material, or ‘CSAM’, refers to indecent or prohibited images of children (including still and animated images, and videos, and including photographs, pseudo-photographs and non-photographic images such as drawings). CSAM also includes other material which contains advice about grooming or abusing a child sexually or which is an obscene article encouraging the commission of other child sexual exploitation and abuse offences. Furthermore, it includes content which links or otherwise directs users to such material, or which advertises the distribution or showing of indecent or prohibited images.

the content might amount to 'arranging', or a similar offence. Then we turn finally to the more complex offences involving offline conduct which can occur when a young person aged under 18 may be the subject of sexual exploitation.

5.5 We group the priority offences most relevant to behavioural CSEA as follows:

a) Sexual activity offences (potential victim under 16);

b) Adult to child offences (potential victim under 16);

c) 'Arranging' together with 'assisting', 'encouraging' and 'conspiring' offences which could take place between adults or children (potential victim(s) under 16); and

d) Offences concerning the sexual exploitation of children and young people aged 17 or younger.

5.6 Although we give specific guidance where it is particularly likely to be relevant, the Act covers offences of encouraging and assisting the commission of these offences, conspiracy to carry out these offences, and knowingly engaging together with someone else in pursuit of a common purpose to commit these offences. Very often, conduct of this nature would amount to one of the priority offences. However, for completeness, we note that encouraging could include words urging another person to carry out the offence. Assisting could include providing substantive help in carrying out the offence. There must either be intent to encourage/assist the offence, or belief that the offence will be committed. For conspiracy, there must be an agreement between two people and intent to carry out the offence. For a common purpose, both parties must knowingly share the purpose.

Communication with a child

5.7 In our guidance we have largely focused on examples of content which could be subject to an illegal content judgement. The majority of these offences will manifest in conversations between two or more users, most likely through messaging functionalities. We sometimes refer to the content concerned as 'communication.' The medium of the communication is not determinative when judging whether content is illegal and it can be written messages, audio, video and images.

5.8 Grooming can happen in numerous online environments, including in private messages, and in virtual reality, immersive environments. Content is communicated via permanent means (for example, in a comment on a photo that stays on the service unless the user/service makes a decision to remove it) or via ephemeral means (for example, an audio message in a virtual reality space, or audio or messaging relayed through gaming platform) is included. Content communicated in a variety of settings will be illegal content where there are reasonable grounds to infer any of the offences set out below. Although in practice we realise that content takedown will be more practical and effective where content is not ephemeral, this may be of wider relevance to content moderation decisions. For more information on different forms of content, please see the introductory chapter of this guidance (Chapter 1).

Duty to report detected but unreported CSEA content to the National Crime Agency

5.9 The Act contains a duty on service providers to report all detected but unreported illegal CSEA content to the National Crime Agency ('**NCA**') (see section 66). CSEA content is any content which amounts to a relevant CSEA offence, whether relating to CSAM or to grooming and sexual exploitation of children.

Risk assessment for grooming offences

5.10 For the purposes of carrying out a risk assessment, providers should be aware that (priority) illegal content which amounts to a relevant grooming offence is may take the form of any type of communication.

5.11 Content amounting to these offences may be found on user-to-user services (including social media services, gaming services, discussion forums and chat rooms, messaging services and video-sharing services). Content amounting to most grooming offences is unlikely to occur on a search service except to the extent that content on user-to-user services appears in search results. The exception is the case of the arranging or facilitating sexual exploitation of a child offence, as adverts which can be found through search results may amount to this offence.

5.12 See the Register of Risks chapter titled 'Child sexual exploitation and abuse (CSEA): Grooming.''

Sexual activity offences

5.13 There are a number of priority offences which involve 'sexual activity' where the potential victim is a child.[28] These offences differ depending on the age of the child concerned and whether they are being incited to engage directly in the sexual activity in question or being exposed to it by another.

What is 'sexual activity' as defined in legislation?

5.14 The law defines 'sexual activity' with a child as any sexual touching, that is touching of any sort which involves:

a) sexual intercourse of any kind, including oral intercourse or penetration of any kind;

b) masturbation; or

c) sexualised touching, which may include touching of clothing.

5.15 Service providers should take a common-sense approach regarding what is classed as 'sexual': if the activity is by its nature sexual then it is sexual for the purposes of the offence.

5.16 In line with legislation, we use the term 'sexual activity' to refer to any such activity, although we acknowledge that the more appropriate term would be sexual abuse. Service providers are reminded that content containing images of sexual activity with children will be one of the CSAM offences and providers should refer to Chapter 4 where appropriate.

[28] We do not deal here with the specific offence of 'sexual activity with a child' (section 9 of the Sexual Offences Act 2003) as it is not one of the priority offences contained in Schedule 6 of the Act.

5.17 The definition above relates to physical acts which take place in the offline world. Whilst content itself is technically not capable of amounting to 'sexual activity', content which depicts sexual activity, through images or videos which are shared, may amount to one or more of the offences below.

5.18 Such offences can – and frequently do – occur through communication between adults and children. However, in some cases, these offences can also be committed where there is no adult involved. That is, they can occur even where both (or all) participants in a communication are aged under 16, meaning that the individuals committing the offences are themselves children. These are typically referred to as 'child-on-child offences'. For there to be reasonable grounds to infer that content amounts to one of the priority offences of sexual activity with a child, however, providers need only make inferences about the age of the potential victim.

Sexual activity offences where the potential victim is under 16

5.19 Where at least one party in a communication containing sexual activity appears to be a child, providers should consider whether there are reasonable grounds to infer that this party is under 16. Where such an inference can be reasonably made, content should be considered illegal where there are reasonable grounds to infer that either the content:

a) **causes or incites a child under 16 to engage in sexual activity**, and the other party *intends* to cause or incite the child to engage in sexual activity;

or

b) **causes a child under 16 to watch sexual activity**[29] (for example by sending a pornographic video or gif to them, or during livestreaming); and the other party *intends* to cause the child to watch sexual activity; and the content was posted for the purpose of the sexual gratification of the other party. (Where both parties to the communication are children, they may both be abusing at the same time as being a victim of sexual abuse).

5.20 Content which **'incites' a child under 16 to engage in sexual activity** is illegal content, even where the incitement takes place but the sexual activity does not. This means that where providers do not have information about whether or not a child has been caused to participate or engage in sexual activity offline, the content is illegal if it incites (i.e. encourages or assists) them to do so. Where providers have received reports that a child has been **'caused' to engage in sexual activity** by online content, for instance through information from specialist third parties, providers can reasonably infer that the content in question is illegal, unless there are reasonable grounds to suggest the report is untrue. Only a judgment of a UK court is binding on a provider in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

5.21 As noted above, in order for the content to be illegal by virtue of **causing a child under 16 to watch sexual activity**, there must be reasonable grounds to infer that the purpose of the communication is the sexual gratification of the other party. Where content involves any sexual activity, and *at least* one of the users concerned can be reasonably inferred to be a child under the age of 16, service providers should infer that the other user knew what the content was and was acting for sexual gratification, unless there is very strong evidence to

[29] The wording of this offence in statute is 'a sexual act.' We rephrase this as 'sexual activity' as explained above.

the contrary. Such evidence might be that the content has been sent for educational or medical reasons.

5.22 If pornographic content is sent to a child under 16 years, it will be reasonable for service providers to infer that the child has been caused to watch it.

Inferring the potential victim's age as under 16

5.23 For content to amount to these offences, the communication must involve a child under the age of 16. In order to protect children from online harms, the Act requires providers of services that are likely to be accessed by children to use age estimation or age verification measures.

5.24 Reasonable grounds to infer that a potential victim is a child should be presumed to exist where:

a) A service explicitly markets itself predominantly to school aged children;
b) Information from age estimation or age verification measures ('age assurance measures') indicates that the *potential victim* in the image is aged under 16.
c) The *potential victim* of grooming states in a report or complaint that they are aged under 16 or were aged under 16 at the time when the potentially illegal content was posted.
d) Account information indicates that the *potential victim* is aged under 16, except where the subject concerned has been using the service for more than 16 years.
e) A person *other* than the *potential victim* states in a report or complaint that the potential victim is aged under 16 or was aged under 16 at the time when the potentially illegal content was posted. This applies *unless:*
    i. Information from age estimation or age verification measures ('age assurance measures') indicate that the *potential victim* is aged 16 or over; or
    ii. The *potential victim* stated in a report or complaint that they were aged 16 or over at the time the potentially illegal content was posted.

5.25 In instances where a person other than the potential victim states in a report or complaint that the potential victim is aged under 16 or was aged under 16 at the time when the content was posted, service providers are encouraged to check this information with the potential victim if they have the ability to do so.

5.26 Service providers should have regard to the privacy implications of reviewing a potential victim's account information (including information derived from age verification or age estimation technologies) in order to determine their age. This is likely to amount to a very significant interference with their privacy and that of the other users they interact with. Service providers should have regard to their obligations under the laws relating to data protection. For more information, see the 'Information Commission's opinion on age assurance.

State of mind

5.27 If the provider has grounds to infer that the child is *under 13* (for example, because the child or other person reporting the content has told them so), and the provider has reasonable grounds to infer that the content **causes or incites a child under 16 to engage in sexual activity** or **causes a child under 16 to watch sexual activity**, then it need not consider the matter further, and should consider the content as illegal content.

5.28 If it does not have grounds to infer this, then there is an extra matter to consider. For content to be judged to be illegal, there must be reasonable grounds to infer that the other

party did not *reasonably* believe that the child in question was 16 or over. Service providers are unlikely to have any direct evidence as to the user's true state of mind. However, if they are able to infer that the potential victim is under 16, this is reasonable grounds to infer that the potential victim is not *generally* seeking to represent themselves to others as being over the age of 16. In these cases, content should be treated as illegal *except* where the victim has made a positive statement that they represented themselves to the other user as being aged 16 or over.

Usage examples

- Sharing of pornographic images or videos with a child (including by another child).
- Conversation which incites a child to engage in sexual activity.

Reasonably available information for user-to-user services

- The content suspected to be illegal content.
- Information from age estimation or age verification measures ('age assurance measures').
- Other account information which establishes age of user.
- A number of the messages or posts immediately preceding the content to show if the user is under the age of 16 and if the nature of the conversation is sexual. The number viewed should be sufficient to judge this, but (in keeping with the principle of data minimisation) no more than sufficient.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A6 in Annex 1.

Statute: Section 10 of the Sexual Offences Act 2003; **Article 17 of the Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2));** section 21 of the Sexual Offences (Scotland) Act 2009; section 12 of the Sexual Offences Act 2003; Article 19 of the Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)); section 13 of the Sexual Offences Act 2003; and Article 20 of the Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)).

Notes: The following offences are not considered separately. For the purposes of making illegal content judgements, they overlap in whole or in part with the offences above: Section 8 of the Sexual Offences Act 2003 (Causing or inciting a child under 13 to engage in sexual activity); Article 15 of the Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769); section 23 of the Sexual Offences (Scotland) Act 2009 (Causing a young child to look at a sexual image); section 11 of the Sexual Offences Act 2003 (Engaging in sexual activity in the presence of a child); Article 18 of the Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)) (Engaging in sexual activity in the presence of a child); section 13 of the

Sexual Offences Act 2003 (Child sex offences committed by children or young persons); Article 20 of the Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I.2)) (Sexual offences against children committed by children or young persons); section 31 of the Sexual Offences (Scotland) Act 2009 (Causing an older child to participate in a sexual activity); and section 33 of the Sexual Offences (Scotland) Act 2009 (Causing an older child to look at a sexual image).

Adult to child *only* offences

5.29 If consideration of the offences above has not resulted in the content being judged to be illegal content, but the content is of a sexual nature and involves a child who can be reasonably inferred to be under 16, the provider should next consider the age of the potential perpetrator.

Sexual communication with a child

5.30 Content will be illegal where it amounts to **sexual communication with a child**. In order for content to be illegal under this offence, there must be reasonable grounds to infer that all of the following are true:

a) the communication involves at least one child under the age of 16 (the potential victim(s)) *and* at least one adult aged 18 or over (the potential perpetrator);

b) the adult aged 18 or over *intends* to communicate with the child;

c) the communication is either itself sexual, *or* was intended to encourage the child to make a sexual communication;

d) the adult in question did not *reasonably* believe that they were communicating with a person aged 16 or over; *and*

e) the communication was for the purposes of sexual gratification of the adult in question.

5.31 Inferences about the age of the potential victim in question should be made using the principles outlined in paragraph 5.23 to 5.26.

5.32 Where both parties are children, they would not fall within the scope of this offence, unless their conversation amounted to one of the sexual activity offences discussed above.

What is 'sexual communication'?

5.33 Communication should be considered sexual where any part of it relates to sexual activity *or* where any part of it is what a reasonable person would consider to be sexual. It is *not* necessary to infer that the adult in question themselves believed the communication to be sexual.

5.34 Communication which encourages a child to communicate in a sexual way is encompassed within this definition.

5.35 The medium of the communication is irrelevant when judging whether content is illegal: written messages, audio, video and images may all be considered to amount to sexual communication with a child. This means that the sending of sexualised imagery (for example, an image, video or gif depicting sexual activity) will be captured (although it is likely to have been caught by the 'sexual activity' offences above). Likewise, content communicated via permanent means (for example, in a comment on a photo that stays on

the service unless the user/service makes a decision to remove it) or via ephemeral means (for example, an audio message in a virtual environment) may amount to sexual communication with a child. Content posted in these settings will be illegal if it amounts to any of the offences set out below.

5.36 Service providers may be most likely to encounter such content via direct or group messages but should also be aware of the risk of this offence manifesting in illegal content in other ways such as via comments or livestreams, via gaming platforms, or in immersive virtual reality environments.

5.37 In order to be considered illegal, content need not target a *particular* child. This offence captures sexual communication which does not target any one child, but which is made to many children or to children in general.

Attempts to engage in sexual communication with a child

5.38 As part of their moderation efforts, service providers may encounter content which has been reported to them by adult users who have posed as a child under the age of 16 in order to 'catch' other users willing to engage in sexual communication with a child. Such activity is typically carried out by law enforcement, journalists or citizen 'vigilante' groups.

5.39 Content which involves sexual communication with an adult credibly posing as a child should also be considered to be illegal content under this offence where the criteria set out in [A5.22] are met. This is because such content would amount to an offence of *attempting* to communicate sexually with a child.

Inferring the age of the potential perpetrator

5.40 For content to amount to this offence, the communication must be between a child and an adult over the age of 18. Reasonable grounds to infer that a perpetrator is 18 or over may arise in any of the following ways:

a) the *potential perpetrator* states they are aged 18 or over;

b) the *potential perpetrator* has been using the service for 18 years or more; or

c) the *potential victim* provides evidence that the potential perpetrator is aged 18 or over, and the service is not aware of any strong evidence to suggest the contrary.

5.41 Service providers should always keep in mind that information about a potential perpetrator's age given on an account may not be accurate. Where users themselves state their age, or the age noted by an account is given in a 'bio' or profile description, the possibility exists that this information is false. Similarly, profile pictures are not a good guide to whether a potential perpetrator is an adult. This sort of evidence is therefore not strong evidence when considering whether a potential perpetrator may be under 18.

5.42 Service providers must have regard to the fact that reviewing a user's account information in order to determine their age is likely to amount to a very significant interference with their privacy and that of the other users they interact with. Service providers should have regard to their obligations under the laws relating to data protection.

State of mind

5.43 As above, providers should infer that the other user knew what the content was and was acting for sexual gratification unless there is very strong evidence to the contrary.

5.44 The service provider is unlikely to have any direct evidence as to the user's true state of mind. However, if the service provider is able to infer that the potential victim is under 16, this is grounds to infer that the potential victim is not generally seeking to represent themselves to others as being over 16. Content should be treated as illegal and taken down in these cases, except where the victim has made a positive statement that they represented themselves to the other user as being aged 16 or over.

Usage examples

- Comments of a sexual nature directed towards a child in comments on their content.
- Messages (text or audio) sent to a child of a sexual nature via a messaging platform or direct messaging feature.
- Content which encourages children under the age of 16 in general to engage in sexual communication with an adult.
- Content posted (by an adult) to encourage or entice a child to send sexual messages.

Reasonably available information for user-to-user services

- The content suspected to be illegal content.
- Information from age estimation or age verification measures ('age assurance measures').
- Other account information which establishes age of user.
- A number of the messages or posts immediately preceding the content to show if the user is under the age of 16 and if the nature of the conversation is sexual. The number viewed should be sufficient to judge this, but (in keeping with the principle of data minimisation) no more than sufficient.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A6 in Annex 1.

Statute: Section 10 of the Sexual Offences Act 2003**; Article 17 of the Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2));** section 15A of the Sexual Offences Act 2003; Article 22A of the Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I.2)).

Case law: *R v Stephenson (Malcolm)* [2019] EWCA Crim 2418

Notes: The following offences are not considered separately. For the purposes of making illegal content judgements, they overlap in whole or in part with the offences above: Section 24 of the Sexual Offences (Scotland) Act 2009 (Communicating indecently with a young child etc.); and section 34 of the Sexual Offences (Scotland) Act 2009 (Communicating indecently with an older child etc.).

'Arranging', 'assisting', 'encouraging' and 'conspiring' involving a child under the age of 16

5.45 Content may still be illegal even when it does not clearly involve a child being abused by being exposed to sexual acts or communications. This may be the case where content appears to show one or more people planning, preparing, or encouraging one another to abuse a child. Content may be illegal even where the perpetrators are themselves under the age of 16.

5.46 The following offences may apply to content of this type:

a) **Arranging or facilitating the commission of a child sex offence** (including sexual activity with a child);

b) **Encouraging, assisting or conspiring in relation to the following child sex offences**:

i. engaging in sexual activity in the presence of a child;
ii. causing a child to engage in sexual activity; or
iii. causing a child to watch a sexual act.

5.47 These offences will also commonly occur at the same time as an offence of sexual communication, and where this is the case, providers should always consider that offence first (see paragraphs 5.30 to 5.44).

5.48 This section focuses only on content which could amount to an offence listed in paragraph 5.46 *without* amounting to a sexual communication or an indecent image offence.

What is 'arranging or facilitating?'

5.49 The terms 'arranging or facilitating' have no special legal meaning and should therefore be understood to carry their natural meaning.

5.50 The offence captures a range of preparatory conduct that would not otherwise be criminal. It can be committed where a person arranges or facilitates sexual activity with a child either for himself or for another, and wherever in the world the activity is intended to take place.

5.51 There are exceptions for acts done to protect the child, which are likely to arise in the case of an adult who is not acting for sexual gratification and is not encouraging or causing the offence, giving advice to a child on contraception, sexually transmitted diseases, physical or emotional health and welfare.

5.52 Where content does not reach the threshold of arranging, for example because it is not specific enough or because the plan is not made, service providers should consider the offences of encouraging, assisting, attempting and conspiracy in relation to the offences of engaging in sexual activity in the presence of a child, causing or inciting a child to engage in sexual activity or causing a child to watch a sexual act.

Usage examples

- Content in which a user agrees to arrange for another person to meet with a child under the age of 16 for the purposes of sexual activity.
- Content in which a user asks another person to arrange for them to meet with a child under the age of 16 for the purposes of sexual activity.
- Content in which one user urges another to engage in sexual activity with a child under the age of 16.
- Content in which a user gives another person advice on how to groom a child for the purpose of engaging in sexual activity with them.

Reasonably available information for user-to-user services

- The content suspected to be illegal content.
- Information from age estimation or age verification measures ('age assurance measures').
- Other account information which establishes age of user.
- A number of the messages or posts immediately preceding the content to show if the user is under the age of 16 and if the nature of the conversation is sexual. The number viewed should be sufficient to judge this, but (in keeping with the principle of data minimisation) no more than sufficient.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

Reasonably available information for search services

- The content suspected to be illegal content.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A6 in Annex 1.

Statute: Section 14 of the Sexual Offences Act 2003 (Arranging or facilitating commission of a child sex offence); Article 21 of the Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 N.I.2)).

Notes: The following offences should also be considered to be wholly or partly encompassed within the guidance given in this section: Section 54 of the Sexual Offences (Scotland) Act 2009 (Incitement to commit certain sexual acts outside Scotland).

Offences concerning the sexual exploitation of children and young people aged 17 or younger

5.53 All the offences mentioned in this chapter involve the exploitation of children in some way. Some offences, however, use the word 'exploitation' in the terms of their offence, and we therefore refer to them here as 'offences concerning the sexual exploitation of children and young people.' For the purposes of these offences alone, an offence may take place when the victim is aged 17 or younger.

5.54 The priority offences concerning the sexual exploitation of children and young people comprise:

a) **arranging or facilitating sexual exploitation of a child aged 17 or younger**;
b) **causing or inciting the sexual exploitation of a child aged 17 or younger;**
c) **paying for the sexual services of a child aged 17 or younger**; and
d) **controlling a child aged 17 or younger in relation to sexual exploitation** (see also Chapter 9 of this guidance on 'Sexual exploitation of adults').

5.55 As there is significant overlap between these offences, we consider them all together.

5.56 These offences may be committed by any person, regardless of age and regardless their relationship with the child in question.

What is sexual exploitation?

5.57 A child should be understood to be sexually exploited where:

a) on *any* occasion, they have provided sexual services to another person in return for payment or promise of a payment.[30] The payment in question may be to the child concerned or some other person, and it is *not* necessary that the child was compelled to provide the service; *or*

b) an indecent image of the child has been recorded, streamed or otherwise transmitted over the internet or in any other way.[31]

Inferring the age of the potential victim

5.58 When inferring the age of a potential victim as under 18 years old, the same factors should be kept in mind as are set out in paragraphs 5.24 above, excluding 5.24 a). Service providers should note in particular the importance of privacy implications (see paragraph 5.26).

Inciting the sexual exploitation of a child

5.59 The offence of **inciting the sexual exploitation of a child aged 17 or younger**, which does not necessarily require service providers to make reasonable inferences about other events, is the most likely offence to be relevant.

5.60 Content should be deemed to be illegal where there are reasonable grounds to infer that it incites (i.e. is capable of encouraging or assisting):

[30] A 'payment' need not be financial. It should be understood to encompass the provision of any goods or services (including sexual services), either for free or at a discount, or the discharge of an obligation to pay for anything which would otherwise incur a charge.
[31] A definition of indecent imagery is given in Chapter 4 on offences relating to child sexual abuse material (CSAM).

a) a child aged 17 or under to offer or provide sexual services to another person in return for *payment* or a promise of *payment* (to the child or a third person);

or

b) an indecent image of a child aged 17 or under to be recorded or streamed or otherwise transmitted; *and* the perpetrator *intended* to incite the child to be sexually exploited.

5.61 If the child in question is 14 – 17 years old, the offence is only committed if the perpetrator does not reasonably believe that the child is over 18.

5.62 Content should be inferred to be illegal and should be removed in circumstances where providers have received information either from:

- Specialist third parties (such as a trusted flagger) to say that what is set out in 5.60 has taken place (unless there are reasonable grounds to suggest the report is untrue),
- A user report saying that a child aged 17 or younger exists who has been exploited by the making of indecent images, for example through livestreaming, or
- A user report that a child aged 17 or younger exists who has provided sexual services to another person in return for payment or promise of a payment (and there are no reasonable grounds to suggest the assertion is untrue).

Arranging or facilitating the sexual offences of a child

5.63 If content does not amount to an offence of inciting the sexual exploitation of a child, providers should next consider whether content amounts to **arranging or facilitating** the same. This is likely to be relevant where the content amounts to abuse in the form of **controlling the activities of a child in relation to sexual exploitation** or **paying for the sexual services of a child**. As set out above, 'arranging' and 'facilitating' are not defined in law and therefore take their natural meaning.

5.64 For the purpose of this offence the abuse may take place anywhere in the world, even if it is legal in the country in which the child is located.

Paying for the sexual services of a child

5.65 A 'payment' need not be financial (and it doesn't matter whether it is made to the child or another person). It should be understood to encompass the provision of any goods or services (including sexual services), either for free or at a discount, or the discharge of an obligation to pay for anything which would otherwise incur a charge.

5.66 In order for an offence to have occurred the services must actually have been 'obtained', i.e. provided by the child in question. There must therefore be reasonable grounds to infer that the sexual services were obtained in order for content to be judged to be illegal. Evidence that this is the case is unlikely to be available to providers, and so the reasonable grounds to infer threshold is unlikely to be met in most instances. However, where providers do have evidence that a child has provided sexual services (for example, through information provided by specialist third parties about a successful conviction), unless there are reasonable grounds to suggest the report is untrue, the content should be reasonably inferred to be illegal. Only a judgment of a UK court is binding on a provider in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

State of mind

5.67 When the potential victim is under 13, the only state of mind requirement is that the person obtaining sexual services intended to obtain them. The person's belief as to the child's age is not relevant. When the potential victim is over 13, content should be judged to be illegal under these offences where there are reasonable grounds to infer that the person arranging the offence did *not* reasonably believe that the child was over the age of 18.

5.68 If the provider is able to infer that the potential victim is under 18, this is grounds to infer that the potential victim is not *generally* seeking to represent themselves to others as being 18 or over. Content should be treated as illegal and taken down in these cases, *except* where the victim has made a positive statement that they represented themselves to the other user as being aged 18 or over.

5.69 These offences, whether the victim is under or over 13, also require **intent**. That is, the perpetrator must have *intentionally* controlled (or attempted to control) the activities of a child or paid (or attempted to pay) for the sexual services of a child. In most cases, it will be appropriate to infer intent from the fact of the content being posted, except where there is strong evidence to the contrary.

Usage examples

- Messages between two or more users arranging the transport of an existing child under the age of 18 to a location to be sexually exploited (either through the provision of sexual services or the creation of an indecent image).
- A message between a user and a child under the age of 18, persuading them to provide sexual services for some form of payment or to create an indecent image of themselves.

Reasonably available information for user-to-user services

- The content suspected to be illegal content.
- Information from age estimation or age verification measures ('age assurance measures').
- A number of the messages or posts immediately preceding the content to show if the content amounts to facilitating, arranging, causing or controlling the sexual exploitation of a child under the age of 18 or relates to paying for the sexual services of a child of the same age. The number viewed should be sufficient to judge this, but (in keeping with the principle of data minimisation) no more than sufficient.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

Reasonably available information for search services

- The content suspected to be illegal content.
- The immediate context in which the content appears.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A6 in Annex 1.

Statute: Section 47 of the Sexual Offences Act 2003; Article 37 of the Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I.2)); section 48 of the Sexual Offences Act 2003; section 49 of the Sexual Offences Act 2003; and section 50 of the Sexual Offences Act 2003.

Notes: The following offences are not considered separately. For the purposes of making illegal content judgements, they overlap in whole or in part with the offences above: Article 38 of the Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I.2)) (Causing or inciting child prostitution or pornography); Article 39 of the Sexual Offences (Northern Ireland) Order (S.I. 2008/1769 (N.I.2)) (Controlling a child prostitute or a child involved in pornography); Article 40 of the Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I.2)) (Arranging or facilitating child prostitution or pornography); section 9 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (Paying for sexual services of a child); section 10 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (Causing or inciting provision by child of sexual services or child pornography); section 11 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (Controlling a child providing sexual services or involved in pornography); and section 12 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (Arranging or facilitating provision by child of sexual services or child pornography).

6. Fraud and other financial offences

Priority fraud and other financial offences

6.1 The priority fraud and other financial offences are listed in schedule 7 of the Act. They broadly comprise:

a) False claims to be authorised or exempt for the purposes of carrying on regulated activity (the first of the financial services offences);

b) Fraud by false representation;

c) Fraud by abuse of position and participating in fraudulent business carried on by sole trader etc.;

d) Other financial services offences;

e) Fraud related to misleading statements or impressions about investments;

f) Offences related to articles for use in fraud; and

g) Offences related to criminal property.

6.2 The Act also covers offences of encouraging and assisting the commission of fraud and financial offences and conspiracy to carry out these priority offences. It is also an offence knowingly to engage in a common purpose with another person, to carry out the financial services offences or the offences related to articles for use in frauds.

6.3 Providers should note that content giving rise to concerns about these offences may also raise other issues for them to consider. In particular, online service providers may have obligations under the Consumer Protection from Unfair Trading Regulations 2008 to take steps to protect consumers.

Navigating the offences

6.4 Though the offences all relate to fraud and financial activity, they require very different inferences to be made and service providers should therefore consider the most appropriate offence to start with based on the content in question.

6.5 If the content includes a claim by a firm that it is 'authorised' in relation to financial products or services (e.g., investments, insurance, mortgages, credit) and relevant claims management businesses, that is a potential starting point for making an illegal content judgement. The Financial Conduct Authority ('**FCA**') publishes a list of authorised firms ('**the FS Register'**) which is available here. Where a firm is claiming to be authorised, providers should check that claim against the FS Register. A provider will have reasonable grounds to infer that a claim to be authorised is false and the content is illegal content if the firm is not included as an authorised firm on the FS Register or the details referred to in the online content do not match the details of the authorised firm on the FS Register.

6.6 Once this check has been made, or if the content does not contain a claim to be authorised, the most relevant offence to consider for potential fraud will be fraud by false representation. Although this is an offence which requires providers to reasonably infer

dishonesty, this is likely to be possible in some cases based on a consideration of the content in question.

6.7 Other financial services offences may also be relevant. These are complex offences for which service providers will likely require a high degree of technical knowledge. In most cases, it will be appropriate for provider to rely on expert or external information when considering these offences or – where possible – to consider whether any of the content in question also amounts to a fraud offence such as false representation.

6.8 We believe that offences related to proceeds of crime and articles for use in fraud are likely to arise chiefly in communications between two or more potential perpetrators of offences. This means they are less likely than other offences to come to a service provider's attention through user reports.

6.9 Where service providers are considering a piece of content which makes a representation which may be false and uses a URL link to do so, they should be aware that particular risks may be associated with accessing the link in question. Where service providers choose to follow links, it may be appropriate for them to use a URL checking service before doing so.

6.10 We acknowledge that many of these offences result in complex illegal content judgements. This is either because of the inferences needed to be made about state of mind (for example, inferring dishonesty in the case of fraud by false representation), or because of the highly technical nature of the offences in question (in the case of some of the financial services offences). We furthermore recognise that it will always be difficult to identify fraudulent content because fraudsters use tactics to appear legitimate. While it may be difficult to reach a threshold of reasonable grounds to infer that content amounts to an offence, we believe there are some instances in which such an inference will be appropriate. The guidance in this section focuses on these instances, and conversely indicates where we do *not* believe reasonable grounds to infer are likely to exist.

6.11 For more information on harms relating to fraud and other financial offences see the chapter of the Register of Risks titled 'Fraud and Financial services offences', and for information on harms relating to proceeds of crime see the chapter titled 'Proceeds of crime.'

6.12 We have only provided usage examples in the section dealing with articles for use in fraud. Most other offences are so context-specific that usage examples are not likely to be helpful.

Trusted flaggers

6.13 Ofcom's Illegal Content Code of Practice for other duties recommends that providers establish and maintain a separate reporting channel for the use of trusted flaggers. At minimum, this should be available to the following entities, all of which have competence, expertise and knowledge in detecting and investigating one or more of the offences set out in this chapter.

a) HM Revenue and Customs (HMRC)
b) Department for Work and Pensions (DWP)
c) City of London Police (CoLP), including Action Fraud, the National Fraud Intelligence Bureau (NFIB) and the National Economic Crime Victim Care Unit (NECVCU)
d) Police Scotland
e) Police Service of Northern Ireland
f) National Crime Agency (NCA), including the National Economic Crime Centre (NECC)
g) National Cyber Security Centre (NCSC)

h) Dedicated Card Payment Crime Unit (DCPCU)
i) Financial Conduct Authority (FCA)

6.14 Providers should take seriously any report from a trusted flagger within its area of expertise. They are entitled to assume that any evidence and information provided with such a report is true so far as the entity concerned is aware, and that reasonable enquiries have been carried out. Except in the limited circumstances set out below (paragraphs 6.63 to 6.74), a provider is not required to accept the opinions of such a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

Risk assessment and fraud and financial services content

6.15 For the purposes of carrying out a risk assessment, providers should be aware that illegal content which amounts to a fraud or financial services offence could be in the form of any communication.

6.16 Illegal content amounting to these offences may be found on user-to-user services (including social media services, messaging services, dating services, and marketplaces and listings services) and providers should note that victims of fraud can be targeted through one type of service and then potentially moved to another service for further communication and transactions. Evidence shows that fraudulent content is present in search content. In the case of articles for use in frauds, search services may also be used to seek out such content.

6.17 See the Register of Risk chapter titled 'Fraud and financial services.'

Encouraging, assisting and conspiracy

6.18 Encouraging, assisting or conspiring to commit any of the offences considered in this chapter is also a priority offence. In all these cases, the content will only be illegal content to the extent that the offence being encouraged, assisted or conspired to is sufficiently linked to the UK - the question is whether the UK would prosecute the people involved. The rules which decide whether or not there is a sufficient link are very complicated and content moderators cannot be expected to understand them in detail. However, for the purposes of this guidance, content should be considered illegal if the person being encouraged or assisted, or with whom there is a conspiracy, is either British or located in the UK.

6.19 Encouraging could include words urging another person to carry out the offence. Assisting could include providing substantive help in carrying out the offence. There must either be intent to encourage/assist the offence, or belief that the offence will be committed. For conspiracy, there must be an agreement between two people and intent to carry out the offence.

False claims to be authorised or exempt for the purposes of carrying on regulated activity

6.20 This section relates to content that appears to involve the provision or promotion of financial products or services (e.g., investments, insurance, mortgages, credit) and relevant claims management businesses. It deals with false claims to be authorised or exempt for the purposes of carrying on regulated activity, which is one of the priority offences from the Financial Services and Markets Act 2000 (**'FSMA'**):

When the content claims to be made by an FCA or PRA authorised person

6.21 Service providers should first look for whether the content contains a claim by a person hereafter referred to as firm, which could include an individual) to be authorised by the FCA or Prudential Regulation Authority ('**PRA**'). If it does, providers should first identify any names of firms as appropriate, associated with the content in question and check these against the FS Register, accessible here, this could be either the firm posting the content or the firm depicted in the content. The FS Register is updated regularly and provides information on whether firms are authorised by either the FCA or PRA. Providers should check the particular status of a firm as listed on the FS Register in order to determine whether they are authorised.

6.22 It is important to remember that the FS Register includes information about a number of different categories of person and not just authorised persons. For example, the FS Register also includes details of appointed representatives, registered crypto asset firms and electronic money and payment services firms. Such persons will not necessarily be authorised persons. In order to check whether a person is authorised, service providers should therefore be careful to ensure that the FS Register shows the status of 'authorised'.

6.23 When providers review the FS Register they should check the details carefully to ensure the name and details match the name and details associated with the content. Service providers should be alert to the activities of 'clone firms'. Clone firms are not authorised but may try to convince consumers they are; see the Financial Conduct Authority's guide to clone firms and individuals. They will often use the name and address of a genuine firm, or they may copy the firm reference number ('**FRN'**), but other details will not match. It is important that the FRN is checked on the FS register to ensure it matches fully to the correct, authorised, firm.

6.24 If the firm is included as an authorised person on the FS Register, it is reasonable for a provider to conclude without further investigation that the content is lawful unless it is brought to their attention that the FCA or PRA has published a decision that it is not. There is no need to go on to consider the rest of this FSMA priority offences section. Providers may however wish to refer complainants to the FCA or PRA.

6.25 A service provider will have reasonable grounds to infer that a claim to be authorised is false and the content is illegal content if the firm is not included as an authorised firm on the FS Register or the details referred to in the online content do not match the details of the authorised firm on the FS Register. Providers should ensure that they have identified a false claim to be authorised. A person operating as an appointed representative or payment services firm, for example, may be lawfully engaged in financial services activity, but in this case they will *not* claim to be authorised themselves. False claims to be authorised are likely to be made using language such as "authorised and regulated by… [the FCA, the PRA etc.]".

6.26 Particular care should be taken when a firm is listed on the FS Register as unauthorised (usually in red) or included in the FCA Warning List here. Firms in red in the Register, or included on the Warning List, are unauthorized persons which the FCA is concerned are carrying on regulated business unlawfully. The FCA Warning List is a list of unauthorised firms and individuals that the FCA has identified may be providing services or products in in a way which would amount to one or more FSMA priority offences. For more information on the use of the FCA's Warning List, see paragraphs 6.68 to 6.69 below.

6.27 Providers of in-scope services should note that the unauthorised firms listed on the FS Register or included in the FCA Warning List are not exhaustive. The FCA will add firms to the

Register and Warning List as soon as possible. But if a firm isn't on the list, it could still be committing an offence.

When the content claims to be by an appointed representative

6.28 In circumstances where the content makes reference to a firm or individual acting as appointed representative of another firm or individual, providers should check the FS Register to establish whether the appointed representative is listed as a relevant current appointed representative. If they are not included on the FS Register, or if the information about the appointed representative's principal does not match that on the Register, it is reasonable for service providers to infer any person doing so is not, in fact, an appointed representative and the content should be considered to be illegal content.

Usage examples

- A company which does not appear on the FS Register, or whose entry does not say it is 'authorised', publishes content in which it says it is 'authorised and regulated by the FCA.'

Reasonably available information for user-to-user and search services

- The content suspected to be illegal content.
- Information provided by any complainant in a free text box, including information from any person the provider considers to be a trusted flagger*.
- Information from the Financial Services Register or FCA Warning List.

*A provider should accept the opinions of the FCA and PRA as to whether a person is authorised by them. However, the opinions of a third party are not determinative as to whether the post amounts to a claim to be authorised. Only a judgment of a UK court is binding on the provider in making this determination. A provider will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A7 of Annex 1.

Statute: Section 24 of the Financial Services and Markets Act 2000.

Fraud by false representation

6.29 This section includes the priority offences of fraud by false representation, fraud by abuse of position and the sole trader offence. Fraud by abuse of position is likely to be less identifiable in content online. Furthermore, it is difficult to imagine circumstances where content amounting to both this offence and participating in a fraudulent business carried on by a sole trader would not also amount to fraud by false representation (for these offences please see 6.59 to 6.62 below). Service providers should therefore consider fraud by false representation first of all, and we have provided the most substantive guidance on this offence.

6.30 It is an offence to **'dishonestly make a false representation'** where the person making such a representation **intends to make a gain** thereby (for themselves or others) ***or*** **to cause another person loss** (or expose them to the risk of loss). Content should be considered illegal where there are reasonable grounds to infer that it contains a false representation

(see below) that was made dishonestly for *either* of these two purposes. In order for content to be considered illegal, providers do *not* need to infer that the representation resulted in an actual gain or loss.

6.31 It will not be possible for providers to identify all instances of this sort of illegal content. A service provider will not always be in a position to know whether a representation is false, what the intent of the person is in making it, or whether they were dishonest. However, in some cases, it will be appropriate for providers to draw these inferences. Although providers need to consider both the conduct and the state of mind elements of the offence, in practice the same considerations are likely to play into both as both the conduct and state of mind elements require some form of dishonesty. For example, if a combination of factors exist which make it reasonable to infer a dishonest state of mind (the mental element of the offence), those same factors may make it reasonable to infer that a representation being made is false (the conduct element of the offence). For more information on state of mind in relation to this offence, see paragraph 6.39 to 6.40 below.

6.32 In this section, we first set out some of the key concepts, and then describe how service providers might approach them in practice.

6.33 It is important to note that identifying fraud online is particularly challenging and there is unlikely to be one factor alone that that indicates content is illegal. Instead, a combination of factors will indicate illegal content.

User reporting and fraud by false representation

6.34 User reports are likely to be particularly important in alerting service providers to untrue or misleading representations, particularly where there are a large number of reports from different users. On a user-to-user service, messages may have been exchanged between the user making a report and the account being reported *before* the complaint was made. If the complainant has provided copies of other messages or used the complaint form to give consent to the service provider viewing other messages, the provider should take these into account.

What is 'a false representation'?

6.35 A false representation is a representation (for example, a statement, suggestion, comment, inducement etc.) which is untrue or misleading and the person making it knows that it is or might be untrue or misleading. It can be expressed or made clear without explicit language, e.g. through the use of imagery or symbols.

6.36 A representation can be made in any medium. It could appear in content as written material or messages, photographs, videos, visual images, oral communication, data, comments, titles and descriptions.

6.37 The representation does *not* need to be made to another person. Content may still be judged illegal even where a person makes a representation to a machine or a piece of software which is able to respond without any need for human involvement. The representation will be *made* only when the content is transmitted.

6.38 We recognise that making inferences about what is true in an online context may be challenging for service providers. In many cases, providers will not be able to ascertain the facts of the case. However, it may be possible for providers to *infer* that a representation is false, from information they have available.

Dishonesty

6.39 For content to amount to illegal content under this offence, there must be reasonable grounds to infer that the false representation was made **dishonestly**. If dishonesty *cannot* reasonably be inferred, content should not be judged to be illegal.

6.40 We recognise that making inferences about dishonesty in an online context is particularly challenging. In many cases, providers will not be able to ascertain the person posting's actual state of knowledge or belief as to the facts. However, it is possible for providers to *infer* a person posting's knowledge or belief as to the facts from the nature of their content or behaviour online. The question of whether the conduct is dishonest is then determined by applying the standards of conduct shared by 'ordinary decent people'.[32]

Intention to make a gain or to cause another person loss

6.41 It is also a requirement of this offence that the person making the false representation did so intending to make a gain or to cause a loss to another or to expose another to a risk of loss. It does not matter if no actual gain was made or loss caused. The requirement is only that the person *intended* either of these things to happen.

6.42 As this requirement relates to a person's state of mind, we recognise that it presents challenges in the context of making a judgement about online content. However, it is possible for an intention to make a gain or cause a loss to be reasonably inferred through a representation, such as request to send money. Providers should keep in mind that a representation which can be reasonably inferred as an intention to make a gain or cause a loss might be completely legitimate, and that on its own an intention to make a gain or cause a loss will not amount to an offence of fraud by false representation. Below we provide guidance regarding how providers might identify other aspects of content which could lead to a reasonable inference of fraud by false representation.

Identifying content which amounts to fraud by false representation

6.43 As noted above at paragraph 6.33, it is unlikely that one factor alone will give rise to reasonable grounds to infer that content amounts to a fraud by false representation. Instead, service providers will need to consider a range of factors. Often a factor that is relevant to one part of the offence is also relevant to another. For example, the information which allows a provider to infer that there has been a false representation or an intent to make a gain may also be the grounds for inferring dishonesty.

6.44 Offenders' tactics are particularly likely to change over time and prompted by real world events, and so service providers will need to be alert to the many different ways in which false information may be dishonestly used to make a gain or cause another a loss. Providers should also refer to their risk assessments. It is ultimately up to providers to stay up to date with new indicators.

6.45 In the guidance below we have provided illustrative examples of 'red flag indicators' to assist service providers to identify content amounting to an offence of fraud by false representation. But these red flag indicators are not exhaustive. The main point to note is that in in order to identify fraud, service providers should not look for just one factor but instead look at a combination of factors. It is important to underline that the majority of the examples provided are not, in isolation, capable of constituting illegal content.

[32] This phrase is taken from case law regarding the meaning of dishonesty in a legal setting.

6.46 The offence requires there to be a dishonest false representation, and an intent to cause a loss/gain. This means that at least four things are needed, although it may only be necessary to consider two or three different factors to establish all four:

a) There must be some sort of a representation, which may relate to the identity of a person (for example the user) or to information within the content in question (or both);
b) There must be some information which suggests the representation is false;
c) There must be some information which could lead to a loss/gain; and
d) There must be some information which suggests that the person posting the content is doing so dishonestly. (An account name and information provided on a user's account profile is also content.)

6.47 Besides the illustrative factors we set out under each of these headings, there are several other contextual factors which are common in relation to fraud by false representation, but also often appear in lawful content. They should *not* be considered indicative of fraud by false representation on their own. We therefore do not treat them as 'red flag indicators', but note that they may be useful, where the provider can identify them, in assessing risks and prioritising content for review. We also consider that they may be helpful for a provider in deciding whether it should check what a URL or hyperlink leads to. As with 'red flag indicators', a provider would need to stay up to date with new contextual factors. Examples of this sort of factor are:

a) Use of lifestyle accounts which heavily feature content which contains wealth signifiers (e.g. currency, luxury cars, private airplanes, snapshots of bank accounts), where these are being used to back up claims about investments.
b) Sensationalist headlines about celebrities.
c) Edited or inauthentic images, AI generated images or celebrity images, which can be clicked on through an embedded hyperlink (taking users off-site), or are used conjunction with a link prompting users to move off site.

6.48 Service providers should take a pragmatic approach which considers whether it is more reasonable overall to infer that a dishonest false representation has been made than it is to assume the opposite.

6.49 The examples of specific information have been mapped against the overarching four categories to ensure clarity. Some of the factors below are only relevant to user-to-user services.

A representation, which may relate to the identity of the person posting or to information within the content in question (or both)

6.50 Any content could be a 'representation' of some sort. However, service providers should be aware of the following types of representation which are some examples of representations a fraudster might make:

a) A claim that an investment or the firm concerned is regulated.
b) A claim that an investment or the firm concerned is regulated by a body which does not exist (This is a particularly serious example and is very likely to be associated with a fraud).
c) A claim to represent a public figure, well known organisation, or brand, unless it is obviously done as a parody.
d) A claim to be a friend or a relative.
e) A claim to be a reputable seller.

f) A claim that a personal emergency has arisen.

Information which suggests the representation is false

6.51 Service providers should be aware of the following indicators which may suggest that the representation which has been made has been false. These are split into several categories:

Content specific anomalies

a) Content guaranteeing an obviously unrealistic rate of return within the time frame for investment or current environment, or which otherwise seem 'too good to be true'.
b) Highly unrealistic discounts or prices.
c) Posts using enticing language to suggest unrealistic gains; for example, 'easy money' or 'fast cash'.
d) Language which exerts pressure on those being requested to send money or invest, including time pressure which is not warranted.
e) Use of a stock image or an image linked to a different identity. For example, the use of publicly available image as a profile image. If there is a user report or complaint suggesting that an inauthentic image has been used, a service provider should carry out a reverse image search.
f) A claim that an emergency has arisen.

Technical anomalies and unusual user behaviour (user-to-user services)

a) Users registering multiple or repeat accounts that share the same phone number, IP address/device identifier, password or date of birth, except where there appears to be a legitimate reason to do so.
b) Accounts which issue a high volume of posts, user connection or 'friend' requests, where:

i) the majority of these are blocked/declined by other users; or
ii) such requests are persistently directed towards other users with whom the user concerned has no apparent connection or users in other countries.

Historic and current reports and complaints

a) A complaint that identity details or documentation are fake.
b) Accounts that are frequently flagged or reported by other users, particularly through dedicated reporting channels, unless the flags appear to be malicious (e.g. made by competitors).
c) A post which has been flagged as fraudulent by an account that is part of a notable user account verification scheme should be treated as particularly likely to be problematic, unless it is obviously run or posted as a parody.

Information which could lead to a loss/gain

6.52 Service providers should be aware of the following characteristics which may indicate that a loss/gain could have been made or attempted to be made:

a) A request, invitation or inducement to invest or send money, monetary instruments or digital assets (e.g. gift cards, rewards, crypto currency, in-game currency/items etc.).
b) A request to send other private financial or identification information, such as bank documents, bank details or identification documents.
c) A request to pay an upfront fee for something which would not normally require this (i.e. for a job).

d) URLs or hyperlinks to an external website where the user is encouraged to submit their details to take advantage of a potential investment opportunity or to sign up to a product subscription.
e) Content guaranteeing an obviously unrealistic rate of return within the time frame for investment or current environment, or which otherwise seem 'too good to be true'.
f) Obviously unrealistic discounts or prices.
g) Posts using enticing language to suggest obviously unrealistic gains; for example, 'easy money' or 'fast cash'.
h) Language which exerts pressure on those being requested to send money or invest, including time pressure which is not warranted.

Information which suggests that the person posting the content is doing so dishonestly

6.53 Service providers should be aware of the following indicators which may suggest that the user posting the content concerned is doing so dishonestly:

a) Disguised account information or activity (see below, paragraphs 6.54 to 6.55) and / or
b) Characteristics commonly associated with fraudulent behaviour (see below, para 6.56).

Disguised account information or activity

6.54 Where the person posting the content has taken steps to mask their identity or location, this may amount to a dishonest false representation, and providers should be alerted that dishonest activity could follow. However, there are many legitimate reasons why a person might mask their identity or location on a platform.

6.55 Examples of masking identity or location may include the following:

a) Stating a profile, account or other location which consistently differs from IP address location, device language or time zone settings.
b) Use of an account or page which claim to represent a public figure, well known organisation or brand, unless it is obviously run as a parody.
c) Links to a contact method (for example, a website or URL, telephone number or email address) different from that brand or organisation's known official channels.
d) A ‘copycat’ account.

Characteristics commonly associated with fraudulent behaviour

6.56 The following characteristics are commonly associated with fraudulent behaviour:

a) All points set out under “Information which suggests the representation is false”.
b) Claims that the investment or firm concerned is regulated by a body which does not exist. (This is a particularly serious example and is very likely to be associated with a fraud).
c) The use of apparently deliberately misspelt words or non-printable characters to evade automated filters (e.g. ‘0ne million d0llars’ or characters which are read by computers but not displayed to users).
d) A user who has purported to be a seller, but who stops responding to messages / blocks when a purchaser starts asking where the product is.

How should service providers approach the process of reviewing reasonably available information for fraud by false representation?

6.57 In the first instance a service provider should assess the primary information. This includes the complaint, the content in question, and the supporting evidence from the complainant.

If a provider is unable to make a content assessment based on primary information, then they should consider supplementary information as listed in the appropriate box below.

6.58 The reasonably available information that a service provider takes into consideration should be appropriate for the fraud type in question.

Note on usage examples

We have not given any usage examples here, due to the particularly strong importance of context to these judgments. Service providers should refer to the lists of identifiers above when identifying examples of content which are likely to meet the threshold for illegality.

Reasonably available information for user-to-user services

Primary information

- The content suspected to be illegal content.
- Any complaint and supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger, or by a verified account which the account posting the suspected fraudulent post is copying.*

Supplementary Information

- Metadata such as location, time of posting and IP address.
- Information on previous user activity, such as volume of posts, or friend requests and whether they are accepted, or other profiles.
- User profile information, such as the user profile image and any contact details or reference number.
- Information on previous complaints about the same content or account.
- A reverse image search, where a complaint is received which suggests an image is inauthentic.

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

Reasonably available information for search services

Primary Information

- The content suspected to be illegal content.
- Any complaint and supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger, or by a verified account which the account posting the suspected fraudulent post is copying.*

Supplementary Information

- Metadata such as location, IP address and domain name details.
- Information on previous complaints about the same search content or website.

- A reverse image search, where a complaint is received which suggests an image is inauthentic.

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A7 of Annex 1.

Statute: Section 2 of the Fraud Act 2006.

Case law: *Ivey v Genting Casinos (UK)* (trading as Cockfords Club) [2017] UKSC 67.

Other: Information about enforcement action against online service providers under consumer protection legislation is available at Competition and Markets Authority cases and projects - GOV.UK

Fraud by abuse of position and participating in fraudulent business carried on by sole trader etc.

6.59 Two further fraud offences are less likely to be identifiable on in-scope services. Content amounting to these offences would in any event be likely to amount to an offence of fraud by false representation. We set them out here for the sake of completeness.

Fraud by abuse of position

6.60 It is an offence for a person to commit fraud by way of a person dishonestly abusing their position. In order for content to be illegal under this offence there must be reasonable grounds to infer that the following criteria are met:

a) the person posting the content occupies a position in which they were expected to safeguard, or not to act against, the financial interests of another person;

b) in posting that content, they abused that position;

c) they did so dishonestly; *and*

d) they did so with the intent that, by that abuse, they would make a gain or cause a loss (or risk of loss).

6.61 Examples of relationships which could be abused include those between: a trustee and beneficiary; a director and a company; an employee and employer; partners or within the family, and any other relationship where the parties are not at arm's length (i.e. are sufficiently close to one another to infer that the user posting occupies a position in which they were expected to safeguard, or not to act against, the financial interests of another person .

Participating in fraudulent business carried on by sole trader etc

6.62 It is also an offence for a person to knowingly be a party to the carrying on of a business where the following criteria are met:

a) The business is carried on by a person who is outside the reach of section 993 of the Companies Act 2006 regarding carrying on the offence of fraudulent trading:

i) most sole traders i.e. individuals carrying on businesses would be outside the reach of that Act *but*

ii) a company, a person 'to whom section 993 of the Companies Act 2006 applies as if the person were a company', or a person 'exempted from the application of section 993 of the Companies Act 2006', would all be inside the reach of section 993 of that Act.

b) The business is carried on with the intent to defraud creditors of any person or for any other fraudulent purpose.

Note on usage examples

We have not given any usage examples here, as these offences are likely to be harder to identify than the offence of fraud by false representation.

Reasonably available information for user-to-user and search services

- The content suspected to be illegal content.
- Supporting information provided by any complainant, including information from any person the provider considers to be a trusted flagger*.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A7 of Annex 1.

Statute: Sections 4 and 9 of the Fraud Act 2006.

Financial services offences

6.63 We have dealt above with content amounting to false claims to be authorised or exempt for the purposes of carrying on a regulated activity, which is one of the priority fraud offences from the Financial Services and Markets Act 2000 (**'FSMA'**). Where reasonable grounds do not exist that content amounts to an offence mentioned in the above sections, but the content in question appears to involve the provision or promotion of financial products or services (e.g., investments, insurance, mortgages, or credit) or claim management activity, service providers should next consider whether the content amounts to one of the other FSMA offences. These include:

a) Contravention of prohibition on carrying on regulated activity in the UK unless authorised or exempt; and

b) Contravention of restrictions on financial promotions.

6.64 We refer to these priority offences together with the offence of false claims to be authorised or exempt for the purposes of carrying on regulated activity as the **'FSMA priority offences'**.

Persons neither claiming to be authorised nor an appointed representative

6.65 In many cases, online content encountered by providers that may amount to a FSMA priority offence will not contain any claim by a firm or individual to be either authorised or an appointed representative.

6.66 The remaining FMSA offences involve a high level of technical complexity with which non specialists cannot be expected to grapple. Service providers with their own legal teams may find more information on FSMA offences by consulting the FCA Handbook, and the legal annex accompanying this guidance.[33]

6.67 Service providers have reasonable grounds to infer that content amounts to a FSMA priority offence where:

a) The FCA or PRA provides them with an explanation of why, in its opinion, each part of the FSMA priority offence concerned is present or satisfied; unless
b) An individual at the service provider who is reviewing the opinion is aware of evidence to the contrary, which is unavailable to the FCA or PRA.

Use of the FCA's warning list

6.68 Service providers should also pay particular attention to the inclusion of firms and individuals on the FCA Warning List. The FCA Warning List is a list of unauthorised firms and individuals that the FCA has identified may be providing services or products in breach of one or more FSMA priority offences. A firm or individual's presence on the Warning List may be taken as reasonable grounds to infer that the expert regulator has looked at the person's activities and concluded that they appear to be committing one or more offences. However, the fact that a person is not included on the list should *no*t be considered proof that a person is operating lawfully.

6.69 Where a piece of content concerns an investment and it is possible to identify a particular firm or individual who appears to be offering this investment, service providers should check the name of the firm or individual in question against the Warning List. Where the name is identified as a person who may be providing financial services or products without authorisation, service providers will have reasonable grounds to infer that content amounts to a FSMA offence *except* where the provider has evidence to suggest the contrary.

Note on usage examples

We have not given any usage examples here, due to the particular complexity of the offence. Service providers should have regard to information provided to them by bodies mentioned in paragraph 6.13.

Reasonably available information for user-to-user and search services

- The content suspected to be illegal content.
- Information on the Financial Conduct Authority's Warning List.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

[33] See particularly: Financial Conduct Authority, 2005. FCA Handbook: PERG 8.23 Regulated activities. [accessed 19 September 2023].

*A provider should consider the opinions of the FCA or PRA as to whether content amounts to a FSMA priority offence in accordance with paragraph 6.67. Otherwise, only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A7 of Annex 1.

Statute: Sections 19, 21, 23 and 25 of the Financial Services and Markets Act 2000.

Misleading statements and impressions about investments

6.70 Also included in the Act's priority offences is the offence of making a false or misleading statement (or concealing facts), or creating a false or misleading impression, in connection with a relevant agreement or relevant investment. However, in practice we are unaware of any examples on in-scope services of the offence of creating a misleading impression about an investment with the intention of inducing another person to do or not do something in relation to that investment. This section therefore focuses on misleading statements.

6.71 Content should be treated as illegal where there are reasonable grounds to infer that the following criteria are met:

a) Either:
   i) a person makes a statement in relation to which either of the following is true:
      a. they *know* it to be false or misleading in a material respect; or
      b. they are *reckless* as to whether the statement is false or misleading in a material respect; or
   ii) whether in connection with a statement made by them or otherwise, the person *dishonestly* conceals any material facts.

b) The person does any of the above with the intention of inducing or is reckless as to whether doing any of the above actions may induce another person to:
   i) enter into, offer to enter into, or to refrain from entering or offering to enter into, a relevant agreement, or
   ii) exercise, or refrain from exercising, any rights conferred by a relevant investment.

6.72 A possible example of this offence would be someone lying about a company's financial position in order to sell shares in that company to another person.

6.73 The offence poses a particular challenge to content judgements because of its high level of technical complexity. Service providers with their own legal teams may find more information in the legal annex accompanying this guidance.[34]

6.74 However, in most cases, a provider is likely to become aware that a statement meets the criteria set out in paragraph in 6.71 only when it has been alerted to this by specialist third parties such law enforcement after a successful prosecution, or by a regulator with appropriate expertise such as the FCA.

[34] See particularly: Financial Conduct Authority, 2005. FCA Handbook: PERG 8.23 Regulated activities. [accessed 19 September 2023].

Note on usage examples

We have not given any usage examples here, due to the particularly strong importance of context to these judgments.

Reasonably available information for user-to-user and search services

- The content suspected to be illegal content.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

* A provider should consider the opinions of the FCA or PRA as to whether content amounts to a FSMA priority offence in accordance with paragraph 6.74. Otherwise, only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A7 of Annex 1.

Statute: Sections 89 and 90 of the Financial Services Act 2012.

Articles for use in frauds

6.75 This section looks at the priority offence of making or supplying articles for use in frauds.

6.76 It is an offence to **make**, **adapt**, **supply** or **offer to supply** any **article**, **knowing** that it is designed or adapted for use in the course of or in connection with fraud. It is also an offence to **make**, **adapt**, **supply** or **offer to supply any article, intending that it be used to commit, or assist in the commission of, fraud**.

6.77 Articles need not be tangible things. They can include data, for example lists of other people's stolen credit/debit card information, PIN numbers or passwords, and software or programs.[35] Data of this kind is commonly advertised for sale using the term 'fullz'[36] or 'dump'[37]; for example in phrases such as 'PIN dump' or 'credit card dump.'

6.78 Content online is most likely to be 'offering to supply'. Data which is provided online for free will be an offer for supply before another person has taken possession of it, and a 'supply' after that. (Service providers which use lawyers to advise on contracts may be aware that in relation to contracts the word 'offer' has a precise meaning, requiring full details of e.g. price

[35] Such software or programs may include card-skimming software or apps.
[36] The term 'fullz' is commonly used by bad actors to identify data that are sold or traded. It is short for 'full information'. A 'fullz' file typically comprises of complete set of information about an individual or individuals which might include their name, address, date of birth, credit card number, expiration date, card security code and other personal info. This information can then be used for identity theft and other types of fraudulent activity.
[37] The term 'dump' is commonly used by bad actors to refer to information contained on the magnetic stripe of a credit or debit card. This will typically include the owner's name, card number and expiration date. Dumps are usually stolen using malware on point of sale systems (POS). Every card which is used on those terminals is copied and transferred to a bad actor who may then use this information themselves or sell it on as a 'dump' for purchase by others.

etc. That is not how the word 'offer' should be considered for the purposes of this offence. It should take its ordinary English meaning.)

6.79 In practice, most 'making', 'adapting' and the 'supply' of tangible items (i.e. other than data) will take place offline, meaning service providers are unlikely to encounter content which amounts to the 'making' and 'adapting' offences, or the 'supply' of tangible items *directly*. However, providers should consider whether content encourages the commission of these offences (for example, by urging someone to do it), or assists in the commission of these offences (for example, by providing instructions on how to do it). For these offences, there must be reasonable grounds to infer that the person posting has intent. This may be particularly relevant where, for example, a person has posted content directing other people to another location to find articles for use in frauds.

6.80 It is not uncommon for people posting to be open about the likely use of articles offered for supply online. Service providers should infer knowledge and intent where the person posting says that the article is for fraud, or says that they mean it to be used for fraud, unless what is said is obviously a joke. Platforms should consider the context in which the content is posted in order to make this judgement. For example, if the content is posted by a user in response to an unconnected user's request for help in committing frauds, it is reasonable to infer intent.

6.81 Otherwise, when considering the person posting's state of mind, service providers should ask themselves whether there is any possible use of the article concerned which is not for fraud, and how likely it is that use of it would not be for fraud. If it is more likely than not that the article is for use in fraud, the content is illegal content. If any non-fraudulent use would still be illegal, then platforms should also take the view that the content is illegal content.

Usage examples

- An offer to supply a fake passport (most fake passports are provided for use in social security fraud).
- An offer to supply or the supply of passwords.
- An offer to supply or the supply of Bank Identification Numbers (BINs) – the first six digits of a credit/debit card number, which determines card issuer, card type, level of security and country of origin.
- An offer to supply or the supply of the data loaded onto a credit card's magnetic strip, including bank account number, cardholder name, expiration date, service code and personal identification number (PIN) – often referred to as 'dump'.
- An offer to supply or the supply of a full set of personal information, including date of birth, mother's maiden name, email, home address, phone number, etc., often described as 'fullz'.
- 'Fraud bibles' and instruction manuals providing guidance on how to carry out fraudulent activity.

Reasonably available information for user-to-user and search services

- The content suspected to be illegal content.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A7 of Annex 1.

Statute: Section 7 of the Fraud Act 2006; section 49(3) of the Criminal Justice and Licensing (Scotland) Act 2010 (articles for use in fraud).

Caselaw: *R v Dhillon* [2000] Crim LR 760.

Offences related to criminal property

6.82 Offences relating to criminal property include the sale of stolen goods and the sale of items which facilitate theft. In particular, the following are priority offences under the Act:

a) Concealing etc of criminal property**:** It is an offence to conceal; disguise; convert or transfer criminal property; or to remove criminal property from England, Wales, Scotland or Northern Ireland. Concealing or disguising criminal property includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

b) Arrangements related to criminal property**:** It is an offence to enter into or becomes concerned in an arrangement which a person knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person.

c) Acquisition, use and possession of criminal property**:** It is an offence to acquire, use or possess criminal property.

6.83 Property is "criminal property" if:

a) It comes from criminal conduct (in whole or part and whether directly or indirectly); *and*

b) The person knows or suspects this.

6.84 If a person states in a post that money depicted is stolen (and that claim is not evidently a joke) service providers should assume that the statement is in earnest. There would therefore be reasonable grounds to infer that the money in question was criminal property and that the person knew this.

6.85 In practice, we are aware of few circumstances in which these offences would give rise directly to any illegal content. Service providers should consider whether content amounts to an offence of encouraging, assisting or conspiring with a person to do any of the above, as set out in paragraphs 6.18 to 6.19.

Relevant defences

6.86 Content should not be judged to be illegal where there are reasonable grounds to infer that:

a) The person posting the content knew, or reasonably believed, that the relevant criminal conduct occurred in a country or territory outside the United Kingdom; *and*

b) The criminal conduct was *not* unlawful under the criminal law applying in that country or territory at the time it occurred.

6.87 It should be noted that this defence does *not* apply if the relevant conduct is of a type described in the Proceeds of Crime Act 2002 (Money Laundering: Exceptions to Overseas Conduct Defence) Order 2006 (SI 2006/1070)).

Usage example

- Content offering stolen credentials for sale, where it is clear that they are stolen.

Reasonably available information for user-to-user and search services

- The content suspected to be illegal content.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A7 of Annex 1.

Statute: Section 327, 328 and 329 of the Proceeds of Crime Act 2002.

7. Drugs and psychoactive substances

7.1 This chapter considers the offences relating to unlawful supplying, or offering to supply of controlled drugs, articles used for the administration or preparation of controlled drugs ('drugs articles'), and psychoactive substances. These are priority offences under the Online Safety Act ('**the Act**').

Priority drugs and psychoactive substances offences

7.2 The priority offences relating to drugs and psychoactive substances offences comprise:

a) The unlawful supply, or offer to supply, of controlled drugs;

b) The unlawful supply, or offer to supply, of articles for administering or preparing controlled drugs;

c) The supply, or offer to supply, of psychoactive substances; and

d) Inciting any offence under the Misuse of Drugs Act 1971.

7.3 The priority offences covered in this section relate to the supply of drugs, psychoactive substances and related articles. They also include the related offences of encouraging or assisting these offences, conspiracy, and knowingly engaging in a common purpose to commit them.

7.4 Where content relates to the exploitation of others for the purpose of the supply of drugs, service providers should first consider whether the content amounts to a relevant human trafficking offence (see Chapter 11 on 'Human Trafficking').

Risk assessment for illegal content related to drugs and psychoactive substances

7.1 For the purpose of risk assessment, services should be aware that illegal content amounting to a drug or psychoactive substance offence could be in the form of any communication.

7.2 Content amounting to these offences may be found on user-to-user services, with social media services and private messaging services at particularly high risk. Video-sharing services are also at risk from being used to access drugs. Our research indicates that discussion forums and chat room services, dating services and marketplace and listing services are also service types that can be linked to the supply of drugs, although the known use of these services is much more limited. Drugs content may also be discoverable via search services.

