

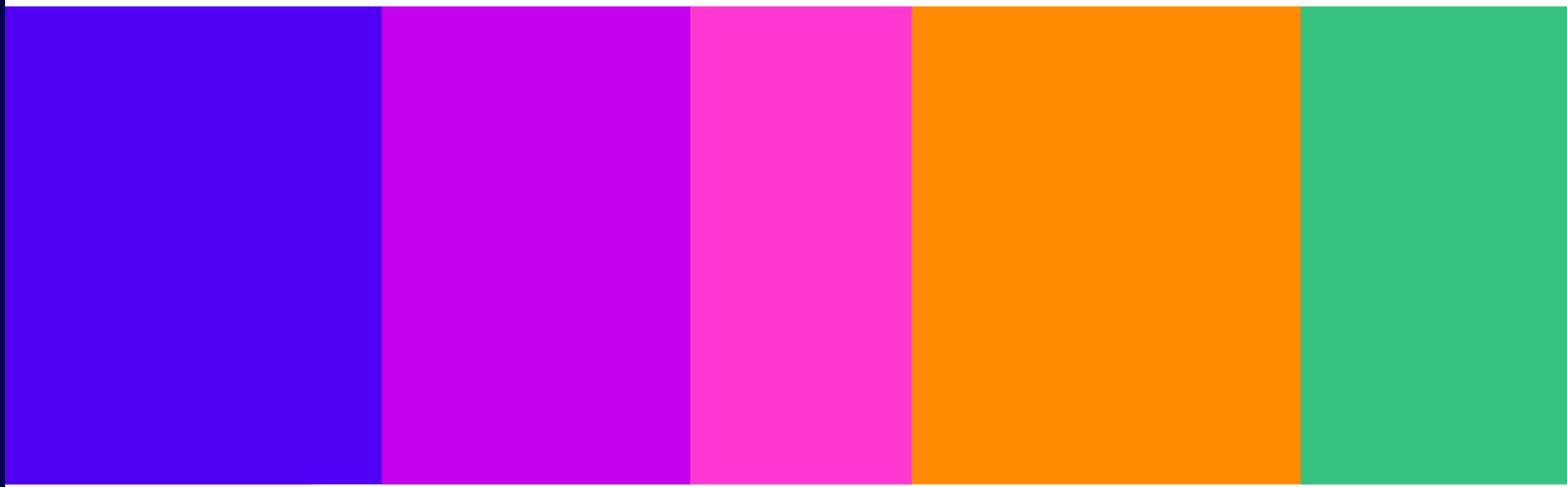
Protecting people from illegal harms online

Annex 10: Online Safety Guidance on
Judgement for Illegal Content

DRAFT FOR CONSULTATION

Published 9 November 2023

Closing date for responses: 23 February 2024



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A1. Introduction

About this document

- A1.1 This document is Ofcom’s Illegal Content Judgements Guidance 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 services¹ It may also be relevant for Category 1 services.² The guidance is intended to support part 3 services (‘services’)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 A1.11-17 of this guidance.
- A1.2 We explain below what the Act defines as ‘illegal content’. Section 192 of the Act sets out the approach to be taken where either a system or process operated or used by a service to comply with the Act, or a risk assessment, involves a judgement by the service about whether content is illegal content. In summary, the Act requires that services make such judgements on the basis of a reasonable inference. The threshold for making this reasonable inference is lower than the criminal standard that is applied in the criminal justice system. Services must treat content as illegal content if, having considered all reasonably available information:
- a) they have reasonable grounds to infer that all elements necessary for the commission of the offence, including mental elements, are present or satisfied, *and*
 - b) they do *not* have reasonable grounds to infer that a defence to the offence may be successfully relied upon.
- A1.3 However, there is nothing in the Act that requires services to make illegal content judgments, so long as the application of that service’s own terms and conditions is sufficient to secure compliance with the duties in the Act in other ways. For example, if the service’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.
- A1.4 Ofcom must produce guidance on the matters dealt with in section 192. This document, the Illegal Content Judgements Guidance, fulfils that obligation. 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 privacy. In particular, 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. Any limitation on the right to privacy must be in accordance with the law, pursue a legitimate aim and be necessary in a democratic society.