7.3 See the Register of Risks chapter titled 'Drugs and psychoactive substances.'

Controlled drugs (offer to supply)

7.4 Service providers should first consider whether the content in question is making an **offer to supply a 'controlled drug' to another person (or persons)**. If an offer *is* being made and there are reasonable grounds to infer that the product or substance being offered is a controlled substance as set out at paragraph 7.9, the content should be considered to be illegal.

7.5 If the suspected 'offer' being made in the content is either fictional (such as a clip from a film) or made in jest, then the content should not be considered illegal.

7.6 Content merely depicting controlled drugs, or a person consuming a controlled drug, would not be illegal content under this offence unless the content is also offering to supply the drug.

7.7 Service providers which use lawyers to advise on contracts may be aware that in relation to contracts the word 'offer' has a precise meaning, requiring full details of, for example, price etc. That is *not* how the word 'offer' should be considered for the purposes of this offence. It should take its ordinary English meaning.

Offers to supply made from outside the UK

7.8 It is *not* relevant whether the drug is a controlled substance in the state or territory from which the post originated. The relevant factor is whether the content could be accessed by a person within the United Kingdom and constitutes an offer to supply to people in the UK. The content should be considered to constitute an offer to supply, *except* where the content or context indicates that the offer does not extend to people within the United Kingdom. For example, where the content states that the offer is *not* extended to people within the United Kingdom or that is extended *only* to people in a specific territory outside the United Kingdom.

What are controlled drugs?

7.9 A full list of controlled drugs can be found in schedule 2 of the Misuse of Drugs Act 1971 ('MDA 1971') accessible here in four parts. The Secretary of State may amend this list by either adding or removing products or substances from it and may also specify new drugs in a Temporary Class Drug Order. [38] Service providers should ensure they keep up to date with these developments.

7.10 It is important to note that many 'controlled drugs' have legitimate uses in a medical setting. As such, regulations provide certain exemptions from the provisions of the MDA 1971. The key regulations are contained in the Misuse of Drugs Regulations 2001 (SI 2001/3998).

7.11 Given the strict regulation, it is our view that exempted content is unlikely to be found on U2U services, and so providers of such services will not need to consider such exemptions. However, the same may not be able to be said for search services. It may be harder for search services to distinguish between, for example, search content offering to supply a controlled drug illegally, and search content offering to supply a controlled drug or its derivative in a lawful way under a relevant exemption. Service providers should take a

[38] Novel and synthetic drugs, formerly known as 'legal highs', may be subject to Temporary Class Drug orders before they are made a 'controlled drug'. Where service providers are aware of this, they should be treated in the same way as a controlled drug. Content offering to supply such substances should be considered illegal.

pragmatic view, considering the context available and whether controlled drugs appear to be sold in the UK.

Controlled drug names

7.12 Service providers should keep in mind that posters may refer to the same substances using slang or 'street names.' We set out some slang or street names of which we are aware in Table 1 below. For the avoidance of doubt, this is not a complete list and as such should be used with caution. Slang changes over time. Service providers should refer to the most up to date information they have.

7.13 Service providers which have access to it should also refer to the list of common drug slang provided to them by the National Crime Agency.

7.14 Service providers should note that users offering drugs for sale will often make use of emojis in place of street names. Common examples include the snow emoji for cocaine, plant or leaf emojis for marijuana and the candy emoji for MDMA.

Table 1: List of commonly used street names for controlled drugs[39]

A	B	C
Acid (lysergide and other N-alkyl derivatives of lysergamide) **AMT** (alpha-methyl tryptamine) **Anadrol** (oxymetholone) **Anabolic steroids** (including nandrolone and testosterone) **Angel dust** (phencyclidine) **Anavar** (oxymetholone) **Ayahuasca** (dimethyltryptamine)	**Benzodiazepines or Benzos** (including alprazolamdiazepam, lorazepam and nitrazepam) **Blow** (cocaine)	**Captagon** (fenethylline) **Charlie** (cocaine) **Coke** (cocaine) **Crack** (cocaine) **Crystal meth** (methylamphetamine)
D	**E**	**F**
Dianabol or Dbol (methandienone) **DMT** (dimethyltryptamine) **Dope** (cannabis and cannabis resin)	**E** (a derivative of phenethylamine) **Ecstasy** (a derivative of phenethylamine) **Edibles** (tetrahydrocannabinol infused sweets)	**Flavours** (cannabis) **Fenty or Fetty** (fentanyl)

[39] This list also includes trade names for prescription medication, in addition to street names or slang.

	Equipoise or EQ (boldenone undecylenate)	
G	**H**	**K**
GHB (gamma-hydroxybutyrate) **GBL** (gamma-butyrolactone) **Gear** (diamorphine) **Gelato** (cannabis)	**Halo or halotestin** (fluoxymesterone) **Hash** or **Hashish** (cannabis) **Haze** (cannabis) **HCG** (chorionic gonadotrophin) **Herb** (Cannabis and cannabis resin) **Heroin** (Diamorphine)	**K** (ketamine) **Ket** (ketamine)
L	**M**	**N**
Laughing gas (nitrous oxide)[40] **LSD** (lysergide and other N-alkyl derivatives of lysergamide) **Lyrica** (pregabalin)	**Magic brownies** (baked goods which contain cannabis) **Magic mushrooms** (psilocin) **Marijuana** (cannabis and cannabis resin) **M-CAT** (mephedrone) **MD** (a derivative of phenethylamine) **MDMA** (a derivative of phenethylamine) **Meow meow** (mephedrone) **Meph** (mephedrone) **Meth** (methylamphetamine) **Methamphetamine** (methylamphetamine) **Molly** (methylenedioxy-methamphetamine; a	**Nos** (nitrous oxide)

[40] As of 8 November 2023, nitrous oxide is classified as a Class C substance under the Misuse of Drugs Act 1971. It is illegal to possess, supply, import, export or produce nitrous oxide outside of its intended legitimate purposes.

	derivative of phenethylamine)	
O	**P**	**R**
Oxandrin (oxandrolone) **OxyContin or Oxy** (oxycodone)	**PCP** (phencyclidine) **Pills** (a derivative of phenethylamine) **Pot** (cannabis) **Powder** (cocaine) **Pub grub** (cocaine)	**Resin** (cannabis resin)
S	**T**	**U**
Shrooms (psilocin) **Skag** (diamorphine) **Skunk** (cannabis) **Smack** (diamorphine) **Snow** (cocaine) **Speed** (amphetamine) **Special K** (ketamine) **Strains** (cannabis)	**Tabs** (lysergide and other N-alkyl derivatives of lysergamide) **Tickets** (cocaine)	**Uppers** (amphetamine)
W	**X**	
Weed (cannabis) **White** (cocaine) **Winstrol or Winny** (stanozolol)	**Xanax** (alprazolam)	

Usage examples

- A social media post offering to supply a controlled drug to another person.
- A website that acts as an online marketplace that advertises controlled drugs it is willing to supply.
- A listing on an online marketplace advertising the same of controlled substances.
- A direct message (including in a group chat) where one user makes an offer for the supply of a controlled drug to another person.

Reasonably available information for user-to-user services

- The content suspected to be illegal content.
- A number of the messages or posts immediately preceding the content to show the nature of the substance being offered for supply, the context in which it is being offered (for example, in earnest, as a joke) and whether content is being offered for supply within the UK or not. The number viewed should be sufficient to judge this, but (in keeping with the principle of data minimisation) no more than sufficient.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

Reasonably available information for search services

- The content suspected to be illegal content.
- The webpage on which the content is posted, including its URL and any banner/sidebar.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A8 of Annex 1.

Statute: Section 4(3) of the Misuse of Drugs Act 1971.

Case law: *R v Prior* [2004] EWCA Crim 1147; R *v Dhillon* [2000] Crim LR 760.

Guidance on Content Harmful to Children: Section 9, 'Guidance on harmful substances content'

Psychoactive substances (offer to supply)

7.15 If content is not judged to be illegal under the terms set out in the 'Controlled substances' section, service providers should next consider whether the content is making **an offer to supply a psychoactive substance**. If there are reasonable grounds to infer that this is the case, the content in question should be treated as illegal.

7.16 An offer to supply has the same meaning in relation to this offence as in the case of controlled drugs and the same considerations should be taken into account (see paragraphs 7.4 to 7.7).

What is a psychoactive substance?

7.17 A psychoactive substance is any substance which is capable of producing a psychoactive effect when a person consumes it, *except* where the substance in question is an exempted substance as set out in schedule 1 of the Psychoactive Substances Act 2016 (see paragraph 7.19).

7.18 A psychoactive effect is an effect which stimulates or depresses a person's central nervous system or affects the person's mental or emotional state.

7.19 The following substances are exempted and should *not* be considered psychoactive, *except* where they contain an additional psychoactive substance which is not exempted:

a) Alcohol or alcoholic products

b) Caffeine or caffeine products

c) Nicotine, tobacco or tobacco products

d) Substances which are ordinarily consumed as food and which do not contain a 'prohibited ingredient' (that is, an ingredient not naturally occurring in the food which has not been authorized for addition in a food).

Usage examples

- A social media post offering to supply a psychoactive substance.
- A listing on a marketplace advertising the sale of a psychoactive substance.

Reasonably available information for user-to-user services

- The content suspected to be illegal content.
- A number of the messages or posts immediately preceding the content to show the nature of the substance being offered for supply and the context in which it is being offered (for example, in earnest, as a joke). The number viewed should be sufficient to judge this, but (in keeping with the principle of data minimisation) no more than sufficient.
- Information provided by any complainant in a free text box, including information provided by any person the provider considers to be a trusted flagger*.

Reasonably available information for search services

- The content suspected to be illegal content.
- The webpage on which the content is posted, including its URL and any banner/sidebar.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A8 of Annex 1.

Statute: Section 5 of the Psychoactive Substances Act 2016.

Guidance on Content Harmful to Children: Section 9, 'Guidance on harmful substances content'

Drugs articles (offer to supply)

7.20 In addition, content should be considered illegal where there are reasonable grounds to infer that it amounts to either of the following:

a) to **supply or offer to supply articles** (other than a hypodermic syringe, or any part of one) **made or adapted for the purpose of administering a controlled drug**, where the administration of the drug will be unlawful; or

b) to **supply or offer to supply articles made or adapted to be used in the preparation of a controlled drug** for unlawful administration.

7.21 The person posting the content must have a belief that the article is to be used in circumstances where the administration is unlawful.

7.22 The Misuse of Drugs Regulations 2001 (SI 2001/3998) provide exemptions for certain individuals when offering to supply specific drug articles. It is our view that service providers are unlikely to encounter this exempted content online.

7.23 In practice, we are aware that many items sold online that may be used as drugs articles may also have lawful uses. For example, bongs and pipes may be used for the consumption of tobacco and the hemp leaf symbol by way of decoration is used by people who have no intention of consuming the drug.

7.24 In light of this, in order to have reasonable grounds to infer about the purpose of the article we consider that providers are likely to require express words or strong contextual clues about its proposed use.

Usage examples

- A social media post, website, or listing on a marketplace offering a bong or pipe for sale where contextual clues strongly suggest it is to be used for the administration of marijuana.

Reasonably available information for user-to-user services

- The content suspected to be illegal content.
- A number of the messages or posts immediately preceding the content to show information regarding the article and purpose it. The number viewed should be sufficient to judge this, but (in keeping with the principle of data minimisation) no more than sufficient.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

Reasonably available information for search services

- The content suspected to be illegal content.
- The webpage on which the content is posted, including its URL and any banner/sidebar.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A8 of Annex 1.

Statute: Section 9A of the Misuse of Drugs Act 1971.

Guidance on Content Harmful to Children: Section 9, 'Guidance on harmful substances content'

Inciting any offence under the Misuse of Drugs Act 1971, encouraging or assisting

7.25 Service providers should consider whether a person posting content intends to suggest or 'urges' other people to unlawfully produce, supply, offer or obtain a controlled drug. Whether or not other individuals comply or engage with the post is irrelevant.

7.26 Rarely, content moderators may come across content which amounts to incitement to commit an offence under the Misuse of Drugs Act 1971, or an offence of encouraging or assisting one of the other offences in this section, or conspiracy to commit one of these offences.

7.27 Content amounting to detailed instructions on how to cultivate or produce controlled drugs or unlawful psychoactive substances would be likely to amount to this offence.

7.28 Further, content which consists of a URL or QR code without any accompanying text may amount to encouragement or assistance, if the context is such that intent can be reasonably inferred.

Usage examples

- Instructions on cultivation and production of cannabis.
- A URL or QR code linking to a webpage or other location in which controlled drugs are offered for sale.

Reasonably available information for user-to-user services

- The content suspected to be illegal content.
- A number of the messages or posts immediately preceding the content to show whether it intends to suggest or 'urges' people to unlawfully produce, supply, offer or obtain a controlled drug. The number viewed should be sufficient to judge this, but (in keeping with the principle of data minimisation) no more than sufficient.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

Reasonably available information for search services

- The content suspected to be illegal content.
- The webpage on which the content is posted, including its URL and any banner/sidebar.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A8 of Annex 1.

Statute: Section 19 of the Misuse of Drugs Act 1971.

Case law: *Regina v Marlow* [1997] Crim LR 897.

Guidance on Content Harmful to Children: Section 9, 'Guidance on harmful substances content'

8. Firearms and other weapons

Priority firearms and other weapons offences

8.1 This chapter considers the firearms and other weapons offences that are priority offences under the Online Safety Act ('**the Act**').

8.2 These offences cover the following types of weapons, some of which we have grouped together where appropriate:

a) Firearms, their parts, ammunition, including air weapons and shotguns;

b) 3D printing instructions for guns and gun parts;

c) Knives;

d) 'Offensive' weapons, including axes and crossbows, knuckledusters, corrosive substances, blowpipes and truncheons; and

e) Imitation firearms.

8.3 We first consider the priority offences which can be committed online, and then the offences of encouraging, assisting and conspiracy as they relate to offences which take place offline.

8.4 Providers should turn to this section whenever they are considering content involving a weapon, a part of a weapon or ammunition for a weapon. The inclusion of some weapons in the firearms section may not be intuitive to providers. For example, in UK criminal law, pepper spray is a firearm and so are stun guns, which are often known by a brand name, tasers. It is very important that providers check both the 'firearms' and the 'offensive weapons' lists carefully if unsure where a weapon may be dealt with.

8.5 It should be noted that merely depicting a firearm or other weapon, including its active use, is *not* illegal.

Risk assessment for firearms and weapons offences

8.6 For the purposes of carrying out a risk assessment, providers should be aware that priority illegal content which amounts to firearm offences may take the form of any type of communication. However, we acknowledge that identifying online content which amounts to these offences is likely to be challenging due to the difficulty of understanding if the person advertising the firearm for sale is a registered firearms dealer who is authorised for the sale in question (see 'Firearms etc.' below). We expect that information from sufficiently expert third parties might help service providers to make these inferences.

8.7 Content amounting to firearms offences may be found on user-to-user services and may be searched for and accessed through search services. Online marketplaces and listing services, messaging services, social media services, and discussion forums and chat rooms services will be at particular risk of being used to host such content.

8.8 For more information on harms relating to firearms and other weapons offences see the Register of Risks titled 'Firearms and other weapons offences'.

Firearms etc.

8.9 This section deals with the priority offences in the Firearms Act 1968 and, where relevant, the Firearms (Northern Ireland) Order 2004 (S.I. 2004/702 (N.I. 3)) and the Air Weapons and Licensing (Scotland) Act 2015 (asp 10). These offences are broadly similar, but differ in some small instances. For example, the definition of a 'component part' in Northern Irish legislation includes magazines, which is not the case in England and Wales or Scotland. Service providers familiar with offences in any one jurisdiction should familiarise themselves with these differences.

8.10 Although this section is called 'Firearms etc.', not all the weapons it covers are '**firearms'** in the common meaning of the word. The legislation itself includes a narrower definition of 'firearms' which excludes some types of weapons that many laypeople might regard as a firearm. Conversely, the definition of 'firearms' includes some weapons which a layperson might not immediately describe as firearms. The definitions of different weapons can be technical and, in some cases, require specialist expertise.

8.11 In what follows we have structured the reasoning in order to ensure that providers can consider the easiest questions first. Providers should work their way through the questions in this section if the weapon in the content looks as if it may be some sort of gun or projectile weapon powered by something other than a drawstring or a person's breath, or it looks like the component part of such a weapon or ammunition used by such a weapon.

8.12 Component parts include:

e) Any barrel, chamber or cylinder;

f) Any frame, body or receiver;

g) Any breech, block or bolt (or any other mechanism for containing the charge at the rear of the chamber); or

h) Any action, any part of a firearm which directly bears the pressure caused by firing and any magazine.

8.13 It is an offence to **expose weapons covered by the legislation (including ammunition and parts) for sale (in/to the UK) without authorisation, where this exposure is made by way of trade or business**.

8.14 The firearm offences covered in this section are complex. Below, we provide a process by which providers may make illegal content judgements in relation to priority firearms offences, based on a sequence of key questions, outlined below (questions A to G). Providers should consider each question sequentially.

A. Is the content exposing a possible 'firearms' weapon, weapon part or ammunition for sale?

8.15 Providers should first consider whether the possible 'firearms' weapon, part or ammunition in question is being exposed for sale.

8.16 If it is not being exposed for sale, the content should *not* be considered illegal content under a priority firearms offence.

8.17 '**Expose for sale**' here means to display or offer firearms for the purposes of sale. An item is considered exposed for sale if it is visible and available to attract offers of purchase. No offer to buy is needed for an 'exposure for sale' to have occurred. Content which advertises an item for sale should be considered to be exposing the item for sale.

8.18 If an item is posted as a listing on an online marketplace it is 'exposed for sale', but exposure for sale can also happen through other means, such as user-generated posts on social media. For example, a picture of a revolver posted on a service with a description of it, a price and/or details about how it could be purchased would be likely to amount to an exposure for sale. It is not, however, necessary that *all* of these elements be present for an exposure for sale to have taken place, only that it be reasonable to infer that such an exposure has occurred.

8.19 The concept of 'exposure for sale' encompasses content which shows a weapon for sale by linking a potential buyer off-platform (for example, to an encrypted messaging app) to arrange the completion of the transfer or sale.

8.20 If there is an exposure for sale, the content is not necessarily illegal, but it could still be, so providers need to go on to consider the following questions.

B. Is the possible 'firearms' weapon an antique firearm which is sold, transferred, purchased, acquired or possessed as a curiosity or ornament, *or* a deactivated firearm?

8.21 If the weapon in question is an 'antique firearm' *and* is being sold, transferred, purchased, acquired or possessed as a 'curiosity or ornament', content should *not* be considered illegal content under a priority firearms offence. This is an exemption from the offence.

8.22 There is a technical definition of 'antique firearm' which is likely to be beyond a non-specialist's ability to apply. However, a firearm is only an antique firearm if it was manufactured before 1st September 1939.

8.23 The exemption also only applies if the weapon is being exposed for sale as a curiosity or ornament. Express words would be needed for providers to reasonably infer that this is the case.

8.24 There is also an exemption for previously working firearms that have been 'deactivated' and which can no longer be used as live firearms. A deactivated firearm is defined as any firearm that has been deactivated to a Home Office deactivation specification, has been inspected by a UK Proof House and has subsequently been issued with a UK deactivation certificate by the same UK Proof House. A weapon can be reasonably inferred to have been deactivated if this is stated in the content (and there is no evidence to suggest otherwise) or if the post shows that the weapon being exposed for sale bears a relevant mark from a Proof House. There are two Proof Houses in the United Kingdom, and their marks are as follows:

- Birmingham Proof House: crossed swords with the letters 'DA' to the right and left, and numerals denoting the year of deactivation (for example, 10 for 2010) written below; and
- London Proof House: a cutlass-like sword, with the letters 'DA' above in italicised writing and numerals denoting the year of deactivation below.

8.25 If neither of these exemptions apply, the content is not necessarily illegal, but it could still be, so providers need to go on to consider the following questions.

C. Is the possible 'firearms' weapon a 'prohibited weapon'?

8.26 '**Prohibited weapons**' are a special class of weapons that have particularly strict limitations on sale, transfer, possession etc. Sale, transfer and possession etc. is authorised by the relevant Secretary of State. If the weapon in question *is* a prohibited weapon, providers should refer to questions D1 and D2. If it *isn't*, providers should skip questions D1 and D2 and go to question E.

8.27 A list of prohibited weapons can be found **here**. Providers should also consider the following weapons: [41]

a) Any self-loading or pump-action smooth-bore gun which is not an air weapon or chambered for .22 rim-fire cartridges and either has a barrel less than 24 inches .96 centimetres in length or is less than 102 centimetres in length overall;

b) Bump stocks which are capable of being added to any firearm, (not just a lethal barrelled weapon); and

c) As component parts, any action, and any part of a firearm which directly bears the pressure caused by firing and any magazine.

8.28 Providers should always refer to the full list of prohibited weapons. However, some of the more common prohibited weapons included in the full list above are set out below together with examples:

a) Fully automatic or burst-fire weapons, including machine guns;

b) Semi-automatic, self-unloading or pump-action rifles that fire centre-fire ammunition, *except* where the rifle is chambered for a .22 rim-fire cartridge or smaller; including:

i) lever-release rifles; and
ii) manually actuated release system (MARS) rifles;

c) Any cartridge-ammunition handgun or revolver with a barrel length of less than 30cm or an overall length of less than 60cm (*except* air weapons, muzzle-loading guns or firearms designed for use as a signalling apparatus);

d) Any air rifle which is designed or adapted to be 'self-contained', that is which makes use of a pressurised propellant gas which is stored in a cartridge also containing the missile; [42]

[41] As contained in Art.45 of the Firearms (Northern Ireland) Order 2004/702 (S.I. 2004/702 (N.I. 3)

[42] Air rifles which contain a separate reservoir of compressed gas, or which require the addition of a CO_2 bulb or canister in order to fire, are not 'self-contained' and are therefore nor prohibited. They may, however, be restricted firearms – see below.

e) Any rocket launcher or any mortar for projecting a stabilised missile (*except* those used for pyrotechnic purposes or as a signalling apparatus);
f) Any weapon designed or adapted for the discharge of electricity[43] or any noxious liquid, gas or other thing; for example, front-venting blank firers (sometimes called 'gas alarm pistols'), stun guns, electric shock devices and CS gas (but *not* cattle prods in most cases); and
g) Any firearm disguised as another object; for example pen guns, key fob guns and phone guns. A firearm is a 'lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged.

Imitation firearms and other non-working weapons

8.29 It should be assumed that any items with a realistic appearance, making it indistinguishable, for all practical purposes, from a prohibited weapon, *is* real, except where there is strong evidence to suggest that the item in question is an imitation firearm, or where there are reasonable grounds to infer that the weapon has been deactivated (see 8.24 above) Where there is evidence to suggest that the firearm being exposed for sale is not real, or that it has been deactivated, providers should refer to paragraphs 8.90 to 8.97.

8.30 If it is reasonable to infer that the weapon *is* real and *is* a prohibited weapon, providers should move on to consider questions D1 and D2. If the weapon is *not* a prohibited weapon, providers should move on to consider question E.

D1. (In the case of prohibited weapons) Is the prohibited weapon being exposed for sale by way of a trade or business?

8.31 If the prohibited weapon is not being exposed for sale by way of trade or business, content should *not* be considered illegal content under a priority firearms offence.

8.32 It is reasonable to infer that a weapon is being exposed for sale by way of a trade or business if any one of the following is true:

a) The person's account or website appears to be a marketplace containing multiple items for sale;

b) The person is holding themselves out as acting by way of a trade or business, for example by describing themselves as a professional, a gun trader or as doing business, or is using a company or business name; or

c) A specialist third party such as a law enforcement agency provides evidence that the person is acting by way of a trade or business.

8.33 In addition, we consider it reasonable for providers to infer that if an exposure for sale is from the UK, it is by way of a business in most cases, except where a service provider has strong evidence to the contrary. This is because it is unlikely that any person exposing a prohibited weapon for sale online from the UK would be acting other than by way of a trade or business.

8.34 It is reasonable to infer that a person is exposing the weapon for sale from the UK if any of the following is true:

[43] Art.45(f) of the Firearms (Northern Ireland) Order 2004 (S.I. 2004/702 (N.I. 3))

a) The service on which the item is being exposed for sale is one specifically for a region, city or other local area in the UK;

b) The item is priced in pounds sterling (£/GBP);

c) The posted content provides a UK location or phone number;

d) On the case of user-to-user services, the user's IP address is in the UK; or

e) Evidence is provided to the service provider by a law enforcement agency that the person posting the content is located in the UK.

Exposure for sale from outside the United Kingdom

8.35 It is not relevant whether it is lawful to sell the weapons in the state or territory from which the post originated. The relevant factor is whether the content could be accessed by a person within the United Kingdom and constitutes an exposure for sale to people in the UK. The content should be considered to constitute an exposure for sale to people in the United Kingdom, *except* where either the content or context indicates that the offer does not extend to people within the United Kingdom. For example, where the content specifically states that the offer is not extended to people within the United Kingdom, that it is extended only to users or buyers in a specific territory outside the United Kingdom, or if it includes wording like: 'not for export.'

8.36 If the prohibited weapon is being exposed for sale by way of a trade or business, the content is not necessarily illegal, but it could still be, so providers need to go on to consider the following question.

D2. (In the case of prohibited weapons) Is the seller appropriately authorised?

8.37 In the UK, prohibited weapons may only be sold by sellers with special authorisation from the relevant Secretary of State ('**authorised sellers**'). If a service provider has reasonable grounds to infer that the prohibited weapon in question is being exposed for sale by way of a trade or business by a seller who is *not* authorised, then content should be considered illegal.

8.38 Where the weapon is a prohibited weapon, it is reasonable to infer that any exposure for sale made from the UK on a U2U service is made by an unauthorised seller.

8.39 It is reasonable to infer that it is from the UK if any of the following is true:

i) The service on which the item is being exposed for sale is one specifically for a region, city or other local area in the UK;

j) The item is priced in pound sterling (£/GBP);

k) The posted content provides a UK location or phone number;

l) In the case of user-to-user services, the user's IP address is in the UK; or

m) Evidence is provided to the service provider by a law enforcement agency that the person posting the content is located in the UK.

8.40 The same is not necessarily true of websites. However, a website purporting to sell directly and remotely to UK users would not be that of an authorised seller.

8.41 Providers may also have reasonable grounds to infer that a trader is unauthorised if evidence is provided to them by specialist third parties such as law enforcement.

8.42 Where the exposure for sale is made from outside the UK, it is reasonable to infer that the seller is not UK authorised unless there is evidence to the contrary.

Conclusion on prohibited weapons

8.43 If all the above criteria are met in relation to an exposure for sale of a prohibited weapon, there are reasonable grounds to infer that the content is illegal.

E. (In the case of other firearms-type weapons, ammunition or parts) Is the firearms-type weapon, ammunition or gun part being exposed for sale by way of a trade or business?

8.44 The following questions (questions E-G) refer to other types of firearms-type weapons, ammunition or parts (that is, other than prohibited weapons). Section G below deals with exactly what these are, but they include (for example) shotguns and shotgun cartridges/ammunition, and air weapons. Providers will only need to consider the detail of the weapon type in section G if sections E and F do not rule the content out from being illegal content.

8.45 In the case of other firearms-types weapons, ammunition or parts (that is, other than prohibited weapons) for content to amount to a priority firearms offence, there must be reasonable grounds to infer that the item in question has been exposed for sale *by way or trade or business*. If this is not the case, content should not be considered illegal under a priority firearms offence.

8.46 It is reasonable to infer that a weapon is being exposed for sale by way of a trade or business if:

f) The person's account or website appears to be a marketplace containing multiple items for sale;

g) The person is holding themselves out as acting by way of a trade or business, for example by describing themselves as a professional, a gun trader or as doing business, or is using a company or business name; and

h) A specialist third party such as a law enforcement agency provides evidence that the person is acting by way of a trade or business.

Exposure for sale from outside the United Kingdom

8.47 It is not relevant whether it is lawful to sell the weapons in the state or territory from which the post originated. The relevant factor is whether the content could be accessed by a person within the United Kingdom and constitutes an exposure for sale to people in the UK. The content should be considered to constitute an exposure for sale to people in the United Kingdom, *except* where either the content or context indicates that the offer does not extend to people within the United Kingdom. For example, where the content specifically states that the offer is not extended to people within the United Kingdom, that it is extended only to users or buyers in a specific territory outside the United Kingdom, or if it includes wording like: 'not for export.'

8.48 If the weapon is being exposed for sale by way of a trade or business, the content is not necessarily illegal, but it could still be, so providers need to go on to consider the following question.

F. Is the seller legally able to sell, exchange or transfer the firearm in question?

8.49 In the case of other firearms-type weapons, ammunition or parts (that is, other than prohibited weapons) for content to amount to a priority firearms offence, there must be reasonable grounds to infer that the seller in question is not legally permitted to sell, exchange or transfer the firearm in question. Those who are permitted to sell, exchange, transfer such weapons are known as Registered Firearms Dealers.

8.50 If the seller is a Registered Firearms Dealer, the content should not be considered illegal under a priority firearms offence.

8.51 Where the exposure for sale takes place on a U2U service, the content may not contain enough information for a reasonable inference to be drawn as to whether the trader is a Registered Firearms Dealer. However, providers may have reasonable grounds to infer that a trader is unauthorised if evidence is provided to them by a sufficiently expert third party.

8.52 For search services, the same is not necessarily true. A website purporting to sell directly and remotely to UK users would not be that of a Registered Firearms Dealer.

8.53 Providers may also have reasonable grounds to infer that a trader is not a Registered Firearms Dealer if evidence is provided to them by a sufficiently expert third party.

8.54 Where the exposure for sale is made from outside the UK, it is reasonable to infer that the seller is not a UK Registered Firearms Dealer unless there is evidence to the contrary.

G. Is the weapon in question of a type that falls under the law relating to firearms etc?

8.55 If the weapon is being exposed for sale in the course of a trade or business by a seller who is *not* a Registered Firearms Dealer, providers will need to consider in more detail, exactly what type of weapon it is.

8.56 The weapons caught by this offence, excluding any prohibited weapons discussed above, are as follows (conflating the legislation for the whole of the UK):

a) A lethal barrelled weapon which is a barrelled weapon of any description from which a shot, bullet or other missile, with kinetic energy or more than one joule as measured at the muzzle of the weapon, can be discharged. This excludes any airsoft gun;
b) A relevant component part in relation to a lethal barrelled weapon (component parts of prohibited weapons should be considered in the prohibited weapons section above);
c) An accessory to a 'lethal barrelled weapon' or prohibited weapon where the accessory is designed or adapted to diminish the noise or flash caused by firing the weapon;
d) Shotguns[44], that is to say a smooth bore gun (not being an airgun or a prohibited weapon) which:
    i) Has a barrel not less than 24 inches in length and does not have any barrel with a bore exceeding 2 inches in diameter;
    ii) Either has no magazine or had a non-detachable magazine incapable of holding more than two cartridges; *and*
    iii) Is *not* a revolver gun;
e) Ammunition for any firearm, shot gun or air weapon, except the following articles:—

[44] Section 1(3)(a) of the Firearms Act 1968

i) Cartridges containing five or more shot, none of which exceeds .36 inch in diameter;
ii) Ammunition for an air gun, air rifle or air pistol; and
iii) Blank cartridges not more than one inch in diameter measured immediately in front of the rim or cannelure of the base of the cartridge;

f) Air weapons[45]; that is, any air rifle, air gun or air pistol (for example, a paintball gun) *except for* the following exceptions (these exceptions are considered prohibited weapons):

i) Air weapons which are designed or adapted so that two or more missiles can be successively discharged without repeated pressure on the trigger;
ii) Air weapons which are of a type declared by rules made by the Secretary of State under section 53 of the Firearms Act to be especially dangerous;

g) Other ammunition[46]; except blank cartridges not more than 25.4 millimetres in diameter measured immediately in front of the rim or cannelure of the base of the cartridge (*as set out in (e) above with different unit of measurement)*;
h) Other shotguns[47] means a smoothbore firearm with a barrel not less than 60.96 centimetres in length, not being an air gun (*as set out in (d) above with different unit of measurement)*; and
i) Other air weapons[48] in addition to the above definition, the expression includes -

i) The component parts of an air weapon (within the meaning of section 1(3)(b) of the Firearms Act 1968), and
ii) Any accessory to such a weapon designed or adapted to diminish the noise caused by discharging the weapon.

But the expression does not include—

i) An air weapon which is not a firearm (within the meaning of section 57(1) of the Firearms Act 1968, or
ii) An air weapon (within the meaning of section 1(3)(b) of the Firearms Act 1968) — (i) which is not capable of discharging a missile with kinetic energy of more than one joule as measured at the muzzle of the weapon, or (ii) that is designed to be used only when submerged in water, or
iii) The component parts of an air weapon described in sub-paragraph I directly above.

[45] Section 1(3)(b) of the Firearms Act 1968
[46] Section 2 of the Firearms (Northern Ireland) Order 2004/702
[47] Section 2 of the Firearms (Northern Ireland) Order 2004/702
[48] Section 1 of the Air Weapons and Licensing (Scotland) Act 2015 asp 10

Conclusion on other firearms-type weapons, ammunition or parts

8.57 If all the above criteria are met in relation to an exposure for sale of other firearms-type weapons, ammunition or parts, there are reasonable grounds to infer that the content in question is illegal.

Usage examples

- A social media post which indicates that any firearm on the list of prohibited weapons above is being offered by a UK seller for sale, particularly where the post contains details about how the firearm may be purchased.
- A listing on a marketplace advertising any firearm which is on the list of prohibited weapons above as being for sale to the UK.

Reasonably available information for providers of user-to-user services

- The content suspected to be illegal content.
- User profile information such as username, profile images, 'bio' text or other descriptive text on the account.
- A user's IP address (when determining whether content is posted in the UK).
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger. This may include information showings that a person posting content is acting by way of a trade or business, that a person is based in the UK, or that a person who is claiming to be a Registered Firearms Dealer is not one.*

Reasonably available information for providers of search services

- The content suspected to be illegal content.
- The webpage on which the content is posted, including its URL and any banner/sidebar.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger. This may include information which shows that a person posting content is acting by way of a trade or business, that a person is based in the UK, or that a person who is claiming to be a Registered Firearms Dealer is not one.*

* A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A9 of Annex 1.

Statute: Section 3(1) of the Firearms Act 1968; section 24 of the Air Weapons and Licensing (Scotland) Act 2015 (asp 10); Article 24 of the Firearms (Northern Ireland) Order 2004 (S.I. 2004/702 (N.I. 3).

Other firearms offences

3D printing of firearms

8.58 Where content amounts to blueprints or instructions to produce a firearm, ammunition or component part in conjunction with other materials (such as a 3D printer), or where information has been provided which tells other users where such blueprints or instructions may be obtained, providers should consider the content in question by reference to the offences relating to firearms training (see paragraphs 2.28 to 2.34 of the Terrorism chapter of this document). It should be noted that these offences do not necessarily require there to be a terrorist purpose.

8.59 The exception is where there are reasonable grounds to infer that the instructions were given for a purpose wholly *other* than terrorism.

Usage examples

- Websites containing instructions or blueprints on how to print a 3D gun of any kind.

Reasonably available information for providers of user-to-user and search services

- The content suspected to be illegal content.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A3 of Annex 1.

Statute: Section 54(1) of the Terrorism Act 2000.

Knives and other weapons offences

Banned knives and 'offensive' weapons

8.60 It is an offence to **expose a banned knife or weapon for sale** without a relevant defence. Where the content in question displays a knife or weapon (other than a firearm etc discussed above), providers should first consider whether it is exposing the knife or weapon for sale, and then consider whether the type of knife or weapon in question is banned (see below). If there are reasonable grounds to infer that a knife or weapon as defined at 8.65 is being exposed for sale without a relevant defence, the content in question should be considered illegal.

What is 'exposure for sale'?

8.61 **'**Expose for sale' here means to display or offer knives and 'offensive weapons' for the purposes of sale. An item is considered exposed for sale if it is visible and available to attract offers of purchase. No offer to buy is needed for an 'exposure for sale' to have occurred.

Content which advertises an item for sale should be considered to be exposing the item for sale.

8.62 If an item is posted as a listing on an online marketplace, it is 'exposed for sale', but exposure for sale can also happen through other means, such as user-generated posts on social media. For example, a picture of a flick knife posted on a service with a description of it, a price and/or details about how it could be purchased would be likely to amount to an exposure for sale. It is not, however, necessary that *all* of these elements be present for an exposure for sale to have taken place, only that it be reasonable to infer that such an exposure has occurred.

8.63 The concept of 'exposure for sale' encompasses content which shows a weapon or knife for sale by linking a potential buyer off-platform (for example, to an encrypted messaging app) to arrange the completion of the transfer or sale.

Exposures for sale from outside the UK

8.64 It is not relevant whether it is lawful to sell knives in the state or territory from which the post originated. The relevant factor is whether the content could be accessed by a person within the United Kingdom. If this is the case, the content should be considered to constitute an exposure for sale to people in the United Kingdom, except where the content or context indicates that the offer does not extend to people within the United Kingdom. For example, where the content specifically states that the offer is not extended to people within the United Kingdom or that is extended only to users or buyers in a specific territory outside the United Kingdom, or if it includes wording like: 'not for export'.

What is a banned knife or offensive weapon?

8.65 A full list of banned knives and 'offensive' weapons can be found under the heading 'Banned knives and weapons' here. Providers should consult the full list when making an illegal content judgement, and we encourage them to refresh their knowledge regularly as this list may change. However, such knives and weapons include but are not limited to the following:

a) Flick knives: a knife with a blade which opens automatically to a fully opened position by pressing a button or spring (sometimes called flick gun);

b) Gravity knives: a knife with a blade with is released by force of gravity or application of centrifugal force, and locked in place by pressing a button or spring;

c) Butterfly knives: a blade enclosed by its handle, designed to split down the middle to reveal the blade without using a spring or other mechanical means;

d) Weapons known as 'zombie knives', 'zombie killer knives' or 'zombie slayer knife (see 8.66);

e) Disguised knives: a blade or sharp point hidden inside something that looks like a commonly carried everyday object; or

f) Knuckledusters: a band of metal or other hard material worn on one or more fingers, and designed to cause injury.

8.66 A zombie knife, zombie-style machete, zombie killer knife or zombie slayer knife is a knife with a plain cutting edge, a sharp pointed end and a blade of over eight inches in length (the length of the blade being the straight-line distance from the top of the handle to the tip of the blade), which has one of the following features:

a) A serrated cutting edge (other than a serrated cutting edge of up to two inches next to the handle);

b) More than one hold in the blade;

c) Spikes;

d) More than two sharp points in the blade other than:

i) A sharp point where the angle between the edges which create the point is an angle of at least 90 degrees (where there is a curved edge, the angle will be measured by reference to the tangent of the curve);

ii) A sharp point on the cutting edge of the blade near the handle.

8.67 It should be noted that the following types of weapon and knives are *not* banned, and content exposing them for sale should not be considered illegal content (absent other relevant offences) unless marketed unlawfully (see below) or sold to a person under the age of 18:

a) Kitchen knives;

b) Razor blades; and

c) Non-locking blades of less than 3 inches long (for example, craft knives, Stanley knives, small Swiss Army knives).

Relevant defences

8.68 Even where the above criteria are met, content should not be judged to be illegal where there are reasonable grounds to believe that *any* of the following is true:

a) In the case of a flick knife, flick gun or gravity knife: That the knife in question was being sold for the purpose of being made available to a museum or gallery. It would be reasonable to infer this if, for example, the exposure for sale was being made from a museum or gallery's own website and was expressed to be limited to sales to another museum or gallery.

b) In the case of all other offensive weapons:

i) That the weapon in question was being sold for the purpose of being used in a theatrical performance (including rehearsals for such performance) or in the production of a film or television programme. It would be reasonable to infer this if, for example, the weapon is blunt and is marketed as being for this use.

ii) That the weapon in question was being sold for the purpose of being used in historical re-enactment or in a sporting activity for which public liability insurance covering third parties has been obtained. It would be reasonable to infer this if, for example, appropriate wording is included in the content.

iii) That the weapon in question was being sold for the purpose of being used for a religious ceremony or for religious reasons. It would be reasonable to infer this if, for example, appropriate wording is included in the content.

iv) That the weapon in question is an antique, that is made more than 100 years before the content was posted, or in the case of a curved blade of over 50cm in length, before 1954. It would be reasonable to infer this if, for example, the content says this is the case, as long as this is not obviously inconsistent with any other description or depiction of the item concerned.

v) That the weapon in question was made at any time according to the traditional methods of making swords by hand. It would be reasonable to infer this if, for example, the content says this is the case, as long as this is not obviously inconsistent with any other description or depiction of the item concerned, or with the volumes of such items sold by the same seller.

c) In the case of a curved sword, that the weapon in question was being sold for the purpose of being presented, in a religious or other ceremonial event, by a Sikh to another person. It would be reasonable to infer this if, for example, appropriate wording and imagery is included in the content and if the language used in the advertisement is one commonly in use in the Sikh community (for example, Punjabi or English).

Usage examples

- A listing on a marketplace advertising the sale of a banned knife.
- A social media post inviting other users to message ('DM') the user to arrange sale of a banned knife or weapon.
- A website advertising the sale of a banned knife.

Reasonably available information for providers of user-to-user and search services

- The content suspected to be illegal content.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

* A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A9 of Annex 1.

Statute: Section 1(1) of the Restriction of Offensive Weapons Act 1959; Article 53 of the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160 (N.I. 24); section 141(1) of the Criminal Justice Act 1988.

Unlawful marketing of knives

8.69 If the content being considered does not expose for sale a banned knife but instead is advertising or exposing for sale a non-prohibited knife for example, a kitchen knife, providers should consider whether the content in question is marketing the knife in an unlawful manner.

8.70 A knife is defined as any instrument which has a blade or is sharply pointed. Any content which is exposing a knife for sale or hire should be considered to be 'marketing' it. Marketing means selling, hiring, offering or exposing it for sale or hire, or having it in possession for sale or hire. Such marketing may be made using either words or images. It should be noted that this offence can occur in relation to *any* knife, not only the 'banned'

knives mentioned above.[49] Content which markets a legal knife (that is, one which may be bought and sold legally to adults) in an unlawful way as described below will amount to an offence and should be considered illegal content.

Marketing from outside the UK

8.71 It is not relevant whether it is lawful to sell the weapons in the state or territory from which the post originated. The relevant factor is whether the content could be accessed by a person within the United Kingdom and constitutes an exposure for sale to people in the UK. The content should be considered to constitute an exposure for sale to people in the United Kingdom, *except* where either the content or context indicates that the offer does not extend to people within the United Kingdom. For example, where the content specifically states that the offer is not extended to people within the United Kingdom, that it is extended only to users or buyers in a specific territory outside the United Kingdom, or if it includes wording like: 'not for export'.

What is 'unlawful' marketing?

8.72 Content should be considered unlawful if it markets a knife in a way which:

a) Indicates, or suggests, that it is suitable for combat; or

b) Is otherwise likely to stimulate or encourage violent behaviour involving the use of the knife as a weapon.

8.73 'Suitable for combat' means suitable for use as a weapon, for inflicting injury on a person or for causing a person to fear injury. 'Violent behaviour' means an unlawful act inflicting injury on a person or causing a person to fear injury. Phrasing suggesting that purchasers should carry a knife in case of attack would also be encompassed within this.

8.74 In order for content to be illegal, it does *not* need to market the knife as specifically made or adapted for causing injury. The criteria for illegality will have been met if the content markets a knife using *any* suggestion that the knife is suitable for hurting another person *to any extent*. This could be suggested through words *or* images.

8.75 Providers should consider the context of the content including, for example, any image, description and comments surrounding the content, in order to establish whether any suggestion has been made as to whether the knife is capable of hurting somebody to any extent.

8.76 Providers should consider whether the language used is 'street language' that refers to violence, injury or protection. A non-exhaustive list of such language may be found on the CPS website. Other examples are animations of a knife dripping blood and a knife being stabbed.[50]

[49] In practice, content which markets a banned knife in any way should be taken down under the offence of exposing a banned knife or offensive weapon for sale as covered above. It is, however, true that such content may *also* amount to an offence of unlawfully marketing a knife.

[50] Crown Prosecution Service, 2023. *Offensive Weapons, Knife Crime Practical Guidance* [Accessed 19 September 2023]

Relevant defences

8.77 It is a defence if the person posting the content:

a) Did not know or suspect, and had no reasonable grounds for suspecting that the way in which the knife was marketed:

i) Amounted to an indication or suggestion that the knife was suitable for combat; or

ii) Was likely to stimulate or encourage violent behaviour involving the use of the knife as a weapon;

b) *And / or* took all reasonable precautions and exercised all due diligence to avoid committing the offence.

8.78 It is also a defence if there are reasonable grounds to infer that the knife was being marketed:

a) For the use of the armed forces in any country; or

b) As an antique or curio.

However, this is true only if it was reasonable for the knife to be marketed in that way; and there are no grounds to suspect that the knife in question would, as a result of being so marketed, come into the possession of a person who would use it for an unlawful purpose. This means that the defence is unlikely to be available unless the marketing takes place on a specialist service for sales of that kind.

Usage examples

A social media post advertising a knife for sale in a way that suggests its capability to inflict damage to humans.

Reasonably available information for providers of user-to-user and search services

- The content suspected to be illegal content.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A9 of Annex 1.

Statute: Sections 1 and 2 of the Knives Act 1997.

Encouraging, assisting, conspiracy, common purpose etc.

8.79 There are a number of other priority offences relating to firearms, knives and other weapons which are somewhat less likely to give rise to identifiable individual items of illegal content. They take place offline, so an offence of encouraging, assisting, conspiracy, knowingly engaging in a common purpose etc, would be needed for there to be any illegal content.

8.80 For the purposes of service risk assessments, providers should be aware of the possibility of this general category of illegal content existing on their platform as well as of the risk of facilitating the commission of the offline buying and selling offences.

Buying generally

8.81 Content which encourages or assists a person in the UK to buy firearms or ammunition without the required authorisation, and in particular prohibited weapons, may be illegal content. It must be reasonable to infer, on the face of the content, that the person posting the content either intended a person in the UK to commit the offence or believed that it would (not might) happen and that their conduct would encourage or assist it.

8.82 Content could also amount to an offence if the person concerned was, by means of the content, agreeing with another person that a course of conduct would be pursued which, if the agreement were carried out in accordance with their intentions, would necessarily amount to or involve the commission of these offences by a person in the UK.

8.83 Clear evidence would be needed of this, but reasonable grounds to infer it may exist if, for example, the content in question refers to places in the UK and to the purchase being illegal.

Underaged buying

8.84 If a person in the UK who is under 18 buys a weapon considered in this section, a priority offence may have been committed, but this would have taken place offline rather than through the posting of content. However, content which encourages or assists them to do so could be illegal content, as could content through which a person conspires for the offence to be committed.

8.85 The weapons in question are as follows:

a) Firearms or ammunition, as defined in the firearms section above (hiring is also an offence);

b) An imitation firearm; and

c) A crossbow or part of a crossbow (except where the crossbow has a draw weight of less than 1.4kg in scope) (hiring is also an offence for this weapon).

8.86 Content which encourages or assists a person under 18 in the UK to buy any of these weapons or to hire a crossbow/firearm or ammunition will be illegal content if it is reasonable to infer, on the face of the content, that the person posting either intended a person under 18 and in the UK to commit the offence or believed that it would happen and that their conduct would encourage or assist it. Clear evidence would be needed of this, but reasonable grounds to infer it will exist if, for example, the content talks about places in the UK which will sell to a person under 18, in a place where it may be seen by children, and states expressly that no age verification checks will be made.

8.87 Content could also amount to an offence if the person concerned was, by means of the content, agreeing with another person that a course of conduct would be pursued which, if

the agreement were carried out in accordance with their intentions, would necessarily amount to or involve the commission of these offences by a person under 18 in the UK.

Note on usage examples

We have not provided any usage examples for this offence due to the particular importance of context in these judgements.

Reasonably available information for providers of user-to-user and search services

- The content suspected to be illegal content.
- Information about age restrictions affecting who is able to view the content (that is, it the content viewable to users under the age of 18).
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A9 in Annex 1.

Statute: Section 22(1) of the Firearms Act 1968; section 24A of the Firearms Act 1968, Article 66A of the Firearms (Northern Ireland) Order 2004 (S.I. 2004/702 (N.I. 3)); section 2 of the Crossbows Act 1987; section 1(1) Firearms Act 1968; section 2(1) of the Firearms Act 1968; section 2 Air Weapons and Licensing (Scotland) Act 2015 (asp 10); section 5(1), 5(1A) and 5(2A) of the Firearms Act 1968; article 45(1) and 45(2) of the Firearms (Northern Ireland) Order 2004 (S.I. 2004/702 (N.I. 3)).

Sale and supply generally and to underaged people

8.88 The **sale or supply in the UK of a prohibited weapon or ammunition without authority, a sale in the UK of a firearm by way of a trade or business to another person other than a registered firearms dealer** and **the sale of a realistic imitation firearm** would usually be an offline offence.

8.89 In addition, some offline priority offences relate to in some way **transferring a weapon to an underaged person**. The weapons concerned are:

a) Firearms or their ammunition as defined above (supplying, selling to under 18s);

b) Shot guns or their ammunition as defined above (gifting to under 15s);

c) Air weapons or their ammunition as defined above (gifting to under 18s, unless permitted by statute);

d) Firearms or their ammunition as defined above (gifting or lending to under 14s unless that person is statutorily entitled);

e) Imitation firearms (supplying to under 18s);

f) A crossbow or part of a crossbow (except where the crossbow has a draw weight of less than 1.4kg in scope) (supplying, selling, letting on hire to under 18s); and

g) Any of the following (supply or sell, to a person who is 'underaged'. It means a person under the age of 18:

i. Any article which has a blade, or which is sharply pointed and which is made or adapted for use for causing injury;
ii. Any knife, razor blade or knife blade; or
iii. Any axe.[51]

8.90 For all these offences, which take place offline, identifying a specific item of illegal content would require a service provider to be able to draw reasonable inferences about the conduct of more than one person, because it is not possible for a person to assist, encourage or conspire with themselves.

8.91 For the purposes of risk assessments, if a service provider is aware generally of content which appears to offer these items for sale etc in a way which would amount to one of these offences, it is reasonable to believe that some proportion of the sellers concerned are likely not be acting alone.

8.92 However, when considering individual items of content for the purposes of the illegal content safety duties, absent information from law enforcement or another sufficiently expert complainant, it is usually unlikely to be possible to identify this sort of illegal content. Only in circumstances where it is possible to draw inferences that more than one person is involved in the activity (the recipient does not count for this), is it necessary for providers to go on to consider the following.

8.93 For content to encourage or assist the commission of the offence it must be clear on the face of the content or the content together with contextual information that the person uploading the content either:

a) Intended to encourage or assist that other person to commit the offence in the relevant part of the UK; or
b) Believed that such an offence would (not may) be committed *and* that their act would (not may) encourage or assist the commission of that offence.

8.94 The poster in question would need to know that the recipient was in the UK; and where age was relevant, they would need to know the recipient's age.

8.95 Content could also amount to an offence if the poster concerned was, by means of the content, agreeing with another person that a course of conduct would be pursued which, if the agreement were carried out in accordance with their intentions, would necessarily amount to or involve the commission of the offence of selling the items to underaged people in the UK.

Note on usage examples

We have not provided any usage examples for this offence due to the particular importance of context in these judgements.

[51] Crossbows sold to under 18s could be added to this list but would be more easily dealt with under the buying offence above.

Reasonably available information for providers of user-to-user and search services

- The content suspected to be illegal content.
- Information about age restrictions affecting who is able to view the content (that is, it the content viewable to users under the age of 18).
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A9 of Annex 1.

Statute: Section 5(2A) of the Firearms Act 1968, article 45(1) and 45(2) of the Firearms (Northern Ireland) Order 2004 (S.I. 2004/702 (N.I. 3)); section 1 of the Crossbows Act 1987; section 24 of the Firearms Act 1968; section 24A of the Firearms Act 1968; Article 66A of the Firearms (Northern Ireland) Order 2004 (S.I. 2004/702 (N.I. 3)); section 36(1)(c) of the Violent Crime Reduction Act 2006; section 3(2) of the Firearms Act 1968; article 37(1) of the Firearms (Northern Ireland) Order 2004 (S.I. 2004/702 (N.I. 3); section 141A Criminal Justice Act 1988; Article 54 of the Criminal Justice (Northern Ireland) Order 1996].

Sale and supply of firearms to criminals

8.96 Certain other offences exist relating to the sale or supply of firearms and ammunition to persons previously convicted of crime and to people who have been in prison. These offences take place offline. Content relating to them may be illegal content if it amounts to encouraging or assisting a person in the UK to commit the offence, or conspiracy by means of the content to commit the offence. It will not be possible for providers to have reasonable grounds to infer any of these offences have been made out unless it is clear from the content or context that the person posting the content:

a) knew that the viewer concerned was in the UK; and

b) knew that the proposed sale or supply was to an impermissible buyer; and

c) had the appropriate intention, belief or agreement.

Note on usage examples

We have not provided any usage examples for this offence due to the particular importance of context in these judgements.

Reasonably available information for providers of user-to-user and search services

- The content suspected to be illegal content.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A9 in Annex 1.

Statute: Section 21(5) Firearms Act 1968; Article 63(8) Firearms (Northern Ireland) Order 2004 (S.I. 2004/702 (N.I. 3)).

Importation of banned knives /offensive weapons or realistic imitation firearms

8.97 It is an offence to **import banned knives** and **'offensive' weapons into the UK.** A full list of such weapons can be found under the heading 'Banned knives and weapons' here. It is also an offence to **bring a realistic imitation firearm into Great Britain** or **cause one to be brought into Great Britain**.

8.98 As for the offences above, the conduct itself would take place offline. Content which encourages or assists the importation of these weapons could amount to an offence. It must be clear on the face of the content or together with contextual information that the person uploading the content either:

a) Intended to encourage or assist another person to import these weapons into the UK; or

b) Believed that such an offence would (not may) be committed AND that their act would (not may) encourage or assist the commission of that offence.

8.99 Content could also amount to an offence if the person posting the content was, by means of the content, agreeing with another person that a course of conduct would be pursued which, if the agreement were carried out in accordance with their intentions, would necessarily amount to or involve the importation of an offensive weapon and/or a realistic imitation firearm.

8.100 For weapons other than flick knives and gravity knives, there is a defence if there are reasonable grounds to infer that user posting the content reasonably believed that the importation was only for the purposes of functions carried out on behalf of the Crown or of a visiting force. This is unlikely ever to arise on regulated services. There is also a defence if the user posting the content reasonably believed importation was for the purposes of theatrical performances or rehearsals, film or TV productions. Strong evidence would be needed of this, including third party evidence of the existence of the theatrical performance, film or TV production and the identity of the person responsible for it.

8.101 In relation to importing a realistic imitation firearm, it is a defence for a person to show that they reasonably believed the conduct was for the purpose only of making the imitation firearm available for one of more of the below purposes:

a. The purposes of a museum or gallery;

b. The purposes of theatrical performances and of rehearsals for such performances;

c. The production of films (within the meaning of Part 1 of the Copyright, Designs and Patents Act 1988 (c. 48));

d. The production of television programmes (within the meaning of the Communications Act 2003 (c. 21));

e. The organisation and holding of historical re-enactments organised and held by persons specified or described for the purposes of this section by regulations made by the Secretary of State;

f. The purposes of functions that a person has in his capacity as a person in the service of His Majesty.

g. There is additional defence for the person to show that the conduct -

   i. was in the course of carrying on any trade or business; and

   ii. was for the purpose of making the imitation firearm in question available to be modified in a way which would result in its ceasing to be a realistic imitation firearm.

Note on usage examples

We have not provided any usage examples for this offence due to the particularly complex role of defences when making judgements regarding this offence.

Reasonably available information for providers of user-to-user and search services

- The content suspected to be illegal content.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A9 in Annex 1.

Statute: section 1(2) of the Restriction of Offensive Weapons Act 1959; section 141(4) of the Criminal Justice Act 1988; section 36(1)(d) of the Violent Crime Reduction Act 2006 (sale etc of realistic imitation firearms).

9. Sexual exploitation of adults

Warning: this chapter contains content that may be upsetting or distressing

9.1 This chapter considers offences related to the sexual exploitation of adults, that is of persons aged 18 or over. Any content relating to the sexual exploitation of a person who can be reasonably inferred to be *under* the age of 18 should be judged against the relevant offences relating to child sexual abuse material (CSAM) and grooming (see Chapters 4 and 5 of this document).

9.2 This chapter should be considered alongside the human trafficking offences set out in Chapter 11 of this document ('Human trafficking').

9.3 In order to accurately reflect the relevant legislation, the terms 'prostitute' and 'prostitution' have been used throughout this chapter when necessary. We recognise that some readers are likely to consider these terms outdated and that some communities can feel stigmatised and upset when using them. The National Police Chiefs' Council's 'Sex Work National Police Guidance' for instance states: "Language around prostitution is often perceived as outdated and pejorative among those selling sex. Use of 'prostitution' and its derivatives should be limited to specific legal meanings and offences." We understand that the broad consensus among representatives of people involved in this work is to use the terms 'sex worker' and 'sex work' and therefore use those terms where statute is not being referenced.

9.4 It is important to note that the priority offences we are considering in this section relate to the conduct of third parties, and not to the sex worker themself. Some adults engage in sex work on their own behalf and of their own free will. In certain instances, taking down content relating to sex work may make those who are voluntarily working in the industry less safe.

9.5 For more information on harms relating to the sexual exploitation of adults see the Register of Risks chapter titled 'Sexual exploitation of adults.'

Priority sexual exploitation of adults offences

9.6 The priority offences relating to the sexual exploitation of adults comprise:

- **a) Causing or inciting prostitution for gain**; and
- **b) Controlling a prostitute for gain** (and related encouraging, assisting and conspiracy offences).

9.7 A service provider should consider both offences if the content in question shows or implies reference to the provision of sexual activities in exchange for something.

9.8 The term 'prostitute' is defined as 'a person who, on at least one occasion and whether or not compelled to do so, offers or provides sexual services to another person in return for payment or a promise of payment to that person or a third person'. A service is 'sexual' if a reasonable person would consider that:

a) Whatever its circumstances or any person's purpose in relation to it, it is, because of its nature, sexual; or

b) Because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it, (or both) it is sexual.

9.9 For the purpose of these offences, 'payment' means any financial advantage, including the discharge of an obligation to pay (for example free rent) or the provision of goods or services (including sexual services) gratuitously or at a discount.

Causing or inciting prostitution for gain

9.10 A service provider should consider whether the intent of the person uploading the content is to cause or incite another person to become a prostitute in any part of the world and whether they do so for or in the expectation of gain for themself or a third party. 'Incitement' involves some form of encouragement and includes the use of threats or other forms of pressure.

9.11 Content of this kind is illegal where the provider has reasonable grounds to infer the following:

a) the content causes or incites another to become a prostitute, where the person is not a prostitute;

b) the content has come to the attention of someone who is not already a prostitute; *and*

c) the person causing or inciting prostitution stands to gain from the potential victim becoming a prostitute. 'Gain' here encompasses financial advantage, including the discharge of an obligation to pay or the provision of goods and services (including sexual services) gratuitously or at a discount or the goodwill of any person which is or appears likely, in time, to bring financial advantage.

9.12 In order for the content to be considered illegal, it is not necessary that the content has in fact caused the person to become a prostitute.

9.13 It is reasonable to infer that most users of user-to-user and search services are not already sex workers. Reasonable grounds to infer that the content has come to the attention of someone who is not already a sex worker will therefore exist on user-to-user and search services where internally-held viewing metrics indicate that the content has been viewed by another person, absent evidence that the person is already a prostitute.

9.14 Most perpetrators will not be honest about their intentions to exploit people through their actions. For example, they may post vague content in an attempt to avoid detection. When making illegal content judgements about content which may amount to this offence, service providers should consider whether any information within the content itself, or any additional information provided to them by a trusted flagger indicate that a perpetrator is trying to avoid detection.

State of mind

9.15 In order for content to be considered illegal, there must be reasonable grounds to infer that the poster of the content intends to cause or incite another person to become a prostitute.

9.16 In most cases, where it is clear on its face that the content incites to prostitution, intent may be inferred through the act of a person having posted the content, but providers should consider the possibility that the post was made as satire, in jest or as part of a fictional work. Providers should also take into account any information about intent provided as a result of user reports or appeals.

9.17 Finally, it should be noted that content which offers advice and support about how to engage in sex work safely is not illegal as it does not meet the threshold for intent to cause or incite another person to become a prostitute.

Risk assessment and inciting prostitution content

9.18 For the purposes of carrying out a risk assessment, providers should be aware that (priority) illegal content which amounts to the offence of inciting prostitution is most likely to present in the form of text in advertisings or listings for sexual services, but may also present as text content in the form of messages.

9.19 Content amounting to these offences may be found on user-to-user services (including social media services, marketplaces and listing services, or messaging services) and search services may be used to seek out such content. Adult service websites are particularly at risk from such content.

9.20 See the chapter of the Register of Risk titled 'Sexual exploitation of adults'.

Usage examples

- An advertisement on a rental forum offering free rent in return for sexual acts or a sexual relationship.

Reasonably available information for user-to-user services and search services

- The content suspected to be illegal content.
- Internally-held viewing metrics.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A10 of Annex 1.

Statute: Section 52 of the Sexual Offences Act 2003 (see also section 78); Article 62 Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)) (see also article 4).

Case law: *R v Ubolcharoen* [2009] EWCA Crim 3263.

Textbooks: See Rook and Ward referencing *Fitzmaurice* [1983] Q.B. 1083; *Invicta Plastics Ltd v Clare* [1976] Crim. L.R. 131; *Marlow* [1997] Crim. L.R. 897, in paragraph 3.146 of: Rook KC, P HH., Ward, R., 2021. *Rook & Ward on Sexual Offences Law and Practice.* 6th ed. London: Sweet & Maxwell.

Controlling a prostitute for gain

9.21 Service providers should also consider whether the content amounts to an offence of **controlling a prostitute for gain**.

9.22 Content of this kind will be illegal content where the service provider has reasonable grounds to infer the following:

a) the person posting the content is, *through the content*, controlling the activities of a separate person or persons related to their prostitution in any part of the world (for example, controlling days and hours of employment or the price to be charged); *and*

b) the person uploading the content does this for or in expectation of gain for himself or a third person.

9.23 Evidence shows that a service type that is often referred to as 'adult service websites' ('ASWs' in this chapter) may enable the sexual exploitation of adults. It is likely to be difficult for service providers to distinguish between content that has been posted on adult service websites by someone that is being controlled for gain and content that has been posted by an independent sex worker. Indicators outlined in the Sexual Identification Trafficking Matrix (STIM) tool[52], which was developed to help police forces identify adverts posted on ASW's that show a high, medium, or low risk of exploitation, may be useful for service providers to consider when judging whether a piece of content amounts to this offence on services.

9.24 The indicators outlined in the STIM are listed alongside explanatory notes[53]:

Indicator	Explanatory note	Score
Pose seems unusual or extreme; appears overly explicit.	The photo is overly explicit (e.g. reveals genitals). Consider camera placement e.g. the camera is very close to the subject, resulting in full or partial genital exposure.	3
Facial expression of subject in content shows general or potential unease.	Any indication that subject in the content is not completely comfortable.	1
Any or multiple inconsistencies between content in question and description.	Subject's age does not appear to match the written description; the ethnicity/nationality appears to have been deliberately changed (e.g.: you suspect the subject is Eastern European but is described as Latino).	2
Background is familiar.	Moderators have seen this background or similar in previous user profiles identified as trafficking.	3
Non-UK image	There are indications that the photograph has not been taken in the UK, e.g. foreign plug sockets, metadata indicating location	2

[52] The STIM was created and developed by Dr Xavier L'Hoiry (Sheffield University), Dr Alessandro Moretti (University of Copenhagen) and Professor Georgios A. Antonopoulos (Northumbria University).
[53] Some of the indicators have been altered slightly to make more relevant to service providers.

Indicator	Explanatory note	Score
Use of stock photo(s).	Photo appears to be stock or it has been used elsewhere.	1
Low quality/resolution content.		1
Subject in content appears to be between 18-24 years old.		1
Use of 's/he' / 'they' / 'we' instead of 'I'.		1
User is a high risk nationality	High risk nationality is context dependent but may refer to a country experiencing conflict and therefore rapid migration. Nationality may be directly stated in ad or indirectly referred to (e.g. in description or other references).	3
Same/similar text as other content for different subjects.	The text and language are similar, possibly copied and pasted.	3
Same contact number in different ads.	The service provider has identified the phone number being used in multiple other pieces of content.	3
Same poster/user ID across multiple pieces of content.	Moderator has identified ID as used in other ads.	2
Poor grammar and misspellings in the text.		1
Inconsistencies in username or 'story'/location.	E .g. username is '*ManchesterMandy*' but location is Sheffield, or username is '*lola87*' but age is 21.	2
Current availability in multiple locations across the region.	Content states subject is immediately available in a number of locations across a region.	2
Historical availability across the country.	The subject's services have been advertised in other locations across the country in the past (e.g. London, 6 months ago).	2
References to being new: 'new in town' / 'just arrived' / 'new 4 you' / 'back in town'.		1
References to youth: 'young and cute' / 'sweet' / 'fresh' / 'candy'.		1
References to drug use in text	e.g. Terms such as 'party girl'.	1
Use of emojis	e.g. Leaf, snowflake.	1
Little or no further information in Q&A section (if this is part of a service).		1
Post offers long list of services, e.g. 10 or more services.		1

Indicator	Explanatory note	Score
Post offers specific services: bareback/anal/OWO (oral without a condom).	Check the services the content says are offered against any info about services offered on the account of the person posting this content. This will sometimes differ.	1
Post offers additional services at no extra price or very low price or an all inclusive price.		2
Advert updates following a regular pattern	e.g. Metadata suggests updates every day at approximately the same time.	2
HIGH RISK = 30 POINTS OR MORE		

9.25 If a piece of content has a score of 30 points or more, the STIM classifies this being at high risk of being exploitative. Where content is able to be identified as being at high risk of being exploitative it is reasonable to infer, absent evidence to the contrary, that it is illegal content.

9.26 To make a reasonable inference about whether the person posting the content is or is not, controlled and exploited for gain, service providers are also encouraged to consider other contextual factors, including but not limited to evidence from sufficiently expert third parties, for example law enforcement or anti-trafficking organisations. A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

9.27 Service providers need to also be mindful that independent sex workers may post content online which may include the indicators outlined in the STIM. They may do so for a variety of reasons, including safety reasons. An example of this is if the content displays poor grammar or misspellings in the text. This content could have been posted by an independent sex worker for whom English is not a first language.

State of mind

9.28 In most cases, where it is clear on its face that the content amounts to controlling the activities of a prostitute for gain, intent may be inferred through the act of a person having posted the content. As set out in paragraph 9.27, service providers need to be mindful that independent sex workers often post content online which may include the indicators outlined in the STIM. Service providers should also take into account any information about intent provided as a result of user reports or appeals, like for instance appeals from independent sex workers.

Encouraging, assisting and conspiracy to control a prostitute for gain

9.29 The Act also covers offences of encouraging and assisting the control of a prostitute for gain, and conspiracy to control a prostitute for gain. In all these cases, the content will only be illegal content to the extent that the offence being encouraged, assisted or conspired to is sufficiently linked to the UK – the question is whether the UK would prosecute the people involved. The rules which decide whether or not there is a sufficient link are very complicated and content moderators cannot be expected to understand them in detail. However, for the purposes of this guidance, content should be considered illegal if either:

a) the prostitute concerned is clearly in or expected to enter the UK, or
b) the causing or inciting prostitution for gain or controlling a prostitute for gain is clearly committed by someone who is British or located in the UK.

9.30 Encouraging could include words urging another person to carry out the offence. Assisting could include providing substantive help in carrying out the offence. There must either be intent to encourage/assist the offence, or belief that the offence will be committed. For conspiracy, there must be an agreement between two people and intent to carry out the offence. The moderator will need to consider whether what the content shows is really an encouragement, assistance or agreement, or whether it is a joke.

Risk assessment and controlling a prostitute for gain content

9.31 For the purposes of carrying out a risk assessment, providers should be aware that (priority) illegal content which amounts to the offence of controlling a prostitute for gain is most likely to present in the form of text in advertisings or listings for sexual services, but may also present as text content in the form of messages.

9.32 Content amounting to these offences may be found on user-to-user services (including social media services, marketplaces and listing services, or messaging services) and search services may be used to seek out such content. ASWs are particularly at risk from such content.

9.33 See Chapter 6K on the 'Sexual exploitation of adults.'

Note on usage examples

We have not given any usage examples here, due to the particularly strong importance of context to these judgments. Service providers should refer to the list of STIM indicators in paragraph 9.24 when identifying examples of content which are likely to meet the threshold for illegality.

Reasonably available information for user-to-user services and search services

- The content suspected to be illegal content.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A10 of Annex 1.

Statute: Section 53 of the Sexual Offences Act 2003; Article 63 Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2).

Case law: *R v Massey* [2008] 1 Cr. App. R. 28 CA.

Textbooks: See Rook and Ward referencing the case of *Drew* unreported Southwark Crown Court, December 2006. The case resulted in acquittals in paragraphs 10.147 – 10.151 of: Rook KC, P HH., Ward, R. 2021. *Rook & Ward on Sexual Offences Law and Practice.* 6th ed. London: Sweet & Maxwell.

10. Image-based adult sexual offences

Warning: this chapter contains content that may be upsetting or distressing

Priority image-based adult sexual offences

10.1 This chapter considers image-based sexual offences which involve adults, that is persons aged 18 and over. The priority image-based adult sexual offences comprise:

a) Possession of extreme pornographic images

b) Offences related to non-consensual disclosure of intimate images (intimate image abuse)

c) Sending or giving a photograph or film of the genitals with the intention of causing alarm, distress or humiliation, or for the purpose of sexual gratification on the behalf of the sender ('cyberflashing').

10.2 The Act also covers offences of encouraging and assisting the commission of image based adult sexual offences and conspiracy to carry out possession of extreme pornographic images and intimate image abuse.

10.3 For more information on harms relating to image-based adult sexual offences see the following chapters of the Register of Risks: the chapter titled 'Extreme pornography,' the chapter titled 'Intimate image abuse' and the chapter titled 'Cyberflashing'.

Age and the image-based sexual offences in this chapter

10.4 While children can be victims or survivors of both the intimate image abuse offence and the cyberflashing offence, the typically sexual nature of the offences in question mean that any content which involves a child and meets the threshold for an offence mentioned above will usually automatically amount to a child sexual exploitation and abuse (CSEA) offence.[54] A piece of extreme pornography involving a child would automatically be classed as child sexual abuse material (CSAM).

10.5 A CSAM offence is committed when an indecent image of a child is created. See Chapter 4 of this document, 'Child sexual abuse and exploitation (CSEA): offences relating to child sexual abuse material (CSAM), for more information.

Extreme pornography

10.6 If the content in question involves adult nudity or image-based sexual content, service providers should first ask whether it amounts to an **extreme pornographic image**.[55]

[54] In the case of intimate image abuse, the offence in question would be the sharing of indecent images of a child. In the case of cyberflashing, the content in question would likely amount to sexual communication with a child if sent by an adult. If the cyberflashing image was of a child, it would be classified as an indecent image of a child.

[55] Under section 59(3)(b) of the Act, content is illegal content if its possession amounts to an offence.

What is an 'image'?

10.7 Both still images and moving images such as videos are encompassed within the definition of an '**image**'. Data which is capable of being converted into an image or video, such as compressed image files, should be treated as equivalent to the image itself. Content which itself does not consist of an image but which consist of a URL linking to such an image should also be treated as equivalent to the image itself.

What is extreme pornography?

10.8 For content to be '**extreme pornography**' it must:

a) be pornographic, that is of such a nature that it must reasonably be assumed to have been produced either solely or principally for the purpose of sexual arousal;
b) be grossly offensive, disgusting or otherwise of an obscene character;
c) involve persons or animals that a reasonable person would think were real upon inspection of the image; *and*
d) portray one or more of the following acts in an explicit and realistic way:

i) an act which threatens a person's life (see below);
ii) an act which results, or is likely to result, in serious injury to a person's anus, breasts or genitals;
iii) an act which involves sexual interference with a human corpse (necrophilia);
iv) a person performing an act of intercourse or oral sex with an animal, whether dead or alive (bestiality);
v) an act which involves the non-consensual penetration of a person's vagina, anus, or mouth by another person's penis; or
vi) an act which involves the non-consensual sexual penetration of a person's vagina or anus by a part of another person's body or anything else.

10.9 All four of the above criteria (a) to (d) must be met in order for the image in question to be an extreme pornographic image.

10.10 Service providers should note that simulated acts, including acts depicted in synthetic images such as '**deepfakes**', fall within the above definition, provided they are depicted in an explicit and realistic way.

'Pornographic'

10.11 Whether content can be assumed to have been produced either solely or principally for the purpose of sexual arousal is dependent on the nature of the image itself, not the intent of the person posting the content or any viewer of it.

'Grossly offensive, disgusting or otherwise obscene'

10.12 '**Grossly offensive**' should be given its ordinary meaning. '**Obscene**' should also be given its ordinary meaning.

'Explicit and realistic' portrayal

10.13 The requirement that the acts in question should be portrayed in an '**explicit and realistic way**' means that artistic depictions which are not lifelike in character are unlikely to meet this criterion. For example, a manga drawing would not be realistic enough. However, synthetic, simulated, edited or manipulated images or videos such as 'deepfakes' which retain a realistic character are likely to satisfy this criterion where they depict the acts mentioned above.

Acts which threaten a person's life

10.14 **'Acts which threaten a person's life**' mean acts which depict physical endangerment with a material risk of death. Non exhaustive examples include explicit and realistic hanging, strangulation, suffocation and causing life threatening injury.

Non-consensual sexual penetration

10.15 '**Non-consensual penetration**' means that the person being penetrated did not or could not consent to the act in question. Examples where consent to penetration cannot not be given include when a person is asleep or otherwise unconscious, or where the penetration results in serious harm.

10.16 We recognise that inferring consent in these cases is very complex. Where appropriate, service providers should take into account contextual information such as content titles or descriptions, or statements from those depicted in the content, when making a judgement as to whether the acts depicted are non-consensual. A user report which suggests that the content depicts non-consensual acts should be taken as reasonable grounds to believe that there was no consent, unless there is evidence to the contrary.

State of mind

10.17 The state of mind requirement for this offence can be assumed to be met by virtue of the image, or a URL linking to the image, being posted.

Relevant defences

10.18 Content which meets the criteria set out above should *not* be considered illegal where there are reasonable grounds to infer that either of the following is true:

a) the user in question (that is, the user uploading the image or otherwise making it available on a user-to-user service or website) has a **legitimate reason** for being in possession of the image concerned; or
b) the image is an **'excluded image'.**

10.19 **Legitimate reasons** are not set out in statute and providers should use their discretion when considering reasons given on a case-by-case basis. However, it should be noted that legitimate reasons given for possessing the content personally or where it can be accessed only by users with the same reasonable excuse may not extend to or justify the hosting of such an image on a public platform. The service provider would need reasonable grounds to infer that each viewer of the content has a legitimate reason in order for the content not to be illegal content.

10.20 It should be noted that malicious intent is not needed for content to amount to an offence. Jokes in poor taste should still be considered as illegal content, as should content posted for the purpose of exposing an offender or offenders.

10.21 An '**excluded image**' is an image or video taken from a work classified by the British Board of Film Classification (BBFC). If the content being considered *is* taken from a classified work, the content may not be illegal, *except* in cases where the content could reasonably be assumed to have been '**extracted**' in such a way that it may be reasonably assumed to be solely or principally for the purposes of sexual arousal.

Encouraging, assisting and conspiracy to possession of extreme pornography

10.22 As set out above, encouraging and assisting the possession of, and conspiracy to possess, extreme pornographic images are also priority offences. In all these cases, content which amounts to the encouragement assistance, or conspiracy will only be illegal content to the extent that the possession of extreme pornography which is being encouraged, assisted or conspired to is sufficiently linked to the UK – the question is whether the UK would prosecute the people involved. The rules which decide whether or not there is a sufficient link are very complicated and content moderators cannot be expected to understand them in detail. However, for the purposes of this guidance, content should be considered illegal if the person being encouraged or assisted, or with whom there is a conspiracy, is either British or located in the UK.

10.23 Encouraging could include words urging another person to carry out the offence. Assisting could include providing substantive help in carrying out the offence. There must either be intent to encourage/assist the offence, or belief that the offence will be committed. For conspiracy, there must be an agreement between two people and intent to carry out the offence.

Risk assessment and extreme pornography content

10.24 For the purposes of carrying out a risk assessment, providers should be aware that (priority) illegal content which amounts to the offence of publishing extreme pornography may take the form of a videos or images (including those which have been digitally manipulated i.e. deepfakes), or links to these same videos or images.

10.25 Content amounting to these offences may be found on user-to-user services (including user-to-user pornography services and messaging services). Search services may also be used to search for and access such content, for example via video or image viewing facilities.

10.26 See the Register of Risks chapter titled ‘Extreme pornography’.

Usage examples

- A video posted to a social media platform depicting a human having sexual intercourse with an animal, regardless of the intent behind the post.
- A photograph posted to an adult service depicting a sexual act threatening the life of the person involved, regardless of the intent behind the post.
- A video posted to a social media site depicting rape, regardless of the intent behind the post.

Reasonably available information for user-to-user and search services:

- The content suspected to be illegal content.
- Content titles or descriptions of the content suspected to be illegal content.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

Reasonably available information for search services:

- The content suspected to be illegal content.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A11 of Annex 1.

Statute: Section 63 of the Criminal Justice and Immigration Act 2008.

Case law: *Regina v Pin Chen Cheung* [2009] EWCA Crim 2965; *Regina v Baddiel* [2016] EWCA Crim 474; *Connolly v DPP* [2007] EWHC 237 (Admin); *R v Okoro* (No. 3) [2018] EWCA Crim 1929.

Guidance on Content Harmful to Children: Section 2, 'Guidance on pornographic content'

Intimate image abuse

What is intimate image abuse?

10.27 '**Intimate image abuse**' relates to the non-consensual disclosure of, or threats to disclose, intimate images. There are multiple priority offences relating to intimate image abuse but they overlap with one another significantly. These priority offences are often referred to colloquially as '**revenge pornography**', but the content need not be posted for revenge and are abusive content rather than legal pornography. We therefore do not use this term in this chapter.

10.28 In the following, 'Person A' refers to the person sharing the photograph or film, and 'Person B' refers to the person depicted in the photograph or film in an intimate state.

10.29 Service providers should consider whether the photograph or film has been disclosed:

a) without Person B's consent *and*
b) when Person A either (i) did not reasonably believe Person B consented; or (ii) is acting with the intention of causing Person B alarm, distress or humiliation.

What is a photograph or film?

10.30 A '**photograph**' should be understood as any still image which is or appears to be a photograph, whether created by a camera, made by computer graphics or generated in any other way (for example, a still of a film). A '**film**' should be understood as any moving image, including automated GIFs. Copies of photographs or films, or photographs or films which have been digitally altered, should be treated as the same as the original.

10.31 The inclusion of the '**appears to show**' criteria of the offence means that manipulated images and videos such as deepfakes should be considered within the scope of this offence. Any photograph or video which appears to depict an intimate situation (see below) should be treated as a photograph or video actually depicting such a situation.

10.32 Data which is capable of being converted into an image or video, such as compressed image files, should be treated as equivalent to the image itself.

What is an 'intimate state' or 'intimate situation'?

10.33 A person should be understood to be in an '**intimate state**' or '**intimate situation**' if any of the following are true:

a) The person is engaging or participating in or present during (what a reasonable person would consider to be) a sexual act, which is not of a kind ordinarily done in public;
b) The person's genitals, buttocks, or breasts are:

i) exposed,
ii) covered only with underwear;
iii) covered only by clothing that is wet or otherwise transparent; or
iv) obscured by any means, other than by clothing that a person is wearing, where the obscured area 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). This includes instances where they are obscured by part of a person's body or by digital alteration.

c) The person in act of urination, defecation, or personal care associated with the person's urination, defecation or discharge.

10.34 Both '**upskirting**' and '**downblousing**' imagery are encompassed within the scope of this offence, in addition to photographs and videos shared by a victim with a previous partner, and intimate photographs and videos obtained through other means (such as hacking).

Consent, reasonable belief in consent and intent

10.35 Providers should look for identifier features which suggest lack of consent and either lack of reasonable belief in consent or intent to cause alarm, distress or humiliation. This may be evidenced by, for example:

a) a user report which suggests that the content has been posted non-consensually (absent evidence to the contrary, this should be taken as reasonable grounds to believe not only that there was no consent, but that Person A did not have reasonable belief in consent), *or*
b) contextual information accompanying the content which suggests that the photograph or video was posted for malicious reasons (for example, abusive descriptions of the person depicted, positioning the disclosure as an act of '**revenge**'), *or*
c) contextual information which presents the image being shared as having been obtained through a '**hack**' or '**leak**'.

10.36 If the person portrayed consented to the disclosure the content is not illegal content.

Images that have been shared, forwarded or reposted

10.37 An image which a provider has reasonable grounds to infer was disclosed without consent (or without reasonable belief in consent) could then be shared, forwarded or reposted. In such cases, if there is an absence of evidence that the person who originally disclosed the image took appropriate steps to obtain consent from the subject of the image to disclose it, it is reasonable for a provider to infer that a person who subsequently shares, forwards or reposts the image does not have a reasonable belief in consent. The content should therefore be taken down.

Threats to disclose

10.38 In order for content to be considered illegal, it is not always necessary that a photograph or film depicting a person in an intimate state has been disclosed. It is also an offence to **threaten to disclose a photograph or film which shows (or appears to show) a person in an intimate state.** There must, however, be reasonable grounds to infer that the person making the threat 'intended' the person being threatened to fear that the threat would be carried out, or 'failed to think about' or was 'indifferent' as to whether this would be the case.

Relevant exemptions

10.39 Content is not illegal where there are reasonable grounds to infer that Person B was, when the photograph or film was taken or recorded, in a place to which the public or a section of the public had or were permitted to have access (whether freely or by paying a fee); Person B had no reasonable expectation of privacy from the photograph or film being taken or recorded; and Person B was in the intimate state voluntarily, or Person A reasonably believed that Person B was in the intimate state voluntarily. In practical terms, 'upskirting' and 'downblousing' photographs or videos are *not* covered by this exemption.

Defences

10.40 Person B also has a defence if they have a reasonable excuse. Some examples of likely reasonable excuses would be:

a) If they reasonably believed that the disclosure of the photograph or film was in the public interest. This may be the case where the disclosure is for journalistic purposes. However, providers should consider and may need to take UK legal advice on whether the right to journalistic freedom of expression outweighs Person B's right to privacy.

b) If they reasonably believed that the disclosure of the photograph or film was necessary for the purposes of the prevention, detection, investigation or prosecution of crime. This defence will not arise where the content is shared by a person who is not a member of the police or acting on police instructions.

Encouraging, assisting and conspiracy to intimate image abuse

10.41 As set out above, encouraging and assisting intimate image abuse, conspiracy to commit intimate image abuse and knowingly engaging together with someone else in pursuit of a common purpose to commit intimate image abuse are also priority offences. In all these cases, content will only be illegal content to the extent that the underlying offence of possession of intimate image abuse is sufficiently linked to the UK – the question is whether the UK would prosecute the people involved. The rules which decide whether or not there is a sufficient link are very complicated and content moderators cannot be expected to understand them in detail. However, for the purposes of this guidance, content should be considered illegal if the person being encouraged or assisted, or with whom there is a conspiracy or a common purpose, is either British or located in the UK.

10.42 Encouraging could include words urging another person to carry out the offence. Assisting could include providing substantive help in carrying out the offence. There must either be intent to encourage/assist the offence, or belief that the offence will be committed. For conspiracy, there must be an agreement between two people and intent to carry out the offence. For a common purpose, both parties must knowingly share the purpose.

Risk assessment and intimate image abuse content

10.43 For the purposes of carrying out a risk assessment, providers should be aware that (priority) illegal content which amounts to intimate image abuse can take the form of videos or images (including those which have been digitally manipulated i.e. deepfakes), or links to these same videos or images.

10.44 Content amounting to these offences may be found on user-to-user services (including adult services, social media services, dating services, messaging services, video-sharing services, file-storage and file-sharing services, and discussion forums and chatrooms). Search services may also be used to search for and access such content, for example via video or image viewing facilities.

10.45 See the Register of Risk chapter titled 'Intimate image abuse.'

Usage examples

- Photographs or video of nudity or a sexual act which is presented as having been obtained through a hack or leak.
- Photographs or video of nudity or a sexual act which is presented as being disclosed without the consent of the person depicted.
- A photograph that appears to have been taken down a person's shirt or blouse ('downblousing') or up their skirt ('upskirting') without consent.
- A reshare or repost of a photograph or video which has already been judged to be illegal content by a provider.

Reasonably available information for user-to-user services

- The content suspected to be illegal content.
- Content titles or descriptions of the content suspected to be illegal content.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

Reasonably available information for search services

- The content suspected to be illegal content.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A11 of Annex 1.

Statute: Section 66(B) of the Sexual Offences Act 2003.

Notes: Section 2 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 has not been considered separately in this guidance. For the purposes of making illegal content judgements, it overlaps in whole or in part with the Section 66(B) offence, which we have treated as the main offence for the purposes of threats above.

Cyberflashing

10.46 The Act creates the offence of **intentionally sending a photograph or film of genitals for the purposes of causing alarm, distress or humiliation or for the purpose of obtaining sexual gratification**. This offence is also known as 'cyberflashing' and is referred to as such for the purposes of this chapter.

10.47 While children can be victims of cyberflashing, the sexual nature of the offences in question mean that any content which involves a child and meets the threshold for an offence mentioned above will also automatically amount to a child sexual exploitation and abuse (CSEA) offence.[56]

10.48 This type of content will only appear on user-to-user services where inferences can be made about intention, purpose for sending and the intended recipient of the image or video. Cyberflashing content is unlikely to be found in a recognisable form in search results except where search results link through to content on a user-to-user (U2U) service. Therefore, the guidance below applies to user-to-user services only.

10.49 For more information on harms relating to cyberflashing, see the Register of Risk chapter titled 'Cyberflashing.'

10.50 Content will be illegal content where the following is true:

a) The content contains a 'photograph or film' of someone's genitals (the genitals in question do not need to be that of the sender); *and*
b) The content has been sent or shown by the sender to another person by any means, electronically or otherwise, or placed for a particular person to find; *and*
c) The sender has sent (etc.) the photograph or film with the intention of causing alarm, distress or humiliation on the part of the receiver, *or*
d) The sender has sent (etc.) the photograph for the purpose of obtaining sexual gratification, *and* been reckless as to whether by doing so the recipient may have experienced alarm, distress or humiliation.

10.51 The genitals being shown in the photograph or film do not need to be the genitals of the user sending the content. Genitals from, for example, a pornographic film or image would meet the definition of this type of content.

What is a 'photograph or film'?

10.52 A photograph should be understood as any still image which is or appears to be a photograph, whether created by a camera, made by computer graphics or generated in any other way (for example, a still of a film). A 'film' should be understood as any moving image, including automated GIFs. In Ofcom's view, AI-generated imagery, 'deepfakes' and other manipulated media which appear to be a photograph or a film are captured by this offence.

10.53 Copies of photographs or films, or data which can be converted to create a photograph or film (for example, a zipped file) should be treated as equivalent to the photograph or film itself.

[56] In the case of cyberflashing, the content in question would likely amount to sexual communication with a child if sent by an adult. If sent by a child, the image itself would be classified as an indecent image of a child.

10.54 Content which does not itself contain a photograph or film of genitals but which contains a URL which links to such content, will be illegal where the relevant state of mind requirement is made out.

State of mind

10.55 The state of mind requirement for this offence is intent to cause distress, alarm, or humiliation or, where the photograph or film is sent for the purpose of obtaining sexual gratification, recklessness as to whether alarm, distress or humiliation would be caused.

10.56 It will be reasonable for service providers to infer the required intent or recklessness where a user sends content depicting genitalia, *unless:*

a) there is evidence of consent from the user(s) receiving the photograph or film *or*
b) it is posted on a service where it is a commonly accepted part of the culture to send and receive intimate images without prior agreement.

10.57 Regardless of the type of service in which the content is sent, it is likely to be reasonable for service providers to infer intent or recklessness:

a) where there is explicit evidence of the intent behind sending the message, for example in the form of a comment on the face of the content or in surrounding contextual information (such as subsequent messages in a conversation), *or*
b) where the user sending the image has previously received warnings that sending such images is likely to cause distress.

Encouraging, assisting and conspiracy of the cyberflashing offence

10.58 Encouraging, assisting and conspiracy to commit the cyberflashing offence are also priority offences. In all these cases, content which amounts to the encouragement, assistance, or conspiracy will only be illegal content to the extent that the offence which is being encouraged, assisted or conspired to is sufficiently linked to the UK – the question is whether the UK would prosecute the people involved. The rules which decide whether or not there is a sufficient link are very complicated and content moderators cannot be expected to understand them in detail. However, for the purposes of this guidance, content should be considered illegal if the person being encouraged or assisted, or with whom there is a conspiracy, is either British or located in the UK.

10.59 Encouraging could include words urging another person to carry out the offence. Assisting could include providing substantive help in carrying out the offence. There must either be intent to encourage/assist the offence, or belief that the offence will be committed. For conspiracy, there must be an agreement between two people and intent to carry out the offence.

Risk assessment and cyberflashing content

10.60 For the purposes of carrying out a risk assessment, providers should be aware that (priority) illegal content which amounts to the offence of cyberflashing can take the form of videos or images (including those which have been digitally manipulated i.e. deepfakes), or links to these same videos or images.

10.61 Content amounting to these offences may be found on user-to-user services (including social media services, messaging services, video-sharing services and dating services).

10.62 See the Register of Risk chapter titled ‘Cyberflashing.’

Usage examples

- A photograph or video of a person's genitals sent via a messaging app or via social media (for example, through a DM) to another user, where it appears to have been sent against the recipient's wishes, and/or without warning or context.
- A photograph or video of a person's genitals, sent over a messaging app or other communications service to all users in a 'meeting' or group chat where it would not be commonly expected to appear.
- A photograph or video of a person's genitals, posted to a public comments section on a service where this is not a commonly accepted part of the service's culture.

Reasonably available information for user-to-user services

- The content suspected to be illegal content.
- No more than three messages or posts immediately preceding content.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided

References

- **Legal annex:** Section A11of Annex 1.
- **Statute:** Section 66A of the Sexual Offences Act 2003.

11. Human trafficking

11.1 This chapter considers the human trafficking offence. This is a priority offence under the Online Safety Act ('**the Act**').

11.2 The human trafficking offence involves the exploitation of children or adults in some way. Service providers should consider this chapter alongside Chapter 5 on 'Grooming and exploitation of children' and Chapter 9 on 'Sexual exploitation of adults.'

11.3 For more information on harms relating to human trafficking, see the Register of Risks chapter titled 'Human trafficking.'

Human trafficking

11.4 it is an offence for a person (Person A) to **take a "relevant action" with a view to another person (Person B) being exploited.**

11.5 "Relevant actions" are:

a) the recruitment of another person,

b) the transportation or transfer of another person,

c) the harbouring or receiving of another person,

d) the exchange or transfer of control over another person, or

e) the arrangement or facilitation of any of these actions

11.6 Online, the most likely relevant actions are the recruitment of another person, or the arrangement or facilitation of the other actions – so long as these actions are done with a view to exploiting the person involved.

11.7 In order for content to be illegal under this offence, there must be reasonable grounds to infer that either:

a) Person A intended that Person B would be exploited (in any part of the world) during or after the relevant action; *or*
b) Person A knew or ought to have known Person B was likely to be exploited (in any part of the world) during or after the relevant action.

What is exploitation?

11.8 For the purposes of this offence, a person should be considered to be exploited if they are:

a) held in slavery or servitude or subjected to forced or compulsory labour;

b) subjected to control, direction or influence over their involvement in prostitution by another person in a manner that indicates that the other person is aiding, abetting or compelling the prostitution; *or* the victim or potential victim of a number of other child and/or adult sexual offences including but not limited to sexual exploitation and/or indecent images;

c) encouraged, required or expected to do anything which might relate to the illegal removal of organs; or

d) subjected to force, threats, deception, abduction, coercion or fraud designed to induce the person to provide services or benefits of any kind to another person, or to enable another person to acquire benefits of any kind. Here, 'benefits' includes the proceeds of forced begging or of criminal activities; or

e) (but only if the person is a child or vulnerable adult) used or attempted to be used to provide services or benefits of any kind to another person, or to enable another person to acquire benefits of any kind, which a person who was not vulnerable would likely refuse to be used for that purpose. Here, 'benefits' includes the proceeds of forced begging or of criminal activities.

11.9 It is irrelevant whether the person being exploited consents to any part of the actions or circumstances mentioned above.

11.10 A vulnerable adult, for the purposes of e), may be vulnerable for any reason. Examples of reasons are:

a) impairment through mental or physical illness, disability or old age,
b) a family relationship with the person targeting them,
c) that the person targeting them holds a position of trust in relation to them.

11.11 It would be reasonable to infer such a vulnerability where the victim, potential victim or someone on their behalf says so in a complaint.

11.12 Service providers should note that children and vulnerable adults are often particular targets of perpetrators seeking to exploit them in the ways mentioned above. A particularly prominent example is through a system of recruitment for 'county lines' activity, where young people and other vulnerable individuals are used to transport drugs and other illegal items from one part of the country to another.

11.13 Reasonable grounds to infer that content amounts to an offence are likely to exist where content makes explicit reference to the exploitation of another person. However, most perpetrators of human trafficking will *not* be honest about their intentions to exploit people through their actions. For example, they may use false job advertisements which appear legitimate. Providers should have regard to any evidence provided by third parties, such as UK law enforcement, that in their view there are reasonable grounds to infer that content is posted for the purposes of exploitation. However, a provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

11.14 A person who knowingly engages together with someone else in pursuit of a common purpose to commit this offence is also committing an offence, as is someone who conspires to commit the offence. It is not necessary for the provider to be able to infer that the offence actually took place. Where content encourages or assists the commission of the offence, providers should refer to the slightly narrower versions of the offences that exist in England, Wales and Northern Ireland, as set out in section A12 of Annex 1.

Risk assessment and illegal human trafficking content

11.15 For the purposes of carrying out a risk assessment, providers should be aware that content which amounts to a human trafficking offence may take the form of any type of communication. Text in the form of messages, such as DMs, is particularly likely to amount to this offence.

11.16 Content amounting to these offences may be found on user-to-user services (including social media services, messaging services, and marketplaces and listings services).

11.17 See the Register of Risk chapter titled 'Human trafficking.'

Usage examples

- Content which discusses practical arrangements for the movement or harbouring of a person for the purposes of exploiting them, including arrangements with the victim/survivor or potential victim themselves.

Reasonably available information for user-to-user services

- The content suspected to be illegal content.
- A number of the messages or posts immediately preceding the content to show whether the content concerns the exploitation of a person. The number viewed should be sufficient to judge this, but (in keeping with the principle of data minimisation) no more than sufficient.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

Reasonably available information for search services

- The content suspected to be illegal content.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A12 of Annex 1.

Statute: Section 1 of the Human Trafficking and Exploitation (Scotland) Act 2015 (asp 12); section 2 of the Modern Slavery Act 2015; section 2 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c. 2(N.I.)).

Guidance on Content Harmful to Children: Section 8, 'Guidance on violent content'

12. Unlawful immigration

12.1 This section of the Illegal Content Judgements Guidance considers the unlawful immigration offences. These are priority offences under the Online Safety Act (the **"Act"**).

Priority offences related to unlawful immigration

12.2 The priority offences relating to unlawful immigration comprise:

a) Offences relating to illegal entry into the UK; and

b) Assisting unlawful immigration.

12.3 These offences centre around an individual being involved in the illegal movement of people, either across borders or within countries, including conduct facilitating a breach of immigration law by a non-British/Irish citizen.

12.4 False documents, including false identity cards, passports or other travel documentation, may be advertised, bought and sold online. Such documents may be used in the commission of an unlawful immigration offence. However, it is likely to be difficult to reasonably infer whether a false document has been advertised, bought, or sold online for the purpose of commissioning an unlawful immigration offence. This is because documents which are false may also be used for other purposes, most notably fraudulent purposes. Where content appears to offer false passports or other false travel documentation for sale, service providers should therefore first refer to paragraphs 6.75 to 6.81 of Chapter 6, 'Fraud and other financial offences' (articles for use in frauds).

12.5 The language used in posts amounting to the unlawful immigration offences may be intentionally vague or make use of coded terms to avoid detection.

Risk assessment and unlawful immigration content

12.6 For the purposes of carrying out a risk assessment, providers should be aware that (priority) illegal content which amounts to an unlawful immigration offence may take the form of any type of communication. Text in the form of messages (for examples direct messages), or advertisements, are particularly likely to amount to this offence.

12.7 Content amounting to these offences may be found on user-to-user services (including social media services, messaging services, and services which allow users to build online communities).

12.8 See the Register of Risk chapter titled 'Unlawful immigration.'

Illegal entry into the UK

12.9 It is an offence under section 24 of the Immigration Act 1971 for a person to:

a) **knowingly enter the United Kingdom in breach of a deportation order** (A1);
b) **knowingly enter the United Kingdom without necessary leave** (B1);
c) **knowingly remain beyond the time of limited leave** (when the person has limited leave to enter or remain in the United Kingdom); (C1) or

d) **knowingly arrive in the United Kingdom in breach of entry clearance under immigration rules if required** (D1).

12.10 The posting of content cannot amount to an act of illegal entry, remaining or arrival. However, in some circumstances online content could amount to an offence of encouraging or assisting one of these offences. For this to be true service providers need to be able to reasonably infer that the person posting the content either intends to encourage or assist the commission of an offence or believes that the offence will (not may) be committed and that their act will encourage or assist its commission.

12.11 Similarly, in some circumstances online content could amount to a conspiracy to commit one of these offences or knowing engagement in a common purpose to commit the offence. Service providers would need to consider whether communications between users appear to be an agreement between two or more people to carry out one (or more) of the offences, intending to carry it out, or whether communications between users show two people knowingly sharing a purpose of carrying it out.

12.12 It should be noted that content which provides safety information to irregular migrants, or which otherwise seeks to promote and protect their safety and wellbeing, does *not* amount to an offence as it does not meet the legal threshold for 'assistance'. It should not therefore be treated as illegal content.

12.13 Whether or not content amounts to encouraging or assisting an illegal entry offence, or conspiracy or a common purpose to commit this offence will be fact specific and service providers will need to make judgements on a case-by-case basis dependent on the nature of the content. The conspiracy, encouragement or assistance must relate to illegal entry, not just entry. In other words, it must be clear that the person posting the content intends to encourage or assist someone to behave illegally or conspire to someone behaving illegally.

12.14 Where content contains warnings and references to legal immigration *only,* this may be an indication that content is legal.

12.15 Reasonable grounds to infer that content is illegal may exist in cases where information has been made available to service providers via third parties such as law enforcement. However, a service provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

Note on usage examples

- We have not given any usage examples here, due to the particular challenges in identifying this content. We also recognise that the nature of this content is particularly prone to change due to bad actors constantly evolving their tactics, making it likely that any guidance would become quickly outdated.

Reasonably available information for user-to-user services:

- The content suspected to be illegal content.
- If the content forms a part of a message chain, a number of the messages or posts immediately preceding and following the content to show whether or not the users concerned are forming an agreement (i.e. a conspiracy). The number viewed should be

sufficient to judge this, but (in keeping with the principle of data minimisation) no more than sufficient.

- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

Reasonably available information for search services:

- The content expected to be illegal content.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A13 of Annex 1.

Statute: Section 24(A1), (B1), (C1) and (D1) of the Immigration Act 1971.

Assisting unlawful immigration

12.16 Under section 25 of the Immigration Act 1971, it is an offence to **do an act which facilitates the breach, or attempted breach, of immigration law by an individual who is not a UK national**. It is not necessary for service providers to prove that a breach of immigration law has actually been committed.

12.17 In order for service providers to have reasonable grounds to infer this, they would need to infer that:

a) The person posting the content is doing an act which facilitates the commission of a breach (or attempted breach) of immigration law by an individual who is not a national of the United Kingdom.

b) Immigration law means a law which has effect in a member state of the European Union, Norway, Iceland or the United Kingdom and which controls, in respect of some or all persons who are not nationals of the member state (or the United Kingdom), entitlement to:

i. enter or arrive in the State;

ii. transit across the State; *or*

iii. be in the State.

12.18 The person posting must have knowledge or reasonable cause for believing that:

a) the act of posting content facilitates the breach or attempted breach of immigration law *and*;

b) knowledge or reasonable cause for believing that the individual is *not* a national of the United Kingdom.

12.19 In cases where information justifying this inference has been made available to service providers by third parties, such as law enforcement, or a court order, reasonable grounds to

infer may exist. However, a provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

Note on usage examples

We have not given any usage examples here, due to the particular challenges in identifying this content. We also recognise that the nature of this content is particularly prone to change due to bad actors constantly evolving their tactics, making it likely that any guidance would become quickly outdated.

Reasonably available information for user-to-user and search services

- The content suspected to be illegal content.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A13 of Annex 1.

Statute: Section 25 of the Immigration Act 1971.

Caselaw: *R. v Bani (Samyar Ahmadii)* [2021] EWCA Crim 1958.

13. Encouraging or assisting suicide and serious self-harm

Warning: this chapter contains content that may be upsetting or distressing

13.1 This chapter considers the offences of encouraging or assisting suicide and serious self-harm. These are priority offences under the Online Safety Act ('**the Act**').

13.2 The offence of encouraging or assisting suicide requires intent to encourage or assist suicide, or an attempt at suicide. The offence of encouraging or assisting serious self-harm also requires intent to encourage or assist serious self-harm. In practice it may be difficult, in some circumstances, for providers to reasonably infer that all of the elements of the offence, including the mental element of intent, are present. This chapter sets out guidance to providers as to when such inferences are likely to be reasonable.

Vulnerability of users posting and engaging with suicide and self-harm related content

13.3 Providers should be mindful that content relating to suicide and self-harm is very likely to be posted or created by people – including children – who are in vulnerable and difficult circumstances, many of whom may be in distress or managing mental health challenges. In these cases, online spaces may be a place to connect with others who may be experiencing similar feelings. Particularly in the case of children or young people, users may not have a full understanding of the harm which may arise from content they are posting. While this does not negate their duties relating to the takedown of illegal content for user-to-user services, or minimising the risk of encountering illegal content for search services, providers should be aware that the over-removal of non-illegal content relating to suicide or self-harm may have a negative impact on the person posting (for example, by exacerbating feelings of isolation or self-criticism). Over-removal may also contribute to the stigma around openly discussing mental health challenges, difficult life circumstances, suicidal thoughts (often referred to as suicidal ideation), experience or thoughts of self-harm.

13.4 Providers should therefore take a careful approach to distinguishing between content posted with the intent to assist or encourage suicide (or attempted suicide of another), or serious self-harm of another person, and content which discusses suicidal thoughts or experience, or thoughts or experience of self-harm, in the context of a supportive or self-expressive conversation.

13.5 Providers are encouraged to take a compassionate and sensitive approach towards the removal of content relating to suicide or self-harm where there are reasonable grounds to infer that it amounts to illegal content. This approach should take account of the risk of harm to the poster as well as other users viewing the content. Where content has been judged to be illegal, we also encourage providers who are able to, to consider the provision of support services at point of takedown, to negate the potentially negative impacts already discussed. We acknowledge that this will not be possible in the case of search services. Search services should, however, be aware of the search design measure on the provision of suicide and self-harm crisis prevention information when users input suicide and self-harm related search queries (Volume 2, chapter 9).

13.6 For more information on the harms related to suicide and self-harm, see the Register of Risks chapter titled 'Encouraging or assisting suicide and serious self-harm.'

Language

13.7 When considering whether content relates to encouraging or assisting suicide or serious self-harm, providers should be alert to the use of euphemistic or coded language ('algospeak', including the use of acronyms, coded hashtags and intentional misspellings, for example, replacing letters with numbers), which is often used to circumvent content moderation systems. Posters may also use slang to indicate membership of a particular community of others who are experiencing suicidal ideation, or thoughts of self-harm.

Encouraging or assisting suicide

13.8 It is an offence for a person to do an act capable of encouraging or assisting the suicide or attempted suicide of another person, with intent to encourage or assist suicide or attempted suicide. In order for content to be illegal, there must be reasonable grounds for providers to infer both:

a) that the content consists of an act capable of encouraging or assisting the suicide or attempted suicide of another person; *and*
b) that the person posting the content intended to encourage or assist the suicide or attempted suicide of another person.

We consider the conduct and then the state of mind elements for 'encouraging' first, and then 'assisting' second.

13.9 For content to be illegal it is not necessary that the content be encouraging or assisting a specific act of suicide or attempted suicide, nor for it to be targeted towards a specific person or persons.

13.10 It should be emphasised that it is *not* a criminal offence to take one's own life or to attempt to, nor is it an offence to express suicidal thoughts.

What is 'encouragement' with intent?

13.11 'Encouragement' can be by any act including a course of conduct (that is, more than one instant of encouragement spread over time) or a single instance. It can take the form of conduct including, but not limited to, threats, pressure, or non-threatening, 'friendly' persuasion. Encouragement may be implied as well as expressed directly. Examples of content which may constitute the encouragement of suicide are blackmail, or 'egging' someone on (which could include praising someone's stated intention to take their life, as well as more concerted efforts to encourage someone to take a course of action they are not yet committed to). Glorification of suicide, by itself, is not sufficient to amount to encouragement.

13.12 Having determined that content is capable of encouraging another person to take, or attempt to take, their own life, it will be necessary in all cases for providers to consider whether there are reasonable grounds to infer that the poster had the required intent.

13.13 When considering whether content (such as messages or comments) encouraging suicide or attempted suicide was posted with intent, content moderators should always consider whether the content was posted in earnest i.e., with the intent that a person should be

encouraged to take, or attempt to take, their own life. Flippant comments (for example, 'you should kill yourself') in the context of a heated argument, while unpleasant and offensive, are unlikely to be enough by themselves for an inference of intent on the part of the user to encourage a person to take or attempt to take their own life.

13.14 Similarly, jokes made in poor taste are very unlikely to be made with intent and therefore there are unlikely to be reasonable grounds to infer that such content firstly amounts to encouragement, and secondly was posted with intent to encourage the suicide or attempted suicide of a person. Providers should keep in mind the popularity of 'dark' or 'edgy' comedy amongst particular communities and consider the possibility that content is a joke in poor taste and therefore indicative of a lack of intent.

13.15 Intent will be reasonably inferred in relation to comments which 'egg on' an act of suicide or attempted suicide, especially where such behaviour is targeted and persistent. For example, when there is what appears to be a credible threat that a person is about to take their own life, it will be reasonable to assume that any comment which explicitly and overtly encourages such an action was made with intent to encourage a person to take, or attempt to take, their own life. This could involve a scenario in which a user posts that they are considering taking, or intend to take their own life and another user responds with words to the effect of 'you should do it' or that they hope that the person 'succeeds' in taking their own life.

13.16 It may also be appropriate to infer intent when a webpage appears to have been set up with the purpose of encouraging suicide.

13.17 It is unlikely to be appropriate to infer intent to encourage a person to take or attempt to take their own life where a user responds to a post in which another user expresses an intention to take their own life with discussions of their own personal experiences with suicide, including suicide attempts.

What is 'assistance' with intent?

13.18 Illegal content judgements should be made on a case-by-case basis. However, broadly speaking, only content which provides specific, practical or instructional information on suicide methods is likely to be capable of constituting assistance for the purposes of this offence in an online context. This could include details on the most effective way of taking one's own life, or tips about how to do so in a way which avoids interruption from others or to beat a 'survival instinct'.

13.19 Content which constitutes 'assistance' is *only* illegal content if there is also intent, on the part of the poster, to assist suicide, or attempted suicide. The service provider should consider the nature of the post and the context around the post as this may indicate a presence or absence of intent. It is unlikely to be appropriate to infer intent where suicide methods are being discussed in the context of personal experience, as opposed to being recommended to another person, *unless* the poster encourages other users to try the suicide method they are discussing.

13.20 Content which consists of a URL without any accompanying text may amount to assistance, if the context is such that intent can be reasonably inferred. For example, where a user posts a URL linking to instructional information on suicide methods in response to a user expressing suicidal ideation or intent.

13.21 Factors to which providers should have regard when considering a poster's intent include:

- In the case of a user-to-user service, the location of the content/post i.e., whether it is a standalone post or a post directed at another user (for example, a reply).
- The content and context in which the content appears. This might be other content/posts in a thread (for example, whether the post was in response to someone that has expressed a will to end their life) or the rest of a webpage (for example, search content linking to a website which presents itself as a 'how to' guide for taking one's own life). It is unlikely to be reasonable to infer intent in the case of philosophical discussions of suicide, discussions of the merits of assisted dying or reports of suicides, or a discussion of a person's own attempt or intent to take their own life. Fictional descriptions of suicide are unlikely to involve intent, except in limited circumstances where the contextual information suggests this is the most reasonable conclusion (for example, where they are presented as a reference point for instructions, or where it appears that a fictional context is being used to obscure the intended meaning).
- Any wording in addition to the specific, practical or instructional information which could suggest intent to assist, or lack thereof.

13.22 In these cases, the content should be treated as illegal.

Risk assessment and illegal suicide content

13.23 For the purposes of carrying out a risk assessment, providers should be aware that (priority) illegal content which amounts to encouraging or assisting suicide could be in the form of any communication.

13.24 Content amounting to these offences may be found on user-to-user services (including discussion forum and chat rooms, social media, video-sharing and online communities) and search services may be used to seek out such content. Groups, forums and other communities which exist to discuss suicide or mental health challenges are particularly at risk from these offences. While such services can often be helpful and productive spaces for those struggling with suicidal ideation, they are also particularly likely to host encouraging and assisting suicide content which demonstrates intent.

13.25 See the Register of Risk chapter titled 'Encouraging or assisting suicide (or attempted suicide) and serious self-harm'.

Usage examples

- Content which amounts to an inducement to enter into a 'suicide pact'.
- Content which provides specific, practical or instructive information about suicide methods to a person showing intention of taking their own life.
- Messages or comments which 'egg on' a person showing intention of taking their own life.

Reasonably available information for providers of user-to-user services

- The content suspected to be illegal content.
- A sufficient, but no more than sufficient number of the messages or posts immediately preceding the content to show the nature of the thread in which the content is posted (supportive, dark comedy etc) (in keeping with the principle of data minimisation).

- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

Reasonably available information for providers of search services

- The content suspected to be illegal content.
- The immediate context in which the content appears.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A14 of Annex 1.

Statute: Section 13 of the Criminal Justice Act (Northern Ireland) 1966 (c. 20 (N.I.)) and section 2 of the Suicide Act 1961.

Guidance on Content Harmful to Children: Section 3, 'Guidance on suicide content'; Section 4, 'Guidance on self-harm content'; Section 5, 'Guidance on eating disorder content'; Section 7, 'Guidance on bullying content'; Section 9, 'Guidance on harmful substances content'; Section 10, 'Guidance on dangerous stunts and challenges content'.

Encouraging or assisting serious self-harm

13.26 The Act created the encouraging or assisting serious self-harm offence. It is an offence to **do a relevant act capable of encouraging or assisting the 'serious self-harm' of another person, with intent to encourage or assist the self-harm of the other person**. In an online context, the 'relevant act' in question will be the posting of a piece of online content (of any type, including the sending of messages and posting of comments).

13.27 In order for content to be illegal, there must be reasonable grounds for a service to infer both that the content is capable of encouraging or assisting serious self-harm *and* that it was posted with the intent of doing so.

13.28 It is not necessary that the post encourage or assist a specific act of serious self-harm, nor for it to be targeted towards a specific person or persons. Nor is it necessary that the content results in an actual act of self-harm, only that the content is capable of encouraging or assisting this.

13.29 Providers should note that acts of self-harm themselves are not illegal, nor is discussion of self-harm.

What is serious self-harm?

13.30 'Serious self-harm' is self-harm which would amount to 'severe injury' or grievous bodily harm, which is defined in law as 'really serious harm'. It need not be permanent, nor does it need to amount to a threat to life. Harm need not be bodily; psychiatric harm (as opposed to mere psychological harm) is also included in the scope of this offence. Successive acts of self-

harm which cumulatively reach the threshold of seriousness should also be considered serious self-harm.

13.31 Self-harm may take a passive or active form. That is, it might result from a positive action or from *in*action. Both types may meet the definition of 'serious self-harm' if they have the capacity to result in really serious harm and/or severe injury. For example, content which constitutes encouragement of another person to starve themselves to the point of really serious harm and/or severe injury may be illegal content, subject to there being reasonable grounds for a service provider to infer intent on the part of the poster to encourage or assist serious self-harm of a person.

What is 'encouragement' with intent?

13.32 Encouragement can be by any act including a course of conduct or a single instance. It can take the form of conduct including, but not limited to, threats, pressure, or friendly persuasion. Encouragement may be implied as well as expressed directly. Examples of content which may constitute the encouragement of serious self-harm are blackmail, or 'egging' someone on. Glorification of self-harm, by itself, is not sufficient to amount to encouragement.

13.33 Once content is judged to be capable of encouraging serious self-harm, it will be necessary in all cases for providers to assess whether there are reasonable grounds to infer intent on the part of the person posting the content before it is judged to be illegal. Intent to encourage will be most clear where there is evidence of sustained pressure or malicious motivation, and will be most likely to be inferred where content is 'egging on' relevant behaviour, or where it contains blackmail or threats. For example, when there is what appears to be a credible threat that a person is about to undertake an act of serious self-harm, it may be reasonable to assume that any comment which, on its face, encourages such an action was made with intent. It will also be appropriate to infer intent when a webpage or online community appears to have been set up with the purpose of encouraging self-harm.

13.34 When considering whether content (such as messages or comments) which is capable of encouraging serious self-harm was posted with intent, content moderators should always consider whether the content was posted in earnest i.e., with the intent that the person should be encouraged to undertake an act of serious self-harm. Flippant comments (for example, 'go cut yourself'), while unpleasant and offensive, are unlikely to be enough by themselves for a provider to reasonably infer intent on the part of the user that a person should be encouraged to undertake an act of serious self-harm.

13.35 Similarly, jokes made in poor taste are very unlikely to be made with intent and therefore there are unlikely to be reasonable grounds to infer that such content firstly amounts to encouragement, and secondly was posted with intent. Providers should again keep in mind the popularity of 'dark' or 'edgy' comedy among particular communities, and consider the possibility that content is a joke in poor taste.

What is 'assistance' with intent?

13.36 Content judgements should be made on a case-by-case basis. However, broadly speaking, only content which provides specific, practical and/or instructional information on how to undertake an act of serious self-harm is likely to constitute content capable of being assistance for the purposes of this offence in an online context. Where such content comes to providers' attention, the nature of the post and the context around the post should always be considered as this may indicate a presence or absence of intent.

13.37 Where specific, practical or instructional content on self-harm methods is posted to a forum or within a chat in which intent to seriously self-harm is discussed, it will be reasonable to infer that intent to assist serious self-harm exists by virtue of the information having been posted. In these cases, the content should be treated as illegal. The exception will be cases where the intent behind the method information posted can be reasonably inferred to promote harm minimisation or safety promotion (for example, promoting less dangerous ways to self-harm, to counter another suggestion), or where the method is being described in the context of a personal experience (without being promoted for replication by others).

13.38 Factors to which providers should have regard when considering a poster's intent include:

- In the case of a user-to-user service, the location of the content/post i.e., whether it is a standalone post or a post directed at another user (for example, a reply).
- The content and context in which the content appears, such as: other content/posts in a thread (for example, whether the post was in response to someone that has expressed an intention to self-harm); or the context of a webpage (for example a website which presents itself as a 'how to' guide for self-harm). It is unlikely to be reasonable to infer intent in the case of fictional descriptions of self-harm, reports of self-harm or discussions of a person's own experiences of self-harm.
- Any wording in addition to the specific, practical or instructional information which could suggest intent to assist, or lack thereof.

Risk assessment and illegal self-harm content

13.39 For the purposes of carrying out a risk assessment, providers should be aware that (priority) illegal content which amounts to encouraging or assisting serious self-harm could be in the form of any communication.

13.40 Content amounting to these offences may be found on user-to-user services (including discussion forum and chat rooms, social media, video-sharing and online communities) and search services may be used to seek out such content. Groups, forums and other communities which exist to discuss ~~suicide~~ self-harm or mental health challenges are particularly at risk from these offences. While such services can often be helpful and productive spaces for those who self-harm or have thoughts of self-harm, they are also particularly likely to host content which encourages or assists serious self-harm with intent.

13.41 See the Register of Risk chapter titled 'Encouraging or assisting suicide (or attempted suicide) and serious self-harm'.

Usage examples

- Messages or comments which 'egg on' a person expressing intent or desire to engage in an act of serious self-harm.
- Content which provides instruction on how to undertake an act of serious self-harm.

Reasonably available information for user-to-user services

- The content suspected to be illegal content.
- A sufficient, but no more than sufficient number of the messages or posts immediately preceding the content to show the nature of the thread in which the content is posted

(supportive of the user, dark comedy etc) (in keeping with the principle of data minimisation).

- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

Reasonably available information for search services

- The content suspected to be illegal content.
- The immediate context in which the content appears.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A14 of Annex 1.

Statute: Section 184 of the Online Safety Act 2023.

Caselaw: DPP v Smith [1961] A.C. 290; R v Ireland [1998] A.C. 147 (psychiatric harm); R v D [2006] EWCA Crim 1139 (psychological harm).

Guidance on Content Harmful to Children: Section 4, 'Guidance on self-harm content'; Section 5, 'Guidance on eating disorder content'; Section 7, 'Guidance on bullying content'; Section 9, 'Guidance on harmful substances content'; Section 10, 'Guidance on dangerous stunts and challenges content'

14. Foreign interference

14.1 This chapter considers the foreign interference offence. This is a priority offence under the Online Safety Act ('**the Act**').

14.2 When considering content relating to this offence, providers should also, where relevant, consider the offences in Chapter 6 (Fraud and other Financial Offences) and the stirring up of hatred offences outlined in Chapter 3 (Threats, Abuse and Harassment (including Hate)). The non-priority false communications offence may also be relevant – see Chapter 16.

Foreign interference

14.3 Section 13 of the National Security Act 2023 created a new offence of foreign interference, which is a priority offence. The offence takes place when a person:

a) engages in "**prohibited conduct**",
b) with the **intention** of having an "**interference effect**" or **being reckless** as to whether it will have an interference effect,
c) and the "**foreign power condition**" is met in relation to the prohibited conduct.

14.4 It is also a priority offence for a person (P) to:

a) engage in a **course of conduct** with one or more other persons,
b) when the '**foreign power condition**' is met in relation to P's conduct,
c) P **intends** the course of conduct to have an **interference effect**,
d) as part of this course of conduct, a **person other than P** engages in '**prohibited conduct**', and
e) P **intends or believes** that, as part of the course of conduct, **the other person will engage in prohibited conduct**.

14.5 It is also an offence to encourage, assist, conspire to or knowingly engage with another person in a common purpose to carry out the offence.

14.6 'Course of conduct' is defined as including a course of conduct engaged in by P alone, or by P and one or more other persons. However, it is not stipulated how many discrete instances would amount to a 'course of conduct.' We take it to refer to two or more instances of related conduct or behaviour.

14.7 We explain the meaning of the other key terms below.

14.8 In order for content to amount to the offence, providers will need to have reasonable grounds to infer that all three conditions of prohibited conduct, the foreign power condition and intended interference effect are satisfied.

14.9 Because the 'foreign power condition' is by far the most difficult to infer of the elements of the offence, it is likely to be most efficient for content moderators to begin with that when they are considering a specific item of content. There may be no need to consider anything else. However, in order to understand the offence, and for the purposes of risk assessments, it is easiest to begin with 'prohibited conduct'.

Prohibited Conduct

14.10 There are three forms of prohibited conduct for the purposes of this offence. Conduct is prohibited conduct if:

a) It constitutes an offence, or if it takes place in a country or territory outside of the United Kingdom, it would constitute an offence if it took place in any part of the United Kingdom;

b) It involves coercion of any kind, including coercion by using or threatening to use violence against that person, damaging or threatening to damage property or reputation, causing or threatening to cause financial loss or causing 'spiritual injury' to, or placing 'undue spiritual pressure on', a person; or

c) It involves making a misrepresentation that a reasonable person would consider to be false or misleading in a way that is material to the interference effect (see below); *and* the person making the representation *knows or intends* the representation to be false or misleading in a way that is material to the interference effect.

14.11 Threats online should usually be considered as potentially amounting to a priority threat offence, as these offences are far more likely to be identifiable. Coercion relating to offline conduct may be reasonably inferred if it is evident on the face of the content and/or supporting materials are able to be provided by a complainant.

14.12 It is unlikely to be possible to infer 'spiritual injury' unless it is clear on the face of the content that the user engaging in coercion is in a position of spiritual or religious authority over the person potentially being coerced and is using that authority improperly to exert pressure. 'Spiritual injury' includes (for example) banning someone from attending a place of worship. 'Undue spiritual pressure' includes (for example) threatening to cause spiritual injury to a person. A religious leader may however express their opinion on political or other matters that have implications for the principles of that religion.

14.13 Misrepresentation is the most likely to be seen online. It may include a misrepresentation as to a person's identity or purpose or presenting information in a way which is misleading, even if some or all of the information is true. In the context of a risk assessment, providers should take the view that a proportion of content which amounts to misinformation is also likely to be foreign interference.

Foreign power condition

14.14 For the purposes of this offence, the foreign power condition is met in relation to a person's conduct if:

a) the conduct in question, or a course of conduct of which it forms part, is carried out for, or on behalf of, a foreign power[57]; *and*

b) the person knows, or ought reasonably to know, that the conduct (or a course of conduct of which it forms part) was carried out for, or on behalf of, a foreign power.

[57] The definition of "foreign power" is given in section 32 of the National Security Act 2023.

14.15 The conduct in question, or a course of conduct of which it forms part, is in particular to be treated as carried out for or on behalf of a foreign power if:

a) it is instigated by a foreign power;

b) it is under the direction or control of a foreign power;

c) it is carried out with financial or other assistance provided by a foreign power for that purpose; *or*

d) it is carried out in collaboration with, or with the agreement of, a foreign power.

14.16 However, the foreign power condition is also met in relation to a person's conduct if none of these are the case, yet the person carrying out the conduct **intends** the conduct to benefit a foreign power. It is reasonable to infer this intent if the user concerned declares it in the content concerned.

Interference effect

14.17 For the purposes of this offence, an "interference effect" means any of the following effects—

a) interfering with the exercise by a particular person of a Convention right in the United Kingdom (meaning a human right under the European Convention of Human Rights, of which perhaps the most likely to be relevant are the rights to freedom of expression, freedom of assembly, and freedom of thought, conscience and religion);

b) affecting the exercise by any person of their public functions;

c) interfering with whether, or how, any person makes use of services provided in the exercise of public functions;

d) interfering with whether, or how, any person (other than in the exercise of a public function) participates in relevant political processes or makes political decisions;

e) interfering with whether, or how, any person (other than in the exercise of a public function) participates in legal processes under the law of the United Kingdom; *or*

f) prejudicing the safety or interests of the United Kingdom.

14.18 Where a complainant has provided information about themselves, it is reasonable for a provider to believe it absent evidence to the contrary. However, it is not possible to give generic guidance on when it is reasonable to infer intent to have an interference effect – providers should instruct moderators to make a decision in each case based on the reasonably available information.

Foreign interference content risk assessment

14.19 For the purposes of carrying out a risk assessment, providers should be aware that foreign interference (priority) illegal content could be in the form of any communication. As outlined the Register of Risk chapter titled 'Foreign interference', it can occur across many different service types, using different tactics. Harm that can arise from this offence is wider than the individual and can affect societies as a whole.

14.20 In carrying out their risk assessments, providers should consider the information set out in the Register of Risk chapter titled 'Foreign interference', including the risks factors that are

liable to increase the risks of harm from foreign interference online, and the ways in which it may manifest there.

Identifying foreign interference content

14.21 In relation to individual items of content we acknowledge that identifying online content amounting to the foreign interference offence is likely to be particularly challenging.

14.22 Analysis of large data sets and use of proactive technology to detect patterns associated with foreign interference behaviour are likely to be effective in some cases in identifying content amounting to offences quickly and at scale, alongside relevant knowledge of the political or geopolitical context. We recognise that such technology may not be available to many providers, and we do not have sufficient information about them at this stage to make specific recommendations. A proportion of the activity which is identified through these means is likely to be foreign interference.

14.23 We expect that credible evidence from expert third parties can help providers draw reasonable inferences about whether any, or all, of the three conditions in the offence have been satisfied. However, at this stage it is not possible to anticipate what evidence may be available or how it should be interpreted, so as to give detailed guidance on the point. Providers should ensure that such decisions are made at an appropriate level of seniority and weighing up the importance of freedom of expression against the likely covert nature of any foreign state action, in order to take a reasonable view about whether the information available satisfies all three elements of the offence.

14.24 Bots and other automated tools play an important role in generating and spreading content which is likely to amount to a foreign interference offence, since they can be used to post content at scale without the need for repeated human intervention. However, they may also be used for other purposes, including benign purposes. A number of larger service providers already have proactive technology which allows them to detect signals which indicate foreign interference tactics in order detect and remove disinformation from foreign state actors which harms the UK. Such signals may include behaviour such as mass posting of the same content at the same time.

14.25 Providers which have access to such technology and are in a position to make judgements relating to content generated by bots should note that, when assessing bot content, inferences should be made about the state of mind of the person (assumed to be) controlling the bot.

14.26 We do not include usage examples for this offence because we are not currently in a position to do so.

Usage examples

We have not given any usage examples here, due to the particular challenges in identifying this content. We also recognise that the nature of this content is particularly prone to change due to bad actors constantly evolving their tactics, making it likely that any guidance would become quickly outdated.

Reasonably available information for providers of user to user and search services

- The content suspected to be illegal content.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger*.
- Such information as the service lawfully collects in order to identify coordinated or inauthentic attempts to manipulate a platform.
- Information provided by sufficiently expert third parties regarding the satisfaction of any of the three conditions of the foreign interference offence*.

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A15 of Annex 1.

Legislation: Section 13 of the National Security Act 2023, see also sections 14 (interference effect), 15 (prohibited conduct), 31 (foreign power condition) and 32 (foreign power).

15. Animal cruelty

Priority offence of causing unnecessary suffering to an animal

15.1 This chapter considers section 4(1) of the Animal Welfare Act 2006 (Causing the unnecessary suffering of an animal), also known here as '**animal cruelty**'. This is a priority offence under the Online Safety Act ('**the Act**').

15.2 A person commits this offence where they know or ought reasonably to know that their conduct would, or would be likely to:

a) cause suffering to an animal; and
b) the animal is a protected animal; and
c) the suffering is unnecessary.

15.3 In practice, this behaviour can only occur offline. It cannot be committed through the posting of online content because, though online content may depict or discuss the suffering of an animal, the animal will not be caused to suffer by the posting of online content.

15.4 Where content depicts past instances of animal cruelty, service providers should consider whether it amounts to a non-priority offence under section 127(1) of the Communications Act; see our guidance on 'Improper use of a public electronic communications network offence'. It is very important that service providers steer content moderators to consider section 127(1), as much of the content which may seem to be animal cruelty content is more appropriately thought about in that way.

15.5 Where content discusses or livestreams instances of animal cruelty, this section may be relevant. It considers the offences of encouraging, assisting and conspiracy as they relate to animal cruelty.

Risk assessment and the animal cruelty offence

15.6 For the purposes of risk assessment, service providers should be aware that illegal content amounting to the animal welfare offence could be in the form of any communication.

15.7 Content amounting to these offences may be found on user-to-user services, with social media services and private messaging services at particularly high risk. Content amounting to the animal welfare offence may also be discoverable through search services.

15.8 For more information, see the Register of Risks chapter titled 'Animal cruelty.'

Encouraging, assisting or conspiracy to cause unnecessary suffering to an animal

15.9 Content should be treated as illegal content where there are reasonable grounds to infer that it amounts to an offence of encouraging or assisting another person to commit the animal cruelty offence. In order for content to be illegal, there must be reasonable grounds to infer both the conduct element of the offence (an act of encouraging or assisting the offence), *and* the state of mind element (intent or belief that an animal cruelty offence will be committed).

15.10 Similarly, in the case of conspiracy, providers should consider content to amount to illegal content where there are reasonable grounds to infer that it amounts to an intentional agreement between two or more people conspiring to commit an offence. The users involved must intend to participate in an agreement and intend that the animal cruelty offence be committed.

Which animals and what suffering?

15.11 Whether the conduct is encouragement, assistance or conspiracy, it is not necessary to infer that an instance of actual animal cruelty took place.

15.12 Animals covered by the offence are referred to as 'protected animals' and generally include a species of animal that is not living independently in the wild. A 'protected' animal is an animal of a type commonly kept by humans in the UK (though the specific animal in question need not be in the UK). Examples are pets, such as cats, dogs, small animals (i.e. hamsters, rabbits, mice, indoor birds, fish, reptiles etc); or livestock (i.e. cattle, horses, sheep, pigs, chickens/cockerels etc). A 'protected' animal is also an animal which is not commonly kept, but which is under the control of a person on a permanent or temporary basis and not living in a wild state – an animal held in a room or cage, or being controlled by a human, no longer in a wild state, should almost always be considered a protected animal (i.e. animals kept in zoos, wildlife parks, or circuses). This is also the case where an animal is being bought or sold.

15.13 A 'protected animal' also includes these types of animals when they were formerly under the control of a person, whether on a permanent or temporary basis – for example, stray cats, feral dogs, and escaped zoo animals.

15.14 Unnecessary suffering may be of a physical or mental nature. The suffering in question may arise from a person's action or their inaction.

Encouraging, assisting or conspiracy

15.15 For content to be considered illegal, the conduct only needs to be 'capable' of encouraging or assisting. In the context of animal cruelty online, encouraging could include words urging another person to carry out animal cruelty. Assisting could include providing information on how to obtain animals to abuse or giving instructions on how to carry out acts which would cause unnecessary suffering to a protected animal in an 'efficient' manner.

15.16 In either case, the content moderator considering the content will need to decide whether it appears that the user is talking about something real, which they anticipate happening, or if it is clear and obvious that the user is fantasising or joking. They must also be aware that some users online may pretend something is a fantasy or joke to disguise illegal content. If

it appears from the content as if the user is talking about something real, the content should be considered illegal where it is capable of encouraging or assisting. It is more likely to be real if what is described is physically possible, if practical details are given, if the comments accompany a livestream or if the users appear to be taking steps to avoid detection.