¹ We use the term ‘service’ interchangeably with ‘providers of regulated user-to-user services and regulated search services.’

² There are additional duties in relation to Category 1 services 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 services at a later date. If we need to amend this guidance we will consult on proposed amendments if necessary.

³ Part 3 services are regulated user-to-user and search services under Part 3 of the Online Safety Act

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.

- A1.5 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 steers and an easy-to-follow 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, services should refer to Ofcom's Register of Risks for further detail on how offences may manifest online.
- A1.6 It is also necessary to discuss topics in this document which may be very upsetting. We have endeavoured to treat such topics sensitively, and note where a proper reflection of the law requires us to use language which is controversial or problematic.
- A1.7 The contents of this document represent an effort by Ofcom to provide services 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.
- A1.8 UK criminal law itself changes and develops over time. This guidance is not a substitute for any regulation or law and is not legal advice. Where required, services should seek their own independent advice to enable them to understand and comply with their duties under the Act.

Structure and formatting

- A1.9 This document is structured as follows:
- a) Introductory contextual front matter, Chapter 1, pp. 1–14; setting out legislative background, key concepts and principles which apply to all illegal content judgements.
 - b) Offence-specific chapters, Chapters 2-14, pp. 15–142 giving overviews of offences and guidance as to how to make illegal content judgements in relation to these offences. N.B. offences are grouped by type as appropriate; see paragraphs A1.73– A1.77 for more information on how to use this section.
 - c) Legal annex; setting out key legal information in more detail to support the guidance given in offence-specific chapters.
- A1.10 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. Key messages regarding process and approach are marked with an underline.

Services' duties regarding illegal content

- A1.11 The Act creates a number of new legal duties of care for services. These include duties in relation to illegal content⁴, content reporting, complaints procedures and freedom of expression and privacy.
- A1.12 This guidance should be used by services in all circumstances when they are required to make a judgement on whether a piece of content is illegal in order to fulfil their duties under the Act.
- A1.13 Such judgements may be required in order to comply with the requirement to conduct illegal content risk assessments (section 9 for user-to user-services and section 26 for search services) (**'illegal content risk assessment duty'**) and the requirement to implement measures in order to comply with their safety duties about illegal content (section 10 for user-to-user services and section 27 for search services) (**'illegal content safety duty'**). In relation to Category 1 services, illegal content judgements may be required in order to comply with their duties to protect news publisher content and duties in relation to fraudulent advertising. Together, these are the **'illegal content duties'**.
- A1.14 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 to "swiftly take down" any illegal content when it is alerted to the presence of it (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).
- A1.15 When services conduct risk assessments and implement measures to comply 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. Services 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 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.
- A1.16 However, to make decisions for the purposes of the takedown duty or determining what search content is illegal content, services will need to take decisions about specific pieces of content. It is here that this guidance will be particularly useful.
- A1.17 We recognise that services are likely to be making content moderation judgements in order to comply with the laws of every country in which they operate and that different countries have different laws. This guidance is not intended to override or supersede existing moderation practices, where these practices already meet the duties set out in the Act. We also recognise that the process of making a full assessment of whether content amounts to 'illegal content' for the purposes of the Act is likely to require both more time and more legal expertise than a content moderator can reasonably be expected to have. This guidance sets out how services need to think about the priority offences in order to comply with the requirements of the illegal content duties.