15.17 Conspiracy is where at least two people agree to carry out a criminal offence. It may be communicated verbally or in writing, or it may be implicit. In the context of animal cruelty, content may amount to an offence where posts (for example, messages) between two or more users indicate that they are planning to cause unnecessary suffering to a protected animal. Similarly to encouraging and assisting, the moderator will need to consider whether what the content shows is really an agreement to do this.

15.18 An agreement may be made in words, or by conduct. An event showing cruelty to animals which is livestreamed to users is likely to amount to illegal content in that it is likely to amount to a conspiracy between them all to commit animal cruelty.

15.19 In order for content to be illegal in this context, the real-world animal cruelty being encouraged, assisted or conspired to would need to be sufficiently linked to the UK – the question is whether the UK would prosecute the people involved. The rules which decide whether or not there is a sufficient link are very complicated and content moderators cannot be expected to understand them in detail. However, for the purposes of this guidance, content should be considered illegal if either:

a) The animal cruelty offence concerned is taking place in the UK; or
b) The animal cruelty offence is to be committed by someone who is British; or
c) The animal cruelty offences is taking place in any other country where animal cruelty is an offence.

15.20 Service providers should consider the content to determine this. However, if the user concerned appears on the face of the content to be conspiring to carry out animal cruelty which they will commit themselves, and the content itself does not provide full information on the location of the cruelty, providers should also consider the IP address of the posting user and any information in their 'bio' or profile description.

15.21 It is also necessary that the animal cruelty concerned is not already in the past when the encouragement, assistance or conspiracy takes place. For example, if a user reacts positively to content which depicts cruelty, they will not necessarily be encouraging, assisting or conspiring to that act of cruelty because it will have already happened before the user did anything. It is possible for a user to react to a first offence of animal cruelty, by encouraging, assisting or conspiring to a later offence, but it must be reasonable to infer that the state of mind needed for the later offence exists. For example, without more evidence, it is not reasonable to infer that a user who 'likes' a depiction of animal cruelty intends or believes that their conduct will lead to further animal cruelty being committed. However, it would be reasonable to infer that the user intended or believed that an animal cruelty offence would be encouraged if the content said "if you like this video, we will hurt more animals."

15.22 Once the conduct element is made out, intent should be inferred from that if it is reasonable to infer that the user knows, or ought to know, that the animal will experience suffering. It is reasonable to infer that the user knows, or ought to know, that the animal will experience suffering if:

a) the conduct being encouraged, assisted or conspired to involves causing any physical pain to the animal, including any kind of mutilation done for aesthetic effect (for example, ear cropping on dogs or declawing of cats);
b) The animal concerned is behaving in a way that a non-expert would consider clearly indicated stress, defensiveness or aggression. Examples of this would include, but are not limited to, hissing, growling, baring teeth, lashing out or aggressively biting, or a fear response such as withdrawal; or
c) the content itself contains a recognition that the conduct will cause suffering to the animal.

Usage examples

- Content which gives instructions or advice on how to carry out actions, such as a person posting content instructing another person to torture a cow in the UK.
- Content providing instructions or advice on how to crop dog ears or declaw a cat.
- Messages in which two or more people post content arranging for hare coursing or dog fighting, to take place in the UK.

Reasonably available information for user-to-user services

- The content suspected to be illegal content. For conspiracy, if the content is a message from one user to another, moderators are likely to need to look at the messages immediately before and after it from that other user (because a conspiracy involves more than one person).
- Where the location of the cruelty is not evident from the content itself, but the user concerned appears to be conspiring to carry out animal cruelty which they will commit themselves, service providers should also consider the IP address of the posting user and any information in their 'bio' or profile description.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

Reasonably available information for search services

- The content suspected to be illegal content.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A16 of Annex 1.

Statute: Section 4(1) of the Animal Welfare Act 2006

Guidance on Content Harmful to Children: Section 8, 'Guidance on violent content'

16. Non-priority offences and relevant non-priority offences ('other' offences)

16.1 The first section of this chapter provides guidance on some specific non-priority offences. These are offences which Ofcom considers it likely service providers will encounter, and which it is proportionate to expect service providers to be able to recognise. The second section of this chapter provides guidance on how providers should approach the non-priority or 'other' offences which are not covered in the first section of this chapter or any previous chapters.

16.2 In their risk assessments, providers must assess the risk of the kinds of priority illegal harm separately. They are not required to assess the risk of each possible kind of 'other' illegal content separately. Nor do providers of user-to-user services have to assess the risk that their service will be used for the commission or facilitation of relevant non-priority offences. The risk assessment duties relating to relevant non-priority offences are therefore more high level.

Non-priority offences

16.3 The non-priority offences in relation to which we are giving specific guidance are:

a) The epilepsy trolling offence; that is, the offence of sending a flashing image with intention that it would be seen by a person with epilepsy or where it was reasonably foreseeable that this would be the case. See section 183 of the Act.

b) The false communications offence; that is, sending a message which conveys knowingly false information with the intent of causing non-trivial psychological or physical harm to the likely audience (without reasonable excuse for sending). See section 179 of the Act.

c) The s.127(1) offence; that is, the offence of sending or causing to be sent, online, a message that is of an obscene character (where the obscenity relates to torture or extreme cruelty).

Epilepsy trolling offence

16.4 The Online Safety Act (‘**the Act**’) created the epilepsy trolling offence. ‘Epilepsy trolling’ occurs in content which **consists of (or includes) flashing images**, if:

a) **it was ‘reasonably foreseeable’ that an individual with epilepsy would be among the individuals who would view it; or the user believed that an individual known or suspected by that user to be an individual with epilepsy would or might view it;**
b) **the user had the intention that the viewer with epilepsy would suffer harm** as a result of viewing it; *and*
c) the person sending the communication had **no reasonable excuse** for sending it.

16.5 The sending of a hyperlink which, when followed, would present the user with a flashing image should be considered to be the same as sending a flashing image.

16.6 This type of content will only appear on user-to-user services where inferences can be made about intention and the absence of a reasonable excuse on the part of the user communicating the content. Providers of search services will need to make illegal content judgements to the extent that content on user-to-user services appears in their search results. As a result, our guidance below focuses on to user-to-user services only.

What is a flashing image?

16.7 A flashing image is defined as any image which carries the risk that an individual with photosensitive epilepsy would suffer a seizure as a result.

16.8 It is irrelevant whether the flashing image in question is played or accessed automatically, or whether it requires some input from another user in order for flashing images to be shown. This means that both automated GIFs, or similar, and videos requiring the push of a ‘play’ button are encompassed within the definition.

State of mind

16.9 Intent can reasonably be inferred where context surrounding the communication suggests that the user sending it is aware of the possibility that one of the users likely to be exposed to their content may have epilepsy.

16.10 Intent to cause harm cannot reasonably be inferred where the content concerned is prefaced by or includes a warning caption for those with epilepsy.

Relevant defences

16.11 The only relevant defence to this offence is that the person sending the image was at the time of sending a healthcare professional acting in that capacity. This defence should be assumed to be absent in all but exceptional cases.

Note on usage examples

We have not given any usage examples here, due to the particular importance of context to these judgments.

Reasonably available information for user-to-user services

- The content expected to be illegal content.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided

References

Legal annex: Section A3 of Annex 2

Statute: Section 183 of the Online Safety Act.

False communications offence

16.12 The Online Safety Act ('**the Act**') created the false communications offence. Under the Act, it is an offence for a person to:

a) **send a message which conveys information that they know to be false**; *if*
b) at the time of sending it, the person **intended** the message, or the information in it, **to cause non-trivial psychological or physical harm** to a likely audience; *and*
c) the user **has no reasonable excuse** for sending the message.

16.13 It should be noted that a recognised news publisher cannot commit this offence and therefore content will not be illegal where it has been posted by a recognised news publisher. A recognised news publisher is any of the following entities:

a) The British Broadcasting Corporation (BBC);
b) Sianel Pedwar Cymru;
c) The holder of a license under the Broadcasting Act 1990 or 1996 who publishes news-related material in connection with broadcasting activities authorised under the licence;
d) Any other entity which:

i) has as its principal purpose the publication of news-related material which is created by different persons, is subject to editorial control *and* which meets all the other conditions outlined in section 56(2) of the Act; *and*
ii) is not an excluded entity, that is a proscribed organisation under section 3 of the Terrorism Act 2000 or an entity whose purpose is to support such a proscribed organisation; *and*
iii) is not a sanctioned entity (see section 56(4) of the Act).

Conduct

16.14 A message includes a publication, for example on a website or by posting on a user-to-user service.

16.15 Providers should first consider whether the message is actually false. If there are no reasonable grounds for the provider to infer that it is, the content cannot be judged to be illegal.

16.16 In order for content to amount to an offence, it is not necessary that the user posting the content directed the message to a specific person.

16.17 An individual is a 'likely audience' of a message if, at the time the message is sent, it is reasonably foreseeable that the individual — (a) would encounter the message, or (b) in the online context, would encounter a subsequent message forwarding or sharing the content of the message.

State of mind

16.18 Misinformation – that is, misleading or untrue information which is shared by a poster who genuinely believes it to be true – is *not* captured by this offence. Misinformation shared by a poster who knows it is false is also not necessarily illegal content, even if they intend to mislead. It is only illegal content if the poster of the content intends to cause "non trivial psychological or physical harm".

16.19 Therefore, to determine that content is illegal, a provider would need reasonable grounds to infer both that:

a) the user posting the message knew it was false; *and*
b) the user posting the message intended to cause non-trivial psychological or physical harm to a likely audience.

16.20 Providers should consider whether:

a) there is evidence (either as part of the content or established based on credible information provided by expert third parties) to illustrate that the user posting the content *knows* the content is false; and
b) there is evidence (either as part of the content or established based on credible information provided by expert third parties) that suggests that the user posting the content *intends* to cause non-trivial psychological or physical harm.

16.21 A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

16.22 If the answer is 'yes' to both the questions above, then it is likely that the provider will have reasonable grounds to infer that the content is illegal content for the purposes of the Online Safety Act.

16.23 We anticipate that it will be challenging for service providers to make these judgements based on content alone.

Note on usage examples

We have not given any usage examples here, due to the particular importance of context to these judgments.

Reasonably available information for providers of user-to-user and search services

- The content suspected to be illegal content.

- A user profile or bio (user-to-user services) or URL or website branding (for search services), to the extent required to identify whether or not the message is sent by a recognised news publisher.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A6 of Annex 2

Statute: Section 179 of the Online Safety Act 2023

Improper use of a public electronic communications network offence

16.24 Online content depicting the torture of humans and/or animals is not necessarily captured by any of the *priority* offences set out elsewhere in the Illegal Content Judgements Guidance. The conduct depicted (which has been carried out offline) is illegal but it is not always illegal to post content that depicts an offline offence. However, where this content amounts to a *non-priority* offence and meets the definition of illegal content for the purposes of the Online Safety Act 2023, it has significant potential to cause harm. We therefore consider it important to cover it in this guidance.

16.25 Service providers should therefore have regard to this section when considering content which:

a) Depicts the apparently real, deliberate infliction of severe physical pain or suffering on an animal or human; and
b) Is not capable of amounting to a priority offence set out elsewhere in the Illegal Content Judgements Guidance (including extreme pornography, child abuse, terrorism).

16.26 The fact that content meets the criteria set out in 16.55 is not on its own reasonable grounds to infer that the content is illegal content. Where content meets the criteria in 16.55, service providers should follow this guidance.

16.27 Section 127(1) of the Communications Act 2003 created the offence of 'Improper use of a public electronic communications network'. This is a non-priority offence under the Online Safety Act 2023.

16.28 The effect of section 127(1) is that it is an offence to send, or cause to be sent, online, a message (or other matter) that is grossly offensive or of an indecent, obscene or menacing character where the sender intended, or recognised, at the time of sending, that it may be taken to be grossly offensive, indecent, obscene, or menacing by a reasonable member of the public.

16.29 Many of the types of online conduct which have previously been found to amount to an offence under section 127(1) are likely to constitute one of the alternative offences set out in the Illegal Content Judgements Guidance. There will be a very significant risk of over

takedown if moderators who are not experts in UK criminal law seek to apply the section 127 offence to such content. In particular, the phrases "grossly offensive", "obscene" and "indecent" when used in this offence do not capture all content which is upsetting, abusive or sexually explicit.

16.30 In drafting this section, we have had particular regard to users' rights to freedom of expression, and the requirement to restrict those rights only when it is necessary and proportionate. We recognise that Article 10 of the European Convention on Human Rights expressly protects speech that offends, shocks, and disturbs. This section is therefore not concerned with content which is simply offensive, shocking or disturbing, but that which is very clearly beyond the pale of what is tolerable in society by reference to contemporary standards. Due to the risks to freedom of expression, we limit this detailed guidance to content which is obscene, in the sense of being atrocious or horrific. Content which is not obscene in this sense should be considered in accordance with Section 14 of this Guidance – Relevant non-priority offences ('other' offences).

User's conduct

16.31 All online communications are potentially caught by this offence, including those on social media platforms and messaging apps.

What is 'obscene'?

16.32 'Obscene' is not defined in legislation. The law says that whether something amounts to this offence "is to be determined by reference to the standards of an open and just multiracial society". The word obscene here should not be taken to mean 'sexual' or 'pornographic'. It should be taken to mean something atrocious and horrific in terms of the pain and suffering depicted. It should be understood within the context of the UK and what is widely acceptable to a UK audience.

16.33 Providers should consider relevant contextual factors (within the content) when determining whether content is obscene under this meaning. For example, content which is upsetting or distasteful is not necessarily obscene. Similarly, content which could be deemed satirical or as 'banter' or humour, even if it is distasteful to some or painful to those subjected to it, will not necessarily be obscene.

16.34 As set out above, the content in question must be *more* than offensive, shocking or disturbing before it is considered illegal content within this section. This is a high threshold. However, it is likely to be reasonable to infer that content is obscene where it graphically depicts what appears to be:

a) The real and deliberate killing or serious injury of humans or animals for the purposes of entertainment or amusement; or
b) The real torture of humans and/or animals.

16.35 Providers should note, when considering whether content is obscene under this section, that the consent of a person upon whom severe pain or suffering is inflicted is not a relevant consideration where the content is otherwise obscene.

16.36 In addition, due to the importance of freedom of expression, where the depiction has a clear political or teaching objective, it is very unlikely that it is illegal content under this offence. For example, it will *not* usually be reasonable to infer that content is obscene where it depicts the following, even in a graphic way and even where the conduct shown is unlawful:

a) War reporting;
b) An apparently real instance of potential misconduct by a person in a position of authority (for example, police brutality, misconduct by an elected official, or war crimes);
c) An apparently real instance of cruelty (for example, demonstrations of cruelty in the keeping or breeding of animals) where the purpose is to educate or raise awareness about such cruelty; and
d) Fictional infliction of severe pain or suffering, for example scenes from films or TV programmes.

16.37 It should be noted that the following should not be considered obscene: tattooing or piercing; medical or veterinary procedures carried out by a professional; or acts of slaughter or killing which are in the context of typical UK food production such as the breeding, rearing, keeping and slaughtering of chickens, cows, pigs, sheep and goats.

State of mind

16.38 Having determined that content is obscene, it will be necessary for providers to assess whether there are reasonable grounds to infer that the user posting or sharing the content intended that the content was obscene, or was aware that it could be taken to be so by a reasonable member of the public. It is likely to be reasonable to infer such intent or awareness where the content is so graphic and gratuitously violent that it is obvious that a reasonable person looking at it would find it obscene. It is also likely to be reasonable to infer such intent or awareness where the user includes language in their post suggesting that they are aware that reasonable people would find the sharing of the content to be unacceptable in any circumstances.

16.39 It is likely to be reasonable to infer that a user is aware that this content might be found obscene by some potential viewers where content graphically and realistically depicts what appears to be:

a) the deliberate killing, serious injury of a human or animal for the purposes of amusement or entertainment; or
b) the torture of a human or animal.

Therefore, where providers identify such content, it is likely to be reasonable to judge that the content is illegal.

Usage examples

- Content which realistically depicts burying an animal alive.
- Content which graphically depicts the real and deliberate dismemberment of an animal or human where the dismemberment is carried out for the purposes of entertainment.
- Content which graphically depicts severe injury of an animal in the course of dog fighting or hare coursing.

Reasonably available information for user-to-user and search services

- The content suspected to be illegal content.
- Supporting information provided by any complainant, including that which is provided by any person the provider considers to be a trusted flagger.*

*A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided.

References

Legal annex: Section A8 of Annex 2

Statute: Section 127(1) Communications Act 2003

Guidance on Content Harmful to Children: Section 8, 'Guidance on violent content'

Relevant non-priority offences ('other' offences)

16.40 This section provides guidance on how providers should approach the non-priority or 'other' offences which have not already been covered in previous sections.

What is a relevant 'non-priority offence'?

16.41 An offence is a 'relevant non-priority offence' when it meets the following criteria[58]:

a) it is not a priority offence (that is, not an offence set out in Schedules 5, 6 or 7 of the Act);

b) the victim or intended victim of the offence is an individual (or individuals);

c) the offence was created by:

i. the Online Safety Act or any other Act of Parliament (or a statutory instrument made under an Act)
ii. an Order in Council[59]
iii. a law passed by a devolved authority such as the Scottish Parliament or Welsh Assembly, *with* consent of the Secretary of State or a Minister from the UK Government; and

d) the offence does not concern any of the following:

i. the infringement of intellectual property rights;
ii. the safety or quality of goods (as opposed to what type of goods they are);
iii. the performance of a service by a person not qualified to perform it; or
iv. unfair trading regulations (specifically, offences under the Consumer Protection from Unfair Trading Regulations 2008).

16.42 It should be noted that the scope of relevant non-priority offences includes not just offences created by Acts of Parliament directly, but also the offences of encouraging and assisting other offences (under the Serious Crime Act 2007) and conspiracy (under the Criminal Law Act 1977). However, encouraging and assisting require the user to either intend or believe that one or more offences will be carried out, which for the most part will be very difficult for providers to infer. Conspiracy requires the content to amount to an agreement between two people.

[58] These criteria can be found in Sections 53(5) and 53(6) of the Act.
[59] An Order in Council is a type of legislation made by the King acting on the advice of the Privy Council.

16.43 A significant number of offences meet the criteria stated above. Some of these will be highly unlikely to ever translate into online content which amounts to the offence. For example, no piece of online content can amount directly to an offence of causing death by dangerous driving because the posting of the content will never amount to driving a vehicle (although a piece of content could amount to encouragement to cause death by dangerous driving if there was intent). However, even acknowledging this, there are numerous offences which fall into the category of relevant non-priority offences as set out in the Act.

16.44 Providers should make an illegal content judgement where a third party has drawn it to their attention with reference to an identified, specific UK criminal offence, and explained why they consider it to amount to such an offence. A provider is not required to accept the opinions of a third party as to whether content is illegal content. Only a judgment of a UK court is binding on it in making this determination. In all other cases, it will need to take its own view on the evidence, information and any opinions provided. Where they lack sufficient expertise to take their own view, providers should seek legal advice.

Illegal content judgements guidance

Annex 1: The priority offences

Last updated: 16/11/26*

*Does not include changes effected by the Crime and Policing Act 2026 or the National Security (State Threats) Act 2026.

A1. Index

A1.1 The below list is presented in the order of presentation of the priority offences in Schedules 5, 6 and 7 of the Online Safety Act 2023.

Offence grouping	ICJG chapter	Annex
Terrorism offences (Schedule 5)	Chapter 2, 'Terrorism'	A3
'Child sexual exploitation and abuse offences' (Schedule 6)	Chapter 4, 'Child sexual abuse and exploitation (CSEA): Offences relating to child sexual abuse material (CSAM) and Chapter 5, 'Child sexual exploitation and abuse exploitation (CSEA): Grooming and exploitation of children'	A5, A6
'Encouraging or assisting suicide' and 'serious self-harm' offences (Schedule 7)	Chapter 13, 'Encouraging or assisting suicide and serious self-harm'	A14
'Threats to kill' and 'Public order offences, harassment, stalking and fear or provocation of violence' offences (Schedule 7)	Chapter 3, 'Threats, abuse and harassment (including hate)'	A4
'Drugs and psychoactive substances' offences (Schedule 7)	Chapter 7, 'Drugs and psychoactive substances'	A8
'Firearms and other weapons' offences (Schedule 7)	Chapter 8, 'Firearms and other weapons'	A9
'Human trafficking' offences (Schedule 7)	Chapter 11, 'Human trafficking'	A12
'Assisting illegal immigration' (Schedule 7)	Chapter 12, 'Unlawful immigration'	A13
'Sexual exploitation' offences (Schedule 7)	Chapter 9, 'Sexual exploitation of adults'	A10
'Sexual images' offences (Schedule 7)	Chapter 10, 'Image-based adult sexual offences'	A11

Offence grouping	ICJG chapter	Annex
‘Proceeds of crime’, ‘Fraud’ and ‘Financial services’ offences (Schedule 7)	Chapter 6, ‘Fraud and other financial offences’	A7
‘Foreign interference’ offence (Schedule 7)	Chapter 14, ‘Foreign interference’	A15
‘Animal welfare’ offence	Chapter 15, ‘Animal Cruelty’	A16

A2. General interpretation

A2.1 This Annex is not intended for and cannot be relied upon in any criminal proceedings relating to the offences concerned. It is relevant only to illegal content judgments made under the Online Safety Act 2023.

A2.2 This Annex is a quick reference guide only. It is *not* a complete statement of the law, nor is it a substitute for legal advice. In any case of conflict between this guidance and the law, for the purposes of making illegal content judgements the law shall prevail.

A2.3 For an offence to be committed, the same person (whether an individual or an entity) must fulfil the conduct requirements ('actus reus') and state of mind requirements ('mens rea'). In the tables below, we refer to that person as "P". This will usually be the person posting the content, but sometimes services will also need to consider whether a person sharing or reviewing the content may be committing an offence.

A2.4 For the purpose of determining whether content is illegal content, it is irrelevant whether or not the user posting the content has attained the age of criminal responsibility in the UK.

A2.5 'User-generated content' which is subject to the safety duties may include content which amounts to an advertisement, for example when an influencer is paid to promote a product or service. It is a 'paid-for advertisement' only if the provider of the service receives any consideration for it and the placement of the advertisement is determined by systems or processes that are agreed between the parties entering into the contract relating to the advertisement. See sections 55 and 236 of the Act.

A2.6 In this Annex, we mostly put definitions next to the offences to which they relate. However some of the definitions are very long and some are used repeatedly. These are set out below. In these Annexes, the following terms have the following meanings:

- **Convention offences:** An offence listed below, or an equivalent offence under the law of a country of territory outside the United Kingdom.

    a) *Aviation and maritime*: Offences under any of the following provisions of the Aviation and Maritime Security Act 1990— (a) section 1 (endangering safety at aerodromes); (b) section 9 (hijacking of ships); (c) section 10 (seizing or exercising control of fixed platforms); (d) section 11 (destroying ships or fixed platforms or endangering their safety); (e) section 12 (other acts endangering or likely to endanger safe navigation); (f) section 13 (offences involving threats relating to ships or fixed platforms); (g) section 14 (ancillary offences).

    b) *Biological weapons*: An offence under section 1 of the Biological Weapons Act 1974 (c 6) (development etc of biological weapons).

    c) *Chemical weapons:* An offence under section 2 of the Chemical Weapons Act 1996 (c 6) (use, development etc of chemical weapons).

    d) *Directing terrorist organisations*: An offence under section 56 of the Terrorism Act 2000 (directing a terrorist organisation) see Row 12 below)

    e) *Explosions*: (1) An offence under any of sections 28 to 30 of the Offences against the Person Act 1861 (c 100) (causing injury by explosions, causing explosions and handling or placing explosives); (2) An offence under any of the following

provisions of the Explosive Substances Act 1883 (c 3)— (a) section 2 (causing an explosion likely to endanger life); (b) section 3 (preparation of explosions); (c) section 5 (ancillary offences). Except that an offence in or as regards Scotland is a Convention offence by virtue of this paragraph only if it consists in—(a) the doing of an act as an act of terrorism; or (b) an action for the purposes of terrorism.

f) *Hijacking and other offences against aircraft*: Offences under any of the following provisions of the Aviation Security Act 1982 (c 36): (a) section 1 (hijacking); (b) section 2 (destroying, damaging or endangering safety of aircraft); (c) section 3 (other acts endangering or likely to endanger safety of aircraft); (d) section 6(2) (ancillary offences).

g) *Hostage-taking*: An offence under section 1 of the Taking of Hostages Act 1982 (c 28) (hostage-taking).

h) *Importation*: (1) Any of the following offences under the Customs and Excise Management Act 1979— (a) an offence under section 50(2) or (3) (improper importation of goods) in connection with a prohibition or restriction relating to the importation of nuclear material; (b) an offence under section 68(2) (exportation of prohibited or restricted goods) in connection with a prohibition or restriction relating to the exportation or shipment as stores of nuclear material; (c) an offence under section 170(1) or (2) (fraudulent evasion of duty etc) in connection with a prohibition or restriction relating to the importation, exportation or shipment as stores of nuclear material.

i) *Internationally protected persons*: (1) An offence mentioned in section 1(1)(a) of the Internationally Protected Persons Act 1978 (c 17) (attacks against protected persons committed outside the United Kingdom) which is committed (whether in the United Kingdom or elsewhere) in relation to a protected person. (2) An offence mentioned in section 1(1)(b) of that Act (attacks on relevant premises etc) which is committed (whether in the United Kingdom or elsewhere) in connection with an attack— (a) on relevant premises or on a vehicle ordinarily used by a protected person, and (b) at a time when a protected person is in or on the premises or vehicle. (3) An offence under section 1(3) of that Act (threats etc in relation to protected persons). Except that an offence in or as regards Scotland is a Convention offence by virtue of this paragraph only if it consists in— (a) the doing of an act as an act of terrorism; or (b) an action for the purposes of terrorism.

j) *Nuclear material/facilities*: (1) An offence mentioned in section 1(1)[(a) to (d)] of the Nuclear Material (Offences) Act 1983 (c 18) (offences in relation to nuclear material committed outside the United Kingdom) which is committed (whether in the United Kingdom or elsewhere) in relation to or by means of nuclear material. (2) An offence mentioned in section 1(1)(a) or (b) of that Act where the act making the person guilty of the offence (whether done in the United Kingdom or elsewhere)— (a) is directed at a nuclear facility or interferes with the operation of such a facility, and (b) causes death, injury or damage resulting from the emission of ionising radiation or the release of radioactive material. (3) An offence under any of the following provisions of that Act (a) section 1B (offences relating to damage to environment); (b) section 1C (offences of importing or exporting etc nuclear material: extended jurisdiction); (c) section 2 (offences involving preparatory acts and threats).

k) *Nuclear weapons*: An offence under section 47 of the Anti-terrorism, Crime and Security Act 2001 (c 24) (use, development etc of nuclear weapons).

l) *Space*: Following offences under Schedule 4 to the Space Industry Act 2018 (a) paragraph 1 (hijacking of spacecraft); (b) paragraph 2 (destroying, damaging or endangering safety of spacecraft); (c) paragraph 3 (other acts endangering or likely to endanger safety of spacecraft); (d) paragraph 4 (endangering safety at spaceports).

m) *Terrorist funds*: An offence under any of the following provisions of the Terrorism Act 2000 (c 11) (see Tables 6 to 9 below)— (a) section 15 (terrorist fund-raising); (b) section 16 (use or possession of terrorist funds); (c) section 17 (funding arrangements for terrorism); (d) section 18 (money laundering of terrorist funds).

n) *Inchoate offences*: Any of the following offences— (a) conspiracy to commit a Convention offence; (b) inciting the commission of a Convention offence; (c) attempting to commit a Convention offence; (d) aiding, abetting, counselling or procuring the commission of a Convention offence.

- **Extreme pornographic image**: An **image** is "pornographic" if it is of such a nature that it must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal.

  It is extreme if it is grossly offensive, disgusting or otherwise of an obscene character *AND EITHER* portrays, in an explicit and realistic way, any of the following—

  a) an act which threatens a person's life,

  b) an act which results, or is likely to result, in serious injury to a person's anus, breasts or genitals,

  c) an act which involves sexual interference with a human corpse, or

  d) a person performing an act of intercourse or oral sex with an animal (whether dead or alive)

  and a reasonable person looking at the image would think that any such person or animal was real.

  OR portrays, in an explicit and realistic way, either of the following—

  a) an act which involves the non-consensual **penetration** of a person's **vagina**, anus or mouth by another with the other person's penis, or

  b) an act which involves the non-consensual sexual penetration of a person's vagina or anus by another with a part of the other person's body or anything else, and a reasonable person looking at the image would think that the persons were real.

"**Penetration**" is a continuing act from entry to withdrawal; "**vagina**" includes vulva. "**Image**" means a moving or still image (produced by any means) or data (stored by any means) which is capable of conversion into an image within paragraph (a). References to a part of the body include references to a part surgically constructed (in particular through gender reassignment surgery).

- **Firearm:** Save where otherwise specified, means —

  a) a *lethal* barrelled *weapon*;

  b) a *prohibited weapon*;

  c) a *relevant component part* in relation to a *lethal barrelled weapon* or a *prohibited weapon*;

  d) an accessory to **a lethal barrelled weapon** or **a prohibited weapon** where the accessory is designed or adapted to diminish the noise or flash caused by firing the weapon.

  Where any description of **firearm** is excluded from the category of **firearms** to which an offence applies, it shall be construed as also excluding component parts of, and accessories to, **firearms** of that description.

  'Lethal barrelled weapon': Means a barrelled weapon of any description from which a shot, bullet or other missile, with kinetic energy of more than one joule at the muzzle of the weapon, can be discharged**.**

  *'Prohibited weapon' (*Category 1)**:** Means — (a) any firearm which is so designed or adapted that two or more missiles can be successively discharged without repeated pressure on the trigger; (ab) any *self-loading** or *pump-action** rifled gun other than one which is chambered for .22 rim-fire cartridges; (aba) any firearm which either has a barrel less than 30 centimetres in length or is less than 60 centimetres in length overall, other than an air weapon, a muzzle-loading gun or a firearm designed as signalling apparatus; (ac) any self-loading or pump-action smooth-bore gun which is not an air weapon or chambered for .22 rim-fire cartridges and either has a barrel less than 24 inches in length or is less than 40 inches in length overall; (ad) any smooth-bore *revolver** gun other than one which is chambered for 9mm rim-fire cartridges or a muzzle-loading gun; (ae) any rocket launcher, or any mortar, for projecting a stabilised missile, other than a launcher or mortar designed for line-throwing or pyrotechnic purposes or as signalling apparatus; (af) any air rifle, air gun or air pistol which uses, or is designed or adapted for use with, a self-contained gas cartridge system; (ag) any rifle with a chamber from which empty cartridge cases are extracted using—(i) energy from propellant gas, or (ii) energy imparted to a spring or other energy storage device by propellant gas, other than a rifle which is chambered for .22 rim-fire cartridges; (b) any weapon of whatever description designed or adapted for the discharge of any noxious liquid, gas or other thing; (ba) any device (commonly known as a bump stock) which is designed or adapted so that—(i) it is capable of forming part of or being added to a self-loading lethal barrelled weapon, and (ii) if it forms part of or is added to such a weapon, it increases the rate of fire of the weapon by using the recoil from the weapon to generate repeated pressure on the trigger; and (c) any cartridge with a bullet designed to explode on or immediately before impact, any ammunition containing or designed or adapted to contain any liquid, gas or other thing and, if capable of being used with a firearm of

any description, any grenade, bomb (or other like missile), or rocket or shell designed to explode as aforesaid;

*'Prohibited weapon' (*Category 2): Means — (1A)(a) any firearm which is disguised as another object; 1A(b) any rocket or ammunition which consists in or incorporates a missile designed to explode on or immediately before impact and is for military use; 1A(c) any launcher or other projecting apparatus which is designed to be used with any rocket or ammunition designed to explode on or immediately before impact and is for military use; 1A(d) any ammunition for military use which consists in or incorporates a missile designed so that a substance contained in the missile will ignite on or immediately before impact; 1A(e) any ammunition for military use which consists in or incorporates a missile designed, on account of its having a jacket and hard-core, to penetrate armour plating, armour screening or body armour; 1A[(f) any ammunition which is designed to be used with a pistol and incorporates a missile designed or adapted to expand on impact; 1A(g) anything which is designed to be projected as a missile from any weapon and is designed to be, or has been, incorporated in any ammunition falling within any of the preceding paragraphs.

Relevant component part: Each of the following items in relation to a *lethal barrelled weapon* or a *prohibited weapon*—(a) a barrel, chamber or cylinder, (b) a frame, body or receiver, (c a breech block, bolt or other mechanism for containing the pressure of discharge at the rear of a chamber, but only where the item is capable of being used as a part of a lethal barrelled weapon or a prohibited weapon.

Ammunition: Means ammunition for any firearm and includes grenades, bombs and other like missiles, whether capable of use with a firearm or not, and also includes prohibited ammunition.

*Revolver**: In relation to a smooth-bore gun, means a gun containing a series of chambers which revolve when the gun is fired.
*Self-loading** and *pump-action**: In relation to any weapon mean respectively that it is designed or adapted so that it is automatically re-loaded or that it is so designed or adapted that it is re-loaded by the manual operation of the fore-end or forestock of the weapon.

- **Offensive weapon:** Means the following descriptions of weapons, other than weapons of those descriptions which are *antique*s:

    a) a knuckleduster, that is, a band of metal or other hard material worn on one or more fingers, and designed to cause injury, and any weapon incorporating a knuckleduster;

    b) a swordstick, that is, a hollow walking-stick or cane containing a blade which may be used as a sword;

    c) the weapon sometimes known as a "handclaw", being a band of metal or other hard material from which a number of sharp spikes protrude, and worn around the hand;

    d) the weapon sometimes known as a "belt buckle knife", being a buckle which incorporates or conceals a knife;

e) the weapon sometimes known as a “push dagger”, being a knife the handle of which fits within a clenched fist and the blade of which protrudes from between two fingers;

f) the weapon sometimes known as a “hollow kubotan”, being a cylindrical container containing a number of sharp spikes;

g) the weapon sometimes known as a footclaw”, being a bar of metal or other hard material from which a number of sharp spikes protrude, and worn strapped to the foot;

h) the weapon sometimes known as a “shuriken”, “shaken” or “death star”, being a hard non-flexible plate having three or more sharp radiating points and designed to be thrown;

i) the weapon sometimes known as a “balisong” or “butterfly knife”, being a blade enclosed by its handle, which is designed to split down the middle, without the operation of a spring or other mechanical means, to reveal the blade;

j) the weapon sometimes known as a “telescopic truncheon”, being a truncheon which extends automatically by hand pressure applied to a button, spring or other device in or attached to its handle;

k) the weapon sometimes known as a “blowpipe” or “blow gun”, being a hollow tube out of which had pellets or darts are shot by the use of breath;

l) the weapon sometimes known as a “kusari gama”, being a length of rope, cord, wire or chain fastened at one end to a sickle;

m) the weapon sometimes known as a “kyoketsu shoge”, being length of rope, cord, wire or chain fastened at one end to a hooked knife;

n) the weapon sometimes known as a “manrikigusari” or “kusari”, being a length of rope, cord, wire or chain fastened at each end to a hard weight or hand grip;

o) a disguised knife, that is any knife which has a concealed blade or concealed sharp point and is designed to appear to be an everyday object of a kind commonly carried on the person or in a handbag, briefcase, or other hand luggage (such as a comb, brush, writing instrument, cigarette lighter, key, lipstick or telephone);

p) a stealth knife, that is a knife or spike, which has a blade, or sharp point, made from a material that is not readily detectable by apparatus used for detecting metal and which is not designed for domestic use or for use in the processing, preparation or consumption of food or as a toy;

q) a straight, side-handled or friction-lock truncheon (sometimes known as a baton);

r) a sword with a curved blade of 50 centimetres or over in length; and for the purposes of this sub-paragraph, the length of the blade shall be the straight line distance from the top of the handle to the tip of the blade;

s) the weapon sometimes known as a “zombie knife”, “zombie killer knife” or “zombie slayer knife”, being a blade with — (i) a cutting edge; (ii) a serrated edge; and (iii) images or words (whether on the blade or handle) that suggest that it is to be used for the purpose of violence; (t) the weapon sometimes known as a “cyclone knife” or “spiral knife” being a weapon with—(i) a handle, (ii) a blade with

two or more cutting edges, each of which forms a helix, and (iii) a sharp point at the end of the blade;

t) the weapon sometimes known as a “zombie knife”, “zombie killer knife” or “zombie slayer knife”, being a blade with—(i) a cutting edge; (ii) a serrated edge; and (iii) images or words (whether on the blade or handle) that suggest that it is to be used for the purpose of violence.

Antique: A weapon is an antique if it was manufactured more than 100 years before the date of any offence alleged to have been committed in respect of that weapon.

- **Recklessness**: In the law of England and Wales, a person acts 'recklessly' with respect to a circumstance when he is aware of a risk that did or would exist, and acts recklessly with respect to a consequence when he is aware of a risk that it will occur, and, in either case, it is, in the circumstances known to him, unreasonable to take the risk (*R v G* [2003] UKHL 50). In Scotland, a person is reckless in relation to an offence if they failed to think about or were indifferent as to whether their behaviour would have the result as specified in the particular offence.

- **Terrorism**: The use or threat of action (including action outside the United Kingdom) where—

  a) the action:

     i) involves serious violence against a person anywhere,
     ii) involves serious damage to property anywhere,
     iii) endangers the life of a person anywhere, other than that of the person committing the action,
     iv) creates a serious risk to the health or safety of the public or a section of the public in any country, or
     v) is designed seriously to interfere with or seriously to disrupt an electronic system.

  b) the use or threat is designed to influence the government of the United Kingdom, of a Part of the United Kingdom or of a country other than the United Kingdom [or an international governmental organisation; or to intimidate the public in any country or a section of the public in any country, *and*

  c) the use or threat is made for the purpose of advancing a political, religious [racial] or ideological cause.

  The use or threat of an action in a) which involves the use of firearms or explosives is terrorism whether or not the use or threat is designed to influence the government [or an international governmental organisation] or to intimidate the public or a section of the public.
  A reference to action taken for the purposes of terrorism includes a reference to action taken for the benefit of a proscribed organisation.

A3. Terrorism

1. Membership of a proscribed organisation – s.11 Terrorism Act 2000

Conduct (actus reus)

P belongs or **professes** to belong to a **proscribed organisation.**

State of mind (mens rea)

P intends to **profess** to belong to the **proscribed organisation:** (*Pwr v DPP* [2022] 1 WLR 789).

Defences

a) The organisation was not proscribed on the last (or only) occasion on which P became a member or began to profess to be a member, and

b) that P has not taken part in the activities of the organisation at any time while it was proscribed.

Definitions and interpretation

Profess: If P posted on the internet another person's personal diary entry which was never intended to be read by others, in which that person records that he is a member of a prohibited organisation, it is doubtful that this would be an intentional "profession" of membership.

If the statement was obviously unserious, then it is doubtful that it would amount to a profession of membership, either because the actus reus was not established, or because the maker of the statement did not have intent to "profess". See *DPP v Collins* [2006] *UKHL 40 and Chambers v DPP* [2012] EWHC 2157 (the "Twitter bomb joke" case).

Proscribed organisation: An up to date list of proscribed organisations can be found here.

2. Inviting support for a proscribed organisation - s. 12(1) of the Terrorism Act 2000

Conduct (actus reus)

P invites support for a proscribed organisation, where the support is not, or is not restricted to, the provision of money or other property.

State of mind (mens rea)

P knows that he is inviting **support** for the **proscribed organisation**, at the time he makes the invitation: (*R v Choudary (Anjem)* [2016] EWCA 61).

P does not need to know that the organisation is proscribed: (*Pwr v DPP* [2022] 1 WLR 789 at para 39).

Defences

No statutory defences.

Definitions and interpretation

Proscribed organisation: An up-to-date list of proscribed organisations can be found here.

Support: Includes the provision of assistance, of backing or of services to keep something operational… But the dictionary definition also includes encouragement, emotional help, mental comfort, and the action of writing or speaking in favour of something or advocacy. In everyday language, support can be given in a variety of ways, and … it is for a jury to decide whether the words used by a particular defendant do or do not amount to inviting support. In its ordinary meaning, "support" can encompass both practical or tangible assistance, and what has been referred to in submissions as intellectual support: that is to say, agreement with and approval, approbation or endorsement of, that which is supported. (*R v Choudary (Anjem)* [2016] EWCA 61)

Further notes

It is not an offence to hold opinions or beliefs which are also held by members of a proscribed organisation, nor to express those opinions or beliefs to other people, nor to share them, nor to encourage others to share them (Attorney General's Reference (No 4 of 2002) [2003] EWCA Crim. 762, [2003] 3 WLR 1153). What Section 12(1) makes criminal is inviting others to support the proscribed organisation.

3. Expressing an opinion or belief supportive of a proscribed organisation – s. 12(1A) Terrorism Act 2000

Conduct (actus reus)

P expresses an opinion or belief that is supportive of a **proscribed organisation.**

State of mind (mens rea)

P is **reckless** as to whether a person to whom the expression is directed will be encouraged to support a proscribed organisation

Defences

No statutory defences.

Definitions and interpretation

Proscribed organisation: An up-to-date list of proscribed organisations can be found here.

Further notes

- It is *not* an offence to recklessly express opinions or beliefs which are also held by members of a proscribed organisation, to express those opinions or beliefs to other people, to share them, to encourage others to share them. Section 12(1A) is an alternative to section 12(1).

4. Arranging a meeting supportive of a proscribed organisation – s. 12(2) Terrorism Act 2000

Conduct (actus reus)

P arranges, manages or assists in arranging or managing a meeting:

a) to support a **proscribed organisation**;

b) to further the activities of a proscribed **organisation**; or

c) to be addressed by a person who belongs or professes to belong to a **proscribed organisation.**

State of mind (mens rea)

P knows the purpose of the meeting.

Defences

In relation to (c) only, the meeting being **private** and P having no reasonable cause to believe that the address would support a **proscribed organisation** or further its activities.

Definitions and interpretation

Proscribed organisation: An up-to-date list of proscribed organisations can be found here.

Meeting: A meeting of three or more persons, whether or not the public are admitted (s. 12(5)(a) Terrorism Act 2000).

Private: A meeting is private if the public are not admitted (s. 12(5)(b)).

5. Publishing an image or uniform or article of proscribed organisation in a way that arouses suspicion – s. 13(1A) Terrorism Act 2000

Conduct (actus reus)

P publishes an **image** of —

(a) an item of clothing; or

(b) any other article

in such a way or in such circumstances as to arouse reasonable suspicion that the person is a member or supporter of a **proscribed organisation**.

State of mind (mens rea)

P knows he is publishing the **image:** *Pwr v DPP* [2022] 1 WLR 789.

Defences

No statutory defences.

Definitions and interpretations

Proscribed organisation: An up to date list of proscribed organisations can be found here.

Image: A still or moving image (produced by any means) (s.13(1B) Terrorism Act 2000).

Further notes

- Whether the clothing or article in question arouses the requisite reasonable suspicion is an objective test: *Pwr v DPP* [2022] 1 WLR 789. An example of this test being applied is *Rankin v Murray* [2004] SLT 1164, in which a defendant was stopped in Scotland wearing a "UVF" ring. His protestations that he was neither a member nor a supporter of the UVF were irrelevant; he was wearing it in such circumstances that aroused reasonable suspicion that he was a member or supporter.

6. Terrorist fundraising – s. 15 Terrorism Act 2000

Conduct (actus reus)

P —

a) invites another to provide money or other property; or

b) receives money or other property; or

c) provides money or other property.

State of mind (mens rea)

P intends that the money or other property should be used, or has **reasonable cause to suspect** that it may be used, for the purposes of **terrorism**.

Defences

P has a defence if acting with the express authority of a constable: s 21(1).

A further defence under s 21(2) and (3) applies to a person who becomes involved in a transaction or arrangement (which could include an invitation to provide money or other property) if the person discloses to a constable:

(a) a suspicion or belief that the money or other property is terrorist property, and

(b) the information on which that suspicion or belief is based.

The disclosure must be made as soon as is reasonably practicable and on the person's own initiative after becoming concerned in the relevant transaction.

Definitions and interpretations

Provision of money or other property: Reference to the provision of money or other property is a reference to its being given, lent or otherwise made available, whether or not for consideration. (s 15(4) Terrorism Act 2000)

Reasonable cause to suspect: The "reasonable cause to suspect" test is an objective one, which applies irrespective of whether P in fact knew or suspected: *R v Lane and Letts* [2018] UKSC 36.

Terrorism: See 'General Interpretation'.

7. Use or possession of money or property for terrorist purposes – s. 16 Terrorism Act 2000

Conduct (actus reus)

P uses or possesses money or other property for the purposes of **terrorism**.

State of mind (mens rea)

P intends that the money or other property will be used, or has **reasonable cause to suspect** that it may be used, for the purposes of **terrorism**.

Defences

P has a defence if acting with the express authority of a constable: s 21(1).

A further defence under s 21(2) and (3) applies to a person who becomes involved in a transaction or arrangement (which could include an invitation to provide money or other property) if the person discloses to a constable:

(a) a suspicion or belief that the money or other property is terrorist property; and

(b) the information on which that suspicion or belief is based.

The disclosure must be made as soon as is reasonably practicable and on the person's own initiative after becoming concerned in the relevant transaction.

Definitions and interpretations

Reasonable cause to suspect: The "reasonable cause to suspect" test is an objective one, which applies irrespective of whether P in fact knew or suspected: *R v Lane and Letts* [2018] UKSC 36.

Terrorism: See 'General Interpretation'.

8. Involvement in terrorist fundraising arrangements – s. 17 Terrorism Act 2000

Conduct (actus reus)

P enters into or becomes concerned in an arrangement as a result of which money or other property is made available or is to be made available to another.

State of mind (mens rea)

P knows or has **reasonable cause to suspect** that the money or other property may be used, for the purposes of **terrorism**.

Defences

P has a defence if they are acting with the express authority of a constable: s 21(1).

A further defence under s 21(2) and (3) applies to a person who becomes involved in a transaction or arrangement (which could include an invitation to provide money or other property) if the person discloses to a constable:

(a) a suspicion or belief that the money or other property is terrorist property; and

(b) the information on which that suspicion or belief is based.

The disclosure must be made as soon as is reasonably practicable and on the person's own initiative after becoming concerned in the relevant transaction.

Definitions and interpretations

Reasonable cause to suspect: The "reasonable cause to suspect" test is an objective one, which applies irrespective of whether P in fact knew or suspected: *R v Lane and Letts* [2018] UKSC 36.

Terrorism: See 'General Interpretation'.

9. Laundering of terrorist property – s. 18 Terrorism Act 2000

Conduct (actus reus)

P enters into or becomes concerned in an arrangement which facilitates the retention or control by or on behalf of another person of **terrorist property** —

(a) by concealment;

(b) by removal from the jurisdiction;

(c) by transfer to nominees; or

(d) in any other way.

State of mind (mens rea)

No mens rea requirement (but see defences).

Defences

P did not know and had no reasonable cause to suspect that the arrangement related to **terrorist property**: Section 18(2).

Definitions and interpretations

Terrorist property: Means—

(a) money or other property which is likely to be used for the purposes of *terrorism* (including any *resources* of a *proscribed organisation*);

(b) proceeds of the commission of acts of terrorism; and

(c) *proceeds of acts* carried out for the purposes of *terrorism* (s.14 Terrorism Act 2000)

Proscribed organisation: An up to date list of proscribed organisations can be found here.

Terrorism: See 'General Interpretation'

Proceeds of acts: These references to proceeds of an act include a reference to any property which wholly or partly, and directly or indirectly, represents the proceeds of the act (including payments or other rewards in connection with its commission), (s.14 Terrorism Act 2000) and

Resources: The reference to an organisation's resources includes a reference to any money or other property which is applied or made available, or is to be applied or made available, for use by the organisation (s.14 Terrorism Act 2000).

10. Providing weapons training – s. 54(1) Terrorism Act 2000

Conduct (actus reus)

P **provides instruction** or training in the making or use of —

(a) **firearms**;

(b) **radioactive material** or weapons designed or adapted for the discharge of any **radioactive materia**l;

(c) **explosives**; or

(d) **chemical, biological** or nuclear weapons.

State of mind (mens rea)

No authority specifically deciding the mens rea; likely to be intentionally providing the instruction or training; it is hard to see inadvertent disclosure of advice constituting “instruction or training”.

Defences

P proves that his action or involvement was wholly for a purpose other than assisting, preparing for or participating in terrorism.

Definitions and interpretations

Biological weapons: a biological agent or toxin (within the meaning of the Biological Weapons Act 1974) in a form capable of use for hostile purposes or anything to which section 1(1)(b) of that Act applies (s.55 Terrorism Act 2000).

Chemical weapons: has the meaning given by section 1 of the Chemical Weapons Act 1996 (c 6) (use, development etc of chemical weapons) (s.55 Terrorism Act 2000).

Explosives: (a) an article or substance manufactured for the purpose of producing a practical effect by explosion; (b) materials for making an article or substance within paragraph (a); (c) anything used or intended to be used for causing or assisting in causing an explosion; and (d) a part of anything within paragraph (a) or (c) (s.121 Terrorism Act 2000).

Firearms: see 'General Interpretation'

Radioactive material: radioactive material capable of endangering life or causing harm to human health. (S.55 Terrorism Act 2000)

Provision of instruction: The reference to the provision of instruction includes a reference to making it available either generally or to one or more specific persons (s.54(4) Terrorism Act 2000).

11. Inviting another to receive weapons training – s. 54(3) Terrorism Act 2000

Conduct (actus reus)

P invites another to receive instruction or training when the receipt—

(a) would constitute an offence under subsection (2), or

(b) would constitute an offence under subsection (2) but for the fact that it is to take place outside the United Kingdom.

Subsection (2) creates an offence where a person receives instruction or training in the making or use of—

(c) **firearms**;

(d) **radioactive material** or weapons designed or adapted for the discharge of any radioactive material;

(e) **explosives**; or

(f) **chemical, biological or nuclear weapons**.

State of mind (mens rea)

No authority specifically deciding the mens rea. By analogy with Section 12 Terrorism Act 2000, it is likely that a defendant must know that he is inviting another to receive weapons training at the time he makes the invitation: *R v Choudary (Anjem)* [2016] EWCA 61.

Defences

P proves that his action or involvement was wholly for a purpose other than assisting, preparing for or participating in terrorism.

Definitions and interpretations

The reference to the **provision of instruction** includes a reference to making it available either generally or to one or more specific persons; an invitation to receive instruction or training may be either general or addressed to one or more specific persons (s.54(4) Terrorism Act 2000).

Biological weapons: a biological agent or toxin (within the meaning of the Biological Weapons Act 1974) in a form capable of use for hostile purposes or anything to which section 1(1)(b) of that Act applies (s.55 Terrorism Act 2000).

Chemical weapons: has the meaning given by section 1 of the Chemical Weapons Act 1996 (c 6) (use, development etc of chemical weapons) (s.55 Terrorism Act 2000).

Explosives: (a) an article or substance manufactured for the purpose of producing a practical effect by explosion; (b) materials for making an article or substance within paragraph (a); (c) anything used or intended to be used for causing or assisting in causing an explosion; and (d) a part of anything within paragraph (a) or (c) (s.121 Terrorism Act 2000).

Firearms: see 'General Interpretation'

Radioactive material: radioactive material capable of endangering life or causing harm to human health. (S.55 Terrorism Act 2000).

12. Directing a terrorist organisation – s. 56 Terrorism Act 2000

Conduct (actus reus)

P commits an offence if he **directs**, at any level, the activities of an organisation which is concerned in the commission of acts of **terrorism**.

State of mind (mens rea)

Intention is implicit in the actus reus of "**directs**".

Defences

No statutory defences.

Definitions and interpretations

Directs: The directing needs to be of the organisation itself, rather than a specific terrorist act being planned by the organisation. –v- Fulton & others (No.10) [2006] NICC 35.

Terrorism: See 'General Interpretation'.

13. Collection of information likely to be of use to a terrorist – s. 58 Terrorism Act 2000

Conduct (actus reus)

P commits an offence if —

(a) he **collects or makes a record** of **information of a kind likely to be useful to a person committing or preparing an act of terrorism**;

(b) he possesses a document or **record** containing information of that kind; or

(c) he views, or otherwise accesses, by means of the internet a document or record containing information of that kind.

State of mind (mens rea)

P not only knows that he has the material or has control over it, but also the broad nature of what it contains (although not necessarily everything that was in it): *R v G; R v J* [2009] UKHL 13.

Defences

P had a reasonable excuse for his action or possession.

The cases in which a person has a reasonable excuse for the purposes of subsection include (but are not limited to) those in which —

(a) at the time of the person's action or possession the person did not know, and had no reason to believe, that the document or record in question contained, or was likely to contain, information of a kind likely to be useful to a person committing or preparing an act of terrorism; or

(b) the person's action or possession was for the purposes of—

(i) carrying out work as a journalist; or

(ii) academic research.

Definitions and interpretations

Collects or makes a record: The cases in which a person collects or makes a record for the purposes of subsection (1)(a) include (but are not limited to) those in which the person does so by means of the internet (whether by downloading the record or otherwise).

Information of a kind likely to be useful to a person committing or preparing an act of terrorism is only information that is, of its very nature likely to provide practical assistance to a person committing or preparing an act of terrorism. *R v G; R v J* [2009] UKHL 13, at para 43. The information must also be not the sort of information that is in everyday use by members of the public (e.g. published maps or timetables): *R v Muhammed* [2010] EWCA Crim 227.

Record: Includes a photographic or electronic record.

Terrorism: See 'General Interpretation'.

Further notes

- The putative person committing or preparing an act of terrorism could the collector of the information himself or a third party: *R v G; R v J* [2009] UKHL 13.
- The defence will not be made out where the reason for collecting the information was for a non-terrorist but still criminal purpose, e.g. a manual on how to manufacture bombs for the purposes of bank robbery: *R v G; R v J* [2009] UKHL 13. The test was whether a jury could find that the excuse was "reasonable", not that it was non-terrorist.
- It could not be a reasonable excuse that the target of terrorist activity was an oppressive foreign government (Libya under Gaddafi): *R v F* [2007] EWCA Crim 243.

14. Publishing information about members of the armed forces etc. – s. 58A Terrorism Act 2000

Conduct (actus reus)

P —

(a) **elicits** or attempts to elicit information about an individual who is or has been —

(i) a member of the UK's armed forces;

(ii) a member of any of the **intelligence services**; or

(iii) a constable;

which is of a kind likely to be useful to a person committing or preparing an act of **terrorism**, or

(b) publishes or communicates any such information.

State of mind (mens rea)

Not specified, but by analogy with Section 58 Terrorism Act 2000, it is likely to require

(a) an intention to elicit, publish or communicate, and

(b) knowledge of the broad nature of what the information contains, although not necessarily every detail within it.

Defences

Reasonable excuse. The editor of Blackstones (2022 Ed.) submits at B10.77 that this will be interpreted in the same way as the statutory defence for the Section 58 offence.

Definitions and interpretations

Constable: A UK police officer (non-statutory definition provided by Ofcom to help overseas readers).

Intelligence services: The Security Service, the Secret Intelligence Service and GCHQ (s.58A(4) Terrorism Act 2000).

Terrorism: See 'General Interpretation'.

15. Inciting terrorism outside the United Kingdom – s. 59-61 Terrorism Act 2000

Conduct (actus reus)

P incites another person to commit an act of terrorism wholly or partly outside the United Kingdom, where the act would, if committed:

(a) in England and Wales, constitute murder, or the defined offences under the Offences against the Person Act 1861 of wounding with intent, poison, explosions, the offence under the Criminal Damage Act 1971 of endangering life by damaging property;

(b) in Northern Ireland, constitute murder, or the defined offences under the Offences against the Person Act 1861 of wounding with intent, poison, explosions, the offence under the SI 1977/426 (NI 4) Criminal Damage (Northern Ireland) Order 1977 of endangering life by damaging property;

(c) in Scotland, constitute murder, assault to severe injury, or reckless conduct which causes actual injury.

State of mind (mens rea)

P intends that the other person should commit the crime: *R v Jones (James)* [2010] EWCA Crim 925.

Defences

No statutory defences.

Definitions and interpretations

Inciting: Requires more than simple encouragement, but amounts to "urging" or "spurring on". It must involve words or actions amounting to a positive step or steps aimed at inciting another to commit a crime. (*R v Jones (James)* [2010] EWCA Crim 925). The definition from the South African case of *R v Nkosiyama* (1966) 4 SA 655 was also quoted: "… one who reaches and seeks to influence the mind of another to commit a crime. The machinations of criminal ingenuity being legion, the approach to another's mind may take various forms, such as suggestion, proposal, request, exhortation, gesture, argument, persuasion, inducement, goading or arousal of cupidity".

Terrorism: See 'General Interpretation'.

16. Use of noxious substances or things. – s. 113 of the Anti-Terrorism, Crime and Security Act 2001

Conduct (actus reus)

(1) P takes any action which—

(a) involves the use of a **noxious** substance or other **noxious** thing; and

(b) has or is likely to have an effect falling within subsection (2)

(2) Action has an effect falling within this subsection if it —

(a) causes serious violence against a person anywhere in the world;

(b) causes serious damage to real or personal property anywhere in the world;

(c) endangers human life or creates a serious risk to the health or safety of the public or a Section of the **public**; or

(d) induces in members of the **public** the fear that the action is likely to endanger their lives or create a serious risk to their health or safety;

but any effect on X is to be disregarded.

State of mind (mens rea)

The action "is designed to influence the **government** [or an international governmental organisation] or to intimidate the **public** or a Section of the **public**."

Defences

No statutory defences.

Definitions and interpretations

Government: The government of the United Kingdom, of a part of the United Kingdom or of a country other than the United Kingdom (s.113(5) Anti-Terrorism Crime and Security Act 2001).

Noxious: Defined in the context of the Offences Against the Person Act 1861 as "injurious, hurtful, harmful, unwholesome": *R v Marcus* [1981] 2 All ER 833, and has been held to cover substances such as urine or faeces thrown at officers in prison: *R v Veysey* [2019] EWCA Crim 1332.

Public: Includes the public of a country other than the United Kingdom s.113(5) Anti-Terrorism Crime and Security Act 2001.

Substance: Includes any biological agent and any other natural or artificial substance (whatever its form, origin or method of production) (s.115 Anti-Terrorism Crime and Security Act 2001.

17. Threaten to use noxious substances or things – s. 113 of the Anti-Terrorism, Crime and Security Act 2001

Conduct (actus reus)

P makes a threat that he or another will take any action which constitutes an offence under offence 16 above.

State of mind (mens rea)

P intends thereby to induce in a person anywhere in the world the fear that the threat is likely to be carried out.

Defences

No statutory defences.

Definitions and interpretations

Government: The government of the United Kingdom, of a part of the United Kingdom or of a country other than the United Kingdom (s.113(5) Anti-Terrorism Crime and Security Act 2001).

Noxious: Defined in the context of the Offences Against the Person Act 1861 as "injurious, hurtful, harmful, unwholesome": *R v Marcus* [1981] 2 All ER 833, and has been held to cover substances such as urine or faeces thrown at officers in prison: *R v Veysey* [2019] EWCA Crim 1332.

Public: Includes the public of a country other than the United Kingdom s.113(5) Anti-Terrorism Crime and Security Act 2001.

Substance: Includes any biological agent and any other natural or artificial substance (whatever its form, origin or method of production) (s.115 Anti-Terrorism Crime and Security Act 2001.

18. Encouragement of terrorism – s. 1 Terrorism Act 2006

Conduct (actus reus)

P publishes or causes another to publish a **statement** that **is likely to be understood by a reasonable person** as a direct or indirect encouragement or other inducement, to some or all of the members of the public to whom it is published, to the commission, preparation or instigation of acts of **terrorism** or **Convention offences**.

State of mind (mens rea)

a) P intends members of the public to be directly or indirectly encouraged or otherwise induced by the statement to commit, prepare or instigate acts of **terrorism** or **Convention offences**; or

b) P is **reckless** as to whether members of the public will be directly or indirectly encouraged or otherwise induced by the statement to commit, prepare or instigate such acts or offence.

Defences

Only where intent is not proved in relation to the state of mind (i.e. where the alleged state of mind is recklessness), it is a defence to show —

(a) that the statement neither expressed X's views nor had his endorsement; and

(b) that it was clear, in all the circumstances of the statement's publication, that it did not express his views and did not have his endorsement.

Definitions and interpretations

Convention offences: See 'General Interpretation.'

Likely to be understood by a reasonable person: Statements that are likely to be understood by a reasonable person as indirectly encouraging the commission or preparation of acts of terrorism or Convention offences include every statement which —

(a) glorifies the commission or preparation (whether in the past, in the future or generally) of such acts or offences; and

(b) is a statement from which members of the public could reasonably be expected to infer that what is being glorified is being glorified as conduct that should be emulated by them in existing circumstances (s.1(3) Terrorism Act 2006).

Glorification includes any form of praise or celebration, and cognate expressions are to be construed accordingly (s.20 Terrorism Act 2006).

Statement: References to a statement are references to a communication of any description, including a communication without words consisting of sounds or images or both (s.20 Terrorism Act 2006).

Terrorism: See 'General Interpretation.'

19. Dissemination of terrorist publications – s. 2 Terrorism Act 2006

Conduct (actus reus)

P —

(a) distributes or circulates a **terrorist publication**;

(b) gives, sells or lends such a publication;

(c) offers such a publication for sale or loan;

(d) provides a service to others that enables them to obtain, read, listen to or look at such a publication, or to acquire it by means of a gift, sale or loan;

(e) transmits the contents of such a publication electronically; or

(f) has such a publication in his possession **with a view to** its becoming the subject of conduct falling within any of paragraphs (a) to (e).

State of mind (mens rea)

(a) P intends an effect of his conduct to be a direct or indirect encouragement or other inducement to the commission, preparation or instigation of acts of **terrorism**;

(b) P intends an effect of his conduct to be the provision of assistance in the commission or preparation of such acts; or

(c) P is **reckless** as to whether his conduct has an effect mentioned in paragraph (a) or (b)

Defences

P shows —

(a) that the matter by reference to which the publication in question was a terrorist publication neither expressed his views nor had his endorsement; and

(b) that it was clear, in all the circumstances of the conduct, that that matter did not express his views and did not have his endorsement.

However this defence does *not* apply where X intends to encourage terrorism *or* where X disseminates information likely to be useful in the commission or preparation of acts of terrorism and to be understood, by some or all of those persons, as contained in the publication, or made available to them, wholly or mainly for the purpose of being so useful to them. (S.2(3)).

Definitions and interpretations

Reckless: See 'General Interpretation'.

Terrorism: See 'General Interpretation'.

Terrorist publication: A publication is a terrorist publication if matter contained in it is likely—(a) to be understood [by a reasonable person as a direct or indirect encouragement or other inducement, to some or all of the persons to whom it is or may become available as a result of that conduct, to the commission, preparation or instigation of acts of terrorism; or (b) to be useful in the commission or preparation of such acts and to be understood, by some or all of those persons, as contained in the publication, or made available to them, wholly or mainly for the purpose of being so useful to them. Matter that is likely to be understood by a [reasonable] person as indirectly encouraging the commission or preparation of acts of terrorism includes any matter which—

(a) glorifies the commission or preparation (whether in the past, in the future or generally) of such acts; and

(b) is matter from which [a person] could reasonably be expected to infer that what is being glorified is being glorified as conduct that should be emulated by him in existing circumstances.

The question whether a publication is a terrorist publication in relation to particular conduct must be determined—

(a) as at the time of that conduct; and

(b) having regard both to the contents of the publication as a whole and to the circumstances in which that conduct occurs.

Section 2 refers to terrorist "publication" which implies some element of a self- contained text which is intended for repeated exposure to the public, even though the dissemination may be in a private setting (The Terrorism Acts in 2020, Report of the Independent Reviewer of Terrorism Legislation on the Operation of the Terrorism Acts 2000 and 2006, and the Terrorism Prevention and Investigation Measures Act 2011, Jonathan Hall Q.C (April 2022).

With a view to: Interpreted at first instance as meaning "with intent to" in *R v Faraz* [2012] EWCA Crim 2820.

Further notes

- P is not to be convicted simply for expressing political or religious views (*R v Faraz* [2012] EWCA Crim 2820.

20. Preparation of terrorist acts – s. 5 Terrorism Act 2006

Conduct (actus reus)

P engages in any conduct in preparation for giving effect to his intention.

State of mind (mens rea)

P intends —

(a) committing acts of **terrorism;** or

(b) assisting another to commit such acts.

Defences

No statutory defences.

Definitions and interpretations

Terrorism: See 'General Interpretation'.

21. Training for terrorism (providing) – s. 6 Terrorism Act 2006

Conduct (actus reus)

P provides instruction in:

(a) the making, handling or use of a **noxious substance**, or of substances of a description of such substances;

(b) the use of any method or technique for doing anything else that is capable of being done for the purposes of **terrorism**, in connection with the commission or preparation of an act of terrorism or **Convention** offence or in connection with assisting the commission or preparation by another of such an act or offence; and

(c) the design or adaptation for the purposes of **terrorism**, or in connection with the commission or preparation of an act of **terrorism** or **Convention** offence, of any method or technique for doing anything.

State of mind (mens rea)

At the time P provides the instruction or training, he knows that a person receiving it intends to use the skills in which he is being instructed or trained—

(a) for or in connection with the commission or preparation of **acts of terrorism** or **Convention** offences; or

(b) for assisting the commission or preparation by others of such acts or offences.

Defences

No statutory defences.

Definitions and interpretations

Noxious substance: Means—

(a) a dangerous substance within the meaning of Part 7 of the Anti-terrorism, Crime and Security Act 2001 (c 24); or

(b) any other substance which is hazardous or noxious or which may be or become hazardous or noxious only in certain circumstances;

Substance: Includes any natural or artificial substance (whatever its origin or method of production and whether in solid or liquid form or in the form of a gas or vapour) and any mixture of substances.

Terrorism: See 'General Interpretation.'

Further notes

- It is irrelevant whether any instruction or training that is provided is provided to one or more particular persons or generally.
- It is irrelevant —

  (a) whether the acts or offences in relation to which a person intends to use such skills consist of one or more particular acts of terrorism or Convention offences, acts of terrorism or Convention offences of a particular description, or acts of terrorism or Convention offences generally; and

  (b) whether assistance that a person intends to provide to others is intended to be provided to one or more particular persons or to one or more persons whose identities are not yet known.

22. Training for terrorism (receiving) – s. 6 Terrorism Act 2006

Conduct (actus reus)

P receives instruction in:

(a) the making, handling or use of a **noxious substance**, or of substances of a description of such substances;

(b) the use of any method or technique for doing anything else that is capable of being done for the purposes of **terrorism**, in connection with the commission or preparation of an act of terrorism or **Convention** offence or in connection with assisting the commission or preparation by another of such an act or offence; and

(c) the design or adaptation for the purposes of **terrorism**, or in connection with the commission or preparation of an act of **terrorism** or **Convention** offence, of any method or technique for doing anything.

State of mind (mens rea)

At the time P receives the instruction or training, he intends to use the skills in which he is being instructed or trained —

(a) for or in connection with the commission or preparation of acts of terrorism or **Convention offences**; or

(b) for assisting the commission or preparation by others of such acts or offences.

Defences

No statutory defences.

Definitions and interpretations

Noxious substance: Means—

(a) a dangerous substance within the meaning of Part 7 of the Anti-terrorism, Crime and Security Act 2001 (c 24); or

(b) any other substance which is hazardous or noxious or which may be or become hazardous or noxious only in certain circumstances;

Substance: Includes any natural or artificial substance (whatever its origin or method of production and whether in solid or liquid form or in the form of a gas or vapour) and any mixture of substances.

Terrorism: See 'General Interpretation.'

Further notes

- It is irrelevant —

  (a) whether the acts or offences in relation to which a person intends to use such skills consist of one or more particular acts of terrorism or Convention offences, acts of terrorism or Convention offences of a particular description, or acts of terrorism or Convention offences generally; and

  (b) whether assistance that a person intends to provide to others is intended to be provided to one or more particular persons or to one or more persons whose identities are not yet known

23. Terrorist threats relating to radioactive devices etc. – s. 11 Terrorism Act 2006

Conduct (actus reus)

P makes a demand, in the course of or in connection with the commission of an act of **terrorism** or for the purposes of **terrorism** —

a) for the supply to himself or to another of a **radioactive device** or of **radioactive material;**

b) for a **nuclear facility** to be made available to himself or to another; or

c) for access to such a facility to be given to himself or to another;

and supports the demand with a threat that he or another will take action if the demand is not met;

when the circumstances and manner of the threat are such that it is reasonable for the person to whom it is made to assume that there is real risk that the threat will be carried out if the demand is not met.

P, in the course of or in connection with the commission of an act of **terrorism** or for the purposes of **terrorism**, makes:

a) a threat to use **radioactive material**;

b) a threat to use a **radioactive device**; or

c) a threat to use or damage a **nuclear facility** in a manner that releases radioactive material or creates or increases a risk that such material will be released;

when the circumstances and manner of the threat are such that it is reasonable for the person to whom it is made to assume that there is real risk that the threat will be carried out if the demand is not met.

State of mind (mens rea)

"For the purposes of terrorism" connotes a specific intent.

Defences

No statutory defences.

Definitions and interpretations

Nuclear facility: Means —

(a) a nuclear reactor, including a reactor installed in or on any transportation device for use as an energy source in order to propel it or for any other purpose; or

(b) a plant or conveyance being used for the production, storage, processing or transport of radioactive material (for the definition of nuclear reactor see s.26 of the Nuclear Installations Act 1965 (c 57); "transportation device" means any vehicle or any space object (within the meaning of the Outer Space Act 1986 (c 38).)

Radioactive device: Means —

(a) a nuclear weapon or other nuclear explosive device;

(b) a radioactive material dispersal device;

(c) a radiation-emitting device.

For further definition of the terms used in this definition, see Section 9 Terrorism Act 2006.

Radioactive material means nuclear material or any other radioactive substance which—

(a) contains nuclides that undergo spontaneous disintegration in a process accompanied by the emission of one or more types of ionising radiation, such as alpha radiation, beta radiation, neutron particles or gamma rays; and

(b) is capable, owing to its radiological or fissile properties, of

(i) causing serious bodily injury to a person;

(ii) causing serious damage to property;

(iii) endangering a person's life; or

(iv) creating a serious risk to the health or safety of the public.

For further definition of the terms used in this definition, see Section 9 Terrorism Act 2006.

A4. Threats, abuse and harassment (including hate)

24. Threats to kill – s. 16 Offences Against the Person Act 1861

Conduct (actus reus)

P makes a threat to another person to kill them or a third person.

State of mind (mens rea)

P intends the other person to fear the threat would be carried out.

Defences

P has a **lawful excuse** for making the threat.

Definitions and interpretations

Lawful excuse means where the threat is made lawfully. This may include a threat made in self-defence to prevent an assault or to prevent a crime, provided it was reasonable in the circumstances. What is reasonable is a matter to be determined by the court.

Further notes

- An implied threat can amount to the act: *R v Solanke* [1970] 1 WLR 1.

25. Fear or provocation of violence – s. 4 Public Order Act 1986

Conduct (actus reus)

P —

(a) uses towards another person threatening, abusive or insulting words or behaviour, or

(b) distributes or displays to another person any writing, sign or other visible representation which is threatening abusive or insulting.

An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the writing, sign or other visible representation is distributed or displayed, by a person inside a dwelling and the other person is also inside that or another dwelling.

State of mind (mens rea)

P either —

(a) intends his words or behaviour, or the writing, sign or other visible representation, to be threatening, abusive or insulting; or

(b) is aware that it may be threatening, abusive or insulting (s.6(3) Public Order Act 1986).

and

P —

(a) intends to cause that person to believe that immediate unlawful violence will be used against him or another by any person; or

(b) intends to provoke the immediate use of unlawful violence by that person or another; or

(c) whereby that person is likely to believe that **such violence** will be used; or

(d) it is likely that **such violence** will be provoked.

Defences

No statutory defences.

Definitions and interpretations

Dwelling: means any structure or part of a structure occupied as a person's home or as other living accommodation (whether the occupation is separate or shared with others) but does not include any part not so occupied, and for this purpose 'structure' includes a tent, caravan, vehicle, vessel or other temporary or movable structure (s. 8 of the Public Order Act 1986).

Violence: Means any violent conduct, so that —

- except in the context of affray, it includes violent conduct towards property as well as violent conduct towards persons, *and*
- it is not restricted to conduct causing or intended to cause injury or damage but includes any other violent conduct (for example, throwing at or towards a person a missile of a kind capable of causing injury which does not hit or falls short) (s.8 of the Public Order Act 1986).

Such violence: as used in this offence means 'immediate unlawful violence' (*Horse-ferry Road Metropolitan Stipendiary Magistrate, ex parte Siadatan* [1991] 1 QB 260.

26. Intentional harassment, alarm, or distress – s. 4A Public Order Act 1986

Conduct (actus reus)

P —

(a) uses threatening, abusive or insulting words or behaviour or disorderly behaviour, or

(b) displays to another of any writing, sign or representation which is threatening, abusive or insulting

thereby causing that or another person **harassment, alarm or distress.**

An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the writing, sign or other visible representation is distributed or displayed, by a person inside a dwelling and the other person is also inside that or another dwelling.

State of mind (mens rea)

P intends to cause a person **harassment, alarm or distress**.

Defences

It is a defence for P to prove:

(a) that he was inside a **dwelling** and had no reason to believe that the words or behaviour used, or the writing, sign or other visible representation displayed, would be heard or seen by a person outside that or any other **dwelling**; or

(b) that his conduct was reasonable.

Definitions and interpretations

Harassment, alarm or distress: 'Harassment, alarm or distress do not have the same meaning…. Distress by its very nature involves an element of real emotional disturbance or upset but the same is not necessarily true of harassment. You can be harassed, indeed seriously harassed, without experiencing emotional disturbance or upset at all. That said, although the harassment does not have to be grave, it should also not be trivial. In other words, the court has to find that the words or behaviour were likely to cause some real, as opposed to trivial, harassment.': *Southard v DPP* [2006] EWHC 3449 (Admin)

Dwelling: means any structure or part of a structure occupied as a person's home or as other living accommodation (whether the occupation is separate or shared with others) but does not include any part not so occupied, and for this purpose 'structure' includes a tent, caravan, vehicle, vessel or other temporary or movable structure (s. 8 of the Public Order Act 1986).

27. Harassment, alarm, or distress – s. 5 Public Order Act 1986

Conduct (actus reus)

P —

(a) uses threatening or abusive words or behaviour, or disorderly behaviour, or

(b) displays any writing, sign or other visible representation which is threatening or abusive,

within the hearing or sight of a person likely to be caused **harassment, alarm or distress** thereby.

An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the writing, sign or other visible representation is distributed or displayed, by a person inside a **dwelling** and the other person is also inside that or another **dwelling**.

State of mind (mens rea)

P —

(a) intends his words or behaviour, or the writing, sign or other visible representation, to be threatening abusive, or the conduct disorderly; or

(b) is aware that the words (etc.) may be threatening or abusive or the behaviour disorderly (s.6(4) of the Public of the Order Act 1986).

Defences

It is a defence for P to prove:

(a) that he had no reason to believe that there was any person within hearing or sight who was likely to be caused **harassment, alarm or distress**; or

(b) that he was inside a **dwelling** and had no reason to believe that the words or behaviour used, or the writing, sign or other visible representation displayed, would be heard or seen by a person outside that or any other **dwelling;** or

(c) that his conduct was reasonable (s.5(3) of the Public Order Act 1986).

Definitions and interpretations

Harassment, alarm or distress: 'Harassment, alarm or distress do not have the same meaning…. Distress by its very nature involves an element of real emotional disturbance or upset but the same is not necessarily true of harassment. You can be harassed, indeed seriously harassed, without experiencing emotional disturbance or upset at all. That said, although the harassment does not have to be grave, it should also not be trivial. In other words, the court has to find that the words or behaviour were likely to cause some real, as opposed to trivial, harassment.': *Southard v DPP* [2006] EWHC 3449 (Admin)

Dwelling: means any structure or part of a structure occupied as a person's home or as other living accommodation (whether the occupation is separate or shared with others) but does not include any part not so occupied, and for this purpose 'structure' includes a tent, caravan, vehicle, vessel or other temporary or movable structure (s. 8 of the Public Order Act 1986).

28. Acts intended to stir up racial hatred – use of words or behaviour or display of written material – s. 18 Public Order Act 1986 (intention)

Conduct (actus reus)

P uses threatening, abusive or insulting words or behaviour, or displays any **written material** which is threatening, abusive or insulting.

An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the **written material** is displayed, by a person inside a **dwelling** and are not heard or seen except by other persons in that or another **dwelling**.

State of mind (mens rea)

P intends thereby to stir up **racial hatred**.

Defences

It is a defence for P to prove that he was inside a **dwelling** and had no reason to believe that the words or behaviour used, or the **written material** displayed, would be heard or seen by a person outside that or any other **dwelling**.

Definitions and interpretations

Dwelling: means any structure or part of a structure occupied as a person's home or other living accommodation (whether the occupation is separate or shared with others) but does not include any part not so occupied, and for this purpose “structure” includes a tent, caravan, vehicle, vessel or other temporary or movable structure (s.29 of the Public Order Act 1986).

Racial hatred: Hatred against a group of persons… defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins (s.17 of the Public Order Act 1986). The courts have held that it includes, for example, Romany gypsies, Irish travellers, and those who are not of British origin (Rogers [2007] UKHL 8.

Written material: Includes any sign or other visible representation (s.29 of the Public Order Act 1986).

Further notes

- This section does not apply to words or behaviour used, or written material displayed, solely for the purpose of being included in a programme included in a *programme service*.
    - *Programme service:* "Programme service" is defined in Section 201 of the Broadcasting Act 1990 and Section 405 of the Communications Act 2003.
- Section 29K of the Public Order Act 1986 provides a saving for reports of parliamentary or judicial proceedings.

29. Acts intended to stir up racial hatred – use of words or behaviour or display of written material – s. 18 1986 Public Order Act 1986 (no intention)

Conduct (actus reus)

a) P uses threatening, abusive or insulting words or behaviour, or displays any **written material** which is threatening, abusive or insulting; and

b) having regard to all the circumstances **racial hatred** is likely to be stirred up thereby.

An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the **written material** is displayed, by a person inside a **dwelling** and are not heard or seen except by other persons in that or another **dwelling**.

State of mind (mens rea)

P was aware that his words, behaviour, or the written material might be threatening, abusive or insulting.

Defences

It is a defence for P to prove that

a) he was inside a **dwelling** and had no reason to believe that the words or behaviour used, or the **written material** displayed, would be heard or seen by a person outside that or any other **dwelling**; or

b) that he did not intend the words or material to be threatening, abusive or insulting and was not aware that they might be threatening, abusive or insulting (s.18(5) of the Public Order Act 1986).

Definitions and interpretations

Dwelling: means any structure or part of a structure occupied as a person's home or as other living accommodation (whether the occupation is separate or shared with others) but does not include any part not so occupied, and for this purpose 'structure' includes a tent, caravan, vehicle, vessel or other temporary or movable structure (s.29 of the Public Order Act 1986).

Racial hatred: Hatred against a group of persons… defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins. (s.17 Public Order Act 1986). The courts have held that it includes, for example, Romany gypsies, Irish travellers, and those who are not of British origin (Rogers [2007] UKHL 8.

Written material: Includes any sign or other visible representation (s.29 Public Order Act 1986).

Further notes

- This section does not apply to words or behaviour used, or written material displayed, solely for the purpose of being included in a programme included in a *programme service*.
    - *Programme service:* "Programme service" is defined in Section 201 of the Broadcasting Act 1990 and Section 405 of the Communications Act 2003.
- Section 29K of the Public Order Act 1986 provides a saving for reports of parliamentary or judicial proceedings.

30. Acts intended to stir up racial hatred – publishing or distributing written material – s. 19 Public Order Act 1986 (intention)

Conduct (actus reus)

P **publishes or distributes written material** which is threatening, abusive or insulting.

State of mind (mens rea)

P intends thereby to stir up **racial hatred**.

Defences

No statutory defences.

Definitions and interpretations

Publication or distribution of written material refers to publication or distribution to the public or a section of the public (s.19(3) Public Order Act 1986).

Racial hatred: Hatred against a group of persons . . . defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins (s.17 of the Public Order Act 1986). The courts have held that it includes, for example, Romany gypsies, Irish travellers, and those who are not of British origin (Rogers [2007] UKHL 8.

Written material: Includes any sign or other visible representation (s.29 of the Public Order Act 1986).

Further notes

- Section 29K of the Public Order Act 1986 provides a saving for reports of parliamentary or judicial proceedings.

31. Acts intended to stir up racial hatred – publishing or distributing written material – s. 19 Public Order Act 1986 (no intention)

Conduct (actus reus)

a) P uses threatening, abusive or insulting words or behaviour, or displays any **written material** which is threatening, abusive or insulting; and

b) having regard to all the circumstances **racial hatred** is likely to be stirred up thereby.

State of mind (mens rea)

None.

Defences

It is a defence for P who is not shown to have intended to stir up **racial hatred** to prove that –

a) he was not aware of the content of the material and did not suspect, and had no reason to suspect, that it was threatening, abusive or insulting.

Definitions and interpretations

Publication or distribution of written material refers to publication or distribution to the public or a section of the public (s.19(3) Public Order Act 1986).

Racial hatred: Hatred against a group of persons . . . defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins (s.17 of the Public Order Act 1986). The courts have held that it includes, for example, Romany gypsies, Irish travellers, and those who are not of British origin (Rogers [2007] UKHL 8.

Written material: Includes any sign or other visible representation (s.29 of the Public Order Act 1986).

Further notes

- Section 29K of the Public Order Act 1986 provides a saving for reports of parliamentary or judicial proceedings.

32. Acts intended to stir up racial hatred – distributing, showing or playing a recording – s. 21 Public Order Act 1986 (intention)

Conduct (actus reus)

P distributes, or shows or plays a **recording** of visual images or sounds which are threatening, abusive or insulting.

State of mind (mens rea)

P intends thereby to stir up **racial hatred**.

Defences

No statutory defences.

Definitions and interpretations

Racial hatred: Hatred against a group of persons . . . defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins (s.17 of the Public Order Act 1986). The courts have held that it includes, for example, Romany gypsies, Irish travellers, and those who are not of British origin (Rogers [2007] UKHL 8.

Recording: Any record from which visual images or sounds may, by any means, be reproduced; and references to the distribution, showing or playing of a recording are to its distribution, showing or playing to the public or a section of the public (s.21(2) of the Public Order Act 1986).

Further notes

- This section does not apply to the showing or playing of a recording solely for the purpose of enabling the recording to be included in *a programme service* (s.21(4) Public Order Act 1986).
    - *Programme service:* "Programme service" is defined in Section 201 of the Broadcasting Act 1990 and Section 405 of the Communications Act 2003.
- Section 29K of the Public Order Act 1986 provides a saving for reports of parliamentary or judicial proceedings.

33. Acts intended to stir up racial hatred – distributing, showing or playing a recording – s. 21 Public Order Act 1986 (no intention)

Conduct (actus reus)

a) P distributes, or shows or plays a **recording** of visual images or sounds which are threatening, abusive or insulting; and

b) having regard to all the circumstances **racial hatred** is likely to be stirred up thereby.

State of mind (mens rea)

None.

Defences

It is a defence for P who is not shown to have intended to stir up **racial hatred** to prove that he was not aware of the content of the **recording** and did not suspect, and had no reason to suspect, that it was threatening, abusive or insulting.

Definitions and interpretations

Recording: Any record from which visual images or sounds may, by any means, be reproduced; and references to the distribution, showing or playing of a recording are to its distribution, showing or playing to the public or a section of the public (s.21(2) Public Order Act 1986).

Racial hatred: Hatred against a group of persons . . . defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins (s.17 of the Public Order Act 1986). The courts have held that it includes, for example, Romany gypsies, Irish travellers, and those who are not of British origin (Rogers [2007] UKHL 8.

Further notes

- This section does not apply to the showing or playing of a recording solely for the purpose of enabling the recording to be [included in a programme service (s.21(4) Public Order Act 1986).
    - *Programme service:* "Programme service" is defined in Section 201 of the Broadcasting Act 1990 and Section 405 of the Communications Act 2003.
- Section 29K of the Public Order Act 1986 provides a saving for reports of parliamentary or judicial proceedings.

34. Acts intended to stir up religious hatred or hatred on the grounds of sexual orientation – use of words or behaviour or display of written material – s. 29B Public Order Act 1986

Conduct (actus reus)

P uses threatening words or behaviour, or display any **written material** which is threatening.

An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the **written material** is displayed, by a person inside a **dwelling** and are not heard or seen except by other persons in that or another **dwelling** (s.29B(2) of the Public Order Act 1986.

State of mind (mens rea)

P intends to stir up **religious hatred** or **hatred on the grounds of sexual orientation**.

Defences

It is a defence for the P to prove –

a) that he was inside a **dwelling** and had no reason to believe that the words or behaviour used, or the **written material** displayed, would be heard or seen by a person outside that or any other **dwelling** (s.29B(4) of the Public Order Act 1986.

Definitions and interpretations

Dwelling: Any structure or part of a structure occupied as a person's home or other living accommodation (whether the occupation is separate or shared with others) but does not include any part not so occupied, and for this purpose “structure” includes a tent, caravan, vehicle, vessel or other temporary or movable structure (s.29N of the Public Order Act 1986)

Hatred on the grounds of sexual orientation: Hatred against a group of persons defined by reference to sexual orientation (whether towards persons of the same sex, the opposite sex or both) (s.29AB of the Public Order Act 1986).

Religious Hatred: Hatred against a group of persons defined by reference to religious belief or lack of religious belief (s.29A of the Public Order Act 1986).

Written material: Includes any sign or other visible representation (s.29N of the Public Order Act 1986)

Further notes

- In relation to 'hatred on the grounds of sexual orientation', the Ministry of Justice Circular 2010/05, para. 7, expresses the view that the definition 'is expressly limited to orientation towards persons of the same sex, the opposite sex, or both. The term does not extend to orientation based on, for example, a preference for particular sexual acts or practices. It therefore covers only groups of people who are gay, lesbian, bisexual or heterosexual.'[60]
- **Section 29J Public Order Act 1986 Protection of freedom of expression:**
    - Nothing in this Part shall be read or given effect in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents, or proselytising or urging adherents of a different religion or belief system to cease practising their religion or belief system.
- **Section 29JA Public Order Act 1986 Protection of freedom of expression (sexual orientation):**
    - In this Part, for the avoidance of doubt, the discussion or criticism of sexual conduct or practices or the urging of persons to refrain from or modify such conduct or practices shall not be taken of itself to be threatening or intended to stir up hatred.
    - In this Part, for the avoidance of doubt, any discussion or criticism of marriage which concerns the sex of the parties to marriage shall not be taken of itself to be threatening or intended to stir up hatred.
- "Ministry of Justice Circular 2010/05, para. 12, states: 'The offences are limited to threatening conduct or material which is intended to stir up hatred. Subject to those conditions, they do not prevent the telling of jokes or the preaching of religious doctrine. Hatred is a very strong emotion. Conduct or material which only stirs up ridicule or dislike, or which simply causes offence, would not meet that threshold. The offences are not intended to cover, for example, teenagers who call each other names in the playground where this is not threatening and there is no intention of stirring up hatred against a group.'"[61]
- This section does not apply to words or behaviour used, or written material displayed, solely for the purpose of being included in a programme service (s.29B(5) of the Public Order Act 1986).

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[60] Ministry of Justice, 2010. 'Offences of stirring up hatred on the grounds of sexual orientation'. *The National Archives* [accessed 19 October, 2023].
[61] Ministry of Justice, 2010. 'Offences of stirring up hatred on the grounds of sexual orientation'. *The National Archives* [accessed 19 October, 2023].

- Section 29K of the Public Order Act 1986 provides a saving for reports of parliamentary or judicial proceedings.

35. Acts intended to stir up religious hatred or hatred on the grounds of sexual orientation – publishing or distributing written material – s. 29C Public Order Act 1986

Conduct (actus reus)

P **publishes or distributes written material** which is threatening.

State of mind (mens rea)

P intends to stir up **religious hatred** or **hatred on the grounds of sexual orientation**.

Defences

No statutory defences.

Definitions and interpretations

Hatred on the grounds of sexual orientation: Hatred against a group of persons defined by reference to sexual orientation (whether towards persons of the same sex, the opposite sex or both) (s.29AB of the Public Order Act 1986).

Publication or distribution: References in this Part to the publication or distribution of **written material** are to its publication or distribution to the public or a section of the public (s.29C of the Public Order Act 1986).

Religious Hatred: Hatred against a group of persons defined by reference to religious belief or lack of religious belief (s.29A of the Public Order Act 1986).

Written material: Includes any sign or other visible representation (s.29N of the Public Order Act 1986)

Further notes

- In relation to 'hatred on the grounds of sexual orientation', the Ministry of Justice Circular 2010/05, para. 7, expresses the view that the definition 'is expressly limited to orientation towards persons of the same sex, the opposite sex, or both. The term does not extend to orientation based on, for example, a preference for particular sexual acts or practices. It therefore covers only groups of people who are gay, lesbian, bisexual or heterosexual.' [62]
- **Section 29J Public Order Act 1986 Protection of freedom of expression:**
    - Nothing in this Part shall be read or given effect in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents, or proselytising or urging adherents of a different religion or belief system to cease practising their religion or belief system.
- **Section 29JA Public Order Act 1986 Protection of freedom of expression (sexual orientation):**
    - In this Part, for the avoidance of doubt, the discussion or criticism of sexual conduct or practices or the urging of persons to refrain from or modify such conduct or practices shall not be taken of itself to be threatening or intended to stir up hatred.
    - In this Part, for the avoidance of doubt, any discussion or criticism of marriage which concerns the sex of the parties to marriage shall not be taken of itself to be threatening or intended to stir up hatred.
- "Ministry of Justice Circular 2010/05, para. 12, states: 'The offences are limited to threatening conduct or material which is intended to stir up hatred. Subject to those conditions, they do not prevent the telling of jokes or the preaching of religious doctrine. Hatred is a very strong emotion. Conduct or material which only stirs up ridicule or dislike, or which simply causes offence, would not meet that threshold. The offences are not intended to cover, for example, teenagers who call each other names in the playground where this is not threatening and there is no intention of stirring up hatred against a group.'" [63]
- Section 29K of the Public Order Act 1986 provides a saving for reports of parliamentary or judicial proceedings.

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[62] Ministry of Justice, 2010. Offences of stirring up hatred on the grounds of sexual orientation. *The National Archives* [accessed 19 October, 2023].
[63] Ministry of Justice, 2010. Offences of stirring up hatred on the grounds of sexual orientation. *The National Archives* [accessed 19 October, 2023].

36. Acts intended to stir up religious hatred or hatred on the grounds of sexual orientation – distributing, showing or playing a recording – s. 29E Public Order Act 1986

Conduct (actus reus)

P distributes, or shows or plays, a **recording** of visual images or sounds which are threatening.

State of mind (mens rea)

P intends to stir up **religious hatred** or **hatred on the grounds of sexual orientation**.

Defences

No statutory defences.

Definitions and interpretations

Hatred on the grounds of sexual orientation: Hatred against a group of persons defined by reference to sexual orientation (whether towards persons of the same sex, the opposite sex or both) (s.29AB of the Public Order Act 1986).

Recording: Any record from which visual images or sounds may, by any means, be reproduced; and references to the distribution, showing or playing of a recording are to its distribution, showing or playing to the public or a section of the public (s.29E(2) of the Public Order Act 1986).

Religious Hatred: Hatred against a group of persons defined by reference to religious belief or lack of religious belief (s.29A of the Public Order Act 1986).

Written material: Includes any sign or other visible representation (s.29N of the Public Order Act 1986)

Further notes

- In relation to 'hatred on the grounds of sexual orientation', the Ministry of Justice Circular 2010/05, para. 7, expresses the view that the definition 'is expressly limited to orientation towards persons of the same sex, the opposite sex, or both. The term does not extend to orientation based on, for example, a preference for particular sexual acts or practices. It therefore covers only groups of people who are gay, lesbian, bisexual or heterosexual.' [64]
- **Section 29J Public Order Act 1986 Protection of freedom of expression:**
    - Nothing in this Part shall be read or given effect in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents, or proselytising or urging adherents of a different religion or belief system to cease practising their religion or belief system.
- **Section 29JA Public Order Act 1986 Protection of freedom of expression (sexual orientation):**
    - In this Part, for the avoidance of doubt, the discussion or criticism of sexual conduct or practices or the urging of persons to refrain from or modify such conduct or practices shall not be taken of itself to be threatening or intended to stir up hatred.
    - In this Part, for the avoidance of doubt, any discussion or criticism of marriage which concerns the sex of the parties to marriage shall not be taken of itself to be threatening or intended to stir up hatred.
- "Ministry of Justice Circular 2010/05, para. 12, states: 'The offences are limited to threatening conduct or material which is intended to stir up hatred. Subject to those conditions, they do not prevent the telling of jokes or the preaching of religious doctrine. Hatred is a very strong emotion. Conduct or material which only stirs up ridicule or dislike, or which simply causes offence, would not meet that threshold. The offences are not intended to cover, for example, teenagers who call each other names in the playground where this is not threatening and there is no intention of stirring up hatred against a group.'" [65]
- This section does not apply to the showing or playing of a recording solely for the purpose of enabling the recording to be included in a *programme service* (s.29E(3) of the Public Order Act 1986).

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[64] Ministry of Justice, 2010. Offences of stirring up hatred on the grounds of sexual orientation. *The National Archives* [accessed 19 October, 2023].
[65] Ministry of Justice, 2010. Offences of stirring up hatred on the grounds of sexual orientation. *The National Archives* [accessed 19 October, 2023].

- *Programme service:* "Programme service" is defined in Section 201 of the Broadcasting Act 1990 and Section 405 of the Communications Act 2003.

- Section 29K of the Public Order Act 1986 provides a saving for reports of parliamentary or judicial proceedings.

37. Racially-aggravated harassment – s. 50A Criminal Law (Consolidation) (Scotland) Act 1995

This offence has been repealed and therefore removed.

38. Harassment – Article 4 Protection from Harassment (Northern Ireland) Order 1997 (S.I. 1997/1180 (N.I. 9))

Conduct (actus reus)

P pursues a course of conduct which amounts to harassment of another.

State of mind (mens rea)

P knows or ought to know it amounts to harassment of the other.

Defences

It is a defence for P to prove —

a) the **course of conduct** was pursued for the purpose of preventing or detecting crime;

b) the **course of conduct** was pursued under any statutory provision or rule of law or to comply with any condition or requirement imposed by any person under any statutory provision; or

c) in the particular circumstances the pursuit of the **course of conduct** was reasonable.

Definitions and interpretations

Course of Conduct: Must involve conduct on at least two occasions and "conduct" includes speech. (Art.2(3) of the Protection from Harassment (Northern Ireland) Order 1997/1180).

Harassing a person: References to harassing a person include alarming the person or causing the person distress. (Art.2(2) of the Protection from Harassment (Northern Ireland) Order 1997/1180).

Knows or ought to know: For the purposes of this Article, the person whose course of conduct is in question ought to know that it amounts to harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other (Art.3(2) of the Protection from Harassment (Northern Ireland) Order 1997/1180).

39. Harassment – s. 2 Protection from Harassment Act 1997

Conduct (actus reus)

P pursues a **course of conduct** that —

(a) amounts to **harassment** of another, *or*

(b) involves **harassment** of two or more persons.

State of mind (mens rea)

Please see corresponding state of mind requirement for each subsection

In the case of subsection (a), P **knows or ought to know that it amounts to harassment**.

In the case of subsection (b), P

- **knows or ought to know amounts** to **harassment** of those persons; and
- intends by the conduct to persuade any person (whether or not one of those mentioned above)—
    - not to do something that he is entitled or required to do; or
    - to do something that he is not under any obligation to do.

Defences

It is a defence for P to prove that -

a) The **course of conduct** was pursued for the purpose of preventing or detecting crime;

b) The **course of conduct** was pursued under any enactment or rule of law to comply with any condition or requirement imposed by any person under any enactment; or

c) In the circumstances the **course of conduct** was reasonable.

Definitions and interpretations

Course of conduct: A “course of conduct” must involve —

(a) in the case of conduct in relation to a single person (see subsection (a) above), conduct on at least two occasions in relation to that person, or

(b) in the case of conduct in relation to two or more persons (see subsection(b) above), conduct on at least one occasion in relation to each of those persons.

Harassment: References to harassing a person include alarming the person or causing the person distress (s.7 of the Protection from Harassment Act).

There is significant case law on what amounts to harassment including but not limited to Thomas v News Group Newspapers [2002] EMLR 4 and Majrowski v Guy's and St Thomas's NHS Trust [2007] 1 AC 224. Below is an abridged version of reasoning as set out at para. 44 in the case of Hayden v Dickenson [2020] EWHC 3291 (QB) *on what amounts to harassment*:

“i) Harassment is an ordinary English word with a well understood meaning: it is a persistent and deliberate course of unacceptable and oppressive conduct, targeted at another person, which is calculated to and does cause that person alarm, fear or distress; a persistent and deliberate course of targeted oppression.

ii) The behaviour said to amount to harassment must reach a level of seriousness passing beyond irritations, annoyances, even a measure of upset, that arise occasionally in everybody's day-to-day dealings with other people. The conduct must cross the boundary between that which is unattractive, even unreasonable, and conduct which is oppressive and unacceptable. To cross the border from the regrettable to the objectionable, the gravity of the misconduct must be of an order which would sustain criminal liability.

iii) The provision, in section 7(2) that "references to harassing a person include alarming the person or causing the person distress" is not… exhaustive. It is merely guidance as to one element of it. It does not follow that any course of conduct which causes alarm or distress therefore amounts to harassment…”

v) Those who are " targeted" by the alleged harassment can include others "who are foreseeably, and directly, harmed by the course of targeted conduct of which complaint is made, to the extent that they can properly be described as victims of it."

Knows or ought to know that it amounts to harassment: The person whose course of conduct is in question ought to know that it amounts to or involves harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to or involved harassment of the other (s.1(2) of the Protection from Harassment Act 1997).

40. Stalking – s. 2A Protection from Harassment Act 1997

Conduct (actus reus)

P —

(a) pursues a **course of conduct** that amounts to **harassment** of another, and

(b) the **course** of conduct **amounts to stalking**.

State of mind (mens rea)

P **knows or ought to know that it amounts to harassment**.

Defences

It is a defence for P to prove that —

a) the **course of conduct** was pursued for the purpose of preventing or detecting crime;

b) the **course of conduct** was pursued under any enactment or rule of law to comply with any condition or requirement imposed by any person under any enactment; or

c) in the circumstances the **course of conduct** was reasonable.

Definitions and interpretations

Course of conduct: A "course of conduct" must involve conduct on at least two occasions in relation to that person.

Amounts to stalking: A person's course of conduct amounts to stalking of another person if—

(a) it amounts to harassment of that person,

(b) the acts or omissions involved are ones associated with stalking, *and*

(c) the person whose course of conduct it is **knows or ought to know that the course of conduct amounts to harassment** of the other person (s.2A(2) of the Protection from Harassment Act 1997).

The following are examples of acts or omissions which, in particular circumstances, are ones associated with stalking—

(a) following a person,

(b) contacting, or attempting to contact, a person by any means,

(c) publishing any statement or other material—

(i) relating or purporting to relate to a person, or

(ii) purporting to originate from a person,

(d) monitoring the use by a person of the internet, email or any other form of electronic communication,

(e) loitering in any place (whether public or private),

(f) interfering with any property in the possession of a person,

(g) watching or spying on a person (s.2A(3) of the Protection from Harassment Act 1997).

Harassment: References to harassing a person include alarming the person or causing the person distress (s.7 of the Protection from Harassment Act) (*see row 39 Harassment – s. 2 of the Protection from Harassment Act 1997 of this table for additional detail*)

Knows or ought to know that it amounts to harassment: The person whose course of conduct is in question ought to know that it amounts to or involves harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to or involved harassment of the other (s.1(2) of the Protection from Harassment Act 1997).

41. Putting people in fear of violence – Art 6 Protection from Harassment (Northern Ireland) Order 1997 (S.I.I 997/1180 (N.I. 9))

Conduct (actus reus)

P's **course of conduct** causes another to fear, on at least two occasions, that violence will be used against him.

State of mind (mens rea)

P **knows or ought to know** that his **course of conduct** will cause the other so to fear on each of those occasions.

Defences

It is a defence for P to prove that —

a) his **course of conduct** was pursued for the purpose of preventing or detecting crime;

b) his **course of conduct** was pursued under any statutory provision or rule of law or to comply with any condition or requirement imposed by any person under any statutory provision; or

c) the pursuit of his **course of conduct** was reasonable for the protection of himself or another or for the protection of his or another's property.

Definitions and interpretations

Course of Conduct: must involve conduct on at least two occasions and "conduct" includes speech**.** (Art.2(3) Protection from Harassment (Northern Ireland) Order 1997/1180).

Knows or ought to know: For the purposes of this Article, the person whose course of conduct is in question ought to know that it will cause another to fear that violence will be used against him on any occasion if a reasonable person in possession of the same information would think the course of conduct would cause the other so to fear on that occasion (Art 6(2) of the Protection from Harassment (Northern Ireland) Order 1997/1180).

42. Putting people in fear of violence – s. 4 Protection from Harassment Act 1997

Conduct (actus reus)

P's **course of conduct** causes another to fear, on at least two occasions, that violence will be used against him.

State of mind (mens rea)

P **knows or ought to know** that his **course of conduct** will cause the other so to fear on each of those occasions.

Defences

It is a defence for P to prove that —

a) his **course of conduct** was pursued for the purpose of preventing or detecting crime;

b) his **course of conduct** was pursued under any statutory provision or rule of law or to comply with any condition or requirement imposed by any person under any statutory provision; or

c) the pursuit of his **course of conduct** was reasonable for the protection of himself or another or for the protection of his or another's property.

Definitions and interpretations

Course of conduct: must involve conduct on at least two occasions in relation to that person (s.7 of the Protection from Harassment Act 1997).

Knows or ought to know: For the purposes of this Article/(section), the person whose course of conduct is in question ought to know that it will cause another to fear that violence will be used against him on any occasion if a reasonable person in possession of the same information would think the course of conduct would cause the other so to fear on that occasion (s.2 of the Protection from Harassment Act 1997).

43. Stalking involving fear of violence or serious alarm or distress – s. 4A Protection from Harassment Act 1997

Conduct (actus reus)

P's **course of conduct amounts to stalking** of another person (B) and either —

(a) causes B to fear on at least 2 occasions that violence will be used against B; or

(b) causes B serious alarm or distress which has a substantial adverse effect on B's usual day to day activities.

State of mind (mens rea)

P —

(a) **knows or ought to know** that the **course of conduct** amounts to harassment of the other person; and

(b) **knows or ought to know** that their **course of conduct**

(i) will cause B to fear on each occasion that violence will be used against B; or

(ii) (as the case may be) will cause serious alarm or distress which has a substantial adverse effect on B's usual day to day activities.

Defences

It is a defence for P to show that –

a) **course of conduct** was pursued for the purpose of preventing or detecting crime;

b) P's **course of conduct** was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment; or

c) the pursuit of P's **course of conduct** was reasonable for the protection of P or another or for the protection of P's or another's property.

Definitions and interpretations

Amounts to stalking: A person's **course of conduct** amounts to stalking of another person if—

(a) it amounts to harassment of that person, *and*

(b) the acts or omissions involved are ones associated with stalking, *and*

(c) the person whose **course of conduct** it is knows or ought to know that the **course of conduct** amounts to harassment of the other person

The following are examples of acts or omissions which, in particular circumstances, are ones associated with stalking—

(a) following a person,

(b) contacting, or attempting to contact, a person by any means,

(c) publishing any statement or other material—

(i) relating or purporting to relate to a person, or

(ii) purporting to originate from a person,

(d) monitoring the use by a person of the internet, email or any other form of electronic communication,

(e) loitering in any place (whether public or private),

(f) interfering with any property in the possession of a person,

(g) watching or spying on a person.

Course of conduct: A "course of conduct" must involve conduct on at least two occasions in relation to that person.

Knows or ought to know…serious alarm or distress: P ought to know that P's course of conduct will cause B serious alarm or distress which has a substantial adverse effect on B's usual day-to-day activities if a reasonable person in possession of the same information would think the course of conduct would cause B such alarm or distress (s.4A(2) Protection from Harassment 1997).

Knows or ought to know…violence will be used against B: P ought to know that P's course of conduct will cause B to fear that violence will be used against B on any occasion if a reasonable person in possession of the same information would think the course of conduct would cause B so to fear on that occasion (s.4A(3) of the Protection from Harassment 1997).

44. Racially or religiously aggravated public order offences – s. 31 Crime and Disorder Act 1998

Conduct (actus reus)

P commits an offence under the following sections of the Public Order Act 1968, which is **racially or religiously aggravated** for the purposes of this section —

(a) Section 4 (fear or provocation of violence);

(b) Section 4A (intentional harassment, alarm or distress); or

(c) Section 5 (harassment, alarm or distress).

State of mind (mens rea)

See state of mind requirements for relevant offences as set out above, which is racially or religiously motivated.

Defences

See defence for relevant offences as set out above.

Definitions and interpretations

Racially or religiously aggravated: An offence is racially or religiously aggravated if —

(a) at the time of committing the offence, or immediately before or after doing so, the offender demonstrates towards the victim of the offence hostility based on the victim's *membership* (or *presumed* membership) of a racial or religious group, *or*

(b) the offence is motivated (wholly or partly) by hostility towards members of a racial or religious group based on their *membership* of that group (s.28(1) of the Crime and Disorder Act 1998).

Membership: "Membership", in relation to a racial group, includes association with members of that group.

Presumed: Means presumed by P (s.28(2) of the Crime and Disorder Act 1998).

Racial group: A group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins (s.28(4) of the Crime and Disorder Act 1998).

Religious group: A group of persons defined by reference to religious belief or lack of religious belief (s.28(5) of the Crime and Disorder Act 1998).

Further notes

Also see definitions and interpretation for relevant offences as set out in offences 25, 26 and 27 above.

45. Racially or religiously aggravated harassment etc. – s. 32 Crime and Disorder Act 1998

Conduct (actus reus)

P commits an offence under the following sections, which is **racially or religiously aggravated** —

(a) Section 2 or 2A of the Protection from Harassment Act 1997 (offences of harassment and stalking)

(b) Section 4 or 4A of the Protection from Harassment Act 1997 (putting people in fear of violence and stalking involving fear of violence or serious alarm or distress)

State of mind (mens rea)

See state of mind requirements for relevant offences as set out above, which is racially or religiously motivated.

Defences

See defence for relevant offences as set out above.

Definitions and interpretations

Racially or religiously aggravated: An offence is racially or religiously aggravated if —

(c) at the time of committing the offence, or immediately before or after doing so, the offender demonstrates towards the victim of the offence hostility based on the victim's *membership* (or *presumed* membership) of a racial or religious group, *or*

(d) the offence is motivated (wholly or partly) by hostility towards members of a racial or religious group based on their *membership* of that group (s.28(1) of the Crime and Disorder Act 1998).

Membership: "Membership", in relation to a racial group, includes association with members of that group.

Presumed: Means presumed by P (s.28(2) of the Crime and Disorder Act 1998).

Racial group: A group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins (s.28(4) of the Crime and Disorder Act 1998).

Religious group: A group of persons defined by reference to religious belief or lack of religious belief (s.28(5) of the Crime and Disorder Act 1998).

Further notes

Also see definitions and interpretation for relevant offences as set out in offences 25, 26 and 27 above.

46. Threatening or abusive behaviour – s. 38 Criminal Justice and Licensing (Scotland) Act 2010 (asp 13)

Conduct (actus reus)

P —

(a) behaves in a threatening or abusive manner; and

(b) the **behaviour** would be likely to cause a reasonable person to suffer fear or alarm.

State of mind (mens rea)

P —

(a) intends by the **behaviour** to cause fear or alarm; or

(b) is **reckless** as to whether the **behaviour** would cause fear or alarm.

Defences

It is a defence to P to show that the **behaviour** was, in the particular circumstances, reasonable.

Definitions and interpretations

Behaviour: Behaviour of any kind including, in particular, things said or otherwise communicated as well as things done, and can be a single act or a course of conduct (s.38(3) of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13)).

Reckless: See 'General Interpretation'.

47. Stalking – s. 39 Criminal Justice and Licensing (Scotland) Act 2010 (asp 13)

Conduct (actus reus)

P stalks another person (B).

P stalks B where –

(a) P engages in a **course of conduct**, and

(b) P's **course of conduct** causes B to suffer fear or alarm

State of mind (mens rea)

P —

(a) engages in the **course of conduct** with the intention of causing B to suffer fear or alarm, or

(b) knows, or ought in all the circumstances to have known, that engaging in the **course of conduct** would be likely to cause B to suffer fear or alarm.

Defences

It is a defence for P to show that the **course of conduct** –

(a) was authorised by virtue of any enactment or rule of law;

(b) was engaged in for the purpose of preventing or detecting crime; or

(c) was, in the particular circumstances, reasonable.

Definitions and interpretations

Course of conduct*:* Involves *conduct* on at least two occasions (s.39(6) of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13).

*Conduct***:** Means:

(a) following B or any other person

(b) contacting, or attempting to contact, B or any other person by any means,

(c) publishing any statement or other material—

  (i) relating or purporting to relate to B or to any other person,

  (ii) purporting to originate from B or from any other person,

(d) monitoring the use by B or by any other person of the internet, email or any other form of electronic communication,

(e) entering any premises

(f) loitering in any place (whether public or private)

(g) interfering with any property in the possession of B or of any other person,

(h) giving anything to B or to any other person or leaving anything where,

(i) watching or spying on B or any other person,

(j) acting in any other way that a reasonable person would expect would cause B to suffer fear or alarm (s.39(6) Criminal Justice and Licensing (Scotland) Act 2010 (asp 13).

48. Controlling or coercive behaviour in an intimate or family relationship – s. 76 Serious Crime Act 2015

Conduct (actus reus)

P —

(a) repeatedly or continuously engages in behaviour *towards* another person (B) that is controlling or coercive; and

(b) at the time of the behaviour, P and B are **personally connected**; and

(c) the behaviour has a **serious effect** on B.

P does not commit an offence under this section if at the time of the behaviour in question:

a) P has responsibility for B, for the purposes of Part 1 of the Children and Young Persons Act 1933 (see section 17 of that Act); and

b) B is under 16.

State of mind (mens rea)

P knows or **ought to know** that the behaviour will have a **serious effect** on B.

Defences

It a defence for P to show that —

(a) in engaging in the behaviour in question, P believed that he or she was acting in B's best interests, and

(b) the behaviour was in all the circumstances reasonable. *

* However, the above defence is *not* available to P in relation to behaviour that causes B to fear that violence will be used against B.

Definitions and interpretations

Ought to know: P "ought to know" that which a reasonable person in possession of the same information would know (s.76(5) of the Serious Crime Act 2015).

Personally connected: P and B are "personally connected" if any of the following applies —

(a) they are, or have been, married to each other;

(b) they are, or have been, civil partners of each other;

(c) they have agreed to marry one another (whether or not the agreement has been terminated);

(d) they have entered into a civil partnership agreement (whether or not the agreement has been terminated);

(e) they are, or have been, in an intimate personal relationship with each other;

(f) they each have, or there has been a time when they each have had, a parental relationship in relation to the same child (see subsection (6A));

(g) they are relatives (s.76(6) of the Serious Crime Act 2015).

For the purposes of subsection (6)(f) a person has a parental relationship in relation to a child if —

(a) the person is a parent of the child, or

(b) the person has parental responsibility for the child (s.76(6A) of the Serious Crime Act 2015).

Civil partnership agreement: Has the meaning given by Section 73 of the Civil Partnership Act 2004.

Child: A person under the age of 18 years.

Parental responsibility: Has the same meaning as in the Children Act 1989.

Relative: has the meaning given by section 63(1) of the Family Law Act 1996.

Serious effect: P's behaviour has a "serious effect" on B if—

(i) it causes B to fear, on at least two occasions, that violence will be used against B, or

(ii) it causes B serious alarm or distress which has a substantial adverse effect on B's usual day-to-day activities (s.76(4) of the Serious Crime Act 2015).

A5. Child sexual exploitation and abuse (CSEA): Offences relating to child sexual abuse material (CSAM)

49. Publishing an obscene article tending to deprave and corrupt others by encouraging them to commit an offence specified in paragraph 2, 4, 5, 7 or 8 of Schedule 6 of the Online Safety Act 2023 – s. 2 Obscene Publications Act 1959

Conduct (actus reus)

P —

a) **publishes**, whether for gain or not, an **obscene article;** or
b) has an **obscene article** for **publication** for gain (whether to gain for themselves or another).

State of mind (mens rea)

In the case of offence (2), P has the article in his ownership, possession or control with a view to such **publication** (s1(2) Obscene Publications Act 1964.

Defences

P shall not be convicted of an offence if they prove that —

(a) In respect of offence (1) they had not examined the article in respect of which they are charged and P had no reasonable cause to suspect that it was such that P's publication of it would make them liable to be convicted of an offence under Section 2(5) of the Obscene Publications Act 1959.
(b) In respect of offence (2) they had not examined the article and had no reasonable cause to suspect that it was such that his having it would make him liable.

(c) The publication is not of a moving picture film or soundtrack and publication of the article in question is justified as being for the public good on the ground that it is in the interests of science, literature, art or learning, or of other objects of general concern (s.4(1) of the Obscene Publications Act 1959); or

(d) The publication is of a film or soundtrack and publication is justified as being for the public good on the ground that it is in the interests of drama, opera, ballet or any other art, or of literature or learning (s.4(1A) of the Obscene Publications Act 1959).

Definitions and interpretations

Publishes: distributes, circulates, sells, lets on hire, gives, lends, offers for sale or for letting for hire; OR in the case of an article containing or embodying matter to be looked at or a record, shows, plays or projects it, or, where the matter is data stored electronically, transmits that data. (s1(3) Obscene Publications Act 1959). It is immaterial where the major steps to set up a website are taken: it is the availability of the web pages within the jurisdiction that constitutes evidence of publication (*Perrin [2002] EWCA Crim 747).*

Obscene: Having the effect or (where the article comprises two or more distinct items) the effect of any one of its items is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it (s.1(1) of the Obscene Publications Act 1959).

Article: Any description of article containing or embodying matter to be read or looked at or both, any sound record, and any film or other record of a picture or pictures. A web page constitutes an article*: R v Perrin* [2002] EWCA Crim 747, as do web chats: *R v GS* [2012] EWCA Crim 398.

50. Taking, permitting to be taken or making an indecent photograph or pseudo-photograph of a child – s. 1(1)(a) of the Protection of Children Act 1978; Article 3(1)(a) of the Protection of Children (Northern Ireland) Order 1978

Conduct (actus reus)

P —

a) takes any **indecent** photograph or **pseudo-photograph** of a **child**;
b) permits any **indecent** photograph or **pseudo-photograph** of a **child** to be taken; or
c) **makes** any **indecent** photograph or **pseudo-photograph** of a **child**.

State of mind (mens rea)

P's act of making is deliberate and intentional, with knowledge that the image is or is likely to be an indecent image of a child: *R v Smith* [2002] EWCA Crim 683.

Taking (i.e. the photographing or filming itself) is a deliberate act by P: *R v WP* [2016] EWCA Crim 745.

Defences

P is not guilty of an offence if they prove that —

(a) it was necessary for P to make the photograph or **pseudo-photograph** for the purposes of the prevention, detection or investigation of crime, or for the purposes of criminal proceedings, in any part of the world;

(b) at the time of the offence charged, P was a member of the Security Service or the Secret Intelligence Service, and it was necessary for P to make the photograph or **pseudo-photograph** for the exercise of any of the functions of that Service; or

(c) at the time of the offence charged, P was a member of **GCHQ**, and it was necessary for P to make the photograph or **pseudo-photograph** for the exercise of any of the functions of **GCHQ**; or

(d) at the time of the offence charged, P was a member of, employed or engaged by **OFCOM** or assisting **OFCOM** in the exercise of any of their online safety functions within the meaning of section 235 of the Online Safety Act 023 and made the photograph or **pseudo-photograph** for the purposes of **OFCOM**'s exercise of any of those functions.

(s.1B(1) of the Protection of Children Act 1978 and Article 3A(1) of the Protection of Children (Northern Ireland) Order 1978).

P is not guilty of an offence if they prove that —

(a) the photograph or **pseudo-photograph** was of a **child** aged 16 or over; and
(b) at the time of the offence charged the **child** and P —
  (i) were married or civil partners of each other; or
  (ii) lived together as partners in an enduring family relationship;
  unless it is proved that the **child** did not consent to the photograph or **pseudo-photograph** being taken or **made** and P did not reasonably believe that the **child** so consented.

(s.1A(1) and (4) of the Protection of Children Act 1978 and Article 3B(1) and (4) of the Protection of Children (Northern Ireland) Order 1978).

Definitions and interpretations

Child: A person under the age of 18 (s.7(6) of the Protection of Children Act 1978). But if the impression conveyed by a **pseudo-photograph** is that the person shown is a child, the **pseudo-photograph** shall be treated for all purposes of the legislation as showing a child and so shall a **pseudo-photograph** where the predominant impression conveyed is that the person shown is a child notwithstanding that some of the physical characteristics shown are those of an adult (s.7(8) of the Protection of Children Act 1978).

GCHQ: Refers to the Government Communications Headquarters and to any unit or part of a unit of the armed forces of the Crown which is for the time being required by the Secretary of State to assist the Government Communications Headquarters in carrying out its functions (s.1B(2) of the Protection of Children Act 1978; s.3(3) of the Intelligence Services Act 1994).

Indecent: An **indecent photograph** is one which is indecent by reference to recognised standards of propriety: *R v Stamford* [1972] 56 Cr App R 398. It is an objective test.

Indecent photograph: Includes an indecent **film**, a copy of an indecent photograph or **film**, and an indecent photograph comprised in a **film** (s.7(2) of the Protection of Children Act 1978). Photographs (including those comprised in a **film**) shall, if they show children and are **indecent**, be treated for all purposes as indecent photographs of **children**, and so as respects **pseudo-photographs** (s.7(3) of the Protection of Children Act 1978). References to a photograph include:

(a) the negative as well as the positive version;
(b) data stored on a computer disc or by other electronic means which is capable of conversion into a photograph;
(c) a tracing or other image, whether made by electronic or other means (of whatever nature) —
    (i) which is not itself a photograph or **pseudo-photograph**, but
    (ii) which is derived from the whole or part of a photograph or **pseudo-photograph** (or a combination of either or both); and
(d) data stored on a computer disc or by other electronic means which is capable of conversion into an image —
    (i) which is not itself a photograph or **pseudo-photograph**, but
    (ii) which is derived from the whole or part of a photograph or **pseudo-photograph** (or a combination of either or both)

(s.7(4) and (4A) of the Protection of Children Act 1978).

Film: Includes any form of video-recording (s.7(5) of the Protection of Children Act 1978).

Makes: An indecent image is “made” when it is created or generated for the first time in a particular place on a computer: see e.g. *R v Harrison* [2007] EWCA Crim 2976.

Pseudo-photograph: An image, whether made by computer-graphics or otherwise howsoever, which appears to be a photograph (s.7(7) of the Protection of Children Act 1978). References to an **indecent** pseudo-photograph include:

(a) a copy of an **indecent** pseudo-photograph, or
(b) data stored on a computer disc or by other electronic means which is capable of conversion into an **indecent** pseudo-photograph (s.7(9) of the Protection of Children Act 1978).

Further notes

- The defence in s.1A(1) and (4) of the Protection of Children Act 1978 and Article 3B(1) and (4) of the Protection of Children (Northern Ireland) Order 1978 applies whether the photograph or **pseudo-photograph** showed the **child** alone or with P, but not if it showed any other person.
- For the avoidance of doubt, the definition and interpretation notes set out above apply equally to the offence in Article 3(1)(a) of the Protection of Children (Northern Ireland) Order 1978 (see Article 2).

51. Taking, permitting to be taken or making an indecent photograph or pseudo-photograph of a child – s. 52(1)(a) of the Civic Government (Scotland) Act 1982

Conduct (actus reus)

P —

(a) takes any **indecent** photograph or **pseudo-photograph** of a child;
(b) permits any **indecent** photograph or **pseudo-photograph** of a **child** to be taken; or
(c) makes any **indecent** photograph or **pseudo-photograph** of a **child**.

State of mind (mens rea)

P's act of making is deliberate and intentional, with knowledge that the image is or is likely to be an indecent image of a child: *Smart v HM Advocate* [2006] SCCR 120.

Taking (i.e. the photographing or filming itself) is a deliberate act by P: *Smart v HM Advocate* [2006] SCCR 120.

Defences

P is not guilty of an offence if —

(a) either —
  (i) the photograph was of the **child** aged 16 or over; or
  (ii) P reasonably believed that to be so;
(a) at the time of the offence charged or at the time when P obtained the photograph, P and the **child** were —
  (i) married to or civil partners of each other; or
  (ii) partners in an established relationship; and
(b) either —
  (i) the **child** consented to the photograph being taken or made; or
  (ii) P reasonably believed that to be so

(s52B(2) of the Civic Government (Scotland) Act 1982)

OR

At the time of the offence charged, P was a member of, employed or engaged by **OFCOM** or assisting **OFCOM** in the exercise of any of their online safety functions within the meaning of section 235 of the Online Safety Act 023 and made the photograph or pseudo-photograph for the purposes of **OFCOM**'s exercise of any of those functions.

(ss.52 (4A) of the Civic Government (Scotland) Act 1982)

Definitions and interpretations

Child: A person under the age of 18, and in proceedings for this offence a person is to be taken as having been a child at any material time if it appears from the evidence as a whole that they were then under the age of 18 (s.52(2) of the Civic Government (Scotland) Act 1982). But if the impression conveyed by a **pseudo-photograph** is that the person shown is a child, the **pseudo-photograph** shall be treated for all purposes of the legislation as showing a child and so shall a **pseudo-photograph** where the predominant impression conveyed is that the person shown is a child notwithstanding that some of the physical characteristics shown are those of an adult (s.52(2B) of the Civic Government (Scotland) Act 1982).

Indecent: Indecency is determined objectively. If it affronts the sensibilities of the average citizen in contemporary society, or if it lies outside recognised contemporary standards of common propriety, it is indecent.

Indecent photograph: Includes an indecent **film**, a copy of an indecent photograph or **film**, and an indecent photograph comprised in a **film**. Photographs (including those comprised in a **film**) shall, if they show children and are **indecent**, be treated for all purposes as indecent photographs of **children**, and so as respects **pseudo-photographs**. References to a photograph include:

(a) the negative as well as the positive version;
(b) data stored on a computer disc or by other electronic means which is capable of conversion into a photograph;
(c) a tracing or other image, whether made by electronic or other means (of whatever nature) —
    (i) which is not itself a photograph or **pseudo-photograph**, but
    (ii) which is derived from the whole or part of a photograph or **pseudo-photograph** (or a combination of either or both); and
(d) data stored on a computer disc or by other electronic means which is capable of conversion into an image —
    (i) which is not itself a photograph or **pseudo-photograph**, but
    (ii) which is derived from the whole or part of a photograph or **pseudo-photograph** (or a combination of either or both)

(s.52(8) and (9) of the Civic Government (Scotland) Act 1982).

Film: Includes any form of video-recording (s.52(8)(d) of the Civic Government (Scotland) Act 1982).

Pseudo-photograph: An image, whether made by computer-graphics or otherwise howsoever, which appears to be a photograph (s.52(2A) of the Civic Government (Scotland) Act 1982). References to an **indecent** pseudo-photograph include:

(a) a copy of an **indecent** pseudo-photograph, or
(b) data stored on a computer disc or by other electronic means which is capable of conversion into an **indecent** pseudo-photograph (s.52(2C) of the Civic Government (Scotland) Act 1982).

Makes: An indecent image is “made” when it is created or generated for the first time in a particular place on a computer: see e.g. *R v Harrison* [2007] EWCA Crim 1976.

Ofcom: Means the Office of Communications.

Further notes

- The defence applies whether the photograph showed the **child** alone or with P, but not if it showed any other person (s.52B(9) of the Civic Government (Scotland) Act 1982).

- If sufficient evidence is adduced to raise an issue whether the defence applies, then it shall be held to apply, except where it is proved beyond reasonable doubt that it does not apply (s.52C(2) and (3) of the Civic Government (Scotland) Act 1982).

52. Distributing or showing indecent photographs or pseudo-photographs of a child – s. 1(1)(b) of the Protection of Children Act 1978; Article 3(1)(b) of the Protection of Children (Northern Ireland) Order 1978

Conduct (actus reus)

P **distributes** or shows any **indecent photograph** or **pseudo-photograph** of **a child**.

State of mind (mens rea)

No statutory mens rea.

Defences

It is a defence for P to prove that —

(a) P had a legitimate reason for **distributing** or showing the photographs or **pseudo-photographs** or (as the case may be) having them in their possession; or

(b) P had not themselves seen the photographs or **pseudo-photographs** and did not know, nor had any cause to suspect, them to be **indecent**

(s.1(4) of the Protection of Children Act 1978 and Article 3(3) of the Protection of Children (Northern Ireland) Order 1978).

P is not guilty of an offence if they prove that —

(a) the photograph or **pseudo-photograph** was of the **child** aged 16 or over; and
(b) at the time of the offence charged, or when they obtained the photograph or **pseudo-photograph**, the **child** and P —
  (i) were married or civil partners of each other; or
  (ii) lived together as partners in an enduring family relationship;

unless it is proved that the showing or **distributing** was to a person other than the **child**.

(s.1A(1), (2) and (5) of the Protection of Children Act 1978 and Article 3B(1), (2) and (5) of the Protection of Children (Northern Ireland) Order 1978).

Definitions and interpretations

Child: A person under the age of 18 (s.7(6) of the Protection of Children Act 1978). But if the impression conveyed by a **pseudo-photograph** is that the person shown is a child, the **pseudo-photograph** shall be treated for all purposes of the legislation as showing a child and so shall a **pseudo-photograph** where the predominant impression conveyed is that the person shown is a child notwithstanding that some of the physical characteristics shown are those of an adult (s.7(8) of the Protection of Children Act 1978).

Distribution: A person is to be regarded as distributing an indecent photograph or pseudo-photographs if they part with possession of it to, or expose or offer it for acquisition by, another person (s.1(2) of the Protection of Children Act 1978).

Indecent: An **indecent photograph** is one which is indecent by reference to recognised standards of propriety: *R v Stamford* [1972] 56 Cr App R 398. It is an objective test.

Indecent photograph: Includes an indecent **film**, a copy of an indecent photograph or **film**, and an indecent photograph comprised in a **film** (s.7(2) of the Protection of Children Act 1978). Photographs (including those comprised in a **film**) shall, if they show children and are **indecent**, be treated for all purposes as indecent photographs of **children**, and so as respects **pseudo-photographs** (s.7(3) of the Protection of Children Act 1978). References to a photograph include:

(a) the negative as well as the positive version;
(b) data stored on a computer disc or by other electronic means which is capable of conversion into a photograph;
(c) a tracing or other image, whether made by electronic or other means (of whatever nature) —
    (i) which is not itself a photograph or **pseudo-photograph**, but
    (ii) which is derived from the whole or part of a photograph or **pseudo-photograph** (or a combination of either or both); and
(d) data stored on a computer disc or by other electronic means which is capable of conversion into an image —
    (i) which is not itself a photograph or **pseudo-photograph**, but
    (ii) which is derived from the whole or part of a photograph or **pseudo-photograph** (or a combination of either or both)

(s.7(4) and (4A) of the Protection of Children Act 1978).

Film: Includes any form of video-recording (s.7(5) of the Protection of Children Act 1978).

Pseudo-photograph: An image, whether made by computer-graphics or otherwise howsoever, which appears to be a photograph (s.7(7) of the Protection of Children Act 1978). References to an **indecent** pseudo-photograph include:

(a) a copy of an **indecent** pseudo-photograph, or
(b) data stored on a computer disc or by other electronic means which is capable of conversion into an indecent pseudo-photograph (section 7(9) of the Protection of Children Act 1978).

Further notes

- The defence in s.1A(1), (2) and (5) of the Protection of Children Act 1978 and Article 3B(1), (2) and (5) of the Protection of Children (Northern Ireland) Order 1978 applies whether the photograph or **pseudo-photograph** showed the **child** alone or with P, but not if it showed any other person.
- For the avoidance of doubt, the definition and interpretation notes set out above apply equally to the offence in Article 3(1)(b) of the Protection of Children (Northern Ireland) Order 1978 (see Article 2).

53. Distributing or showing indecent photographs or pseudo-photographs of a child – s. 52(1)(b) of the Civic Government (Scotland) Act 1982

Conduct (actus reus)

P **distributes** or shows any **indecent photograph** or **pseudo-photograph** of a **child**.

State of mind (mens rea)

The **distribution** is a deliberate act: *Peebles v HM Advocate* [2007] JC 93.

Defences

It is a defence for P to prove that —

(a) P had a legitimate reason for **distributing** or showing the photographs or **pseudo-photographs** or (as the case may be) having them in their possession; or

(b) P had not themselves seen the photographs or **pseudo-photographs** and did not know, nor had any cause to suspect, them to be **indecent**

(s.52(5) of the Civic Government (Scotland) Act 1982).

P is not guilty of an offence if —

(a) either —
  (i) the photograph was of the **child** aged 16 or over; or
  (ii) P reasonably believed that to be so;
(b) at the time of the offence charged or at the time when P obtained the photograph, P and the **child** were —
  (i) married to or civil partners of each other; or
  (ii) partners in an established relationship;
(c) either —
  (i) the **child** consented to the photograph being taken or made; or
  (ii) P reasonably believed that to be so; and
(d) the showing or distributing of the photograph was only to the **child**

(s.52B(4) of the Civic Government (Scotland) Act 1982).

Definitions and interpretations

Child: A person under the age of 18, and in proceedings for this offence a person is to be taken as having been a child at any material time if it appears from the evidence as a whole that they were then under the age of 18 (s.52(2) of the Civic Government (Scotland) Act 1982). But if the impression conveyed by a **pseudo-photograph** is that the person shown is a child, the **pseudo-photograph** shall be treated for all purposes of the legislation as showing a child and so shall a **pseudo-photograph** where the predominant impression conveyed is that the person shown is a child notwithstanding that some of the physical characteristics shown are those of an adult (s.52(2B) of the Civic Government (Scotland) Act 1982).

Distribution: A person is to be regarded as distributing an **indecent photograph** or **pseudo-photograph** if they part possession of it to, or expose or offer it for acquisition by, another person (s.52(4) of the Civic Government (Scotland) Act 1982).

Indecent: Indecency is determined objectively. If it affronts the sensibilities of the average citizen in contemporary society, or if it lies outside recognised contemporary standards of common propriety, it is indecent.

Indecent photograph: Includes an indecent **film**, a copy of an indecent photograph or **film**, and an indecent photograph comprised in a **film**. Photographs (including those comprised in a **film**) shall, if they show children and are **indecent**, be treated for all purposes as indecent photographs of **children**, and so as respects **pseudo-photographs**. References to a photograph include:

(a) the negative as well as the positive version;
(b) data stored on a computer disc or by other electronic means which is capable of conversion into a photograph;
(c) a tracing or other image, whether made by electronic or other means (of whatever nature) —
    (i) which is not itself a photograph or **pseudo-photograph**, but
    (ii) which is derived from the whole or part of a photograph or **pseudo-photograph** (or a combination of either or both); and
(d) data stored on a computer disc or by other electronic means which is capable of conversion into an image —
    (i) which is not itself a photograph or **pseudo-photograph**, but
    (ii) which is derived from the whole or part of a photograph or **pseudo-photograph** (or a combination of either or both)

(s.52(8) and (9) of the Civic Government (Scotland) Act 1982).

Film: Includes any form of video-recording (s.52(8)(d) of the Civic Government (Scotland) Act 1982).

Pseudo-photograph: An image, whether made by computer-graphics or otherwise howsoever, which appears to be a photograph (s.52(2A) of the Civic Government (Scotland) Act 1982). References to an **indecent** pseudo-photograph include:

(a) a copy of an **indecent** pseudo-photograph, or
(b) data stored on a computer disc or by other electronic means which is capable of conversion into an indecent pseudo-photograph (s.52(2C) of the Civic Government (Scotland) Act 1982).

Further notes

- It may be inferred from having enabled fire-sharing software that files were held with the intention of their being **distributed**, whether or not any **distribution** takes place and whether or not any other user accesses the file(s): *Peebles v HM Advocate* [2007] JC 93.
- The legitimate reason defence is to be approached 'sceptically': Atkins v DPP [2000] 2 All ER 425.
- The defence in s.52B(4) of the Civic Government (Scotland) Act 1982 applies whether the photograph showed the **child** alone or with P, but not if it showed any other person (s.52B(9) of the Civic Government (Scotland) Act 1982). If sufficient evidence is adduced to raise an issue whether the defence applies, then it shall be held to apply, except where it is proved beyond reasonable doubt that it does not apply (s.52C(2) and (3) of the Civic Government (Scotland) Act 1982).

54. Possession of indecent photographs or pseudo-photographs of a child with a view to their being distributed or shown – s. 1(1)(c) of the Protection of Children Act 1978; Article 3(1)(c) of the Protection of Children (Northern Ireland) Order 1978

Conduct (actus reus)

P **possesses** any **indecent** photograph or **pseudo-photograph** of a **child**.

State of mind (mens rea)

P knew that they **possessed** the photograph or **pseudo-photograph** on the relevant device/devices. Knowledge of the content of the photograph or **pseudo-photograph** is not required.

P has **a view to** the photograph or **pseudo-photograph** being **distributed** or shown by themselves or others.

Defences

It is a defence for P to prove that —

(a) P has a legitimate reason for **distributing** or showing the photographs or pseudo-photographs or (as the case may be) having them in their possession; or
(b) P had not themselves seen the photographs or **pseudo-photographs** and did not know, nor had any cause to suspect, them to be **indecent**

(s.1(4) of the Protection of Children Act 1978 and Article 3(3) of the Protection of Children (Northern Ireland) Order 1978).

P is not guilty of an offence if they prove that —

(c) the photograph or **pseudo-photograph** was of the **child** aged 16 or over; and
(d) at the time of the offence charged, or when they obtained the photograph or **pseudo-photograph**, the **child** and P —
    (i) were married or civil partners of each other; or
    (ii) lived together as partners in an enduring family relationship;
(e) unless it is proved either that —
    (i) the **child** did not consent to the photograph or **pseudo-photograph** being in P's possession and P did not reasonably believe that the **child** so consented; or

(ii) P had the photograph or **pseudo-photograph** in their possession with a view to its being distributed or shown to anyone other than the child

(s.1A(1), (2) and (6) of the Protection of Children Act 1978 and Article 3B(1), (2) and (6) of the Protection of Children (Northern Ireland) Order 1978).

Definitions and interpretations

A view to: Requires that this must be one of the defendant's purposes, although not necessarily their primary purpose: R v Dooley [2005] EWCA Crim 3093.

Child: A person under the age of 18 (s.7(6) of the Protection of Children Act 1978). But if the impression conveyed by a **pseudo-photograph** is that the person shown is a child, the **pseudo-photograph** shall be treated for all purposes of the legislation as showing a child and so shall a **pseudo-photograph** where the predominant impression conveyed is that the person shown is a child notwithstanding that some of the physical characteristics shown are those of an adult (s.7(8) of the Protection of Children Act 1978).

Distribution: A person is to be regarded as distributing an indecent photograph or pseudo-photographs if they part with possession of it to, or expose or offer it for acquisition by, another person (s.1(2) of the Protection of Children Act 1978).

Indecent: An **indecent photograph** is one which is indecent by reference to recognised standards of propriety: R v Stamford [1972] 56 Cr App R 398. It is an objective test.

Indecent photograph: Includes an indecent **film**, a copy of an indecent photograph or **film**, and an indecent photograph comprised in a **film** (s.7(2) of the Protection of Children Act 1978). Photographs (including those comprised in a **film**) shall, if they show children and are **indecent**, be treated for all purposes as indecent photographs of **children**, and so as respects **pseudo-photographs** (s.7(3) of the Protection of Children Act 1978). References to a photograph include:

(a) the negative as well as the positive version;
(b) data stored on a computer disc or by other electronic means which is capable of conversion into a photograph;
(c) a tracing or other image, whether made by electronic or other means (of whatever nature) —
    (i) which is not itself a photograph or **pseudo-photograph**, but
    (ii) which is derived from the whole or part of a photograph or **pseudo-photograph** (or a combination of either or both); and
(d) data stored on a computer disc or by other electronic means which is capable of conversion into an image —
    (i) which is not itself a photograph or **pseudo-photograph**, but
    (ii) which is derived from the whole or part of a photograph or **pseudo-photograph** (or a combination of either or both)

(s.7(4) and (4A) of the Protection of Children Act 1978).

Film: Includes any form of video-recording (s.7(5) of the Protection of Children Act 1978).

Possession: P will have possession where: (1) the images were in the custody or control of P, i.e. so that they were capable of accessing, or in a position to retrieve the image(s); and (2) P knew that they possessed an image or group of images on the relevant device/devices. Knowledge of the content of those images is not required: R v Okoro (No. 3) [2018] EWCA Crim 19.

Pseudo-photograph: An image, whether made by computer-graphics or otherwise howsoever, which appears to be a photograph (s.7(7) of the Protection of Children Act 1978). References to an **indecent** pseudo-photograph include:

(a) a copy of an **indecent** pseudo-photograph, or
(b) data stored on a computer disc or by other electronic means which is capable of conversion into an **indecent** pseudo-photograph (section 7(9) of the Protection of Children Act 1978).

Further notes

- The defence in s.1A(1), (2) and (6) of the Protection of Children Act 1978 and Article 3B(1), (2) and (6) of the Protection of Children (Northern Ireland) Order 1978 applies whether the photograph or pseudo-photograph showed the child alone or with P, but not if it showed any other person.
- For the avoidance of doubt, the definition and interpretation notes set out above apply equally to the offence in Article 3(1)(c) of the Protection of Children (Northern Ireland) Order 1978 (see Article 2).

55. Possession of indecent photographs or pseudo-photographs of a child with a view to their being distributed or shown – s. 52(1)(c) of the Civic Government (Scotland) Act 1982

Conduct (actus reus)

P possesses any **indecent** photograph or **pseudo-photograph** of a **child**.

State of mind (mens rea)

P has **a view to** the photograph or pseudo-photograph being **distributed** or shown by themselves or others.

Defences

It is a defence for P to prove that —

(a) P has a legitimate reason for **distributing** or showing the photographs or **pseudo-photographs** or (as the case may be) having them in their possession; or

(b) P had not themselves seen the photographs or **pseudo-photographs** and did not know, nor had any cause to suspect, them to be **indecent**

(s.52(5) of the Civic Government (Scotland) Act 1982).

P is not guilty of an offence if —

(a) either —
  (i) the photograph was of the **child** aged 16 or over; or
  (ii) P reasonably believed that to be so;
(b) at the time of the offence charged or at the time when P obtained the photograph, P and the **child** were —
  (i) married to or civil partners of each other; or
  (ii) partners in an established relationship;
(c) either —
  (i) the **child** consented to the photographs being in P's possession; or
  (ii) P reasonably believed that to be so; and
(d) P had the photograph in their possession with a view to its being distributed or shown only to the **child**

(s.52B(6) of the Civic Government (Scotland) Act 1982).

Definitions and interpretations

Child: A person under the age of 18, and in proceedings for this offence a person is to be taken as having been a child at any material time if it appears from the evidence as a whole that they were then under the age of 18 (s.52(2) of the Civic Government (Scotland) Act 1982). But if the impression conveyed by a **pseudo-photograph** is that the person shown is a child, the **pseudo-photograph** shall be treated for all purposes of the legislation as showing a child and so shall a **pseudo-photograph** where the predominant impression conveyed is that the person shown is a child notwithstanding that some of the physical characteristics shown are those of an adult (s.52(2B) of the Civic Government (Scotland) Act 1982).

Distribution: A person is to be regarded as distributing an **indecent photograph** or **pseudo-photograph** if they part possession of it to, or expose or offer it for acquisition by, another person (s.52(4) of the Civic Government (Scotland) Act 1982).

Indecent: Indecency is determined objectively. If it affronts the sensibilities of the average citizen in contemporary society, or if it lies outside recognised contemporary standards of common propriety, it is indecent.

Indecent photograph: Includes an indecent **film**, a copy of an indecent photograph or **film**, and an indecent photograph comprised in a **film**. Photographs (including those comprised in a **film**) shall, if they show children and are **indecent**, be treated for all purposes as indecent photographs of **children**, and so as respects **pseudo-photographs**. References to a photograph include:

(a) the negative as well as the positive version;
(b) data stored on a computer disc or by other electronic means which is capable of conversion into a photograph;
(c) a tracing or other image, whether made by electronic or other means (of whatever nature) —
    (i) which is not itself a photograph or **pseudo-photograph**, but
    (ii) which is derived from the whole or part of a photograph or **pseudo-photograph** (or a combination of either or both); and
(d) data stored on a computer disc or by other electronic means which is capable of conversion into an image —
    (i) which is not itself a photograph or **pseudo-photograph**, but
    (ii) which is derived from the whole or part of a photograph or **pseudo-photograph** (or a combination of either or both)

(s.52(8) and (9) of the Civic Government (Scotland) Act 1982).

Film: Includes any form of video-recording (s.52(8)(d) of the Civic Government (Scotland) Act 1982).

Pseudo-photograph: An image, whether made by computer-graphics or otherwise howsoever, which appears to be a photograph (s.52(2A) of the Civic Government (Scotland) Act 1982). References to an **indecent** pseudo-photograph include:

(a) a copy of an **indecent** pseudo-photograph, or
(c) data stored on a computer disc or by other electronic means which is capable of conversion into an **indecent** pseudo-photograph (s.52(2C) of the Civic Government (Scotland) Act 1982).

Further notes

- It may be inferred from having enabled file-sharing software that files were held with the intention of their being **distributed**, whether or not any **distribution** takes place and whether or not any other user accesses the file(s): *Peebles v HM Advocate* [2007] JC 93.
- The legitimate reason defence is to be approached 'sceptically': *Atkins v DPP* [2000] 2 All ER 425.

- The defence in s.52B(6) of the Civic Government (Scotland) Act 1982 applies whether the photograph showed the **child** alone or with P, but not if it showed any other person (s.52B(9) of the Civic Government (Scotland) Act 1982). If sufficient evidence is adduced to raise an issue whether the defence applies, then it shall be held to apply, except where it is proved beyond reasonable doubt that it does not apply (s.52C(2) and (3) of the Civic Government (Scotland) Act 1982.

56. Publishing or causing to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows indecent photographs or pseudo-photographs of a child – s. 1(1)(d) of the Protection of Children Act 1978; Article 3(1)(d) of the Protection of Children (Northern Ireland) Order 1978

Conduct (actus reus)

P publishes or causes to be published any advertisement likely to be understood as conveying that the advertiser **distributes** or shows such **indecent photographs** or **pseudo-photographs** of a **child** or intends to do so.

State of mind (mens rea)

No statutory mens rea.

Defences

No statutory defences.

Definitions and interpretations

Child: A person under the age of 18 (s.7(6) of the Protection of Children Act 1978). But if the impression conveyed by a **pseudo-photograph** is that the person shown is a child, the **pseudo-photograph** shall be treated for all purposes of the legislation as showing a child and so shall a **pseudo-photograph** where the predominant impression conveyed is that the person shown is a child notwithstanding that some of the physical characteristics shown are those of an adult (s.7(8) of the Protection of Children Act 1978).

Distribution: A person is to be regarded as distributing an indecent photograph or **pseudo-photographs** if they part with possession of it to, or expose or offer it for acquisition by, another person (s.1(2) of the Protection of Children Act 1978).

Indecent: An **indecent photograph** is one which is indecent by reference to recognised standards of propriety: R v Stamford [1972] 56 Cr App R 398. It is an objective test.

Indecent photograph: Includes an indecent **film**, a copy of an indecent photograph or **film**, and an indecent photograph comprised in a **film** (s.7(2) of the Protection of Children Act 1978). Photographs (including those comprised in a **film**) shall, if they show children and are **indecent**, be treated for all purposes as indecent photographs of **children**, and so as respects **pseudo-photographs** (s.7(3) of the Protection of Children Act 1978). References to a photograph include:

(a) the negative as well as the positive version;
(b) data stored on a computer disc or by other electronic means which is capable of conversion into a photograph;
(c) a tracing or other image, whether made by electronic or other means (of whatever nature) —
    (i) which is not itself a photograph or **pseudo-photograph**, but
    (ii) which is derived from the whole or part of a photograph or **pseudo-photograph** (or a combination of either or both); and
(d) data stored on a computer disc or by other electronic means which is capable of conversion into an image —
    (i) which is not itself a photograph or **pseudo-photograph**, but
    (ii) which is derived from the whole or part of a photograph or **pseudo-photograph** (or a combination of either or both)

(s.7(4) and (4A) Protection of Children Act 1978).

Film: Includes any form of video-recording (s.7(5) Protection of Children Act 1978).

Pseudo-photograph: An image, whether made by computer-graphics or otherwise howsoever, which appears to be a photograph (s.7(7) Protection of Children Act 1978). References to an **indecent** pseudo-photograph include:

(a) a copy of an **indecent** pseudo-photograph, or
(b) data stored on a computer disc or by other electronic means which is capable of conversion into an **indecent** pseudo-photograph (section 7(9) Protection of Children Act 1978).

Further notes

- For the avoidance of doubt, the definition and interpretation notes set out above apply equally to the offence in Article 3(1)(d) Protection of Children (Northern Ireland) Order 1978 (see Article 2).

57. Publishing or causing to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows indecent photographs or pseudo-photographs of a child – s. 52(1)(d) Civic Government (Scotland) Act 1982

Conduct (actus reus)

P publishes or causes to be published any advertisement likely to be understood as conveying that the advertiser **distributes** or shows such **indecent photographs** or **pseudo-photographs** of a **child** or intends to do so.

State of mind (mens rea)

No statutory mens rea.

Defences

No statutory defences.

Definitions and interpretations

Child: A person under the age of 18, and in proceedings for this offence a person is to be taken as having been a child at any material time if it appears from the evidence as a whole that they were then under the age of 18 (s.52(2) Civic Government (Scotland) Act 1982). But if the impression conveyed by a **pseudo-photograph** is that the person shown is a child, the **pseudo-photograph** shall be treated for all purposes of the legislation as showing a child and so shall a **pseudo-photograph** where the predominant impression conveyed is that the person shown is a child notwithstanding that some of the physical characteristics shown are those of an adult (s.52(2B) Civic Government (Scotland) Act 1982).

Distribution: A person is to be regarded as distributing an **indecent photograph** or **pseudo-photograph** if they part possession of it to, or expose or offer it for acquisition by, another person (s.52(4) Civic Government (Scotland) Act 1982).

Indecent: Indecency is determined objectively. If it affronts the sensibilities of the average citizen in contemporary society, or if it lies outside recognised contemporary standards of common propriety, it is indecent.

Indecent photograph: Includes an indecent **film**, a copy of an indecent photograph or **film**, and an indecent photograph comprised in a **film**. Photographs (including those comprised in a **film**) shall, if they show children and are **indecent**, be treated for all purposes as indecent photographs of **children**, and so as respects **pseudo-photographs**. References to a photograph include:

(a) the negative as well as the positive version;
(b) data stored on a computer disc or by other electronic means which is capable of conversion into a photograph;
(c) a tracing or other image, whether made by electronic or other means (of whatever nature) —
    (i) which is not itself a photograph or **pseudo-photograph**, but
    (ii) which is derived from the whole or part of a photograph or **pseudo-photograph** (or a combination of either or both); and
(d) data stored on a computer disc or by other electronic means which is capable of conversion into an image —
    (i) which is not itself a photograph or **pseudo-photograph**, but
    (ii) which is derived from the whole or part of a photograph or **pseudo-photograph** (or a combination of either or both)

(s.52(8) and (9) Civic Government (Scotland) Act 1982).

Film: Includes any form of video-recording (s.52(8)(d) Civic Government (Scotland) Act 1982).

Pseudo-photograph: An image, whether made by computer-graphics or otherwise howsoever, which appears to be a photograph (s.52(2A) Civic Government (Scotland) Act 1982). References to an **indecent** pseudo-photograph include:

(a) a copy of an **indecent** pseudo-photograph, or
(b) data stored on a computer disc or by other electronic means which is capable of conversion into an **indecent** pseudo-photograph (s.52(2C) Civic Government (Scotland) Act 1982).

58. Possession of an indecent photograph of a child – s. 160 Criminal Justice Act 1988

Conduct (actus reus)

P has an **indecent photograph** or **pseudo-photograph** of a child in his possession.

State of mind (mens rea)

No statutory mens rea.

Defences

It is a defence for P to prove that –

(a) P had a legitimate reason for having the photograph or pseudo-photograph in his possession; or

(b) that he had not himself seen the photograph or pseudo-photograph and did not know, nor had any cause to suspect, it to be indecent; or

(c) that the photograph or pseudo-photograph was sent to him without any prior request made by him or on his behalf and that he did not keep it for an unreasonable time.

(s.160(2) Criminal Justice Act 1988).

P is not guilty of an offence if they prove that –

(a) the photograph or **pseudo-photograph** was of the **child** aged 16 or over; and
(b) at the time of the offence charged the **child** and P —
  (iii) were married or civil partners of each other; or
  (iv) lived together as partners in an enduring family relationship;
  unless it is proved that the **child** did not consent to the photograph or **pseudo-photograph** being taken or **made** and P did not reasonably believe that the **child** so consented

(s.160A Criminal Justice Act 1988).

Definitions and interpretations

Child: A person under the age of 18 (s.7(6) Protection of Children Act 1978). But if the impression conveyed by a **pseudo-photograph** is that the person shown is a child, the **pseudo-photograph** shall be treated for all purposes of the legislation as showing a child and so shall a **pseudo-photograph** where the predominant impression conveyed is that the person shown is a child notwithstanding that some of the physical characteristics shown are those of an adult (s.7(8) Protection of Children Act 1978).

Pseudo-photograph: An image, whether made by computer-graphics or otherwise howsoever, which appears to be a photograph (s.7(7) Protection of Children Act 1978).

Indecent: An **indecent photograph** is one which is indecent by reference to recognised standards of propriety: R v Stamford [1972] 56 Cr App R 398. It is an objective test.

Indecent photograph: Includes an indecent **film**, a copy of an indecent photograph or **film**, and an indecent photograph comprised in a **film** (s.7(2) Protection of Children Act 1978). Photographs (including those comprised in a **film**) shall, if they show children and are **indecent**, be treated for all purposes as indecent photographs of **children**, and so as respects **pseudo-photographs** (s.7(3) Protection of Children Act 1978). References to a photograph include:

(a) the negative as well as the positive version;
(b) data stored on a computer disc or by other electronic means which is capable of conversion into a photograph;
(c) a tracing or other image, whether made by electronic or other means (of whatever nature) —
    (i) which is not itself a photograph or **pseudo-photograph**, but
    (ii) which is derived from the whole or part of a photograph or **pseudo-photograph** (or a combination of either or both); and
(d) data stored on a computer disc or by other electronic means which is capable of conversion into an image —
    (i) which is not itself a photograph or **pseudo-photograph**, but
    (ii) which is derived from the whole or part of a photograph or **pseudo-photograph** (or a combination of either or both)

(s.7(4) and (4A) Protection of Children Act 1978).

Film: Includes any form of video-recording (s.7(5) Protection of Children Act 1978).

Pseudo-photograph: An image, whether made by computer-graphics or otherwise howsoever, which appears to be a photograph (s.7(7) Protection of Children Act 1978). References to an **indecent** pseudo-photograph include:

(a) a copy of an **indecent** pseudo-photograph, or
(b) data stored on a computer disc or by other electronic means which is capable of conversion into an **indecent** pseudo-photograph (section 7(9) Protection of Children Act 1978).

Further notes

- The defence in s.160A Criminal Justice Act 1988 applies whether the photograph or **pseudo-photograph** showed the **child** alone or with P, but not if it showed any other person.

59. Possession of indecent photographs of children – s. 52A Civic Government (Scotland) Act 1982

Conduct (actus reus)

P has an **indecent photograph** or **pseudo-photograph** of a **child** in their possession.

State of mind (mens rea)

No statutory mens rea.

Defences

It is a defence for P to prove that —

(a) They had a legitimate reason for having the photograph or **pseudo-photograph** in their possession; or
(b) They had not themselves seen the photograph or **pseudo-photograph** and did not know, nor had any cause to suspect, it to be **indecent**; or
(c) The photograph or **pseudo-photograph** was sent to them without any prior request made by them or on their behalf and that they did not keep it for an unreasonable time

(s.52A(2) Civic Government (Scotland) Act 1982).

P is not guilty of an offence if —

(a) either —
  (i) the photograph was of the **child** aged 16 or over; or
  (ii) P reasonably believed that to be so;
(b) at the time of the offence charged or at the time when P obtained the photograph, P and the **child** were —
  (i) married to or civil partners of each other; or
  (ii) partners in an established relationship; and
(c) either —
  (i) the **child** consented to the photographs being in P's possession; or
  (ii) P reasonably believed that to be so

(s.52B(8) Civic Government (Scotland) Act 1982).

Definitions and interpretations

Child: A person under the age of 18, and in proceedings for this offence a person is to be taken as having been a child at any material time if it appears from the evidence as a whole that they were then under the age of 18 (s.52(2) Civic Government (Scotland) Act 1982). But if the impression conveyed by a **pseudo-photograph** is that the person shown is a child, the **pseudo-photograph** shall be treated for all purposes of the legislation as showing a child and so shall a **pseudo-photograph** where the predominant impression conveyed is that the person shown is a child notwithstanding that some of the physical characteristics shown are those of an adult (s.52(2B) Civic Government (Scotland) Act 1982).

Indecent: Indecency is determined objectively. If it affronts the sensibilities of the average citizen in contemporary society, or if it lies outside recognised contemporary standards of common propriety, it is indecent.

Indecent photograph: Includes an indecent **film**, a copy of an indecent photograph or **film**, and an indecent photograph comprised in a **film**. Photographs (including those comprised in a **film**) shall, if they show children and are **indecent**, be treated for all purposes as indecent photographs of **children**, and so as respects **pseudo-photographs**. References to a photograph include:

(a) the negative as well as the positive version;
(b) data stored on a computer disc or by other electronic means which is capable of conversion into a photograph;
(c) a tracing or other image, whether made by electronic or other means (of whatever nature) —
    (i) which is not itself a photograph or **pseudo-photograph**, but
    (ii) which is derived from the whole or part of a photograph or **pseudo-photograph** (or a combination of either or both); and
(d) data stored on a computer disc or by other electronic means which is capable of conversion into an image —
    (i) which is not itself a photograph or **pseudo-photograph**, but
    (ii) which is derived from the whole or part of a photograph or **pseudo-photograph** (or a combination of either or both)

(s.52(8) and (9) Civic Government (Scotland) Act 1982).

Film: Includes any form of video-recording (s.52(8)(d) Civic Government (Scotland) Act 1982).

Pseudo-photograph: An image, whether made by computer-graphics or otherwise howsoever, which appears to be a photograph (s.52(2A) Civic Government (Scotland) Act 1982). References to an **indecent** pseudo-photograph include:

(a) a copy of an **indecent** pseudo-photograph, or

(b) data stored on a computer disc or by other electronic means which is capable of conversion into an indecent pseudo-photograph (s.52(2C) Civic Government (Scotland) Act 1982).

Further notes

- The legitimate reason defence is to be approached 'sceptically': Atkins v DPP [2000] 2 All ER 425.
- The defence in s.52B(8) Civic Government (Scotland) Act 1982 applies whether the photograph showed the **child** alone or with P, but not if it showed any other person (s.52B(9) Civic Government (Scotland) Act 1982). If sufficient evidence is adduced to raise an issue whether the defence applies, then it shall be held to apply, except where it is proved beyond reasonable doubt that it does not apply (s.52C(2) and (3) Civic Government (Scotland) Act 1982).

60. Possession of a paedophile manual – s. 69 Serious Crime Act 2015

Conduct (actus reus)

P possesses any **item** that contains advice or guidance about **abusing children sexually**.

State of mind (mens rea)

No statutory mens rea.

Defences

It is a defence for P to prove that —

(a) P had a legitimate reason for being in possession of the **item**;
(b) P had not read, viewed or (as appropriate) listened to the item and did not know, and had no reason to suspect, that it contained advice or guidance about **abusing children sexually**;
(c) The item was sent to P without any request made by P or on their behalf, and P did not keep it for an unreasonable time

(s.69(2) Serious Crime Act 2015).

Definitions and interpretations

Abusing children sexually: Anything that constitutes an offence under Part 1 of the Sexual Offences Act 2003, or Parts 2, 3 or 4 of the Sexual Offences (Northern Ireland) Order 2008 against a person under 16; or an offence under section 1 Protection of Children Act 1978, or Article 3 Protection of Children (Northern Ireland) Order 1978, involving **indecent photographs** (but not **pseudo-photographs**); or an offence under s.2 of the Modern Slavery Act 2015 (human trafficking) committed with a view to exploitation that consists of or includes behaviour within s.3(3) of that Act (sexual exploitation); or doing anything outside England, Wales or Northern Ireland that would constitute such an offence if done in England, Wales or Northern Ireland (s.69(8) Serious Crime Act 2015).

Film: Includes any form of video-recording (s.7(5) Protection of Children Act 1978).

Indecent: An **indecent photograph** is one which is indecent by reference to recognised standards of propriety: R v Stamford [1972] 56 Cr App R 398. It is an objective test.

Indecent photograph: Includes an indecent **film**, a copy of an indecent photograph or **film**, and an **indecent photograph** comprised in a **film** (s.7(2) Protection of Children Act 1978). References to a photograph include:

(a) the negative as well as the positive version;
(b) data stored on a computer disc or by other electronic means which is capable of conversion into a photograph;
(c) a tracing or other image, whether made by electronic or other means (of whatever nature) —
    (i) which is not itself a photograph or **pseudo-photograph**, but
    (ii) which is derived from the whole or part of a photograph or **pseudo-photograph** (or a combination of either or both); and
(d) data stored on a computer disc or by other electronic means which is capable of conversion into an image —
    (i) which is not itself a photograph or **pseudo-photograph**, but
    (ii) which is derived from the whole or part of a photograph or **pseudo-photograph** (or a combination of either or both)

(s.7(4) and (4A) Protection of Children Act 1978).

Item: Includes anything in which information of any description is recorded (s.69(8) Serious Crime Act 2015).

Pseudo-photograph: An image, whether made by computer-graphics or otherwise howsoever, which appears to be a photograph (s.7(7) Protection of Children Act 1978). References to an **indecent** pseudo-photograph include:

(a) a copy of an **indecent** pseudo-photograph, or
(b) data stored on a computer disc or by other electronic means which is capable of conversion into an **indecent** pseudo-photograph (section 7(9) Protection of Children Act 1978).

Further notes

- The definitions above which are from the Protection of Children Act 1978 apply equally to the offences in Article 3 Protection of Children (Northern Ireland) Order 1978 (see Article 2).

61. Possession of prohibited image of a child – s. 62 Coroners and Justice Act 2009

Conduct (actus reus)

P possesses a **prohibited image** of a child.

State of mind (mens rea)

No statutory mens rea.

Defences

It is a defence for P to prove that —

(a) P had a legitimate reason for being in possession of the image concerned;
(b) P had not seen the image concerned and did not know, nor had any cause to suspect, it to be a prohibited image; or
(c) P was sent the image concerned without any prior request having been made by or on behalf of the person, and did not keep it for an unreasonable time.

(s64 Coroners and Justice Act 2009).

Definitions and interpretations

Child: subject to s.65(6) Coroners and Justice Act 2009, means a person under the age of 18. Section 65(6) Coroners and Justice Act 2009 states that where an image shows a person the image is to be treated as an image of a child if—

(a) the impression conveyed by the image is that the person shown is a child, or

(b) the predominant impression conveyed is that the person shown is a child despite the fact that some of the physical characteristics shown are not those of a child (s.65(6) of the Coroners and Justice Act 2009)

Image: includes (a) a moving or still image (produced by any means), or (b) data (stored by any means) which is capable of conversion into an image within paragraph (a) (s.65(2) of the Coroners and Justice Act 2009).

Prohibited image: A prohibited image is an image which—

(a) is **pornographic**,
(b) falls within **subsection (6)**, and
(c) is grossly offensive, disgusting or otherwise of an obscene character (s.62(2) of the Coroners and Justice Act 2009)

Pornographic: An image is "pornographic" if it is of such a nature that it must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal (s.62(3) Coroners and Justice Act 2009).

Subsection 6: An image falls within this subsection if it—

(a) is an image which focuses solely or principally on a child's genitals or anal region, or
(b) portrays any of the acts mentioned in subsection (7) (s.62(6) of the Coroners and Justice Act 2009)

(7) Those acts are—

(a) the performance by a person of an act of intercourse or oral sex with or in the presence of a child;
(b) an act of masturbation by, of, involving or in the presence of a child;
(c) an act which involves penetration of the vagina or anus of a child with a part of a person's body or with anything else;
(d) an act of penetration, in the presence of a child, of the vagina or anus of a person with a part of a person's body or with anything else;
(e) the performance by a child of an act of intercourse or oral sex with an animal (whether dead or alive or imaginary);
(f) the performance by a person of an act of intercourse or oral sex with an animal (whether dead or alive or imaginary) in the presence of a child. (s.6 and 7 Coroners and Justice Act 2009) (s.62(7) of the Coroners and Justice Act 2009)

Further notes

- Where (as found in the person's possession) an image forms part of a series of images, the question whether the image is of such a nature as is mentioned in subsection s.62(3) of the Coroners and Justice Act 2009 is to be determined by reference to—
    (a) the image itself, and

(b) (if the series of images is such as to be capable of providing a context for the image) the context in which it occurs in the series of images.

- So, for example, where—
  (a) an image forms an integral part of a narrative constituted by a series of images, and
  (b) having regard to those images as a whole, they are not of such a nature that they must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal

  the image may, by virtue of being part of that narrative, be found not to be pornographic, even though it might have been found to be pornographic if taken by itself. (s.62(4) and s.62(5) of the Coroners and Justice Act 2009).

Classified works

The offence of possessing a prohibited image does not apply to *excluded images* (s.63(1) of the Coroners and Justice Act 2009).

*Excluded images***:** An image which forms part of a series of images contained in a recording of the whole or part of a classified work. (s.63(2) Coroners and Justice Act 2009). But such an image is not an '**excluded image**' if—

(a) it is contained in a recording of an extract from a classified work, and
(b) it is of such a nature that it must reasonably be assumed to have been extracted (whether with or without other images) solely or principally for the purpose of sexual arousal (s.63(3) of the Coroners and Justice Act 2009).

Where an extracted image is one of a series of images contained in the recording, the question whether the image is of such a nature that it must be reasonably assumed to have been extracted solely or principally for the purpose of sexual arousal. This is to be determined by reference to—

(a) the image itself, and
(b) (if the series of images is such as to be capable of providing a context for the image) the context in which it occurs in the series of images; and section 62(5) of the Coroners and Justice Act 2009 applies in connection with determining that question as it applies in connection with determining whether an image is pornographic (s.63(4) of the Coroners and Justice Act 2009).

In this section—

(a) 'classified work' means a video work in respect of which a classification certificate has been issued by a designated authority (whether before or after the commencement of this section);
(b) 'classification certificate' and 'video work' have the same meaning as in the Video Recordings Act 1984 (c. 39);
(c) 'designated authority' means an authority which has been designated by the Secretary of State under section 4 of the Video Recordings Act 1984;
(d) 'extract' includes an extract consisting of a single image;

(e) ‘pornographic’ has the same meaning as in section 62 of the Coroners and Justice Act 2009; and
(f) ‘recording’ means any disc, tape or other device capable of storing data electronically and from which images may be produced (by any means).

A6. Child sexual abuse and exploitation (CSEA): grooming and exploitation of children

62. Causing or inciting a child under 13 to engage in sexual activity – s. 8 Sexual Offences Act 2003; Article 15 Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2))

Conduct (actus reus)

P causes or **incites** another person (B) under 13 to engage in an activity, and the activity is **sexual**.

State of mind (mens rea)

P intends to cause or **incite** B to engage in **sexual** activity.

Defences

No statutory defences.

Definitions and interpretations

Incite: Includes proposals, requests and invitations: *R v Mumford* (Unreported, 11 November 2014). This is consistent with the old common law definition of incitement, summarised in *R v Jones* (James) [2010] EWCA Crim 925 as requiring more than simple encouragement, but amounting to "urging" or "spurring on". They must involve words or actions amounting to a positive step or steps aimed at inciting another to commit a crime. The definition from the South African case of *R v Nkosiyama* (1966) 4 SA 655 was also quoted: "… one who reaches and seeks to influence the mind of another to commit a crime. The machinations of criminal ingenuity being legion, the approach to another's mind may take various forms, such as suggestion, proposal, request, exhortation, gesture, argument, persuasion, inducement, goading or arousal of cupidity." This section also covers the situation where incitement takes place but the sexual activity itself does not.

Sexual: Penetration, touching or any other activity is sexual if a reasonable person would consider that —

(a) whatever its circumstances or any person's purpose in relation to it, it is because of its nature sexual, or
(b) because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both) it is sexual.

(s78 Sexual Offences Act 2003).

63. Causing a young child to participate in sexual activity – s. 21 Sexual Offences (Scotland) Act 2009

Conduct (actus reus)

P causes a child (B) who has not attained the age of 13 years to participate in a **sexual activity**.

State of mind (mens rea)

P intends to cause B to participate in **sexual activity**.

Defences

No statutory defences. It is specifically *not* a defence that P believed that B had attained the age of 13 years (s. 27 Sexual Offences (Scotland) Act 2009).

Definitions and interpretations

Sexual activity: An activity is sexual if a reasonable person would, in all the circumstances of the case, consider it to be sexual (s. 60 Sexual Offences (Scotland) Act 2009). This is a wholly objective test.

64. Causing or inciting a child to engage in sexual activity – s. 10 Sexual Offences Act 2003; Article 17 Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2))

Conduct (actus reus)

P is over 18 years old and causes or **incites** another person (B) to engage in activity where —

(a) the activity is **sexual**, and
(b) either
  (i) B is 13 or more and under 16, or
  (ii) B is under 13.

State of mind (mens rea)

P intends to cause or **incite** B to engage in sexual activity, and if B is over 13 but under 16, P did not reasonably believe that B was 16 or over.

Defences

No statutory defences.

Definitions and interpretations

Incite: Includes proposals, requests and invitations: *R v Mumford* (Unreported, 11 November 2014). This is consistent with the old common law definition of incitement, summarised in *R v Jones* (James) [2010] EWCA Crim 925 as requiring more than simple encouragement, but amounting to "urging" or "spurring on". They must involve words or actions amounting to a positive step or steps aimed at inciting another to commit a crime. The definition from the South African case of *R v Nkosiyama* (1966) 4 SA 655 was also quoted: "… one who reaches and seeks to influence the mind of another to commit a crime. The machinations of criminal ingenuity being legion, the approach to another's mind may take various forms, such as suggestion, proposal, request, exhortation, gesture, argument, persuasion, inducement, goading or arousal of cupidity." This section also covers the situation where incitement takes place but the sexual activity itself does not.

Sexual: Penetration, touching or any other activity is sexual if a reasonable person would consider that —

(a) whatever its circumstances or any person's purpose in relation to it, it is because of its nature sexual, or

(b) because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both) it is sexual.

(s78 Sexual Offences Act 2003.

65. Causing an older child to participate in sexual activity – s. 31 of the Sexual Offences Act (Scotland) 2009

Conduct (actus reus)

P has attained the age of 16 years and causes a child (B), who —

(a) has attained the age of 13 years, but
(b) has not attained the age of 16 years,

to participate in a **sexual activity**.

State of mind (mens rea)

P intends to cause B to engage in a sexual activity.

Defences

P reasonably believed that B had attained the age of 16 years. (This defence is *not* available if —

(a) P has previously been charged by the police with a relevant sexual offence,
(b) P has a previous conviction for a relevant foreign offence committed against a person under the age of 16 and the court before which the charge is brought considers it is appropriate for that conviction to have that effect, or
(c) there is in force in respect of B a risk of sexual harm order.)

At the time when the conduct to which the offence relates took place, the difference between P's age and B's age did not exceed two years.

It is specifically *not* a defence that P believed that B had not attained the age of 13 years (s.39 Sexual Offences (Scotland) Act 2009).

Definitions and interpretations

Sexual activity: An activity is sexual if a reasonable person would, in all the circumstances of the case, consider it to be sexual (s. 60 Sexual Offences (Scotland) Act 2009). This is a wholly objective test.

66. Engaging in sexual activity in the presence of a child – s. 11 Sexual Offences Act 2003; Article 18 Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2))

Conduct (actus reus)

P is aged 18 or over and engages in activity where —

(a) the activity is **sexual**,
(b) P engages in the activity, when another person (B) is present or is in a place from which P can be observed, and
(c) either —
    (i) B is under 16, or
    (ii) B is under 13.

State of mind (mens rea)

P —

(a) intends to engage in the activity;
(b) for the purpose of obtaining sexual gratification, he engaged in the sexual activity:
    (i) in the presence of B (or in a place from which he can be observed by B); and
    (ii) knowing or believing that B is aware, or intends that B should be aware, that he is engaging in the activity, and
(c) if B is 13 or over but under 16, P does not reasonably believe that B is 16 or over.

Defences

No statutory defences.

Definitions and interpretations

Observe (observation): References to observation (however expressed) are to observation whether direct or by looking at an image (s.79(7) Sexual Offences Act 2003).

Sexual: penetration, touching or any other activity is sexual if a reasonable person would consider that —

(a) whatever its circumstances or any person's purpose in relation to it, it is because of its nature sexual, or
(b) because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both) it is sexual.

(s78 Sexual Offences Act 2003).

67. Causing a child to watch a sexual act – s. 12 Sexual Offences Act 2003; Article 19 Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2))

Conduct (actus reus)

P is 18 or over and **causes** another person (B) to watch a third person engaging in an activity, or to look at an **image** of any person engaging in an activity, where —

(a) the activity is **sexual**, and
(b) either
    (iii) B is 13 or more and under 16, or
    (iii) B is under 13.

State of mind (mens rea)

P for the purpose of obtaining sexual gratification, intentionally causes B to watch the activity or look at the image.

Defences

No statutory defences.

Definitions and interpretations

Image: A moving or still image and includes an image produced by any means and, where the context permits, a three-dimensional image (s.79(4) Sexual Offences Act 2003).

Sexual: penetration, touching or any other activity is sexual if a reasonable person would consider that —

(a) whatever its circumstances or any person's purpose in relation to it, it is because of its nature sexual, or
(b) because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both) it is sexual.

(s78 Sexual Offences Act 2003).

68. Causing a young child to look at a sexual image – s. 23 Sexual Offences (Scotland) Act 2009

Conduct (actus reus)

P **causes** a child (B) who has not attained the age of 13 years to **look at a sexual image**.

State of mind (mens rea)

P —

(a) **intended** to cause the child to look at the **sexual image**, and
(b) acted for the purpose of
    (i) obtaining sexual gratification, or
    (ii) humiliating, distressing or alarming B.

Defences

No statutory defences.

Definitions and interpretations

Sexual image: An image (produced by whatever means and whether or not a moving image) of –

(a) P engaging in a **sexual activity** or of a third person or imaginary person so engaging;
(b) P's genitals or the genitals of a third person or imaginary person.

Sexual activity: An activity is sexual if a reasonable person would, in all the circumstances of the case, consider it to be sexual (s. 60 Sexual Offences (Scotland) Act 2009). This is a wholly objective test.

69. Child sex offences committed by children or young persons – s. 13 Sexual Offences Act 2003; Article 20 Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2))

Conduct (actus reus)

P, who is under 18 years old, commits an offence if he does anything which would be an offence under any of sections 9 to 12 of the Sexual Offences Act 2003, or Articles 16 to 19 of the Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I.2)) if he were aged 18.

State of mind (mens rea)

See relevant offence.

Defences

See relevant offence.

Definitions and interpretations

None applicable.

70. Causing an older child to look at a sexual image – s. 33 Sexual Offences (Scotland) Act 2009

Conduct (actus reus)

P has attained the age of 16 years and causes a child (B), who —

(a) has attained the age of 13 years, but
(b) has not attained the age of 16 years

to look at a **sexual image**.

State of mind (mens rea)

P —

(a) intended to cause the child to look at the **sexual image**, and
(b) acted for the purpose of
    (i) obtaining sexual gratification, or
    (iii) humiliating, distressing or alarming.

Defences

P reasonably believed that B had attained the age of 16 years. (This defence is *not* available if:

(a) P has previously been charged by the police with a relevant sexual offence,
(b) P has a previous conviction for a relevant foreign offence committed against a person under the age of 16 and the court before which the charge is brought considers it is appropriate for that conviction to have that effect, or
(c) there is in force in respect of B a risk of sexual harm order.)

At the time when the conduct to which the charge relates took place, the difference between P's age and B's age did not exceed two years.

It is specifically *not* a defence that P believed that B had not attained the age of 13 years (s. 39 Sexual Offences (Scotland) Act 2009).

Definitions and interpretations

Sexual image: An image (produced by whatever means and whether or not a moving image) of —

(a) P engaging in a *sexual activity* or of a third person or imaginary person so engaging;
(b) P's genitals or the genitals of a third person or imaginary person.

Sexual activity: An activity is sexual if a reasonable person would, in all the circumstances of the case, consider it to be sexual (s. 60 Sexual Offences (Scotland) Act 2009). This is a wholly objective test.

71. Arranging or facilitating commission of a child sex offence – s. 14 Sexual Offences Act 2003; Article 21 Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2))

Conduct (actus reus)

P **arranges** or **facilitates** something, when doing it will involve the commission of an offence under any of Sections 5 to 13 of the Sexual Offences Act 2003 or Articles 16 to 20 of the Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I.2)).

State of mind (mens rea)

P **intends** to arrange or facilitate something that he **intend**s to do, **intends** another person to do, or **believes** that another person will do, in any part of the world.

Defences

P does not commit an offence if he

(a) **arranges** or **facilitates** something that he believes another person will do, but he does *not* **intend** to do it or **intend** another person to do it, and
(b) the offence would be an offence against a child **for whose protection he acts**.

Definitions and interpretations

For whose protection he acts: Under s 14(3), a person acts for the protection of a child if he acts for the purpose of —

(a) protecting the child from sexually transmitted infection,
(b) protecting the physical safety of the child,
(c) preventing the child from becoming pregnant, or
(d) promoting the child's emotional well-being by the giving of advice, and not for the purpose of obtaining sexual gratification or for the purpose of causing or encouraging the activity constituting the offence or the child's participation in it.

72. Incitement to commit certain sexual acts outside Scotland – s. 54 Sexual Offences (Scotland) Act 2009

Conduct (actus reus)

P does an act in Scotland which would amount to the offence of incitement to commit a **listed offence** but for the fact that "the relevant conduct" is intended to occur in a **country** outside [Scotland], then—

(a) the relevant conduct is to be treated as the **listed offence**, and
(b) the person accordingly commits the offence of incitement to commit the listed offence.

A person who is not **a habitual resident of Scotland**, or a **UK national**, commits this offence only if the relevant conduct would also involve the commission of an offence under the law in force in the country where the whole or any part of it was intended to take place.

State of mind (mens rea)

P intends for the relevant conduct to occur in a country outside Scotland.

Defences

See relevant offence.

Definitions and interpretations

Listed offence: Means an offence listed in Part 1 of schedule 4.

Country: Includes territory.

Habitual resident of Scotland: Means an individual who was at the time the act mentioned in subsection (1) took place habitually resident in Scotland.

UK national: means an individual who was at the time the [act mentioned in subsection (1)] took place —

(a) British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,
(b) a person who under the British Nationality Act 1981 is a British subject, or
(c) a British protected person within the meaning of that Act.

Further notes

- The condition that the relevant conduct needs to involve the commission of an offence under the law in force in the *country* where the whole or any part of it was intended to take place (in order for a person who is not a *habitual resident of Scotland*, or a *UK national*, to commit the offence) is to be taken as satisfied, unless, not later than such time as may be prescribed by Act of Adjournal, the accused serves on the prosecutor a notice —
    (a) stating that, on the facts as alleged with respect to the relevant conduct, the condition is not in the accused's position satisfied;
    (b) setting out the grounds for the accused's opinion; and
    (c) requiring the prosecutor to prove that the condition is satisfied.

73. Meeting a child following sexual grooming etc. – s. 15 Sexual Offences Act 2003; Article 22 Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2))

Conduct (actus reus)

P is aged 18 or over and —

(a) P has **met** or communicated with another person (B) on one or more occasions and subsequently —
    (i) P **meets** B,
    (ii) P travels to **meet** B in any part of the world or arranges to meet B in any part of the world, or

(iii) B travels to **meet** P in any part of the world,
and

(b) B is under 16.

State of mind (mens rea)

P —

(a) **intends** to **meet** B,
(b) **intends** to do anything to or in respect of B, during or after the **meeting** mentioned in paragraph (a)(i) to (iii) and in any part of the world, which if done will involve the commission by P of a **relevant offence**, and
(c) P does not reasonably believe that B is 16 or over.

Defences

See relevant offence.

Definitions and interpretations

Meeting: The meeting following sexual grooming must be in person. The Explanatory Notes state, "the offence will be complete either when, following the earlier communications, [P] meets the child or travels to meet the child with the intent to commit a relevant offence against the child. The intended offence does not have to take place."

Relevant offence: A "relevant offence" is —

(a) any offence in Part I of the Act (sections 1-79),
or
(b) anything done outside England and Wales which is not an offence within sub-paragraph (i) but would be an offence within sub-paragraph (i) if done in England and Wales.

74. Meeting a child following certain preliminary contact – s. 1 Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005

Conduct (actus reus)

Having met or communicated with another person (B) on at least one earlier occasion, P —

(a) either
  (i) meets B,
  (ii) travels with the intention of meeting B in any part of the world, or
  (iii) makes arrangements, in any part of the world, with the intention of meeting B in any part of the world;
  and
(b) B is under 16 or a constable, and
(c) at least one of the following is the case:
  (i) a prior meeting / communication has a **Scottish connection**,
  (ii) the subsequent meeting / travelling / arrangements have a Scottish connection, or
  (iii) P is a British citizen or UK resident.

State of mind (mens rea)

P —

(a) intends to meet B,
(b) at the time, intends to engage in unlawful sexual activity involving B or in the presence of B during or after the meeting in any part of the world (but it is not necessary to allege or prove that A intended to engage in a specific activity), and
(c) does *not* reasonably believe that B is 16 or over.

Defences

No statutory defences.

Definitions and interpretations

Scottish connection: A meeting / travelling or making arrangements will have a Scottish connection if it, or any part of it, takes place in Scotland. A communication will take place in Scotland if it is made to or from or takes place in Scotland (s 1(2)(b)).

75. Sexual communication with a child – s. 15A Sexual Offences Act 2003; Article 22A Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2))

Conduct (actus reus)

P is aged 18 or over and —

(a) communicates with another person (B), and
(b) the communication is **sexual**, or requisite mens rea is present for a non-sexual communication, and
(c) B is under 16.

State of mind (mens rea)

P intends to communicate with B for the purpose of obtaining sexual gratification.

P does not reasonably believe that B is 16 or over.

Where communication is non-sexual, P intended to encourage B to make (whether to P or to another) a communication that is sexual.

Defences

No statutory defences.

Definitions and interpretations

Sexual: Penetration, touching or any other activity is sexual if a reasonable person would consider that —

(a) whatever its circumstances or any person's purpose in relation to it, it is because of its nature sexual, or

(b) because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both) it is sexual.

(s78 Sexual Offences Act 2003).

76. Communicating indecently with a young child etc – s. 24 Sexual Offences (Scotland) Act 2009

Conduct (actus reus)

(1) P —

(a) sends, by whatever means, a **sexual written communication**, or
(b) directs, by whatever means, a **sexual verbal communication** at

a child (B) who has not attained the age of 13 years.

OR

(2) P causes B (under 13 years) to see or hear, by whatever means, a **sexual written or verbal communication**.

State of mind (mens rea)

In the case of both offence (1) and (2), P —

(a) acts intentionally, and
(b) acts for the purpose of either
    (i) obtaining sexual gratification, or
    (ii) humiliating, distressing or alarming B.

Defences

No statutory defences.

Definitions and interpretations

Sexual: An activity is sexual, and communication is sexual, if a reasonable person would, in all the circumstances of the case, consider it to be sexual (s. 60). It is a wholly objective test.

Written communication: A communication in whatever written form, and includes a communication which comprises writings of a person other than P (as for example a passage in a book or magazine) (s 24(4)).

Verbal communication: Under s 24(4), a communication in whatever verbal form, and without prejudice to that generality includes —

(a) communication which comprises sounds of sexual activity (whether actual or simulated), and
(b) a communication by means of sign language.

77. Communicating indecently with an older child etc – s. 34 Sexual Offences (Scotland) Act 2009

Conduct (actus reus)

(1) P, who has attained the age of 16 years —

(a) sends, by whatever means, a **sexual written communication to** or
(b) directs, by whatever means, a **sexual verbal communication** at

B who

(i) has attained the age of 13 years, but
(ii) has not attained the age of 16 years

OR

(2) P, who has attained the age of 16 years —

(a) causes another person ("B"), to see or hear, by whatever means, a **sexual written communication** or **sexual verbal communication**, and
(b) B is a child who has attained the age of 13 years but has not attained the age of 16 years.

State of mind (mens rea)

In the case of both (1) and (2), P —

(a) acts intentionally, and
(b) acts for the purpose of either
    (i) obtaining sexual gratification, or
    (iii) humiliating, distressing or alarming B.

Defences

P reasonably believed that B had attained the age of 16 years. This defence is *not* available if:

(a) P has previously been charged by the police with a relevant sexual offence,
(b) P has a previous conviction for a relevant foreign offence committed against a person under the age of 16 and the court before which the charge is brought considers it appropriate for that conviction to have that effect, or
(c) there is in force in respect of B a risk of sexual harm order.

At the time when the conduct to which the charge relates took place, the difference between P's age and B's age did not exceed two years.

It is specifically *not* a defence that P believed that B had not attained the age of 13 years (s 39).

Definitions and interpretations

Sexual: An activity is sexual, and communication is sexual, if a reasonable person would, in all the circumstances of the case, consider it to be sexual (s. 60). It is a wholly objective test.

Written communication: A communication in whatever written form, and includes a communication which comprises writings of a person other than P (as for example a passage in a book or magazine) (s 24(4)).

Verbal communication: Under s 24(4), a communication in whatever verbal form, and without prejudice to that generality includes —

(a) communication which comprises sounds of sexual activity (whether actual or simulated), and
(b) a communication by means of sign language.

78. Paying for sexual services of a child – s. 47 Sexual Offences Act 2003; Article 37 Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2))

Conduct (actus reus)

P obtains —

(a) for himself the **sexual** services of another person (B), and
(b) either —
    (i) B is under 13, or
    (ii) B is 13 to under 18 and P has the requisite mens rea for the offence
    and
(c) before obtaining those services, he has made or promised **payment** for those services to B or a third person, or another person has made or promised such a payment.

State of mind (mens rea)

P intends to obtain the **sexual** services of B.

Where B is between 13 and 18, P does not reasonably believe that B is 18 or over.

Where another person has made or promised payment, P knows that such a payment has been made or promised.

Defences

No statutory defences.

Definitions and interpretations

Sexual: Penetration, touching or any other activity is sexual if a reasonable person would consider that —

(a) whatever its circumstances or any person's purpose in relation to it, it is because of its nature sexual, or
(b) because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both) it is sexual

(s78 Sexual Offences Act 2003)

Payment: Any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount (s 47(2)).

79. Causing or inciting the sexual exploitation of a child – s. 48 Sexual Offences Act 2003

Conduct (actus reus)

P —

(a) causes or incites B to **be sexually exploited** in any part of the world, and
(b) either
    (i) B is under 13; or
    (ii) B is aged 13 to 18 and P has the required mens rea.

State of mind (mens rea)

P intends to cause or incite B to be **sexually exploited**.

Where B is 13 or over but under 18, P does not reasonably believe that B is 18 or over.

Defences

No statutory defences.

Definitions and interpretations

Sexually exploited: Under s. 51, a person (B) is sexually exploited if —

(a) on at least one occasion and whether or not compelled to do so, B offers or provides sexual services to another person in return for *payment* or a promise of *payment* to B or a third person, or

(b) an indecent image of B is recorded or streamed or otherwise transmitted.

Payment: Any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount (s. 47(2)).

80. Causing or inciting abuse: payment for sexual services and involvement in indecent images – Article 38 Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2))

Conduct (actus reus)

P —

(a) causes or incites another person (B) to offer or provide sexual services to a third person in return for payment; OR
(b) causes or incites B to be involved in the recording or streaming or other transmission of an indecent image of B; AND
(c) either
  (i) B is under 18 and P does not reasonably believe that B is over 18, or
  (iii) B is under 13.

State of mind (mens rea)

P intends to cause or incite and *w*here B is aged 13 or over but under 18, P does not reasonably believe that B is 18 or over.

Defences

No statutory defences.

Definitions and interpretations

Indecent: Indecency is to be interpreted by reference to recognised standards of propriety: *R v Stamford* [1972] 56 Cr App R 398.

81. Controlling a child in relation to sexual exploitation – s. 49 Sexual Offences Act 2003

Conduct (actus reus)

P controls any activities of B relating to B's **sexual exploitation** in any part of the world, and

either

(i) B is under 18 and P has the required mens rea, or
(ii) B is under 13.

State of mind (mens rea)

P intends to control any of B's activities relating to their **sexual exploitation**, and where B is aged 13 or over but under 18, P does not reasonably believe that B is 18 or over.

Defences

No statutory defences.

Definitions and interpretations

Sexual exploitation:, A person (B) is sexually exploited if —

(a) on at least one occasion and whether or not compelled to do so, B offers or provides sexual services to another person in return for ***payment*** or a promise of ***payment*** to B or a third person, or
(b) an **indecent image** of B is recorded or streamed or otherwise transmitted.

Payment: Any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount (s 47(2)).

82. Controlling a child: payment for sexual services and involvement in indecent images – Article 39 Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2))

Conduct (actus reus)

P controls any activities of B relating to the **offering or provision by B of sexual services to a third person in return for payment or B's involvement in the recording or streaming or other transmission of an indecent image of B;**

AND either

(i) B is under 18 and P has the required mens rea, or
(ii) B is under 13.

State of mind (mens rea)

P intends to control B's activities and where B is aged 13 or over but under 18, P does not reasonably believe that B is 18 or over.

Defences

No statutory defences.

Definitions and interpretations

Indecent: Indecency is to be interpreted by reference to recognised standards of propriety: *R v Stamford* [1972] 56 Cr App R 398.

83. Arranging or facilitating sexual exploitation of a child – s. 50 Sexual Offences Act 2003

Conduct (actus reus)

P —

(a) arranges or facilitates the **sexual exploitation** of another person (B) in any part of the world, and
(b) either
  (i) B is under 18 and P has the required mens rea, or
  (iii) B is under 13.

State of mind (mens rea)

P intends to arrange or facilitate B's **sexual exploitation**, and where B is aged 13 or over, but under 18, P does not reasonably believe that B is 18 or over.

Defences

No statutory defences.

Definitions and interpretations

Sexual exploitation: Under s 51, a person (B) is sexually exploited if —

(a) on at least one occasion and whether or not compelled to do so, B offers or provides sexual services to another person in return for ***payment*** or a promise of ***payment*** to B or a third person, or
(b) an indecent image of B is recorded or streamed or otherwise transmitted.

Payment: Any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount (s. 47(2)).

84. Arranging or facilitating abuse: payment for sexual services and involvement in indecent images– Article 40 Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2))

Conduct (actus reus)

P —

arranges or facilitates the offering or provision by another person (B) of sexual services to a third person in return for payment; OR the involvement by B in the recording or streaming or other transmission of an indecent image of B;

AND either:

(a) B is under 18 and P has the required mens rea, or
(b) B is under 13.

State of mind (mens rea)

P —

(a) intends to arrange or facilitate B's provision of sexual services or involvement in the recording, streaming or other transmission of an indecent image of B; and
(b) and where B is 13 or over but under 18, P does not reasonably believe that B is 18 or over.

Defences

No statutory defences.

Definitions and interpretations

Indecent: Indecency is to be interpreted by reference to recognised standards of propriety: *R v Stamford* [1972] 56 Cr App R 398.

Payment: Any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount (s. 47(2)).

85. Paying for sexual services of a child – s. 9 Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005

Conduct (actus reus)

P –

(a) obtains for himself or herself the **sexual services** of another person ("B");

(b) before obtaining those services,

(i) P makes or promises **payment** for those services to B or to a third person; or

(ii) another person has made or promised such a **payment**;

and

(c) either–

(i) B is aged under 18 and P has the required mens rea; or

(c) B is aged under 13.

State of mind (mens rea)

P intentionally obtains the sexual services of B.

Where P has not made or promised **payment** for the services, P knows that another person has made or promised **payment** for those services

Where B is aged under 18, P does not reasonably believe that B is aged 18 or over.

Defences

No statutory defences.

Definitions and interpretations

Sexual services: Means —

(a) the performance of sexual activity; or

(b) the performance of any other activity that a reasonable person would, in all the circumstances, consider to be for the purpose of providing sexual gratification,

and a person's sexual services are obtained where what is obtained is the performance of such an activity by the person.

Payment: means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.

86. Causing or inciting provision by child of sexual services or child pornography - s.10 Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005

Conduct (actus reus)

P causes or incites another person ("B") to become a **provider of sexual services**, or to be involved in **pornography**, in any part of the world; and either —

(a) B is aged under 18 and P has the required mens rea; or

(b) B is aged under 13.

State of mind (mens rea)

P —

(a) intentionally causes or incites B; and

(b) If B is aged 13 or over but under 18, P does not reasonably believe that B is aged 18 or over.

Defences

A person does not commit an offence under section 10 by reason only of doing something within section 52(1) or 52A(1) of the Civic Government (Scotland) Act 1982 (c.45) (s.13(5)).

Definitions and interpretations

Provider of sexual services: Means a person ("B") who, on at least one occasion and whether or not compelled to do so, offers or provides B's **sexual services** to another person in return for payment or a promise of payment to B or a third party; and "provision of sexual services" is to be construed accordingly (s. 13(2)).

Sexual services: Means —

(a) the performance of sexual activity; or

(b) the performance of any other activity that a reasonable person would, in all the circumstances, consider to be for the purpose of providing sexual gratification,

and a person's sexual services are obtained where what is obtained is the performance of such an activity by the person (s. 13(4)).

Pornography: A person is involved in pornography if an indecent image of that person is recorded; and similar expressions, and "pornography", are to be construed accordingly (s. 13(1)).

87. Controlling a child providing sexual services or involved in pornography - s.11 Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005

Conduct (actus reus)

P controls any of the activities of another person ("B") relating to B's **provision of sexual services** or involvement in **pornography** in any part of the world; and either —

(a) B is aged under 18 and P has the required mens rea; or
(b) B is aged under 13.

State of mind (mens rea)

P intentionally controls any of the activities of another person ("B") relating to B's **provision of sexual** services or involvement in pornography.

Where B is aged 13 or over but under 18 P does not reasonably believe that B is aged 18 or over.

Defences

A person does not commit an offence under section 11 by reason only of doing something within section 52(1) or 52A(1) of the Civic Government (Scotland) Act 1982 (c.45) (s.13(5)).

Definitions and interpretations

Pornography: A person is involved in pornography if an indecent image of that person is recorded; and similar expressions, and "pornography", are to be construed accordingly (s.13(1)).

Provision of sexual services: A "provider of sexual services" means a person ("B") who, on at least one occasion and whether or not compelled to do so, offers or provides B's sexual services to another person in return for payment or a promise of payment to B or a third party; and "provision of sexual services" is to be construed accordingly (s. 13(2)).

Sexual services: Means —

(a) the performance of sexual activity; or

(b) the performance of any other activity that a reasonable person would, in all the circumstances, consider to be for the purpose of providing sexual gratification,

and a person's sexual services are offered or provided to another person where such an activity is offered to be performed or performed with or for the other person (s. 13(4)).

88. Arranging or facilitating provision by child of sexual services or child pornography - s.12 Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005

Conduct (actus reus)

P arranges or facilitates the —

(a) **Provision of sexual services** by, or **involvement in pornography** of, another person ("B") in any part of the world; and

(b) either —

(i) B is aged under 18 and P has the required mens rea; or

(ii) B is aged under 13.

State of mind (mens rea)

P intentionally arranges or facilitates the **provision of sexual services** or involvement in pornography.

B is aged 13 or over but under 18, and P does not reasonably believe that B is aged 18 or over.

Defences

A person does not commit an offence under section 12 by reason only of doing something within section 52(1) or 52A(1) of the Civic Government (Scotland) Act 1982 (c.45) (s.13(5)).

Definitions and interpretations

Pornography: A person is involved in pornography if an indecent image of that person is recorded; and similar expressions, and "pornography", are to be construed accordingly (s.13(1)).

Provision of sexual services: A "provider of sexual services" means a person ("B") who, on at least one occasion and whether or not compelled to do so, offers or provides B's sexual services to another person in return for payment or a promise of payment to B or a third party; and "provision of sexual services" is to be construed accordingly (s. 13(2)).

Sexual services: Means —

(a) the performance of sexual activity; or

(b) the performance of any other activity that a reasonable person would, in all the circumstances, consider to be for the purpose of providing sexual gratification,

and a person's sexual services are offered or provided to another person where such an activity is offered to be performed or performed with or for the other person (s. 13(4)).

A7. Fraud and other financial offences

89. Fraud by false representation – s.2 Fraud Act 2006

Conduct (actus reus)

P makes a **false representation**.

State of mind (mens rea)

P —

(a) has knowledge that the representation is or might be untrue or misleading;

(b) is **dishonest** in making the representation

(c) intends by making the representation

(i) to make a **gain** for himself or another, or
(ii) to cause **loss** to another or to expose another to a risk of **loss**.

Defences

No statutory defences.

Definitions and interpretations

False representation: A representation which is untrue or misleading and the person making it knows that it is, or might be, untrue or misleading (s. 2(2)). It can be any representation as to fact or law, including a representation as to a person's state of mind (s. 2(3)). It may be express or implied (s. 2(4)), and can be stated in words or communicated by conduct. Therefore it may be written, spoken, or posted on a website (Explanatory Note to the Fraud Act 2006, section 2 at paragraph 14).

The representation does *not* need to be made to another person. It can be made to a machine or a piece of software which is able to respond automatically without any need for human involvement (s. 2(5) and Explanatory Note to the Fraud Act 2006, section 2 at paragraph 17).

Dishonest: The test for dishonesty requires ascertaining the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. The question of whether the person's conduct was honest or dishonest is to be determined by applying the (objective) standards of ordinary decent people. There is no requirement that the individual must appreciate that what he has done, by those standards, is dishonest: *Ivey v Genting Casinos (UK) (trading as Crockfords Club)* [2017] UKSC 67; [2018] AC 391. In other words, (a) what was the defendant's actual state of knowledge or belief as to the facts and (b) was his conduct dishonest by the standards of ordinary decent people?: *R v Barton and Booth* [2020] EWCA Crim 575.

Gain and loss: "Gain" includes a gain by keeping what one has, as well as a gain by getting what one does not have (s.5(3) of the Fraud Act 2006). "Loss" includes a loss by not getting what one might get, as well as a loss by parting with what one has (s.5(4) of the Fraud Act 2006). The "gain" or "loss" must relate to money or any other property, but it can be a temporary gain or loss or a permanent one (s.5(2) of the Fraud Act 2006). There does not have to be an actual gain or an actual loss: *R v Pennock* [2014] 2 Cr. App. R. 10; [2014] EWCA Crim 498, para. 6(d).

90. Fraud by abuse of position – s.4 Fraud Act 2006

Conduct (actus reus)

When occupying **a position in which he is expected to safeguard, or not to act against, the financial interests of another person**, P **abuses** that position.

State of mind (mens rea)

P —

(a) is **dishonest**,

(b) intends by means of the abuse of position

(i) to make a gain for himself or another, or
(ii) to cause loss to another or to expose another to a risk of loss.

Defences

No statutory defences.

Definitions and interpretations

Abuse: Intended to capture a wide range of conduct (Explanatory Note to the Fraud Act 2006, section 4 at paragraph 21). It can be done by omission or by action (s. 4(2)). A good working meaning of 'abuse' might be: 'uses incorrectly' or 'puts to improper use' the position held in a manner that is contrary to the *expectation* that arises because of that position: *R v Pennock* [2014] 2 Cr. App. R. 10; [2014] EWCA Crim 498, para. 4.

Expectation: The 'expectation' is that of the reasonable member of the public as personified by the jury: *R v Pennock* [2014] 2 Cr. App. R. 10; [2014] EWCA Crim 498, para. 6(1).

A position… another person: The person must have at the relevant time occupied a position in which he is expected to safeguard or, at least, not act against the financial interests of another: *R v Pennock* [2014] 2 Cr. App. R. 10; [2014] EWCA Crim 498, at para. 6(1). The 'position' occupied will be one where there is a relationship between trustee and beneficiary, director and company, professional person and client, agent and principal, employee and employer, or between partners. It may arise otherwise, for example within a family, or in the context of voluntary work, or in any context where the parties are not at arm's length. It is, however, a position that carries something more than a moral obligation. In many cases it will be one where there is a legal 'fiduciary' duty; but such a duty is not essential (Explanatory Note to the Fraud Act 2006, section 4 at paragraph 20, which refers to the Law Commission report (Law Com No.276) on Fraud, para. 7.38).

Dishonest: The test for dishonesty requires ascertaining the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. The question of whether the person's conduct was honest or dishonest is to be determined by applying the (objective) standards of ordinary decent people. There is no requirement that the individual must appreciate that what he has done, by those standards, is dishonest: *Ivey v Genting Casinos (UK) (trading as Crockfords Club)* [2017] UKSC 67; [2018] AC 391. In other words, (a) what was the defendant's actual state of knowledge or belief as to the facts and (b) was his conduct dishonest by the standards of ordinary decent people?: *R v Barton and Booth* [2020] EWCA Crim 575.

Gain and loss: *"Gain"* includes a gain by keeping what one has, as well as a gain by getting what one does not have (s.5(3) of the Fraud Act 2006). *"Loss"* includes a loss by not getting what one might get, as well as a loss by parting with what one has (s.5(4) of the Fraud Act 2006). The "gain" or "loss" must relate to money or any other property, but it can be a temporary gain or loss or a permanent one (s.5(2) of the Fraud Act 2006). There does not have to be an actual gain or an actual loss: *R v Pennock* [2014] 2 Cr. App. R. 10; [2014] EWCA Crim 498, para. 6(d).

91. Participating in fraudulent business carried on by a sole trader etc. – s.9 Fraud Act 2006

Conduct (actus reus)

P is **a party to the carrying on of a business which is carried on by a person who is outside the reach of Section 993 of the Companies Act 2006** (offence of fraudulent trading).

State of mind (mens rea)

P has **knowledge** that he is a party to it and P intends to **defraud creditors** of any person or for any other **fraudulent purpose**.

Defences

No statutory defences.

Definitions and interpretations

Fraudulent purpose: Should be given its ordinary and natural meaning. A fraudulent purpose might be proven before anyone is actually defrauded or becomes an actual victim of the fraud. Implementation of a fraudulent purpose is not an essential ingredient of the offence: *R. v Hunter (Peter)* [2021] EWCA Crim 1785).

Knowledge: Can be found where a person who manages or controls a business turns a blind eye to the truth: *Bank of India v Morris* [2005] EWCA Civ 693.

Further notes

- This offence applies where there is an intention to **defraud creditors** of a business, as well as to frauds on customers of the company.
- For the purposes of considering who is **outside the reach of section 993 of the Companies Act 2006**, the following are within the reach of Section 993 of the Companies Act 2006 —

  (a) a company (as defined in Section 1(1) of the Companies Act 2006),

(b) a person to whom that section applies (with or without adaptations or modifications) as if the person were a company; and

(c) a person exempted from the application of that section.

92. Contravention of prohibition on carrying on regulated activity unless authorised or exempt – s. 23 Financial Services and Markets Act 2000

Conduct (actus reus)

(1) P contravenes the **general prohibition** in Section 19 of the Financial Services and Markets Act 2000.

or

(2) P, an **authorised person**, carries on a **credit-related regulated activity** in the United Kingdom, or purports to do so, otherwise than in accordance with permission given to that person under Part 4A, or resulting from any other provision of the Financial Services and Markets Act 2000.

State of mind (mens rea)

No state of mind requirements.

Defences

P shows that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

Definitions and interpretations

General prohibition: The "general prohibition" in Section 19 prohibits a person from carrying on a *regulated activity* in the United Kingdom, or purporting to do so, unless he is an *authorised person*; or an *exempt person*.

Authorised person: The list of authorised persons may be found on the FCA's Financial Services Register.

Credit-related regulated activities: Under subsection 2 above (s.23(1B) of FSMA), a 'credit-related regulated activity' is a regulated activity designated by the Treasury in a statutory instrument. The relevant statutory instrument is the Financial Services and Markets Act 2000 (Consumer Credit) (Designated Activities) Order 2014/334. See FCA guidance at PERG 2.2.1G**.**

Exempt person: In relation to a regulated activity, means a person who is exempt from the general prohibition in relation to that activity as a result of an exemption order made under section 38(1) or as a result of section 39(1) or 285 of FSMA (s.417(1) of FSMA). (The FCA Handbook Glossary definition of 'exempt person' also reflects this definition.) Service providers should consider the FCA's perimeter guidance in Chapter 2 of the Perimeter Guidance Manual which contains detailed guidance on the regulated activity regime. In particular, PERG 2.10 covers circumstances in which exemption from the general prohibition applies. A particularly common category of exempt person is an "appointed representative". Appointed representatives may be found on the FCA's Financial Services Register.

Regulated activity: Broadly speaking, an activity of a specified kind which is carried on by way of a business and relates to an investment of a specified kind (or, in certain cases, property of any kind). We do not attempt to summarise the applicable legislation in this Annex. The FCA Handbook contains a list of regulated activities. Service providers may wish to refer to the guidance on the regulated activities in PERG 2 and, specifically PERG 2.7.

93. False claims to be authorised or exempt - s. 24 Financial Services and Markets Act 2000

Conduct (actus reus)

P, who is neither an **authorised person** nor, in relation to the **regulated activity** in question, an **exempt person** —

(a) describes himself (in whatever terms) as an authorised person,

(b) describes himself (in whatever terms) as an exempt person in relation to the regulated activity, or

(c) behaves, or otherwise holds himself out, in a manner which indicates (or which is reasonably likely to be understood as indicating) that he is

(i) an **authorised person**, or
(ii) an **exempt person** in relation to the **regulated activity**.

State of mind (mens rea)

No statutory mens rea.

Defences

P shows that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

Definitions and interpretations

Authorised person: The list of authorised persons may be found on the FCA's Financial Services Register.

Exempt person: In relation to a regulated activity, means a person who is exempt from the general prohibition in relation to that activity as a result of an exemption order made under section 38(1) or as a result of section 39(1) or 285 of FSMA (s.417(1) of FSMA). (The FCA Handbook Glossary definition of 'exempt person' also reflects this definition.)

Regulated activity: Broadly speaking, an activity of a specified kind which is carried on by way of a business and relates to an investment of a specified kind (or, in certain cases, property of any kind). We do not attempt to summarise the applicable legislation in this Annex. The FCA Handbook contains a list of regulated activities. Service providers may wish to refer to the guidance on the regulated activities in PERG 2 and, specifically PERG 2.7.

94. Contravention of restrictions on financial promotion – s. 25 Financial Services and Markets Act 2000

Conduct (actus reus)

P contravenes the **financial promotion restriction** in Section 21(1) of the Financial Services and Markets Act 2000 where P is not an **authorised person** or where the content of P's communication has not been lawfully approved by an **authorised person**.

State of mind (mens rea)

No state of mind requirement.

Defences

P shows that he believed on reasonable grounds that the content of the communication was prepared, or lawfully approved for the purposes of Section 21, by an **authorised person** (s. 25(2)(a)).

P shows that he took all reasonable precautions and exercised all due diligence to avoid committing the offence (s. 25(2)(b)).

Definitions and interpretations

Financial Promotion Restriction: The 'financial promotion restriction' in section 21 prohibits a person (A) from communicating, in the course of business, an invitation or inducement to: (a) engage in **investment activity**; or (b) engage in *claims management activity*. The restriction does not apply if (a) A is an **authorised person**, (b) the content of the communication is approved by an **authorised person** who is lawfully able to provide that approval, or (c) an exemption in the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 applies. The FCA has published guidance on the financial promotion regime in PERG 8.

Acting in the course of business: Service providers may want to refer to FCA guidance in PERG 8.5.

Authorised person: The list of authorised persons may be found on the FCA's Financial Services Register.

Communicate: Includes causing a communication to be made (s .21(13)). If a communication originates outside the United Kingdom, the offence applies only if the communication is capable of having an effect in the United Kingdom (s.21(3)).

Investment: Includes any asset, right or interest (including where an asset, right or interest is, or comprises or represents, a cryptoasset) (s .21(14)).

Engaging in investment activity: Means (s. 21(8))—

(a) entering or offering to enter into an agreement the making or performance of which by either party constitutes a *controlled activity* (specified in Schedule 2), or

(b) exercising any rights conferred by a controlled investment to acquire, dispose of, underwrite or convert a *controlled investment* (specified in Schedule 2).

Controlled activity "Controlled activities" are listed in Part I of Schedule 1 of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005. The list of controlled activities is reflected in the FCA Handbook here

Controlled investment: "Controlled investments" are listed in Part II of Schedule 1 of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005.

Engaging in claims management activity: entering into or offering to enter into an agreement the making or performance of which by either party constitutes a controlled claims management activity. A 'controlled claims management activity' (section 21(10B) FSMA) is an activity specified in Part 1A of Schedule 1 of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 carried on in Great Britain which is, or relates to, claims management services (as defined in section 419A FSMA.

95. Misleading statements – s. 89 Financial Services Act 2012

Conduct (actus reus)

P makes a statement which is false or misleading in a material respect, or **dishonestly** conceals any material facts.

The offence requires a **UK connection**.

State of mind (mens rea)

P —

(a) intends to induce another person (whether or not the person to whom the statement is made) —

(i) to enter into or offer to enter into, or to refrain from entering or offering to enter into, a **relevant agreement**, or

(ii) to exercise, or refrain from exercising, any rights conferred by a **relevant investment**.

or

(b) is **reckless** as to whether it may induce the same,

and P either —

(a) has knowledge that the statement is false or misleading;

(b) is **reckless** as to whether it is false or misleading; or

(c) is **dishonest** in concealing the facts.

Defences

Where P makes a statement which P knows to be false or misleading in a material respect, it is a defence for P to show that it was made in conformity with —

(a) price stabilising rules (i.e. rules made under section 137Q of the Financial Services and Markets Act 2000),

(b) control of information rules (i.e. rules made under section 137P of Financial Services and Markets Act 2000), or

(c) Article 5 of the Market Abuse Regulation (596/2014/EC)

Definitions and interpretations

Control of information rules: Has the same meaning as in Financial Services and Markets Act 2000 (s93(8)).

Dishonest: The test for dishonesty requires ascertaining the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. The question of whether the person's conduct was honest or dishonest is to be determined by applying the (objective) standards of ordinary decent people. There is no requirement that the individual must appreciate that what he has done, by those standards, is dishonest: *Ivey v Genting Casinos (UK) (trading as Crockfords Club)* [2017] UKSC 67; [2018] AC 391. In other words, (a) what was the defendant's actual state of knowledge or belief as to the facts and (b) was his conduct dishonest by the standards of ordinary decent people?: *R v Barton and Booth* [2020] EWCA Crim 575.

Relevant agreement: Defined in Section 93(3) as an agreement —

(a) the entering into or performance of which by either party constitutes an *activity of a kind specified in an order made by the Treasury*, and

(b) which relates to a *relevant investment*.

Activity of a kind specified in an order made by the Treasury: see Article 2 of the Financial Services Act 2012 (Misleading Statements and Impressions) Order 2013, SI 2013/637.

Relevant investment: Defined by Section 93(5) and Article 4 of the Financial Services Act 2012 (Misleading Statements and Impressions) Order 2013**.**

Price stabilising rules: Has the same meaning as in the Financial Services and Markets Act 2000 (s93(8)).

UK connection: There is a 'UK connection' if —

(a) the statement is made in or from, or the facts are concealed in or from, the United Kingdom or arrangements are made in or from the United Kingdom for the statement to be made or the facts to be concealed,

(b) the person on whom the inducement is intended to or may have effect is in the United Kingdom, or

(c) the agreement is or would be entered into or the rights are or would be exercised in the United Kingdom.

96. Misleading impressions – s. 90 Financial Services Act 2012

Conduct (actus reus)

P does any act or engages in any course of conduct which creates a false or misleading impression as to the market in or the price or value of any **relevant investments**.

This offence requires a **UK connection**.

State of mind (mens rea)

P intends to create the impression *and* (either or both) —

(a) intends to induce another person to acquire, dispose of, subscribe for or underwrite the investments or to refrain from doing so or to exercise or refrain from exercising any rights conferred by the investments, or

(b) has knowledge that the impression is false or misleading, or is **reckless** as to whether it is, and intends by creating the impression to produce the following results (or is aware that creating the impression is likely to produce those results):

(i) making of **gain** for P or another person, or
(ii) causing of **loss** to another person or the exposing of another person to the risk of loss.

Defences

It is a defence for P to show that:

(a) If the offence involves an intention to induce (as set out in the previous column), P reasonably believed that P's conduct would not create an impression that was false or misleading as to the market in or the price or value of any **relevant investments**, or

(b) P acted or engaged in the conduct—

(i) for the purpose of stabilising the price of investments, and
(ii) in conformity with **price stabilising rules**; or

(c) P acted or engaged in the conduct in conformity with **control of information rules**, or

(d) P acted or engaged in the conduct in conformity with the relevant provisions of Article 5 (exemption for buy-back programmes and stabilisation) of the Market Abuse Regulation (596/2014/EC).

Definitions and interpretations

Control of information rules: Has the same meaning as in the Financial Services and Markets Act 2000 (s93(8)).

Gain: Includes a gain by keeping what one has, as well as a gain by getting what one does not have. "Gain" —

(a) extends only to gain in money or other property of any kind, and

(b) includes such gain whether temporary or permanent.

Loss: Includes a loss by not getting what one might get, as well as a loss by parting. "Loss" —

(a) extends only to loss in money or other property of any kind, and

(b) includes such loss whether temporary or permanent.

Price stabilising rules: Has the same meaning as in the Financial Services and Markets Act 2000.

Relevant investment: Defined by Section 93(5) and Article 4 of the Financial Services Act 2012 (Misleading Statements and Impressions) Order 2013.

UK connection: The act must be done, or the course of conduct is engaged in, in the UK, or the false or misleading impression is created in the UK.

97. Making or supplying articles for use in frauds – s. 7 Fraud Act 2006

Conduct (actus reus)

P makes, adapts, supplies or **offers** to supply any **article**.

State of mind (mens rea)

P —

(a) has knowledge that the article is designed or adapted for use in the course of or in connection with fraud, or

(b) intends that it be used to commit, or assist in the commission of fraud

Defences

No statutory defences.

Definitions and interpretations

Article: includes any program or data held in electronic form (s. 8(1)).

Offer: Should be given its ordinary English meaning and it is irrelevant whether or not the offer is genuine: *R v Prior* [2004] EWCA Crim 1147. However, a statement which is obviously a charade or joke may not constitute an offer: *R v Kray* [1999] 2 Archbold News 3.

98. Articles for use in fraud – s. 49(3) Criminal Justice and Licensing (Scotland) Act 2010

Conduct (actus reus)

P makes, adapts, supplies or offers to supply any **article**.

State of mind (mens rea)

P —

(a) has knowledge that the article is designed or adapted for use in the course of or in connection with fraud, or

(b) intends that it be used in, or in connection with, the commission of fraud.

Defences

No statutory defences.

Definitions and interpretations

Article: includes any program or data held in electronic form (s. 49(5)).

99. Concealing etc criminal property – s. 327 Proceeds of Crime Act 2002

Conduct (actus reus)

P —

(a) conceals **criminal property**,
(b) disguises **criminal property**,
(c) converts **criminal property**,
(d) transfers **criminal property**,
(e) removes **criminal property** from England and Wales or from Scotland or from Northern Ireland.

State of mind (mens rea)

P has knowledge or suspicion that the property constitutes a person's benefit from **criminal conduct** or that it represents such a benefit (in whole or part and whether directly or indirectly).

Defences

P does not commit such an offence if:

(a) P makes an authorised disclosure under Section 338 and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent.
(b) P intended to make such an authorised disclosure under Section 338 but had a reasonable excuse for not doing so.
(c) The act P has done was done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to **criminal conduct** or benefit from **criminal conduct**.

Nor does P commit an offence if:

(a) P knows, or believes on reasonable grounds, that the **relevant criminal conduct** occurred in a particular country or territory outside the United Kingdom, and

(b) the **relevant** criminal **conduct** —

(i) was not, at the time it occurred, unlawful under the criminal law then applying in that country or territory, and

(ii) is not of a description prescribed by an order made by the Secretary of State.

Defences that are only relevant to banks and regulated businesses have not been included here.

Definitions and interpretations

Conceals or disguises: "Concealing" or "disguising" criminal property includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

Criminal conduct: Conduct which constitutes an offence in any part of the United Kingdom, or would constitute an offence in any part of the United Kingdom if it occurred there. It is immaterial who carried out the conduct and who benefited from it.

Criminal property: Property is "criminal property" if it constitutes a person's benefit from criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly), and the alleged offender knows or suspects that it constitutes or represents such a benefit (s.340(3))

Criminal property for the purposes of Sections 327, 328 and 329 means property obtained as a result of or in connection with criminal activity separate from that which is the subject of the charge itself. In everyday language, the sections are aimed at various forms of dealing with dirty money (or other property). They are not aimed at the use of clean money for the purposes of a criminal offence, which is a matter for the substantive law relating to that offence: R v. GH [2015] UKSC 24 at para. 27.

Relevant criminal conduct: The "relevant criminal conduct" is the criminal conduct by reference to which the property concerned is criminal property.

100. Arrangements facilitating acquisition etc of criminal property – s. 328 Proceeds of Crime Act 2002

Conduct (actus reus)

P enters into or becomes concerned in an arrangement which facilitates (by whatever means) the acquisition, retention, use or control of **criminal property** by or on behalf of another person.

State of mind (mens rea)

(a) P has knowledge or suspicion that the arrangement facilitates (by whatever means) the acquisition, retention, use or **control of criminal property** by or on behalf of another person (s.328(1)); or

(b) P has knowledge or suspicion that the property constitutes a person's benefit from **criminal conduct** or that it represents such a benefit (in whole or part and whether directly or indirectly) (s.340(3)(b)).

Defences

P does not commit such an offence if:

(a) P makes an authorised disclosure under Section 338 and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent.

(b) P intended to make such an authorised disclosure under Section 338 but had a reasonable excuse for not doing so.

(c) The act P has done was done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to **criminal conduct** or benefit from **criminal conduct**.

Nor does P commit an offence if:

(a) P knows, or believes on reasonable grounds, that the **relevant criminal conduct** occurred in a particular country or territory outside the United Kingdom, and

(b) the **relevant** criminal **conduct** —

(i) was not, at the time it occurred, unlawful under the criminal law then applying in that country or territory, and

(ii) is not of a description prescribed by an order made by the Secretary of State.

Defences that are only relevant to banks and regulated businesses have not been included here.

Definitions and interpretations

Criminal conduct: Conduct which constitutes an offence in any part of the United Kingdom, or would constitute an offence in any part of the United Kingdom if it occurred there (s.340(2)(a) and (b))). It is immaterial who carried out the conduct and who benefited from it (s.340(4)(a) and (b)).

Criminal property: Property is "criminal property" if it constitutes a person's benefit from criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly), and the alleged offender knows or suspects that it constitutes or represents such a benefit (s.340(3)(a) and (b)).

Criminal property for the purposes of Sections 327, 328 and 329 means property obtained as a result of or in connection with criminal activity separate from that which is the subject of the charge itself. In everyday language, the sections are aimed at various forms of dealing with dirty money (or other property). They are not aimed at the use of clean money for the purposes of a criminal offence, which is a matter for the substantive law relating to that offence: *R. v GH* [2015] UKSC 24 at para. 27.

It does not matter whether criminal property existed when the arrangement was first hatched. What matters is that the property should be criminal at a time when the arrangement operates on it: *R. v GH [*2015] UKSC 24 at para. 40.

Relevant criminal conduct: The "relevant criminal conduct" is the criminal conduct by reference to which the property concerned is criminal property.

101. Acquisition, use and possession of criminal property – s. 329 Proceeds of Crime Act 2002

Conduct (actus reus)

P —

(a) acquires **criminal property**,

(b) uses **criminal property**, or

(c) has possession of **criminal property**.

.

State of mind (mens rea)

P has knowledge or suspicion that the property constitutes a person's benefit from criminal conduct or that it represents such a benefit (in whole or part and whether directly or indirectly).

Defences

P does not commit such an offence if:

(a) P makes an authorised disclosure under Section 338 and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent.
(b) P intended to make such an authorised disclosure under Section 338 but had a reasonable excuse for not doing so.
(c) P acquired or used or had possession of the property for adequate consideration.
(d) The act P has done was done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to **criminal conduct** or benefit from **criminal conduct**.

Nor does P commit an offence if:

(a) P knows, or believes on reasonable grounds, that the **relevant criminal conduct** occurred in a particular country or territory outside the United Kingdom, and
(b) the **relevant** criminal **conduct** —
    (i) was not, at the time it occurred, unlawful under the criminal law then applying in that country or territory, and
    (ii) is not of a description prescribed by an order made by the Secretary of State.

Defences that are only relevant to banks and regulated businesses have not been included here.

Definitions and interpretations

Adequate consideration: For the purposes of this section (s.329(3)) —

(a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property;
(b) a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of the use or possession;

(c) the provision by a person of goods or services which he knows or suspects may help another to carry out criminal conduct is not consideration.

Criminal conduct: Conduct which constitutes an offence in any part of the United Kingdom, or would constitute an offence in any part of the United Kingdom if it occurred there (s. 340(2)(a) and (b))). It is immaterial who carried out the conduct and who benefited from it (s. 340(4)(a) and (b)).

Criminal property: Property is "criminal property" if it constitutes a person's benefit from criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly), and the alleged offender knows or suspects that it constitutes or represents such a benefit (s.340(3)(a) and (b)).

Criminal property for the purposes of Sections 327, 328 and 329 means property obtained as a result of or in connection with criminal activity separate from that which is the subject of the charge itself. In everyday language, the sections are aimed at various forms of dealing with dirty money (or other property). They are not aimed at the use of clean money for the purposes of a criminal offence, which is a matter for the substantive law relating to that offence: *R. v GH* [2015] UKSC 24 at para. 27.

It does not matter whether criminal property existed when the arrangement was first hatched. What matters is that the property should be criminal at a time when the arrangement operates on it: *R. v GH* [2015] UKSC 24 at para. 40.

Relevant criminal conduct: The "relevant criminal conduct" is the criminal conduct by reference to which the property concerned is criminal property (s. 327(2B)).

A8. Drugs

102. Unlawful supply, or offer to supply, of controlled drugs – s. 4(3) of the Misuse of Drugs Act 1971

Conduct (actus reus)

(1) P **supplies** or **offers** to supply a **controlled drug** to another.

(2) P is concerned in the **supplying** of a **controlled drug** to another.

(3) P is concerned in the making to another of an **offer** to **supply** a **controlled drug**.

State of mind (mens rea)

P intends to make an offer.

In the case of (2) and (3): P has knowledge of the enterprise: R v Coker [2019] EWCA 420.

Defences

In the case of (2) and (3), P will be acquitted if they prove that:

(a) They neither believed nor suspected nor had reason to suspect that the substance or product in question was a **controlled drug**; or

(b) They believed the substance or product in question was a **controlled drug**, or a controlled drug of a description, such that, if it had in fact been the drug of that description, they would not at the material time have been committing an offence to which this defence applies.

(s.28(3) of the Misuse of Drugs Act 1971).

Definitions and interpretations

Controlled drug: Any substance or product for the time being specified in schedule 2 of the Misuse of Drugs Act 1971 or a temporary class drug order (s.2(1) of the Misuse of Drugs Act 1971).

Offer: "Offer" is to be given its ordinary English meaning. It is irrelevant whether or not the offer was genuine (for example, there would still be an offer even if the offeror had no drugs to supply). However, a statement which is obviously a charade or joke may not constitute an offer: *R v Kray* [1999] 2 Archbold News 3.

Supplying: Includes "distributing" (s.37(1) of the Misuse of Drugs Act 1971.

103. Prohibition of supply etc of articles for administering or preparing controlled drugs – s. 9A Misuse of Drugs Act 1971

Conduct (actus reus)

(1) P **supplies** or **offers** to **supply** any article which may be used or adapted to be used (whether by itself or in combination with another article or other articles) in the **administration** by any person of a **controlled drug** to themselves or another.

(2) P **supplies** or **offers** to **supply** any article which may be used to prepare a **controlled drug** for **administration** by any person to themselves or another.

State of mind (mens rea)

P believes that the article (or the article as adapted) is to be used in circumstances where the **administration** is **unlawful**.

Defences

It is not an offence to **supply** or offer to **supply** a hypodermic syringe, or any part of one (s.9A(2) of the Misuse of Drugs Act 1971).

Definitions and interpretations

Administration: References to administration by any person of a **controlled drug** to themselves include a reference to them administering it to themselves with the assistance of another (s.9A(5) of the Misuse of Drugs Act 1971).

Controlled drug: Any substance or product for the time being specified in schedule 2 of the Misuse of Drugs Act 1971 or a temporary class drug order (s.2(1) of the Misuse of Drugs Act 1971).

Offer: "Offer" is to be given its ordinary English meaning. It is irrelevant whether or not the offer was genuine (for example, there would still be an offer even if the offeror had no drugs to supply). However, a statement which is obviously a charade or joke may not constitute an offer: *R v Kray* [1999] 2 Archbold News 3.

Supplying: Includes "distributing" (s.37(1) of the Misuse of Drugs Act 1971).

Unlawful administration: Any **administration** of a **controlled drug** is unlawful except the **administration** by any person of a —

(a) **Controlled drug** to another in circumstances where the **administration** of the drug is not unlawful under s.4(1) of the Misuse of Drugs Act 1971, which makes it unlawful for a person to produce a **controlled drug** or to supply or offer to supply a **controlled drug** to another;

(b) **Controlled drug**, other than a temporary class drug, to themselves in circumstances where having the **controlled drug** in his possession is not unlawful under s.5(1) of the Misuse of Drugs Act 1971, which makes it unlawful for a person to have a **controlled drug** in their possession; or

(c) Temporary class drug to themselves in circumstances where having the drug in their possession is to be treated as excepted possession under s.7A(2)(c) of the Misuse of Drugs Act 1971

(s.9A(4) of the Misuse of Drugs Act 1971).

104. Inciting any offence under the Misuse of Drugs Act – s. 19 Misuse of Drugs Act 1971

Conduct (actus reus)

P **incites** another to commit an offence under any provision of the Misuse of Drugs Act 1971.

State of mind (mens rea)

P intends to incite.

Defences

No statutory defences.

Definitions and interpretations

Incites: Incitement is more than merely encouragement, rather it amounts to "urging" or "spurring on". It must involve words or actions amounting to a positive step or steps aimed at inciting another to commit a crime: *R v Jones (James)* [2010] EWCA Crim 925. One who incites is "one who reaches and seeks to influence the mind of another to commit a crime. The machinations of criminal ingenuity being legion, the approach to another's mind may take various forms, such as suggestion, proposal, request, exhortation, gesture, argument, persuasion, inducement, goading or arousal of cupidity": *R v Nkosiyama* (1966) 4 SA 655, cited in *R v Jones (James)* [2010] EWCA Crim 925.

105. Supplying, or offering to supply, a psychoactive substance – s. 5 Psychoactive Substances Act 2016

Conduct (actus reus)

(1) P supplies a **psychoactive substance** to another person.

(2) P **offers** to **supply** a **psychoactive substance** to another person (R).

State of mind (mens rea)

In the case of (1):

(a) P intends to supply the substance to another person;

(b) P knows or suspects, or ought to know or suspect, that it is a psychoactive substance; and

(c) P knows, or is reckless as to whether, the psychoactive substance is likely to be **consumed** by the person to whom it is supplied, or by some other person, for its **psychoactive** effects.

In the case of (2): P knows or is reckless as to whether R, or some other person, would, if P supplied a substance to R in accordance with the offer, be likely to **consume** the substance for its **psychoactive effects**. This includes a reference to the **psychoactive effects** which the substance would have if it were the substance which P had offered to supply to R.

Defences

It is not an offence for P to supply or offer to supply a psychoactive substance if, in the circumstances in which it is carried on by P, the activity is an **exempted activity** (s.11 of the Psychoactive Substances Act 2016).

Definitions and interpretations

Consume: A person consumes a substance if the person causes or allows the substance, or fumes given off by the substance, to enter the person's body in any way (s.2(3) of the Psychoactive Substances Act 2016).

Controlled drug: Any substance or product for the time being specified in schedule 2 of the Misuse of Drugs Act 1971 or a temporary class drug order (s.2(1) of the Misuse of Drugs Act 1971).

Exempted activity: An activity listed in schedule 2 to the Psychoactive Substances Act 2016, which includes activities carried on by a person who is a healthcare professional and acting in the course of their profession; activities carried on for the purpose of, or in connection with, the supply to or consumption by any person of a substance prescribed to them by or in accordance with the directions of a healthcare professional acting in the course of their profession; any activity carried on in respect of an active substance (which has the same meaning as in the Human Medicines Regulations 2012; see regulation 8 of those Regulations) by a person who is registered in accordance with regulation 45N of the Human Medicines Regulations 2012, or is exempt from any requirement to be so registered by virtue of regulation 45M(2) or (3) of those Regulations; or any activity carried on in the course of, or in connection with, approved scientific research (which means scientific research carried out by a person who has approval from a relevant ethics review body to carry out that research) (s.11(2) and schedule 2 of the Psychoactive Substances Act 2016).

Exempted substance: A substance listed in schedule 1 to the Psychoactive Substances Act 2016, including: (a) **controlled drugs** (within the meaning of the Misuse of Drugs Act 1971); (b) medicinal products (which has the same meaning as in the Human Medicines Regulations 2012; see regulation 2 of those Regulations); (c) alcohol or alcoholic products; (d) nicotine and tobacco products; (e) caffeine or caffeine products; and (f) food and drink (s.3 and schedule 1 of the Psychoactive Substances Act 2016).

Offer: “Offer” is to be given its ordinary English meaning. It is irrelevant whether or not the offer was genuine (for example, there would still be an offer even if the offeror had no drugs to supply). However, a statement which is obviously a charade or joke may not constitute an offer: *R v Kray* [1999] 2 Archbold News 3.

Psychoactive effect: A substance produces a psychoactive effect in a person if, by stimulating or depressing the person's central nervous system, it affects the person's mental functioning or emotional state, and references to a substance's psychoactive effects are to be read accordingly (s.2(2) of the Psychoactive Substances Act 2016).

Psychoactive substance: A substance which is capable of producing a psychoactive effect in a person who **consumes** it and is not an **exempted substance** (s.2(1) of the Psychoactive Substances Act 2016).

Supply: Any reference to supplying a substance includes a reference to distributing it (s.59(1) of the Psychoactive Substances Act 2016).

A9. Firearms and other weapons

106. Sale etc of flick knife etc – s. 1(1) Restriction of Offensive Weapons Act 1959; Article 53 of the Criminal Justice (Northern Ireland) Order 1996

Conduct (actus reus)

P manufactures or sells, hires or offers for sale or hire (or exposes or has in possession for the purpose of sale or hire), or lends or gives to any other person:

(a) any knife with a blade which opens automatically from closed to fully opened position, or from partially opened to fully opened position, by manual pressure applied to a button, spring or other device in or attached to the knife (sometimes known as a "flick knife" or "flick gun"), or

(b) any knife with a blade which is released from the handle or sheath thereof by force of gravity or the application of centrifugal force and which, when released, is locked in place by means of a button, spring, lever or other device (sometimes known as a "gravity knife").

State of mind (mens rea)

No statutory mens rea.

Defences

P's conduct was only for the purposes of making the knife available to a **museum or gallery** which does not distribute profits.

Definitions and interpretations

Museum or gallery: Includes any institution which has as its purpose, or one of its purposes, the preservation, display and interpretation of material of historical, artistic or scientific interest and gives the public access to it.

107. Importation of flick knives – s. 1(2) Restriction of Offensive Weapons Act 1959

Conduct (actus reus)

P imports:

(a) any knife with a blade which opens automatically from closed to fully opened position, or from partially opened to fully opened position, by manual pressure applied to a button, spring or other device in or attached to the knife (sometimes known as a "flick knife" or "flick gun"), or

(b) any knife with has a blade which is released from the handle or sheath thereof by force of gravity or the application of centrifugal force and which, when released, is locked in place by means of a button, spring, lever or other device (sometimes known as a "gravity knife")

State of mind (mens rea)

No statutory mens rea.

Defences

No statutory defences.

Definitions and interpretations

None applicable.

108. Purchase etc of firearms or ammunition without Certificate – s. 1(1) Firearms Act 1968

Conduct (actus reus)

P has in his possession, or purchases or acquires, a [**relevant firearm**] without holding a firearm certificate in force at the time, or otherwise than as authorised by such a certificate;

P has in their possession, or purchases or acquires, any [**relevant ammunition**] without holding a firearm certificate in force at the time, or otherwise than as authorised by such a certificate, or in quantities in excess of those so authorised.

State of mind (mens rea)

No statutory mens rea.

Defences

No statutory defences.

Definitions and interpretations

Firearm: See 'General interpretation.'

Relevant ammunition: Any ammunition for a **firearm**, except the following articles, namely —

(a) cartridges containing five or more shot, none of which exceeds .36 inch in diameter;

(b) ammunition for an air gun, air rifle or air pistol; and

(c) blank cartridges not more than one inch in diameter measured immediately in front of the rim or cannelure of the base of the cartridge.

Relevant firearm: Every firearm except —

(a) a shot gun within the meaning of the Firearms Act 1968, that is to say a smooth-bore gun (not being an air gun) which — (i) has a barrel not less than 24 inches in length and does not have any barrel with a bore exceeding 2 inches in diameter; (ii) either has no magazine or has a non-detachable magazine incapable of holding more than two cartridges; and (iii) is not a revolver gun;

and,

(b) an air weapon (that is to say, an air rifle, air gun or air pistol which is not a *prohibited weapon* and which is not of a type declared by rules made by the Secretary of State under section 53 of the Firearms Act 1968 to be specially dangerous).

Ofcom does not include in this section an exception for a *shot gun* adapted to have no or a non-detachable magazine as this appears to us a level of technical complexity and detail beyond the capability of a U2U or search service to apply.

Prohibited weapon: For the meaning of "prohibited weapon" and associated terms see General Interpretation under the heading 'firearm'.

109. Purchase etc of shot gun without certificate – s. 2(1) Firearms Act 1968

Conduct (actus reus)

P has in their possession, or purchases or acquires, a **shot gun** without holding a certificate under this Act authorising them to possess shot guns.

State of mind (mens rea)

No statutory mens rea.

Defences

No statutory defences.

Definitions and interpretations

Shot gun: A smooth-bore gun (not being an air gun) which— (i) has a barrel not less than 24 inches in length and does not have any barrel with a bore exceeding 2 inches in diameter; (ii) either has no magazine or has a non-detachable magazine incapable of holding more than two cartridges; and (iii) is not a revolver gun. Ofcom does not include in this section an exception for a shot gun adapted to have no or a non-detachable magazine as this appears to us a level of technical complexity and detail beyond the capability of a U2U or search service to apply.

110. Dealing etc in firearms or ammunition by way of trade or business without being registered – s. 3(1) Firearms Act 1968

Conduct (actus reus)

P, by way of a trade or business,

(a) manufactures, sells, transfers, repairs, tests or proves any **relevant firearm** or **relevant ammunition**, or a **shot gun**; or

(b) exposes for sale or transfer, or has in their possession for sale, transfer, repair, test or proof any such firearm or ammunition, or a **shot gun;** or

(c) sells or transfers an **air weapon**, exposes such a weapon for sale or transfer or has such a weapon in his possession for sale or transfer,

without being registered (in the UK) as a firearms dealer.

P is exempt from the offences of ‘possessing’, ‘purchasing’ or ‘acquiring’ if they are carrying on the business of a firearms dealer and registered as such in the UK, and are acting in the ordinary course of that business (S.8(1) of the Firearms Act 1968).

Other exemptions exist for possession but are unlikely to manifest online.

State of mind (mens rea)

No statutory mens rea.

Defences

No statutory defences.

Definitions and interpretations

Firearm: For the meaning of **firearm** and associated terms see General Interpretation under the heading ‘firearm’.

Relevant ammunition: Any ammunition for a **firearm**, except the following articles, namely —

(a) cartridges containing five or more shot, none of which exceeds .36 inch in diameter;

(b) ammunition for an air gun, air rifle or air pistol; and

(c) blank cartridges not more than one inch in diameter measured immediately in front of the rim or cannelure of the base of the cartridge.

Relevant firearm: Every firearm except —

(a) a shot gun within the meaning of the Firearms Act 1968, that is to say a smooth-bore gun (not being an air gun) which — (i) has a barrel not less than 24 inches in length and does not have any barrel with a bore exceeding 2 inches in diameter; (ii) either has no magazine or has a non-detachable magazine incapable of holding more than two cartridges; and (iii) is not a revolver gun;

and,

(b) an air weapon (that is to say, an air rifle, air gun or air pistol which is not a *prohibited weapon* and which is not of a type declared by rules made by the Secretary of State under section 53 of the Firearms Act 1968 to be specially dangerous).

Ofcom does not include in this section an exception for a *shot gun* adapted to have no or a non-detachable magazine as this appears to us a level of technical complexity and detail beyond the capability of a U2U or search service to apply.

Prohibited weapon: For the meaning of "prohibited weapon" and associated terms see General Interpretation under the heading 'firearm'.

111. Sale etc of firearms or ammunition to person other than registered dealer – s. 3(2) Firearms Act 1968

Conduct (actus reus)

P sells or transfers to any other person in the United Kingdom, other than a registered firearms dealer, any **relevant firearm** or **relevant ammunition**, or a **shot gun**, unless that other produces a firearm certificate authorising him to purchase or acquire it or, as the case may be, his shot gun certificate, or shows that he is entitled to purchase or acquire it without holding a certificate.

State of mind (mens rea)

No statutory mens rea.

Defences

No statutory defences.

Definitions and interpretations

Firearm: See 'General interpretation.'

Relevant ammunition: Any ammunition for a **firearm**, except the following articles, namely —

(a) cartridges containing five or more shot, none of which exceeds .36 inch in diameter;

(b) ammunition for an air gun, air rifle or air pistol; and

(c) blank cartridges not more than one inch in diameter measured immediately in front of the rim or cannelure of the base of the cartridge.

Relevant firearm: Every firearm except —

(a) a shot gun within the meaning of the Firearms Act 1968, that is to say a smooth-bore gun (not being an air gun) which — (i) has a barrel not less than 24 inches in length and does not have any barrel with a bore exceeding 2 inches in diameter; (ii) either has no magazine or has a non-detachable magazine incapable of holding more than two cartridges; and (iii) is not a revolver gun;

and,

(b) an air weapon (that is to say, an air rifle, air gun or air pistol which is not a *prohibited weapon* and which is not of a type declared by rules made by the Secretary of State under section 53 of the Firearms Act 1968 to be specially dangerous).

Ofcom does not include in this section an exception for a *shot gun* adapted to have no or a non-detachable magazine as this appears to us a level of technical complexity and detail beyond the capability of a U2U or search service to apply.

Prohibited weapon: For the meaning of "prohibited weapon" and associated terms see General Interpretation under the heading 'firearm'.

112. Purchase, sale etc of prohibited weapons – s. 5(1), (1A) or (2A) Firearms Act 1968

Conduct (actus reus)

P, without authority, possesses, or purchases or acquires a **prohibited weapon.**

P manufactures any **category 1 prohibited weapon**, device or **ammunition**

P sells or transfers any **prohibited weapon** or **prohibited ammunition**

P has in his possession for sale or transfer any **prohibited weapon** or **prohibited ammunition**, or

P purchases or acquires for sale or transfer any **prohibited weapon** or **prohibited ammunition**

In limited cases, where P is authorised by a certificate under the Firearms Act 1968 to possess, purchase or acquire a weapon or ammunition subject to a condition that he does so only for the purpose of its being kept or exhibited as part of a collection, P does not need authority.

In the case of expanding ammunition or the missile for such ammunition, P does not need authority if P is entitled to have a slaughtering instrument and the ammunition for it in his possession; and the ammunition or missile in question is designed to be capable of being used with a slaughtering instrument.

State of mind (mens rea)

No statutory mens rea.

Defences

No statutory defences.

Definitions and interpretations

Prohibited weapon: For the meaning of "prohibited weapon" and associated terms see General Interpretation under the heading 'firearm'.

Authority: The "authority" referred to in this section is the authority given in writing by the Secretary of State (or for Scotland, Scottish Ministers).

113. Sale etc of firearms or ammunition to persons previously convicted of crime – s. 21(5) Firearms Act 1968; Article 63(8) of the Firearms (Northern Ireland) Order 2004

Conduct (actus reus)

P sells or transfers a **firearm** or **ammunition** to, or repairs, tests or proves a **firearm** or **ammunition** for, a person whom he knows or has reasonable ground for believing to be prohibited by s. 21(5) Firearms Act 1968 or Article 63(8) of the Firearms (Northern Ireland) Order 2004 from having a firearm or ammunition in his possession, being:

(a) persons previously convicted of crimes and sentenced to imprisonment or another custodial sentence for 3 years or more; or

(b) persons previously convicted of crimes and sentenced to imprisonment or another custodial sentence for 3 months or more but less than 3 years, but less than 5 years has passed since their release date; or

(c) persons subject to licence, order or other conditions that they not have a firearm or ammunition in their possession.

State of mind (mens rea)

No statutory mens rea.

Defences

No statutory defences.

Definitions and interpretations

Firearm and ammunition: For the meaning of **firearm** and associated terms see General Interpretation under the heading ‘firearm’.

114. Purchase etc of firearms or ammunition by person under 18 – s. 22(1) Firearms Act 1968

Conduct (actus reus)

P, under the age of eighteen, purchases or hires any **firearm** or **ammunition**.

State of mind (mens rea)

No statutory mens rea.

Defences

No statutory defences.

Definitions and interpretations

Firearm: See ‘General interpretation.’

115. Supplying firearms to minors – s. 24 Firearms Act 1968

Conduct (actus reus)

P sells or lets on hire any **firearm** or **ammunition** to a person under the age of eighteen.

P makes a gift of or lends any **relevant firearm** or ammunition to a person under the age of fourteen.

P parts with possession of any **relevant firearm** or ammunition to a person under the age of fourteen except where that person is entitled to possess it without holding a UK firearm certificate under a statutory exemption.

P makes a gift of a **shot gun** or ammunition to a person under the age of fifteen.

P makes a gift of an **air weapon** or ammunition to a person under the age of eighteen.

P parts with possession of an **air weapon** or ammunition to a person under the age of eighteen except where that person is not prohibited from having it with them because one of the exceptions under s.23 of the Firearms Act 1968 applies.

State of mind (mens rea)

No statutory mens rea.

Defences

P believed the other person to be of or over the relevant age; and had reasonable ground for that belief.

Definitions and interpretations

Firearm: See 'General interpretation.'

Relevant ammunition: Any ammunition for a **firearm**, except the following articles, namely —

(a) cartridges containing five or more shot, none of which exceeds .36 inch in diameter;

(b) ammunition for an air gun, air rifle or air pistol; and

(c) blank cartridges not more than one inch in diameter measured immediately in front of the rim or cannelure of the base of the cartridge.

Relevant firearm: Every firearm except —

(a) a shot gun within the meaning of the Firearms Act 1968, that is to say a smooth-bore gun (not being an air gun) which — (i) has a barrel not less than 24 inches in length and does not have any barrel with a bore exceeding 2 inches in diameter; (ii) either has no magazine or has a non-detachable magazine incapable of holding more than two cartridges; and (iii) is not a revolver gun;

and,

(a) an air weapon (that is to say, an air rifle, air gun or air pistol which is not a *prohibited weapon* and which is not of a type declared by rules made by the Secretary of State under section 53 of the Firearms Act 1968 to be specially dangerous).

Ofcom does not include in this section an exception for a *shot gun* adapted to have no or a non-detachable magazine as this appears to us a level of technical complexity and detail beyond the capability of a U2U or search service to apply.

Prohibited weapon: For the meaning of "prohibited weapon" and associated terms see General Interpretation under the heading 'firearm'.

116. Supplying imitation firearms to minors - section 24A Firearms Act 1968; Article 66A of the Firearms (Northern Ireland) Order 2004

Conduct (actus reus)

P, under the age of 18, purchases an imitation firearm.

P sells an imitation firearm to someone under the age of 18.

State of mind (mens rea)

No statutory mens rea.

Defences

For the ‘selling’ offence only: P believed the other person to be aged eighteen or over; and had reasonable ground for that belief.

Definitions and interpretations

Imitation firearm: Anything which has the appearance of being a *firearm* (other than a weapon of whatever description designed or adapted for the discharge of any noxious liquid, gas or other thing) whether or not it is capable of discharging any shot, bullet or other missile.

Firearm: See ‘General interpretation’.

117. Sale and letting on hire of crossbow – s.1 Crossbows Act 1987

Conduct (actus reus)

P sells or lets on hire a crossbow or a part of a crossbow to a person under the age of eighteen, without reasonable grounds to believe they are over the age of 18.

State of mind (mens rea)

P does not believe the person to be eighteen years of age or older.

Defences

P believes the person to whom the crossbow or part was sold or let on hire to be aged 18 or over, and either—

(a) P had taken reasonable steps to establish the purchaser or hirer's age, or

(b) no reasonable person could have suspected from the purchaser or hirer's appearance that the purchaser or hirer was under the age of 18.

P is to be treated as having taken reasonable steps to establish the purchaser or hirer's age if and only if—

(a) P was shown any of the documents mentioned below, and

(b) the document would have convinced a reasonable person.

Those documents are any document bearing to be—

(a) a passport,

(b) a UK driving licence,

(c) a European Union photocard driving licence, or

(d) a photographic identity card bearing the national Proof of Age Standards Scheme hologram (see Sale and Hire of Crossbows, Knives and Certain Other Articles to Children and Young Persons (Scotland) Order 2011 (SSI 2011/129)).

Definitions and interpretations

None applicable.

Further notes

- This does not apply to crossbows with a draw weight of less than 1.4 kilograms.

118. Purchase and hiring of crossbow – s.2 Crossbows Act 1987

Conduct (actus reus)

P, under the age of 18, buys or hires a crossbow or part of a crossbow.

State of mind (mens rea)

No statutory mens rea.

Defences

No statutory defence.

Definitions and interpretations

None applicable.

Further notes

- This does not apply to crossbows with a draw weight of less than 1.4 kilograms.

119. Sale etc of offensive weapons – s. 141(1) Criminal Justice Act 1988

Conduct (actus reus)

P manufactures, sells or hires or offers for sale or hire, exposes or has in their possession for the purpose of sale or hire, or lends or gives to any other person, an **offensive weapon**.

State of mind (mens rea)

No statutory mens rea.

Defences

P's conduct was only for the purposes of functions carried out on behalf of the Crown or of a visiting force; or

P's conduct was only for the purposes of making the weapon available to a **museum or gallery** which does not distribute profits; or

P's conduct was only for the purpose of (a) theatrical performances and of rehearsals for such performances; (b) the production of films; or (c) the production of television programmes; or

P's conduct relates to a weapon which was made before 1954 or was made at any other time according to traditional methods of making swords by hand; or

P's conduct was for the purpose only of making the weapon available for the purposes of the organisation and holding of an **historical re-enactment** or a **sporting activity** for which public liability **insurance** is held in relation to liabilities to **third parties** arising from or in connection with the organisation and holding of such an activity; or

P's conduct was for the purpose only of making the weapon available for the purposes of use in religious ceremonies for religious reasons; or

P's conduct relates to a curved sword and was for the purpose only of making the sword available for presentation by a Sikh to another person at a religious ceremony or other ceremonial event.

Definitions and interpretations

Historical re-enactment: Any presentation or other event held for the purpose of re-enacting an event from the past or of illustrating conduct from a particular time or period in the past.

Insurance: a contract of insurance or other arrangement made for the purpose of indemnifying a person or persons named in the contract or under the arrangement.

Museum or gallery: Includes any institution which has as its purpose, or one of its purposes, the preservation, display and interpretation of material of historical, artistic or scientific interest and gives the public access to it (s.141(11) Criminal Justice Act 1988).

Offensive weapon: See 'General Interpretation.'

Sporting activity: The practising of a sport which requires the use of a sword with a curved blade of 50 centimetres or over in length; the length of the blade shall be the straight line distance from the top of the handle to the tip of the blade.

Third parties: Includes participants in, and spectators of, a **historical re-enactment** or **sporting activity** and members of the public.

120. Import of offensive weapons – s. 141(4) Criminal Justice Act 1988

Conduct (actus reus)

P imports an **offensive weapon**.

State of mind (mens rea)

No statutory mens rea.

Defences

No statutory defences.

Definitions and interpretations

Offensive weapon: See 'General Interpretation.'

121. Sale of knives etc to persons under 18 – s. 141A Criminal Justice Act 1988 (England and Wales)

Conduct (actus reus)

P sells to a person under the age of eighteen years any knife, knife blade or razor blade, any axe and any other article which has a blade or which is sharply pointed and which is made or adapted for use for causing injury to the person, excluding an **offensive weapon**.

State of mind (mens rea)

No statutory mens rea.

Defences

(1) P took all reasonable precautions and exercised all due diligence to avoid committing the offence. Where P was not in the presence of the buyer at the time of the sale, this defence is only available if (2) applies.

(2) P was not in the presence of the purchaser or hirer and met all four conditions A to D below:

(a) P operated a system for checking that persons buying or hiring were not under 18, which was likely to prevent them from doing so.

(b) P dispatched the article in a package clearly marked to indicate that it contained an article with a blade or which was sharply pointed (as the case may be) and that, when finally delivered, it should only be delivered into the hands of a person aged 18 or over.

(c) P took all reasonable precautions and exercised all due diligence to ensure that, when finally delivered, the package would be delivered into the hands of a person aged 18 or over.

(d) P did not deliver the package, or arrange for its delivery, to a **locker.** (s.141B Criminal Justice Act 1988)

Definitions and interpretations

Locker: A lockable container to which the package was delivered with a view to its collection by the buyer, or a person acting on behalf of the buyer, in accordance with arrangements made between the accused and the buyer (s.141B Criminal Justice Act 1988).

Offensive weapon: See 'General Interpretation.'

122. Sale of knives etc to persons under 18 – s. 141A Criminal Justice Act 1988 (Scotland)

Conduct (actus reus)

P sells or lets on hire to a person under the age of eighteen years any knife, knife blade or razor blade, any axe, any sword; and any other article which has a blade or which is sharply pointed and which is made or adapted for use for causing injury to the person, except:

(a) when the weapon is an **offensive weapon**; or
(b) the person is aged 16 or over, the knife or blade is designed for domestic use, and the sale or hire does not take place remotely.

State of mind (mens rea)

No statutory mens rea.

Defences

(1) P was in the presence of the buyer or hirer and believed the person to whom the article was sold or let on hire to be of or above the relevant age, and either—

(a) P had taken reasonable steps to establish the buyer or hirer's age, or

(b) no reasonable person could have suspected from the purchaser or hirer's appearance that the purchaser or hirer was aged under the relevant age.

P is to be treated as having taken reasonable steps to establish the buyer or hirer's age if and only if—

(a) P was shown any of the documents mentioned below, and

(b) the document would have convinced a reasonable person.

Those documents are any document bearing to be—

(a) a passport,

(b) a UK driving licence,

(c) a European Union photocard driving licence, or

(d) a photographic identity card bearing the national Proof of Age Standards Scheme hologram (see Sale and Hire of Crossbows, Knives and Certain Other Articles to Children and Young Persons (Scotland) Order 2011 (SSI 2011/129)).

(2) P was not in the presence of the purchaser or hirer and met all four conditions A to D below:

(d) P operated a system for checking that persons buying or hiring were not under 18, which was likely to prevent them from doing so.

(e) P dispatched the article in a package clearly marked to indicate that it contained an article with a blade or which was sharply pointed (as the case may be) and that, when finally delivered, it should only be delivered into the hands of a person aged 18 or over.

(f) P took all reasonable precautions and exercised all due diligence to ensure that, when finally delivered, the package would be delivered into the hands of a person aged 18 or over.

(d) P did not deliver the package, or arrange for its delivery, to a **locker.** (s.141C Criminal Justice Act 1988)

Definitions and interpretations

Locker: A lockable container to which the package was delivered with a view to its collection by the recipient, or a person acting on behalf of the recipient, in accordance with arrangements made between the accused and the recipient (s 141C Criminal Justice Act 1988).

Offensive weapon: See ‘General Interpretation.’

123. Article 54 of the Criminal Justice (Northern Ireland) Order 1996

Conduct (actus reus)

P sells to a person under the age of eighteen years any knife, knife blade or razor blade, any axe; and any other article which has a blade or which is sharply pointed and which is made or adapted for use for causing injury to the person, except a flick knife, flick gun, gravity knife or **offensive weapon**,.State of mind (mens rea)

No statutory mens rea.

Defences

(1) P took all reasonable precautions and exercised all due diligence to avoid committing the offence.

124. Unlawful marketing of knives – s. 1 Knives Act 1997

Conduct (actus reus)

P markets a **knife** in a way which—

(a) indicates, or suggests, that it is suitable for combat; or

(b) is otherwise likely to stimulate or encourage **violent behaviour** involving the use of the **knife** as a weapon.

State of mind (mens rea)

No statutory mens rea.

Defences

(1) The **knife** was marketed—

(a) either

(i) for use by the armed forces of any country;

(ii) as an antique or curio;

and

(b) it was reasonable for the **knife** to be marketed in that way;

and

(c) there were no reasonable grounds for suspecting that a person into whose possession the **knife** might come in consequence of the way in which it was marketed would use it for an unlawful purpose.

(2) P did not know or suspect, and had no reasonable grounds for suspecting, that the way in which the **knife** was marketed—

(a) amounted to an indication or suggestion that the knife was **suitable for combat**; or

(b) was likely to stimulate or encourage **violent behaviour** involving the use of the **knife** as a weapon.

(3) P took all reasonable precautions and exercised all due diligence to avoid committing the offence.

Definitions and interpretations

Knife: An instrument which has a blade or is sharply pointed.

Markets a knife: P 'markets' a knife if—(a) they sell or hire it; (b) they offer, or expose, it for sale or hire; or (c) they have it in their possession for the purpose of sale or hire.

Suitable for combat: Suitable for use as a weapon for inflicting injury on a person or causing a person to fear injury (s.10 Knives Act 1997).

Violent behaviour: An unlawful act inflicting injury on a person or causing a person to fear injury (s.10 Knives Act 1997).

Further notes

- An indication or suggestion that a knife is suitable for combat may, in particular, be given or made by a name or description— (a) applied to the knife; (b) on the knife or on any packaging in which it is contained; or (c) included in any advertisement which, expressly or by implication, relates to the knife.

125. Publication of material in connection with marketing of knives – s. 2 Knives Act 1997

Conduct (actus reus)

P publishes any written, pictorial or other material in connection with the marketing of any **knife** and that material—

(a) indicates, or suggests, that the **knife** is **suitable for combat**; or

(b) is otherwise likely to stimulate or encourage **violent behaviour** involving the use of the **knife** as a weapon.

State of mind (mens rea)

No statutory mens rea.

Defences

(1) The **knife** was marketed—

(a) either

(i) for use by the armed forces of any country;

(ii) as an antique or curio;

and

(b) it was reasonable for the **knife** to be marketed in that way;

and

(c) there were no reasonable grounds for suspecting that a person into whose possession the **knife** might come in consequence of the way in which it was marketed would use it for an unlawful purpose.

(2) P did not know or suspect, and had no reasonable grounds for suspecting, that the way in which the **knife** was marketed—

(a) amounted to an indication or suggestion that the knife was **suitable for combat**; or

(b) was likely to stimulate or encourage **violent behaviour** involving the use of the **knife** as a weapon.

(3) P took all reasonable precautions and exercised all due diligence to avoid committing the offence.

Definitions and interpretations

Markets a knife: P 'markets' a knife if—(a) they sell or hire it; (b) they offer, or expose, it for sale or hire; or (c) they have it in their possession for the purpose of sale or hire.

Suitable for combat: Suitable for use as a weapon for inflicting injury on a person or causing a person to fear injury (s.10 Knives Act 1997).

Violent behaviour: An unlawful act inflicting injury on a person or causing a person to fear injury (s.10 Knives Act 1997.

Further notes

- An indication or suggestion that a knife is suitable for combat may, in particular, be given or made by a name or description— (a) applied to the knife; (b) on the knife or on any packaging in which it is contained; or (c) included in any advertisement which, expressly or by implication, relates to the knife.

126. Sale etc of firearms or ammunition without certificate - Article 24 Firearms (Northern Ireland) Order 2004

Conduct (actus reus)

P, by way of trade or business—

(a) manufactures, sells, transfers, repairs, tests or proves any **firearm** or **ammunition**; or
(b) exposes for sale or transfer, or has in his possession for sale, transfer, repair, test or proof any **firearm** or **ammunition**,

without holding a firearms dealer's certificate or otherwise than as authorised by a firearms dealer's certificate.

There are exceptions for auctioneers and for holders of occasional permits.

State of mind (mens rea)

No statutory mens rea.

Defences

No statutory defences.

Definitions and interpretations

Firearm and ammunition: For the meaning of firearm and associated terms see General Interpretation under the heading 'firearm'**,** subject to the following differences:

- The definition of **ammunition** excludes blank cartridges which are not more than 25.4 millimetres in diameter measured immediately in front of the rim or cannelure of the base of the cartridge.
- In the definition of **prohibited weapon:**
    - The following is not included: any firearm which either has a barrel less than 30 centimetres in length or is less than 60 centimetres in length overall, other than an air weapon, a muzzle-loading gun or a firearm designed as signalling apparatus.
    - 'Any self-loading or pump-action smooth-bore gun which is not an air weapon or chambered for .22 rim-fire cartridges and either has a barrel less than 24 inches in length or is less than 40 inches in length overall', should be replaced by a definition in which the dimensions of the barrel are different, i.e. 'Any self-loading or pump-action smooth-bore gun which is not an air weapon or chambered for .22 rim-fire cartridges and either has a barrel less than 60.96 centimetres in length or is less than 102 centimetres in length overall'
    - Bump stocks fall within the definition if capable of being added to any firearm, not just a lethal barrelled weapon.

Relevant component part: Also includes any action, any part of a firearm which directly bears the pressure caused by firing and any magazine.

127. Sale etc of firearms or ammunition to person without certificate etc – Article 37(1) Firearms (Northern Ireland) Order 2004

Conduct (actus reus)

P sells or transfers to any other person in the United Kingdom, other than the holder of a firearms dealer's certificate, any **firearm** or **ammunition**, unless that other person—

(a) produces a firearm certificate authorising him to purchase or acquire it; or
(b) shows that he is entitled by the Firearms (Northern Ireland) Order 2004 to purchase or acquire it without holding a certificate.

Exemptions exist for: registered firearms dealers, auctioneers, carriers and warehousemen, animal slaughter, shops and aircraft, supervised sporting purposes, athletics meetings, firearms clubs, recreational facilities, air guns and ammunition, rifles on private premises where the owner of the premises is present and holds a certificate, shotguns on private premises where the owner of the premises is present, shotguns on premises authorised by a Chief Constable for shooting at artificial targets, theatre and cinema.

State of mind (mens rea)

No statutory mens rea.

Defences

No statutory defences.

Definitions and interpretations

Firearm and ammunition: For the meaning of firearm and associated terms see General Interpretation under the heading 'firearm'**,** subject to the following differences:

- The definition of **ammunition** excludes blank cartridges which are not more than 25.4 millimetres in diameter measured immediately in front of the rim or cannelure of the base of the cartridge.
- In the definition of **prohibited weapon:**
    - The following is not included: any firearm which either has a barrel less than 30 centimetres in length or is less than 60 centimetres in length overall, other than an air weapon, a muzzle-loading gun or a firearm designed as signalling apparatus.
    - 'Any self-loading or pump-action smooth-bore gun which is not an air weapon or chambered for .22 rim-fire cartridges and either has a barrel less than 24 inches in length or is less than 40 inches in length overall', should be replaced by a definition in which the dimensions of the barrel are different, i.e. 'Any self-loading or pump-action smooth-bore gun which is not an air weapon or chambered for .22 rim-fire cartridges and either has a barrel less than 60.96 centimetres in length or is less than 102 centimetres in length overall'
    - Bump stocks fall within the definition if capable of being added to any firearm, not just a lethal barrelled weapon.

Relevant component part: Also includes any action, any part of a firearm which directly bears the pressure caused by firing and any magazine.

128. Purchase, sale etc of prohibited weapons - Article 45(1) or (2) of the Firearms (Northern Ireland) Order 2004

Conduct (actus reus)

P has in his possession, or purchases or acquires, or manufactures, sells or transfers a **Category 1 prohibited weapon**.

P without the authority of the Secretary of State has in his possession, or purchases or acquires, or sells or transfers a **Category 2 prohibited weapon**.

There are exceptions for **Category 1 prohibited weapons** for those holding firearms certificates in connection with the treatment of animals,

There are exceptions for **Category 2 prohibited weapons** for those holding firearms certificates for exhibition as part of a collection, for recognised collectors of firearms or a body concerned in the cultural or historical aspects of weapons, for expanding ammunition where authorised by certificate or for use in slaughtering animals, for those authorised by certificate, and for registered firearms dealers.

State of mind (mens rea)

No statutory mens rea.

Defences

No statutory defences.

Definitions and interpretations

Firearm and ammunition: For the meaning of firearm and associated terms see General Interpretation under the heading 'firearm'**,** subject to the following differences:

- The definition of **ammunition** excludes blank cartridges which are not more than 25.4 millimetres in diameter measured immediately in front of the rim or cannelure of the base of the cartridge.
- In the definition of **prohibited weapon:**
    - The following is not included: any firearm which either has a barrel less than 30 centimetres in length or is less than 60 centimetres in length overall, other than an air weapon, a muzzle-loading gun or a firearm designed as signalling apparatus.

- ‘Any self-loading or pump-action smooth-bore gun which is not an air weapon or chambered for .22 rim-fire cartridges and either has a barrel less than 24 inches in length or is less than 40 inches in length overall’, should be replaced by a definition in which the dimensions of the barrel are different, i.e. ‘Any self-loading or pump-action smooth-bore gun which is not an air weapon or chambered for .22 rim-fire cartridges and either has a barrel less than 60.96 centimetres in length or is less than 102 centimetres in length overall’
- Bump stocks fall within the definition if capable of being added to any firearm, not just a lethal barrelled weapon.

Relevant component part: Also includes any action, any part of a firearm which directly bears the pressure caused by firing and any magazine.

129. Sale etc of realistic imitation firearms – s. 36(1)(c) or (d) Violent Crime Reduction Act 2006

Conduct (actus reus)

P sells a **realistic imitation firearm**; or brings a **realistic imitation firearm** into Great Britain or causes one to be brought into Great Britain.

State of mind (mens rea)

No statutory mens rea.

Defences

(1) P’s conduct was for the purpose only of making the imitation firearm in question available for one or more of the following purposes:

(a) the purposes of a museum or gallery;

(b) the purposes of theatrical performances and of rehearsals for such performances;

(c) the production of films;

(d) the production of television programmes;

(e) the organisation and holding of historical re-enactments organised and held by persons specified or described for the purposes of this section by regulations made by the Secretary of State;

(f) the purposes of functions that a person has in his capacity as a person in the service of Her Majesty.

(2) P's conduct in bringing a realistic imitation firearm into Great Britain or causing one to be brought into Great Britain—

(a) was in the course of carrying on any trade or business; and

(b) was for the purpose of making the imitation firearm in question available to be modified in a way which would result in its ceasing to be a realistic imitation firearm.

(3) P's conduct was for the purpose only of making the imitation firearm in question available for one or more of the following purposes:

(a) the organisation and holding of **permitted activities** for which public liability **insurance** is held in relation to liabilities to **third parties** arising from or in connection with the organisation and holding of those activities;

(b) the purposes of display at a **permitted event**. (Reg 3 of the Violent Crime Reduction Act 2006 (Realistic Imitation Firearms) Regulations 2007 (SI 2007/2606).

Definitions and interpretations

Insurance: Means a contract of insurance or other arrangement made for the purpose of indemnifying a person or persons named in the contract or under the arrangement (Reg 2 of the Violent Crime Reduction Act 2006 (Realistic Imitation Firearms) Regulations 2007 (SI 2007/2606)).

Permitted activities: The acting out of military or law enforcement scenarios for the purposes of recreation; (Reg 2 of the Violent Crime Reduction Act 2006 (Realistic Imitation Firearms) Regulations 2007 (SI 2007/2606)).

Permitted event: A commercial event at which firearms or realistic imitation firearms (or both) are offered for sale or displayed; (Reg 2 of the Violent Crime Reduction Act 2006 (Realistic Imitation Firearms) Regulations 2007 (SI 2007/2606)).

Realistic imitation firearm: An imitation firearm which —

(a) has an appearance that is so realistic as to make it indistinguishable, for all practical purposes, from a real firearm; and

(b) is neither a de-activated firearm nor itself an antique.

An imitation firearm is not to be regarded as distinguishable from a real firearm for any practical purpose if it could be so distinguished only —

(a) by an expert;

(b) on a close examination; or

(c) as a result of an attempt to load or to fire it.

In determining whether an imitation firearm is distinguishable from a real firearm—

(a) the matters that must be taken into account include any differences between the size, shape and principal colour of the imitation firearm and the size, shape and colour in which the real firearm is manufactured; and

(b) the imitation is to be regarded as distinguishable if its size, shape or principal colour is unrealistic for a real firearm.

The size of an imitation firearm is to be regarded as unrealistic for a real firearm only if the imitation firearm has dimensions that are less than a height of 38 millimetres and a length of 70 millimetres. (Reg 6(2) of the Violent Crime Reduction Act 2006 (Realistic Imitation Firearms) Regulations 2007 (SI 2007/2606))

A colour is to be regarded as unrealistic for a real firearm only the imitation firearm is made of transparent material or if the colour is bright red; bright orange; bright yellow; bright green; bright pink; bright purple; or bright blue. (Reg 7 of the Violent Crime Reduction Act 2006 (Realistic Imitation Firearms) Regulations 2007 (SI 2007/2606))

Third parties: Includes participants in, and spectators of, **permitted activities** and historical re-enactments (as the case may be) and members of the public. (Reg 2 of the Violent Crime Reduction Act 2006 (Realistic Imitation Firearms) Regulations 2007 (SI 2007/2606)).

130. Requirement for air weapon certificate – s. 2 Air Weapons and Licensing (Scotland) Act 2015

Conduct (actus reus)

P uses, possesses, purchases or acquires, an air weapon without holding an **air weapon** certificate, unless they are exempt from needing one.

Exemptions exist for: approved air weapon clubs, registered firearms dealers and their employees, auctioneers, carriers and warehouse keepers, artistic performers, cadet corps, bodies corporate where an officer of the body corporate holds a certificate, holders of police permits, holders of visitor permits, authorised events, supervised use on private land, recreational shooting facilities, museums, ships of which the air weapon is part of the equipment, purchase by an over 18 year old for delivery outside the UK, or in the UK to a registered firearms dealer, public servants carrying out permitted duties, service premises of Her Majesty's armed forces, premises of Ministry of Defence police.

State of mind (mens rea)

No statutory mens rea.

Defences

No statutory defences.

Definitions and interpretations

Air weapon: An air rifle, air gun or air pistol which is not a *prohibited weapon* and which is not of a type declared by rules made by the Secretary of State to be specially dangerous). In addition, the expression includes —

(a) the component parts of an air weapon (within the meaning of section 1(3)(b) of the 1968 Act), and

(b) any accessory to such a weapon designed or adapted to diminish the noise caused by discharging the weapon.

But the expression does not include—

(a) an air weapon which is not a firearm, or

(b) an air weapon — (i) which is not capable of discharging a missile with kinetic energy of more than one joule as measured at the muzzle of the weapon, or (ii) that is designed to be used only when submerged in water, or

(c) the component parts of an air weapon described in paragraph (a) or (b).

Ofcom does not include in this section an exception for a *shot gun* adapted to have no or a non-detachable magazine as this appears to us a level of technical complexity and detail beyond the capability of a U2U or search service to apply.

Firearm, prohibited weapon and shotgun: For the meaning of **firearm, prohibited weapon** and associated terms see General Interpretation under the heading '**firearm'**.

131. Restrictions on sale etc of air weapons – s. 24 Air Weapons and Licensing (Scotland) Act 2015

Conduct (actus reus)

P, not being a registered firearms dealer, by way of a trade or business—

(a) manufactures, sells, transfers, repairs or tests an **air weapon**,

(b) exposes an **air weapon** for sale or transfer, or

(c) possesses an **air weapon** for the purposes of its sale, transfer, repair or testing;

or

P sells or transfers an **air weapon** to another person unless —

(a) that other person is a registered firearms dealer,

(b) that other person holds an air weapon certificate (without a condition attached to it preventing them from purchasing or acquiring an air weapon) and shows it to P,

(c) P is a registered firearms dealer and is satisfied that—

(i) in a case where the other person is an individual, the other person is aged 18 years or more, and

(ii) the air weapon is to be delivered to a place out with Great Britain, or to a registered firearms dealer in England or Wales, without first coming into the other person's possession, or

(d) the other person provides evidence to P that the other person is otherwise entitled to purchase or acquire an air weapon without holding an air weapon certificate.

or

P manufactures, repairs or tests an air weapon for another person unless—

(a) that other person is a registered firearms dealer,

(b) that other person holds an air weapon certificate and shows it to P, or

(c) that other person provides evidence to P that the other person is otherwise entitled to possess an air weapon without holding an air weapon certificate.

Exemptions exists where P is an individual who holds a police permit to sell (or expose for sale) an air weapon, in the course of the holder's business, if the permit authorises the sale; where the transfer is a loan to someone who is exempt, for public servants carrying out public functions.

State of mind (mens rea)

No statutory mens rea.

Defences

No statutory defences.

Definitions and interpretations

Air weapon: An air rifle, air gun or air pistol which is not a *prohibited weapon* and which is not of a type declared by rules made by the Secretary of State to be specially dangerous). In addition, the expression includes —

(a) the component parts of an air weapon (within the meaning of section 1(3)(b) of the 1968 Act), and

(b) any accessory to such a weapon designed or adapted to diminish the noise caused by discharging the weapon.

But the expression does not include—

(a) an air weapon which is not a firearm, or

(b) an air weapon —

(i) which is not capable of discharging a missile with kinetic energy of more than one joule as measured at the muzzle of the weapon, or (ii) that is designed to be used only when submerged in water, or

(c) the component parts of an air weapon described in paragraph (a) or (b).

Ofcom does not include in this section an exception for a *shot gun* adapted to have no or a non-detachable magazine as this appears to us a level of technical complexity and detail beyond the capability of a U2U or search service to apply.

Firearm, prohibited weapon and shotgun: For the meaning of **firearm, prohibited weapon** and associated terms see General Interpretation under the heading '**firearm'**.

A10. Sexual exploitation of adults

132. Causing or inciting prostitution for gain – s. 52 Sexual Offences Act 2003 and Article 62 Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2))

Conduct (actus reus)

P **causes** or incites another person to become a **prostitute** in any part of the world.

State of mind (mens rea)

P intended to **cause** or incite **prostitution** for, or in the expectation of, **gain** for themselves or a third person.

Defences

No statutory defences.

Definitions and interpretations

Cause: Where a criminal offence requires the prosecution to prove that the defendant "caused" another to commit an offence is that the prosecution must prove that the defendant contemplated or desired that the act would ensue and it was done on his express or implied authority or as a result of him exercising control or influence over the other person: *AG of Hong Kong v Tse Hung-lit* [1986] AC 876. However, s.52 of the Sexual Offences Act 2003 imports an additional element, that D must "intentionally" cause or incite and must also have the expectation of a gain for himself or another.

Gain: Means —

(a) any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount, or

(b) the goodwill of any person which is or appears likely, in time, to bring financial advantage (s.54(1) of the Sexual Offences Act 2003).

Payment: Any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount (s.54(3) of the Sexual Offences Act 2003).

Prostitute, prostitution: A person (A) who, on at least one occasion and whether or not compelled to do so, offers or provides sexual services to another person in return for ***payment*** or a promise of ***payment*** to A or a third person. "Prostitution" is to be interpreted accordingly (s.54(2) of the Sexual Offences Act 2003).

Sexual: Penetration, touching or any other activity is sexual if a reasonable person would consider that —

(a) whatever its circumstances or any person's purpose in relation to it, it is because of its nature sexual, or

(b) because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both) it is sexual (s.78 of the Sexual Offences Act 2003).

Further notes

- It is not necessary that any person has in fact been caused to become a prostitute. Even if they have not, the attempt would still constitute incitement.
- The offence is aimed at individuals who cause prostitution through "fraud or persuasion:" (*Christian (*1913) 23 Cox CC 541).
- The offence can only be committed if a person is caused or incited to "become" a prostitute. Therefore it cannot be committed if that other person has already been involved in prostitution (*R v Ubolcharoen* [2009] EWCA Crim 3263). Advertisements aimed at people already involved in prostitution are therefore unlikely to be illegal content.
- For the avoidance of doubt, the definition and interpretation notes set out above apply equally to the offence in Article 62 of the Sexual Offences (Northern Ireland) Order 2008.

133. Controlling prostitution for gain – s. 53 Sexual offences Act 2003 and Article 63 Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2))

Conduct (actus reus)

P controls any of the activities of another person relating to that person's **prostitution** in any part of the world.

State of mind (mens rea)

P intends to control such activities, for, or in the expectation of, **gain** for themselves or a third person.

Defences

No statutory defences.

Definitions and interpretations

Gain: Means —

(a) any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount, or

(b) the goodwill of any person which is or appears likely, in time, to bring financial advantage (s.54(1) of the Sexual Offences Act 2003).

Payment: Any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount (s.54(3) of the Sexual Offences Act 2003).

Prostitute, prostitution: A person (A) who, on at least one occasion and whether or not compelled to do so, offers or provides sexual services to another person in return for ***payment*** or a promise of ***payment*** to A or a third person. "Prostitution" is to be interpreted accordingly (s.54(2) of the Sexual Offences Act 2003).

Sexual: Penetration, touching or any other activity is sexual if a reasonable person would consider that —

(a) whatever its circumstances or any person's purpose in relation to it, it is because of its nature sexual, or

(b) because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both) it is sexual (s.78 of the Sexual Offences Act 2003).

Further notes

- It must be proved that any advertising website is operated by a different person from the prostitute being advertised (even if that person is another prostitute). If a single prostitute operates a website advertising their own services, this would be insufficient to constitute the offence.
- There is no requirement for the person who has done as instructed to have acted without free will: *R v Massey* [2008] 1 Cr App R 28 CA.

- For the avoidance of doubt, the definition and interpretation notes set out above apply equally to the offence in Article 63 of the Sexual Offences (Northern Ireland) Order 2008.

A11. Adult image-based sexual offences

134. Possession of extreme pornographic images – s. 63 Criminal Justice and Immigration Act 2008

Conduct (actus reus)

P is in possession of an **extreme pornographic image**.

State of mind (mens rea)

P has knowledge that they have the image in their possession, but it is not necessary that they have knowledge that it was an **extreme pornographic image**: *R v Pin Chen Cheung* [2009] EWCA Crim 2965.

Defences

It is a defence for P to prove that they:

(a) Had a legitimate reason for being in possession of the **image** concerned (s.65(2)(a) of the Criminal Justice and Immigration Act 2008);

(b) Had not seen the **image** concerned and did not know, nor had any cause to suspect, it to be an **extreme pornographic image** (s.65(2)(b) of the Criminal Justice and Immigration Act 2008); or

(c) Were sent the **image** concerned without any prior request having been made by on behalf of P and did not keep it for an unreasonable time (s.65(2)(c) of the Criminal Justice and Immigration Act 2008); or

(d) (i) Directly participated in the act or any of the acts portrayed; AND (ii) that the act or acts did not involve the infliction of any **non-consensual harm** on any person; AND (iii) if the **image** portrays an act which involves sexual interference with a human corpse (i.e. an act within s.63(7)(c) of the Criminal Justice and Immigration Act 2008), that what is portrayed as a human corpse was not in fact a corpse; AND (iv) if the **image** portrays an act which involves non-consensual penetration (i.e. within s.63(7A) of the Criminal Justice and Immigration Act 2008), that what is portrayed as non-consensual penetration was in fact consensual (s.66 of the Criminal Justice and Immigration Act 2008).

Also:

(e) The offence does not apply to **excluded images** (s.64 of the Criminal Justice and Immigration Act 2008).

Definitions and interpretations

Excluded image: An **image** which forms part of a series of images contained in a recording of a classified work. But such an **image** is not an excluded image if it is contained in a recording of an extract (including an extract consisting of a single image) from a classified work and it is of such a nature that it must reasonably be assumed to have been extracted (whether with or without **images**) solely or principally for the purpose of sexual arousal. A classified work is a video work in respect of which a classification certificate has been issued by the British Board of Film Classification (s.64 of the Criminal Justice and Immigration Act 2008).

Extreme pornographic image: An image which is both **pornographic** and an **extreme image** (s.63(2) of the Criminal Justice and Immigration Act 2008).

Extreme image: An **image** which is grossly offensive, disgusting or otherwise of an obscene character and which portrays, in an explicit and realistic way: an act which threatens a person's life; an act which results, or is likely to result, in serious injury to a person's anus, breasts or genitals; an act which involves sexual interference with a human corpse; a person performing an act of intercourse or oral sex with an animal (whether dead or alive); an act which involves the non-consensual penetration of a person's vagina, anus or mouth by another with the other person's penis; or an act which involves the non-consensual sexual penetration of a person's vagina or anus by another with a part of the other person's body or anything else; and a reasonable person looking at the image would think that any persons or animal portrayed in the image were real. References to a part of the body include references to a part surgically constructed (in particular through gender reassignment surgery) (s.63(5A), (6), (7), (7A) and (9) of the Criminal Justice and Immigration Act 2008)

Image: A moving or still image (produced by any means) or data (stored by any means) which is capable of conversion into such an image (s.63(8) of the Criminal Justice and Immigration Act 2008).

Pornographic: An image which is of such a nature that it must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal. Where (as found in P's possession) an image forms part of a series of images, the question whether the image is of such a nature is to be determined by reference to the image itself and, if the series of images is such as to be capable of providing context for the image, the context in which it occurs in the series of images (s.63(3) and (4) of the Criminal Justice and Immigration Act 2008).

Further notes

- D bears the burden of establishing the "direct participation" defence set out in point (d) under "Defences" above: *R v Pin Chen Cheung* [2009] EWCA Crim 2963.

135. Disclosing, or threatening to disclose, an intimate photograph or film – s. 2 Abusive Behaviour and Sexual Harm (Scotland) Act 2016

Conduct (actus reus)

P —

(a) **discloses**, or threatens to **disclose**, a **photograph** or **film** which shows, or appears to show, another person (B) in an **intimate situation;** and

(b) the photograph or film has not previously been **disclosed** to the public at large, or any section of the public, by B or with B's **consent**.

State of mind (mens rea)

By **disclosing** the photograph or film, P —

(a) intends to cause B fear, alarm or distress; or

(b) is **reckless** as to whether B will be caused fear, alarm or distress.

Defences

P has a defence if any of the following facts or matters is established:

(a) B **consented** to the **photograph** or **film** being **disclosed**;

(b) P reasonably believed that B **consented** to the **photograph** or **film** being disclosed;

(c) P reasonably believed that **disclosure** of the **photograph** or **film** was necessary for the purposes of the prevention, detection, investigation or prosecution of crime;

(d) P reasonably believed that **disclosure** of the **photograph** or **film** was in the public interest; or

(e) B was in the **intimate situation** shown in the **photograph** or **film** and was not in the **intimate situation** as a result of a deliberate act of another person to which they did not agree; and when B was in the **intimate situation** they were in a place to which members of the public had access (whether or not on payment of a fee) and members of the public were present

(s.2(3) and (5) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016).

Definitions and interpretations

Consent: Consent to a **photograph** or **film** being **disclosed** may be consent which is specific to the particular disclosure or (as the case may be) the particular threatened disclosure, or consent to disclosure generally where that consent covers the particular disclosure or (as the case may be) the particular threatened disclosure (s.2(4) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016).

Disclose: A **photograph** or **film** is disclosed if it, or any data or other thing which is capable of being converted into it, is given, shown or made available to a person other than B (s.2(2) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016.

Extreme pornographic image: An image which is both **pornographic** and an **extreme image** (s.63(2) of the Criminal Justice and Immigration Act 2008).

Intimate situation: A person is in an "intimate situation" if —

(a) the person is engaging or participating in or present during an act which a reasonable person would consider to be a sexual act, and which is not of a kind ordinarily done in public; or

(b) the person's genitals, buttocks, or breasts are exposed or covered only with underwear

(s.3(1) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016).

Photograph: A still image in any form, whether or not the image has been altered in any way, that was originally captured by photography, including a copy of the image (s.3(2) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016).

Reckless (Scot): See 'General Interpretation.'

Further notes

- For the purposes of the defences, a fact or matter is established if sufficient evidence is adduced to raise an issue as to whether that is the case and it is not proved beyond reasonable doubt that it is not the case (s.2(6) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016).

136. Sharing or threatening to share intimate photograph or film – s. 66B Sexual Offences Act 2003

Conduct (actus reus)

(1) P —

(a) **Shares** a **photograph** or **film** which shows, or appears to show, another person (B) in an **intimate state**; and

(b) B does not **consent** to the sharing of the **photograph** or **film**.

(2) P —

(a) **Shares** a **photograph** or **film** which shows, or appears to show, another person (B) in an **intimate state**; and

(b) B does not **consent** to the sharing of the **photograph** or **film**.

(3) P —

(a) **Shares** a **photograph** or **film** which shows, or appears to show, another person (B) in an **intimate state**; and

(b) B does not **consent** to the sharing of the **photograph** or **film**.

(4) P —

(c) Threatens to **share** a **photograph** or **film** which shows, or appears to show, another person (B) in an **intimate state**.

State of mind (mens rea)

In the case of (1): P intends to **share** the **photograph** or **film** and does not **reasonably believe** that B **consents**.

In the case of (2): P intends to **share** the **photograph** or **film** and does so with the intention of causing B alarm, distress or humiliation.

In the case of (3): P intends to **share** the **photograph** or **film** for the purpose of P or another person obtaining sexual gratification, and P does not **reasonably believe** that B **consents**.

In the case of (4): P carries out the threat with the intention that B or another person who knows B will fear that the threat will be carried out, or is **reckless** as to whether B or another person who knows B will fear that the threat will be carried out.

Defences

In the case of (1):

(a) It is a defence for P to prove that they had a reasonable excuse for sharing the **photograph** or **film** (s.66B(8) of the Sexual Offences Act 2003).

(b) P does not commit an offence if:

(i) B is a person under 16;

(ii) B lacks, or P reasonably believes that B lacks, capacity to **consent** to the sharing of the photograph or film; and

(iii) the **photograph** or **film** is shared with a healthcare professional acting in that capacity, or otherwise in connection with the care or treatment of B by a healthcare professional

(s.66C(4) of the Sexual Offences Act 2003).

(c) P does not commit an offence if the **photograph** or **film** shows, or appears to show, a child in an **intimate state** and the **photograph** or **film** is of a kind ordinarily shared between family and friends (s.66C(5) of the Sexual Offences Act 2003).

In the case of (1), (2) and (3):

(a) P does not commit an offence if the **photograph** or **film**:

(i) 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);

(ii) B had no **reasonable expectation of privacy** from the **photograph** or **film** being taken; and

(iii) B was, or P reasonably believes that B was, in the **intimate state** voluntarily

(s.66C(1) of the Sexual Offences Act 2003).

(b) P does not commit an offence if:

(i) the **photograph** or **film** had, or P reasonably believes that the **photograph** or **film** had, been previously publicly shared; and

(ii) B had, or P reasonably believes that B had, **consented** to the previous sharing

(s.66C(3) of the Sexual Offences Act 2003).

In the case of (4): P does not commit an offence if, by reason of any of the matters set out above, they would not commit an offence under cases (1), (2) or (3) by sharing the **photograph** or **film** in the circumstances conveyed by the threat (s.66C(6) of the Sexual Offences Act 2003).

Definitions and interpretations

Consent: Includes general consent covering the particular act of **sharing** as well as specific consent to the particular act of **sharing** (s.66B(6)(a) of the Sexual Offences Act 2003).

Exposed: A 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)

(s.66D(6) of the Sexual Offences Act 2003).

Film: A moving image. References to a film also include—

(a) an image, whether made by computer graphics or in any other way, which appears to be a film;

(b) a copy of a film or image within paragraph (a); and

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

(ss.66A(4), (5) and 66D(4) of the Sexual Offences Act 2003).

Intimate state: Except where a **photograph** or **film** shows or appears to show something other than breastfeeding (which includes the rearranging of clothing in the course of preparing to breastfeed or having just finished breastfeeding) that is of a kind ordinarily seen in public, 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

(s.66D(5), (8) and (9) of the Sexual Offences Act 2003).

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 (s.66D(7) of the Sexual Offences Act 2003).

Photograph: Includes the negative as well as the positive version. References to a photograph also include—

(a) an image, whether made by computer graphics or in any other way, which appears to be a film;

(b) a copy of a film or image within paragraph (a); and

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

(ss.66A(3), (5) and 66D(4) of the Sexual Offences Act 2003).

Reasonable belief: Whether a belief is reasonable is to be determined having regard to all the circumstances including any steps P has taken to ascertain whether B consents (s.66B(6)(b) of the Sexual Offences Act 2003).

Reasonable expectation of privacy: 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 (s.66C(2) of the Sexual Offences Act 2003).

Reckless: See 'General Interpretation.'

Share: A person "shares" something if the person, by any means, gives or shows it to another person or makes it available to another person (s.66D(2) of the Sexual Offences Act 2003).

Further notes

- In the case of the offence at (4), it is not necessary 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

  (s.66B(7) of the Sexual Offences Act 2003).

- 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 (s.66D(3) of the Sexual Offences Act 2003).

137. Sending etc photograph or film of genitals – s. 66A Sexual Offences Act 2003

Conduct (actus reus)

P intentionally **sends** or **gives** a **photograph** or **film** of any person's genitals to another person (B).

State of mind (mens rea)

P —

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

(b) 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.

Defences

No statutory defences

Definitions and interpretations

Film: A moving image. References to a film also include —

(a) an image, whether made by computer graphics or in any other way, which appears to be a film;

(b) a copy of a film or image within paragraph (a); and

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

(s.66A(4) and (5) of the Sexual Offences Act 2003).

Photograph: Includes the negative as well as the positive version. References to a photograph also include —

(a) an image, whether made by computer graphics or in any other way, which appears to be a photograph;

(b) a copy of a photograph or image within paragraph (a); and

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

(s.66A(3) and (5) of the Sexual Offences Act 2003).

Reckless: See 'General Interpretation'.

Sending / giving: 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

(s.66A(2) of the Sexual Offences Act 2003).

A12. Human trafficking

138. Human trafficking - s. 2 of the Modern Slavery Act 2015

Conduct (actus reus)

P arrange or facilitate the **travel** of another person ("V") with a view to V being **exploited**.

State of mind (mens rea)

P must intend to **exploit** V (in any part of the world) during or after the **travel**, or

P knows or ought to know that another person is likely to exploit V (in any part of the world) during or after the **travel**.

Defences

No statutory defences.

Definitions and interpretations

Travel: Means —

(a) arriving in, or entering, any country,

(b) departing from any country,

(c) travelling within any country.

Exploitation: For the purposes of this offence a person is exploited only if one or more of the following subsections apply in relation to the person.

Slavery, servitude and forced or compulsory labour: The person is the victim of behaviour—

(a) which involves the commission of an offence under section 1, or

(b) which would involve the commission of an offence under that section if it took place in England and Wales (s.3(2) Modern Slavery Act 2015).

Sexual exploitation: Something is done to or in respect of the person—

(a) which involves the commission of an offence under —

(i) section 1(1)(a) of the Protection of Children Act 1978 (indecent photographs of children), or

(ii) Part 1 of the Sexual Offences Act 2003 (sexual offences), as it has effect in England and Wales, or

(b) which would involve the commission of such an offence if it were done in England and Wales (s.3(3) Modern Slavery Act 2015).

Removal of organs etc: The person is encouraged, required or expected to do anything—

(a) which involves the commission, by him or her or another person, of an offence under section 32 or 33 of the Human Tissue Act 2004 (prohibition of commercial dealings in organs and restrictions on use of live donors) as it has effect in England and Wales, or

(b) which would involve the commission of such an offence, by him or her or another person, if it were done in England and Wales (s.3(4) Modern Slavery Act 2015).

Securing services etc by force, threats or deception: The person is subjected to force, threats or deception designed to induce him or her—

(a) to provide services of any kind,

(b) to provide another person with benefits of any kind, or

(c) to enable another person to acquire benefits of any kind (s.3(5) Modern Slavery Act 2015).

Securing services etc from children and vulnerable persons: Another person uses or attempts to use the person for a purpose within paragraph (a), (b) or (c) of subsection (5), having chosen him or her for that purpose on the grounds that—

(a) he or she is a child, is mentally or physically ill or disabled, or has a family relationship with a particular person, and

(b) an adult, or a person without the illness, disability, or family relationship, would be likely to refuse to be used for that purpose (s.3(6) Modern Slavery Act 2015).

Further notes

- It is irrelevant whether V consents to the **travel** (whether V is an adult or a child) (s.2(2) Modern Slavery Act 2015).
- A person may in particular arrange or facilitate V's **travel** by recruiting V, transporting or transferring V, harbouring or receiving V, or transferring or exchanging control over V (s.2(3) Modern Slavery Act 2015).

139. Human trafficking - s. 1 of the Human Trafficking and Exploitation (Scotland) Act 2015 (asp 12)

Conduct (actus reus)

P takes a **relevant action** and does so with a view to another person being **exploited**.

State of mind (mens rea)

P either —

(a) intends to **exploit** the other person (in any part of the world) during or after the **relevant action**, or

(b) knows or ought to know the other person is likely to be **exploited** (in any part of the world) during or after the **relevant action**.

Defences

No statutory defences.

Definitions and interpretations

Relevant action: Under section 1(2) Human Trafficking and Exploitation (Scotland) Act 2015 (asp 12), this means an action which is any of the following—

(a) the recruitment of another person,

(b) the transportation or transfer of another person,

(c) the harbouring or receiving of another person,

(d) the exchange or transfer of control over another person, or

(e) the arrangement or facilitation of any of the actions mentioned in paragraphs (a) to (d) (s.1(1) of the Human Trafficking and Exploitation (Scotland) Act 2015 (asp 12))

Exploitation: For the purposes of this offence, a person is exploited only if one or more of the following subsections apply in relation to that person.

Slavery, servitude and forced or compulsory labour: The person is the victim of conduct which—

(a) involves the commission of an offence under section 4, or

(b) would constitute such an offence were it done in Scotland (s.3(2) of the Human Trafficking and Exploitation (Scotland) Act 2015 (asp 12))

Prostitution and sexual exploitation: Another person exercises control, direction or influence over prostitution by the person in a way which shows that the other person is aiding, abetting or compelling the prostitution (s.3(3) of the Human Trafficking and Exploitation (Scotland) Act 2015 (asp 12)).

Another person involves the person in the making or production of obscene or indecent material (material is to be construed in accordance with section 52(1)(a) of the Civic Government (Scotland) Act 1982 and includes images within the meaning of section 51A of that Act) (s.3(4) of the Human Trafficking and Exploitation (Scotland) Act 2015 (asp 12))

The person is the victim of conduct which—

(a) involves the commission of an offence under—

(i) sections 1, 2 or 7 to 10 of the Criminal Law (Consolidation) (Scotland) Act 1995 (sexual offences),
(ii) sections 9 to 12 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (sexual services of children and child pornography),
(iii) Part 1 of the Sexual Offences (Scotland) Act 2009 (rape etc.),
(iv) Part 4 of the Sexual Offences (Scotland) Act 2009 (children), or
(v) Part 5 of the Sexual Offences (Scotland) Act 2009 (abuse of a position of trust), or

(b) would constitute such an offence were it done in Scotland (s.3(5) of the Human Trafficking and Exploitation (Scotland) Act 2015 (asp 12))

Removal of organs etc.: The person is encouraged, required or expected to do anything—

(a) involves the commission, by the person or another person, of an offence under Part 1 of the Human Tissue (Scotland) Act 2006 (transplantation etc.),

(b) in connection with the removal of any part of a human body as a result of which the person or another person would commit an offence under the law of Scotland (other than an offence mentioned in paragraph (a)), or

(c) which would constitute an offence mentioned in paragraph (a) or (b) were it done in Scotland (s.3(6) of the Human Trafficking and Exploitation (Scotland) Act 2015 (asp 12))

Securing services and benefits: The person is subjected to force, threats or deception designed to induce the person —

(a) to provide services of any kind,

(b) to provide another person with benefits of any kind, or

(c) to enable another person to acquire benefits of any kind (s.3(7) of the Human Trafficking and Exploitation (Scotland) Act 2015 (asp 12))

Another person uses or attempts to use the person for any purpose within subsection (7)(a), (b) or (c), where—

(a) the person is —

(i) a child, or

(ii) an adult whose ability to refuse to be used for a purpose within subsection (7)(a), (b) or (c) is impaired through mental or physical illness, disability, old age or any other reason (a "vulnerable adult"), and

(b) a person who is not a child or a vulnerable adult would be likely to refuse to be used for that purpose (s.3(8) of the Human Trafficking and Exploitation (Scotland) Act 2015 (asp 12) 2015).

Further notes

- It is irrelevant whether the other person consents to any part of the relevant action (s.1(3) of the Human Trafficking and Exploitation (Scotland) Act 2015 (asp 12).

140. Human trafficking – s. 2 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015

Conduct (actus reus)

P arranges or facilitates the **travel** of another person ('B') with a view to B being **exploited**.

State of mind (mens rea)

P either —

(a) intends to **exploit** B (in any part of the world) during or after the **travel**, or

(b) knows or ought to know that another person is likely to **exploit** B (in any part of the world) during or after the **travel**.

Defences

No statutory defences.

Definitions and interpretations

Travel: Means —

(a) arriving in, or entering, any country,

(b) departing from any country,

(c) travelling within any country (s.2(4) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 c.2

Exploitation: For the purposes of this offence a person is exploited only if one or more of the following subsections apply in relation to the person.

Slavery, servitude and forced or compulsory labour: The person is the victim of behaviour—

(a) which involves the commission of an offence under section 1, or

(b) which would involve the commission of an offence under that section if it took place in Northern Ireland (s.3(2) Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) c.2 2015).

Sexual exploitation: Something is done to or in respect of the person—

(a) which involves the commission of an offence under —

(i) Article 3(1)(a) of the Protection of Children (Northern Ireland) Order1978 (indecent photographs of children), or

(ii) any provision of the Sexual Offences (Northern Ireland) Order 2008 (sexual offences), or

(b) which would involve the commission of such an offence if it were done in Northern Ireland (s.3(3) Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 c.2).

Removal of organs etc: The person is encouraged, required or expected to do anything—

(a) which involves the commission, by him or her or another person, of an offence under section 32 or 33 of the Human Tissue Act 2004 (prohibition of commercial dealings in organs and restrictions on use of live donors) in Northern Ireland, or

(b) which would involve the commission of such an offence, by him or her or another person, if it were done in Northern Ireland (s.3(4)Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 c. 2).

Securing services etc by force, threats or deception: The person is subjected to force, threats, abduction, coercion, fraud or deception designed to induce him or her—

(a) to provide services of any kind,

(b) to provide another person with benefits of any kind, or

(c) to enable another person to acquire benefits of any kind;

and for the purposes of this subsection "benefits" includes the proceeds of forced begging or of criminal activities. (s.3(5) Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 c.2).

Securing services etc from children and vulnerable persons: Another person uses or attempts to use the person for a purpose within paragraph (a), (b) or (c) of subsection (5), having chosen him or her for that purpose on the grounds that—

(a) he or she is a child or a vulnerable adult or is a member of the other person's family or the other person is in a position of trust in relation to him or her; and

(b) a person who was not within paragraph (a) would be likely to refuse to be used for that purpose (s.3(6) Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 c.2).

Further notes

- The consent of B to any act which forms part of an offence under this section is irrelevant (s.2(5) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 c. 2)
- A person may in particular arrange or facilitate B's travel by recruiting B, transporting or transferring B, harbouring or receiving B, or transferring or exchanging control over B (s.2(2) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 c. 2).

A13. Unlawful immigration

141. Illegal entry and similar offences – s. 24(A1), (B1), (C1) or (D1) Immigration Act 1971

Conduct (actus reus)

P —

(A1) enters the United Kingdom in breach of a deportation order;

(B1) requires leave to enter the United Kingdom under this Act and enters the United Kingdom without such leave;

(C1) has only a limited leave to enter or remain in the United Kingdom and remains beyond the time limited by the leave; or

(D1) requires entry clearance under the immigration rules and knowingly arrives in the United Kingdom without a valid entry clearance.

State of mind (mens rea)

Please see corresponding state of mind requirement for each subsection.

P —

(A1) knowingly enters the United Kingdom in breach of a deportation order;

(B1) knowingly enters the United Kingdom without such leave;

(C1) knowingly remains beyond the time limited by the leave; or

(D1) knowingly arrives in the United Kingdom without a valid entry clearance.

Defences

No statutory defences.

Definitions and interpretations

None applicable.

142. Assisting unlawful immigration – s.25 Immigration Act 1971

Conduct (actus reus)

P does an act which facilitates the commission of a breach or attempted breach of **immigration law** by an individual who is not a **national of the United Kingdom**.

State of mind (mens rea)

P —

(a) knows or has reasonable cause for believing that the act facilitates the commission of a breach or attempted breach of **immigration law** by the individual, and

(b) knows or has reasonable cause for believing that the individual is not a **national of the United Kingdom**.

Defences

Section 25BA and 25BB of the Immigration Act 1971 provide defences for rescuers and stowaways respectively.

Definitions and interpretations

Immigration law: In this section 'immigration law' means a law which has effect in a member State or the United Kingdom and which controls, in respect of some or all persons who are not nationals of the State or, as the case may be, of the United Kingdom, entitlement to—

(a) enter or arrive in the State or the United Kingdom,

(b) transit across the State or the United Kingdom, or

(c) be in the State or the United Kingdom.

National of the United Kingdom: Means —

(a) a British citizen;

(b) a person who is a British subject by virtue of Part 4 of the British Nationality Act 1981 and who has the right of abode in the United Kingdom; or

(c) a person who is a British overseas territories citizen by virtue of a connection with Gibraltar.

Further notes

- The offence is complete when the act of facilitation is done with the necessary knowledge or reasonable cause for belief. The words 'or attempted breach' mean that it is an offence to facilitate a breach of **immigration law** at any stage in the plan which may result in such a breach. It does not matter whether the plan results in a breach of **immigration law** or not. It is an offence to facilitate any step in the journey which is more than merely preparatory to the breach: *R v Bani* [2021] EWCA Crim 1958
- A reference to a member State includes a reference to Norway or Iceland.

A14. Encouraging or assisting suicide and serious self-harm

143. Encouraging or assisting suicide – s. 2 Suicide Act 1961 and s. 13 Criminal Justice Act (Northern Ireland) 1966 (c. 20 (N.I.))

Conduct (actus reus)

P does an **act capable of encouraging or assisting** the suicide or attempted suicide of another person.

State of mind (mens rea)

P intends to encourage or assist suicide or an attempt at suicide.

Defences

No statutory defences.

Definitions and interpretations

Acts capable of encouraging or assisting: If P arranges for a person ("P2") to do an act that is capable of encouraging or assisting the suicide or attempted suicide of another person and P2 does that act, P is also to be treated as having done it. Where the facts are such that an act is not capable of encouraging or assisting suicide or attempted suicide, it is to be treated as so capable if the act would have been so capable had the facts been as P believed them to be at the time of the act or had subsequent events happened in the manner P believed they would happen (or both). A reference to P doing an act that is capable of encouraging the suicide or attempted suicide of another person includes a reference to P doing so by threatening another person or otherwise putting pressure on another person to commit or attempt suicide (s.2A of the Suicide Act 1960).

Further notes

- The person whose suicide or attempted suicide is encouraged or assisted by an act of P need not be a specific person (or class of persons) known to, or identified by, P (s.2(1A) of the Suicide Act 1960).
- P may commit an offence whether or not a suicide or attempted suicide occurs (s.2(1B) of the Suicide Act 1961).
- An "act" includes a course of conduct (s.2B of the Suicide Act 1961).
- For the avoidance of doubt, the definitions and interpretation set out above apply equally to the offence under s.13 of the Criminal Justice Act (Northern Ireland) 1966 (see ss. 13 to 13B).

144. Encouraging or assisting serious self-harm – s. 184 Online Safety Act 2023

Conduct (actus reus)

P does a **relevant act** capable of **encouraging** or assisting the **serious self-harm** of another **person**.

State of mind (mens rea)

P's act was intended to **encourage** or assist the **serious self-harm** of another **person**.

Defences

No statutory defences

Definitions and interpretations

Encouraging: Any reference to doing an act that is capable of encouraging the **serious self-harm** of another **person** includes a reference to doing so by threatening another person or otherwise putting pressure on another person to **seriously self-harm** (s.184(11) of the Online Safety Act 2023).

Person: Need not be a specific person (or class of persons) known to, or identified by, P (s.184(4) of the Online Safety Act 2023).

Relevant act: P "does a relevant act" if P —

(a) communicates in person;

(b) sends, transmits or publishes a communication by electronic means;

(c) shows a person such a communication;

(d) publishes material by any means other than electronic means;

(e) sends, gives, shows or makes available to a person —

(i) material published as mentioned in paragraph (d); or

(ii) any form of correspondence; or

(f) sends, gives or makes available to a person an item on which data is stored electronically

(s.184(2) of the Online Safety Act 2023).

If a person (D1) arranges for a person (D2) to do an act that is capable of **encouraging** or assisting the **serious self-harm** of another person and D2 does that act, D1 is to be treated as also having done it. Any reference to an act (except in the definition of **serious self-harm**) includes a reference to a course of conduct, and references to doing an act are to be read accordingly (s.184(6) and (12) of the Online Safety Act 2023).

Serious self-harm*:* Means self-harm amounting to: (a) in England and Wales and Northern Ireland, *grievous bodily harm* within the meaning of the Offences Against the Person Act 1861; and (b) in Scotland, severe injury, and includes successive acts (including omissions) of self-harm which cumulatively reach that threshold (s.184(3) and (13) of the Online Safety Act 2023).

Grievous bodily harm: Means "really serious bodily harm": *DPP v Smith* [1961] AC 290; *R v Cunningham* [1982] AC 566; *R v Brown (A)* [1994] 1 AC 212; *R v Brown and Stratton* [1998] Crim LR 485. This includes psychiatric injury but not mere psychological harm: *R v Ireland* [1998] AC 147; *R v D* [2006] EWCA Crim 1139.Q

Further notes

- P may commit an offence whether or not **serious self-harm** occurs (s.184(5) of the Online Safety Act 2023).

- If the **relevant act** by P involves an electronic communication or a publication in physical form, it does not matter whether the content of the communication or publication is created by P (so for example, in the online context, the offence may be committed by forwarding another person's direct message or sharing another person's post) (s.184(7) of the Online Safety Act 2023).
- If the **relevant act** by P involves sending, transmitting, or publishing by electronic means a communication consisting of or including a hyperlink to other content, "sending, transmitting or publishing a communication by electronic means" is to be read as including a reference to content accessed directly via the hyperlink (s.184(8) of the Online Safety Act 2023).
- If the **relevant act** by P involves an item on which data is stored electronically, "sending, giving or making available to a person an item on which data is stored electronically" is to be read as including a reference to content accessed by means of the item to which the person in receipt of the item is specifically directed by P (s.184(9) of the Online Safety Act 2023).
- A provider of an internet service by means of which a communication is sent, transmitted or published is not to be regarded as a **person** who sends, transmits or publishes it (s.184(10) of the Online Safety Act 2023).

A15. Foreign interference offence

145. Foreign interference offence – s.13 National Security Act 2023

Conduct (actus reus)

(1) P commits an offence where —

(a) P engages in **prohibited conduct**,

(b) the **foreign power condition** is met in relation to the prohibited conduct, and

(c) the **person intends** the prohibited conduct, or a course of conduct of which it forms part, **to have an interference effect**.

(2) P commits an offence where –

(a) P engages in **prohibited conduct**,

(b) the **foreign power condition** is met in relation to the prohibited conduct, and

(c) the **person is reckless** as to whether the prohibited conduct, or a course of conduct of which it forms part, **will have an interference effect**.

(3) P commits an offence where -

(a) P engages in a **course of conduct** with **one or more other persons**,

(b) the **foreign power condition** is met in relation to conduct of P which forms part of the course of conduct,

(c) P **intends** the course of conduct to have an interference effect,

(d) as part of the **course of conduct**, a person other than P engages in prohibited conduct, and

(e) P intends or believes that, as part of the course of conduct, a person other than P will engage in prohibited conduct.

State of mind (mens rea)

In the case of offence (1), P intends the **prohibited conduct**, or a **course of conduct** of which it forms part, to have an **interference effect**,

In the case of offence (2), P is **reckless** as to whether the prohibited conduct, or a **course of conduct** of which it forms part, will have an **interference effect**.

In the case of offence (3), either

(a) P intends the course of conduct to have an **interference effect** and P intends that, as part of the **course of conduct**, a person other than P will engage in **prohibited conduct**, *or*

(b) P intends the course of conduct to have an interference effect and believes that, as part of the **course of conduct**, a person other than P will engage in **prohibited conduct**.

Defences

No statutory defences.

Definitions and interpretations

Course of conduct: For the purposes of a course of conduct as bolded in above in the 'state of mind' column only, a course of conduct includes a course of conduct engaged in by the person alone, or by the person and one or more other person (s.13(4) of the National Security Act 2023).

Foreign power condition: Under s.31(1)(a) and (b) of the National Security Act 2023, the foreign power condition is met in relation to a person's conduct if —

(a) the conduct in question, or a course of conduct of which it forms part, is carried out *for or on behalf of a foreign power*, *and*

(b) the person knows, or having regard to other matters known to them ought reasonably to know, that to be the case.

For or on behalf of a foreign power: The conduct in question, or a course of conduct of which it forms part, is in particular to be treated as carried out for or on behalf of a foreign power if —

(a) it is instigated by a foreign power,

(b) it is under the direction or control of a foreign power,

(c) it is carried out with financial or other assistance provided by a foreign power for that purpose, or

(d) it is carried out in collaboration with, or with the agreement of, a foreign power (s.31(2) of the National Security Act 2023).

Subsections 31(1)(a) and 31(2) as set out above may be satisfied by a direct or indirect relationship between the conduct, or the course of conduct, and the foreign power (for example, there may be an indirect relationship through one or more companies) (s.31(3) of the National Security Act 2023).

A person's conduct may form part of a course of conduct engaged in by the person alone, or by the person and one or more other persons (s.31(4) of the National Security Act 2023). The foreign power condition is also met in relation to a person's conduct if the person intends the conduct in question to benefit a foreign power (s.31(5) of the National Security Act 2023). It is *not* necessary to identify a particular foreign power when satisfying this condition (s.31(6) of the National Security Act 2023). The foreign power condition may be met in relation to the conduct of a person who holds office in or under, or is an employee or other member of staff of, a foreign power, as it may be met in relation to the conduct of any other person (s.31(7) of the National Security Act 2023).

Interference effect: Under s.14(1) of the National Security Act 2023, An "interference effect" means any of the following effects —

(a) interfering with the exercise by a particular person of a Convention right in the United Kingdom,

(b) affecting the exercise by any person of their public functions,

(c) interfering with whether, or how, any person makes use of services provided in the exercise of public functions,

(d) interfering with whether, or how, any person (other than in the exercise of a public function) participates in relevant political processes or makes political decisions,

(e) interfering with whether, or how, any person (other than in the exercise of a public function) participates in legal processes under the law of the United Kingdom, or

(f) prejudicing the safety or interests of the United Kingdom.

An effect may be an interference effect whether it relates to a specific instance of a matter mentioned in the list above, or to the matter in general (s.14(2) of the National Security Act 2023).

Relevant political processes: Under s.14(3) of the National Security Act 2023, means—

(a) an election or referendum in the United Kingdom,

(b) the proceedings of a local authority,

(c) the proceedings of a UK registered political party*, or

(d) the activities of an informal group consisting of or including members of—

    (i) one or both of Houses of Parliament,

(ii) the Northern Ireland Assembly,
(iii) the Scottish Parliament, or
(iv) Senedd Cymru (acting in that capacity).

Political decisions: Under s.14(4) of the National Security Act 2023, means decisions of —

(a) a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975) or a United Kingdom government department,

(b) a Northern Ireland Minister, the First Minister in Northern Ireland, the deputy First Minister in Northern Ireland, a person appointed as a junior Minister under Section 19 of the Northern Ireland Act 1998, a Northern Ireland department or the Executive Committee of the Northern Ireland Assembly,

(c) the Scottish Ministers or the First Minister for Scotland,

(d) the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Government, or

(e) a local authority*.

Convention rights: Has the meaning given by section 1 of the Human Rights Act 1998 (s.14(5) of the National Security Act 2023).

Law of the United Kingdom: Includes the law of any part of the United Kingdom (s.14(5) of the National Security Act 2023).

*Local authority**: Under s.14(5) of the National Security Act 2023, means —

(a) in England —

(i) a county council,
(ii) a district council,
(iii) a London borough council,
(iv) a combined authority established under section 103 of the Local Democracy, Economic Development and Construction Act 2009,
(v) a parish council,
(vi) the Council of the Isles of Scilly,
(vii) the Common Council of the City of London,
(viii) the Sub-Treasurer of the Inner Temple, or
(ix) the Under Treasurer of the Middle Temple;

(b) in Wales, a county council, county borough council or community council,

(c) in Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994, and

(d) in Northern Ireland, a district council;

Public functions: Under s.14(5), means functions of a public nature —

(a) exercisable in the United Kingdom, or

(b) exercisable in a country or territory outside the United Kingdom by a person acting for or on behalf of, or holding office under, the Crown.

*UK registered political party**: Means a political party registered under Part 2 of the Political Parties, Elections and Referendums Act 2000 (s.14(5)).

Prohibited conduct: Conduct is "prohibited conduct" if —

(a) it constitutes an offence, *or* if it takes place in a country or territory outside the United Kingdom, it would constitute an offence if it took place in any part of the United Kingdom (s.15(1) of the National Security Act 2023).

(b) it involves coercion of any kind, including coercion by —

(i) using or threatening to use violence against a person,
(ii) damaging or destroying, or threatening to damage or destroy, a person's property,
(iii) damaging or threatening to damage a person's reputation,
(iv) causing or threatening to cause financial loss to a person, or
(v) **causing spiritual injury to, or placing undue spiritual pressure on**, a person.

(whether or not that person is the person to whom the interference effect relates) (s.15(2) of the National Security Act 2023).

(c) it involves making a ***misrepresentation*** (s15(3) of the National Security Act 2023).

Misrepresentation*:* Further to s.15(4) of the National Security Act 2023, a "misrepresentation" is a representation —

(a) that a reasonable person would consider to be false or misleading in a way material to the interference effect, and

(b) that the person making the representation knows or intends to be false or misleading in a way material to the interference effect.

A misrepresentation may be made by making a statement or by any other kind of conduct, and may be express or implied (s.15(5) of the National Security Act 2023. A misrepresentation may in particular include —

(a) a misrepresentation as to a person's identity or purpose;

(b) presenting information in a way which amounts to a misrepresentation, even if some or all of the information is true (s.15(6) of the National Security Act 2023).

Causing spiritual injury to, or placing undue spiritual pressure mirrors wording in the Elections Act 2022 the Explanatory Note to which says: “This is often, but not always, inflicted or exerted by those in a position of spiritual or religious authority. “Spiritual injury” includes (for example) the act of excluding a person from the membership of an organised belief system or banning them from attending a place of worship. “Undue spiritual pressure” includes (for example) threatening to cause spiritual injury to a person, as well as the suggestion that to vote or not vote for a particular candidate or party:

(a) is a duty or obligation arising from the spiritual or religious beliefs that a person holds or purports to hold;

(b) improves or reduces a person's spiritual standing or wellbeing;

(c) has specific spiritual consequences, either positive (e.g., going to “heaven” or similar) or negative (e.g., damnation);

(d) has other consequences of a spiritual nature, such as exclusion from the membership of an organised belief system.

However, there is a degree of spiritual influence inherent in all positions of religious or spiritual authority. It is only when this spiritual influence becomes a form of improper or inappropriate pressure that it amounts to “undue” spiritual influence. Therefore “undue spiritual pressure” does not include legitimate aspects of the enjoyment of the freedoms of thought, belief or expression, for example, a religious leader expressing their opinion on political or other matters that have implications for the principles of that religion, or the behaviour of religious groups for whom not voting is an established doctrinal position.

A16. Animal cruelty

146. Unnecessary suffering of an animal – s.4 Animal Welfare Act 2006

Conduct (actus reus)

P commits an offence if –

(a) he acts or fails to act, causing an **animal** to **suffer**,

(b) he knew, or ought reasonably to have known, that the act, or failure to act, would have that effect or be likely to do so,

(c) the animal is a **protected animal**, and

(d) the **suffering** is **unnecessary**.

State of mind (mens rea)

P knows or ought reasonably to have known, that the acts, or failures to act, would cause or likely to cause an **animal** to **suffer**, and that **suffering** was **unnecessary**.

Defences

No statutory defences.

Definitions and interpretations

Animal: means animals which are vertebrate other than man (s.1 of the Animal Welfare Act 2006).

Protected animal: Animal of a kind commonly domesticated in the British Islands, **or** an animal under the control of man (whether on a permanent or temporary basis) **or** an animal not living in a wild state (s.2 of the Animal Welfare Act 2006).

Suffering: means physical or mental suffering (s.62(1) of the Animal Welfare Act 2006).

Unnecessary suffering: Considerations focus on the necessity, proportionality, humaneness and competence of the conduct. (s.4(3) Animal Welfare Act 2006).

Further notes

- S. 4(3) of the Animal Welfare Act 2006 sets out considerations which are relevant in determining whether suffering is unnecessary. These include whether:

(a) the suffering could reasonably have been avoided or reduced;

(b) the conduct which caused the suffering was in compliance with any relevant law, licence or code of practice;

(c) the conduct which caused the suffering was for a legitimate purpose;

(d) the suffering was proportionate to the purpose of the conduct concerned;

(e) the conduct concerned was in all the circumstances that of a reasonably competent and humane person.

Illegal content judgements guidance

Annex 2: The relevant non-priority offences

Last updated: 25/06/2026

A.1 Index

The below list is presented in the order of presentation in the Illegal Content Judgements Guidance.

Offence	ICJG chapter	Annex
Epilepsy trolling[66]	Chapter 16, 'Non-priority offences and relevant non-priority offences ('other offences')'	A3
False communications offence	Chapter 16, 'Non-priority offences and relevant non-priority offences ('other offences')'	A4
Threatening communications offence	Chapter 16, 'Non-priority offences and relevant non-priority offences ('other offences')'	A5
Improper use of public electronic communications network	Chapter 16, 'Non-priority offences and relevant non-priority offences ('other offences')'	A6

[66] The offence of sending or showing flashing images.

A.2 General interpretation

A2.1 This Annex is not intended for and cannot be relied upon in any criminal proceedings relating to the offences concerned. It is relevant only to illegal content judgments made under the Online Safety Act 2023.

A2.2 This Annex is a quick reference guide only. It is *not* a complete statement of the law, nor is it a substitute for legal advice. In any case of conflict between this guidance and the law, for the purposes of making illegal content judgements the law shall prevail.

A2.3 For an offence to be committed, the same person (whether an individual or an entity) must fulfil the conduct requirements ('actus reus') and state of mind requirements ('mens rea'). In the tables below, we refer to that person as "P". This will usually be the person posting the content, but sometimes services will also need to consider whether a person sharing or reviewing the content may be committing an offence.

A2.4 In this Annex, we mostly put definitions next to the offences to which they relate. However, some of the definitions are very long and some are used repeatedly. These are set out below. In these Annexes, the following terms have the following meanings:

Recognised news publisher: Means any of the following entities —

(a) the British Broadcasting Corporation,

(b) Sianel Pedwar Cymru,

(c) the holder of a licence under the Broadcasting Act 1990 or 1996 who publishes news-related material in connection with the broadcasting activities authorised under the licence, and

(d) any other entity which — (i) meets all of the conditions in subsection (2), (ii) is not an excluded entity, and (iii) is not a sanctioned entity.

The conditions required by subsection (2) are that the entity —

(a) has as its principal purpose the publication of **news-related material**, and such material — (i) is created by different persons, and (ii) is **subject to editorial control**,

(b) publishes such material in the course of a business (whether or not carried on with a view to profit),

(c) is subject to a standards code,

(d) has policies and procedures for handling and resolving complaints,

(e) has a registered office or other business address in the United Kingdom,

(f) is the person with legal responsibility for material published by it in the United Kingdom, and

(g) publishes — (i) the entity's name, the address mentioned in paragraph (e) and the entity's registered number (if any), and (ii) the name and address of any person who controls the entity (including, where such a person is an entity, the address of that person's registered or principal office and that person's registered number (if

any)).

"Excluded entity" is an entity —

(a) which is a proscribed organisation under the Terrorism Act 2000 (see section 3 of that Act), *or*

(b) the purpose of which is to support a proscribed organisation under that Act.

"News-related material" means material consisting of —

(a) news or information about current affairs,

(b) opinion about matters relating to the news or current affairs, *or*

(c) gossip about celebrities, other public figures or other persons in the news.

"Publish" means publish by any means (including by broadcasting), and references to a publisher and publication are to be construed accordingly.

"Recklessness" means In the law of England and Wales, a person acts 'recklessly' with respect to a circumstance when he is aware of a risk that did or would exist, and acts recklessly with respect to a consequence when he is aware of a risk that it will occur, and, in either case, it is, in the circumstances known to him, unreasonable to take the risk (R v G [2003] UKHL 50). In Scotland, a person is reckless in relation to an offence if they failed to think about or were indifferent as to whether their behaviour would have the result as specified in the particular offence.

"Sanctioned entity" is an entity which —

(a) is designated by name under a power contained in regulations under section 1 of the Sanctions and Anti-Money Laundering Act 2018 that authorises the Secretary of State or the Treasury to designate persons for the purposes of the regulations or of any provisions of the regulations, *or*

(b) is a designated person under any provision included in such regulations by virtue of section 13 of that Act (persons named by or under UN Security Council Resolutions).

"Sends a message" - A person "sends a message" if the person —

(a) sends, transmits or publishes a communication (including an oral communication) by electronic means; or

(b) sends, or gives to an individual, a letter or a thing of any other description,

and references to a message are to be read accordingly (s.183(2) of the Online Safety Act 2023).

A person also "sends a message" if the person —

(a) causes a communication (including an oral communication) to be sent, transmitted or published by electronic means; or

(b) causes a letter or a thing of any other description to be (i) sent or (ii) given to an individual,

but a provider of an internet service by means of which a communication is sent, transmitted or published is not to be regarded as a person who sends a message (s.183(3) and (4) of the Online Safety Act 2023).

“Standards code” means —

(a) a code of standards that regulates the conduct of publishers, that is published by an independent regulator, *or*

(b) a code of standards that regulates the conduct of the entity in question, that is published by the entity itself.

“Subject to editorial control”: news-related material is “subject to editorial control” if there is a person (whether or not the publisher of the material) who has editorial or equivalent responsibility for the material, including responsibility for how it is presented and the decision to publish it. “*Control*” has the same meaning as it has in the Broadcasting Act 1990 by virtue of Section 202 of that Act.

A.3 Epilepsy trolling

1. Sending or showing flashing images electronically – s. 183 Online Safety Act 2023

Conduct (actus reus)

(1) P **sends a communication** by electronic means which consists of or includes **flashing images**.

(2) P **shows an individual (B) flashing images** by means of **an electronic communications device**.

State of mind (mens rea)

In the case of (1):

(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) P **sends the communication** with the intention that an individual with epilepsy will suffer **harm** as a result of viewing the **flashing images**; OR

(a) P believes that an individual (B) —

(i) whom P knows to be an **individual with epilepsy**; or

(ii) whom P suspects to be an **individual with epilepsy**

will, or might, **view** it; and

(b) P intends that B will suffer harm as a result of viewing the **flashing images**.

In the case of (2), when **showing the images**, P:

(a) knows or suspects that B is an **individual with epilepsy**; and

(b) intends that B will suffer **harm** as a result of viewing them.

Defences

In the case of (1), an offence is not committed by P if they —

(a) Have a reasonable excuse for sending the communication (s.183(1)(c) of the Online Safety Act 2023);

(b) Are a **recognised news publisher** (ss. 180(1) and 183(5) of the Online Safety Act 2023);

(c) Are the holder of a licence under the Broadcasting Act 1990 or Broadcasting Act 1996 in connection with anything done under the authority of the licence (ss. 180(2) and 183(5) of the Online Safety Act 2023);

(d) Are the holder of a **multiplex licence** in connection with anything done under the authority of the licence (ss. 180(3) and 183(5) of the Online Safety Act 2023);

(e) Are the provider of an **on-demand programme service** in connection with anything done in the course of providing such a service (ss. 180(4) and 183(5) of the Online Safety Act 2023); or

(f) Send the message in connection with the showing of a film made for cinema to members of the public (ss. 180(5) and 183(5) of the Online Safety Act 2023).

In the case of (1) and (2) , an offence cannot be committed by a healthcare professional acting in that capacity (s.183(9) of the Online Safety Act 2023).

In the case of (2), P has a reasonable excuse for showing the images (s.183(8)(d) of the Online Safety Act 2023).

Definitions and interpretations

Electronic communications device: Equipment or a device that is capable of transmitting images by electronic means (s.183(13) of the Online Safety Act 2023).

Flashing images: Images which carry a risk that an individual with photosensitive epilepsy who viewed them would suffer a seizure as a result (s.183(13) of the Online Safety Act 2023).

It does not matter 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) (s.183(11) of the Online Safety Act 2023).

Harm: Means (a) a seizure, or (b) alarm or distress (s.183(13) of the Online Safety Act 2023).

Individual with epilepsy: Includes, but is not limited to, an individual with photosensitive epilepsy (s.183(13) of the Online Safety Act 2023).

Multiplex license: A licence under s.8 of the Wireless Telegraphy Act 2006 which authorises the provision of a multiplex service within the meaning of s.42(6) of that Act (s.182(11) of the Online Safety Act 2023).

On-demand programme service: Has the same meaning as in s.368A the Communications Act 2003, and a person is the "provider" of an on-demand programme service if the person has given notification of the person's intention to provide that service in accordance with s.368BA of that Act (s.182(12) of the Online Safety Act 2023).

Recognised news publisher: See 'General Interpretation.'

Sending a communication: References to sending a communication include references to causing a communication to be sent (s.183(12)(a) of the Online Safety Act 2023).

'Sends' includes transmit and publish (and related expressions are to be read accordingly) (s.183(13) of the Online Safety Act 2023).

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 (s.183(6) of the Online Safety Act 2023).

Viewing the image: Includes references to viewing a subsequent communication forwarding or sharing the content of the communication (s.183(4) of the Online Safety Act 2023).

A.4 False communications

2. False communications offence – s. 179 Online Safety Act 2023

Conduct (actus reus)

P **sends a message** that conveys information.

State of mind (mens rea)

P —

(a) knows the information to be false; and

(b) at the time of **sending the message**, intended it, or the information in it, to cause non-trivial psychological or physical harm to a **likely audience**.

Defences

An offence is not committed by P if they have a reasonable excuse for sending the message (s.179(1)(d) of the Online Safety Act 2023);

S180 Online Safety Act 2023 also provides the following exemptions:

(1) A **recognised news publisher** cannot commit an offence under section 179.

(2) An offence under section 179 cannot be committed by the holder of a licence under the Broadcasting Act 1990 or Broadcasting Act 1996 in connection with anything done under the authority of the licence.

(3) An offence under section 179 cannot be committed by the holder of a **multiplex licence** in connection with anything done under the authority of the licence.

(4) An offence under section 179 cannot be committed by the provider of an **on-demand programme service** in connection with anything done in the course of providing such a service.

(5) An offence under section 179 cannot be committed in connection with the showing of a **film made for cinema** to members of the public.

Definitions and interpretations

Encounter: In relation to a message means read, view, hear or otherwise experience the message (s.182(5) of the Online Safety Act 2023).

Likely audience: An individual is a "likely audience" of a message if, at the time the message is sent, it is reasonably foreseeable that the individual —

(a) would **encounter** the message; or

(b) in the online context, would **encounter** a subsequent message forwarding or sharing the content of the message

(s.179(2) of the Online Safety Act 2023)

but in a case where several or many individuals are a **likely audience**, it is not necessary that P intended to cause harm to any one of them in particular (or to all of them) (s.179(3) Online Safety Act 2023).

Multiplex license: A licence under s.8 of the Wireless Telegraphy Act 2006 which authorises the provision of a multiplex service within the meaning of s.42(6) of that Act (s.182(11) of the Online Safety Act 2023).

On-demand programme service: Has the same meaning as in s.368A the Communications Act 2003, and a person is the "provider" of an on-demand programme service if the person has given notification of the person's intention to provide that service in accordance with s.368BA of that Act (s.182(12) of the Online Safety Act 2023).

Recognised news publisher: See 'General Interpretation.'

Sends a message: See 'General Interpretation'.

Further notes

- It does not matter whether the content of a message is created by the person who sends it (so for example, in the online context, an offence may be committed by a person who forwards another person's direct message or shares another person's post) (s.182(6) of the Online Safety Act 2023).
- Where the offence concerns the sending by electronic means of a message consisting of or including a hyperlink to other content: (a) references to the message are to be read as including references to content accessed directly via the hyperlink; and (b) an individual who is a **likely audience** in relation to the hyperlink is to be assumed to be a likely audience in relation to the linked content (s.182(7) of the Online Safety Act 2023).

- Where the offence concerns the sending of an item on which data is stored electronically, references to the message are to be read as including content accessed by means of the item to which the recipient is specifically directed by the sender (and “sending” includes “giving”, and “sender” is to be read accordingly) (s.182(8) of the Online Safety Act 2023).

A.5 Threatening communications

3. Threatening communications offence – s. 181 Online Safety Act 2023

Conduct (actus reus)

P **sends a message** which conveys a threat of death or **serious harm**.

State of mind (mens rea)

At the time of **sending the message**, P —

(a) intended an individual **encountering** the message to fear that the threat would be carried out (whether or not by P); or

(b) was **reckless** as to whether an individual encountering the message would fear that the threat would be carried out (whether or not by P).

Defences

If the offence relates to a threat of serious financial loss, it is a defence for P to show that —

(a) the threat was used to reinforce a reasonable demand; and

(b) P reasonably believed that the use of the threat was a proper means of reinforcing the demand

(s.181(3) of the Online Safety Act 2023).

Definitions and interpretations

Encounter: In relation to a message means read, view, hear or otherwise experience the message (s.182(5) of the Online Safety Act 2023).

Sends a message: See 'General Interpretation'

Serious harm: Means —

(a) serious injury amounting to *grievous bodily harm* within the meaning of the Offences Against the Person Act 1861;

(b) rape;

(c) assault by penetration within the meaning of s.2 of the Sexual Offences Act 2003; or

(d) serious financial loss

(s.181(2) of the Online Safety Act 2023).

Grievous bodily harm: Means "really serious bodily harm": *DPP v Smith* [1961] AC 290; *R v Cunningham* [1982] AC 566; *R v Brown* (A) [1994] 1 AC 212; *R v Brown and Stratton* [1998] Crim LR 485. This includes psychiatric injury but not mere psychological harm: *R v Ireland* [1998] AC 147; *R v Dhaliwal* [2006] EWCA Crim 1139.

Further notes

- It does not matter whether the content of a message is created by the person who sends it (so for example, in the online context, an offence may be committed by a person who forwards another person's direct message or shares another person's post) (s.182(6) of the Online Safety Act 2023).
- Where the offence concerns the sending by electronic means of a message consisting of or including a hyperlink to other content, references to the message are to be read as including references to content accessed directly via the hyperlink (s.182(7) of the Online Safety Act 2023).

A.6 Improper use of a public electronic communications network

4. Improper use of public electronic communications network – s127(1) Communications Act 2003

Conduct (actus reus)

P sends, or causes to be sent, by means of a **public electronic communications network** a **message** or other matter that is **grossly offensive** or of an **indecent**, **obscene** or **menacing** character.

State of mind (mens rea)

P intended that the message was grossly offensive, indecent, obscene or menacing **or** was aware of, or recognised the risk, at the time of sending the message, that it may be taken to be so by a reasonable member of the public

Defences

No statutory defences.

Definitions and interpretations

Grossly offensive means couched in such terms liable to cause gross offence to reasonable persons, judged by the standards of an open and just multiracial society (DPP v Smith [2017] EWHC 359). However, care is required not to criminalise speech which is no more than contemptible as it is not the task of the [criminal] law to censor offensive utterances. (R.(Karsten) v Crown Court at Wood Green [2014] EWHC 2900 (Admin). A message which is in bad taste, even shockingly bad taste, is not enough (Bussetti v DPP [2021] EWHC 2140 (Admin).

Menacing means 'creating fear or apprehension in those to whom it is communicated, or who may reasonably be expected to see it (Chambers v DPP [2012] EWHC 2157). A message intended to be a joke was not of such character.

Message includes messages on social media platforms which are communicated and are accessible via the internet– Chambers v DPP [2012] EWHC 2157 (Admin)

Public electronic communications network means an electronic communications network provided wholly or mainly for the purpose of making electronic communications services available to members of the public (s151(1) Communications Act 2003)

Additional note

- *Except where content is obscene cruelty or torture content as per our guidance, it should be considered as per the guidance chapter on non-priority offences and relevant non-priority offences.*