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 A1.21-31 of this guidance

Freedom of expression and privacy

- A1.18 It remains open to services 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 services use their terms and conditions to prohibit sexual content 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 services identify when compliance with their duties pursuant to the Act *requires* them to take the content down.
- A1.19 When assessing their compliance with the illegal content duties, Ofcom may take into account whether services' illegal content judgements follow the approaches set out in section 192 of the Act and in doing so we will likely have reference to this guidance.
- A1.20 Services 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, services should have a particular regard to the importance of protecting users' right to freedom of expression within the law and to the importance of protecting users from a 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 Commissioner's Office (the ICO). The ICO has a range of guidance on data protection and the PECR which services may wish to consult.

Illegal content

Box 1: The Act's definitions of 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.

Illegal content: content which amounts to a relevant offence.

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.

- A1.21 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.
- A1.22 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 A1.24-A.28) 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 A1.29-A1.31). It is the content

⁵ Section 237 of the Act

itself which much 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 services may need to consider carefully whether, for example, it encourages terrorism.

A1.23 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 must make an illegal content judgement.

Figure 1.1: How ‘illegal content’ relates to ‘relevant offences’⁶



Priority offences

A1.24 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 accompanying this guidance.

⁶ Priority offences are named in the Act in schedules 5, 6 and 7. For details on ‘other’ offences, see paragraphs 1.31-4 below.

- A1.25 The Act includes in the priority offences an additional category of offences, referred to in UK law as ‘inchoate offences.’⁷ Inchoate offences happen when someone is involved in *another* offence in a way which makes them guilty, without actually committing it themselves. 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.
- A1.26 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 the commission of a priority offence;
 - c) *Assisting (someone) to commit a priority offence*. This overlaps with aiding and abetting the commission of a priority offence and, in the case of Scottish law, being involved art and part⁹; and finally
 - d) *Attempting to commit an offence*. We are not aware of any circumstances in which this could take place online, and so we do not talk about it further in this guidance.
- A1.27 Where we believe it is particularly important that conspiring, encouraging and assisting and conspiring offences are considered alongside the other priority offences, we have indicated this in the appropriate section in Chapters 2-14. The inchoate offences will be particularly important to consider in relation to those priority offences which cannot themselves be committed online.
- A1.28 We have provided further information about these inchoate offences in the Legal Annex accompanying this document.

Relevant non-priority offences (‘other’ offences)

- A1.29 ‘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**’.
- A1.30 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 have been created by the Online Safety Act and do not wholly overlap with any priority offences. These offences comprise the following:
- a) *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) *‘Cyberflashing’ offence*; that is, the offence of sending or giving a photograph or video of the genitals with the intent of causing alarm, distress or humiliation, or for the

⁷ Inchoate offences are found in schedule 5(4), schedule 6(9 and 13), and schedule 7(33) 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.

⁹ In Scottish law, the term ‘art and part’ is used to denote the equivalent of aiding and abetting an offence.

purpose of sexual gratification on the behalf of the sender (with recklessness as to whether alarm, distress or humiliation could be caused). See section 187 of the Act.

- c) *Self-harm offence*: that is, the offence of assisting or encouraging ‘serious’ acts of self harm. See section 184 of the Act.
- d) *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.

A1.31 Section 14 of this Guidance deals with how a service should consider content which may amount to a relevant non-priority offence which is not specifically covered in this guidance.

Jurisdictional considerations

A1.32 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.”¹⁰ This means that, for example:

- 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 itself and the user viewing the content were in England.

A1.33 However, where the offence concerned involves an element of offline behaviour, services 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, location should be taken to be not relevant.

A1.34 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 in which 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 which exist and services should consult the appropriate section in Chapters 1-14 of this guidance.

Facilitation of relevant offences

A1.35 Under section 10(2)(b) of the Act, U2U services 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

¹⁰ 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 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)”.

Service Risk Assessment Guidance (Volume 3, Chapter 9 of this consultation) and evidence of such facilitation has been included in the Register of Risks (Volume 2, Chapter 6 of this consultation).

- A1.36 It is possible for specific items of content to facilitate the commission of an offence without amounting to illegal content. 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 facilitates the commission of an offence. However, in the event that an illegal content judgement as set out in this document does not result in the content in question being taken down, services 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.

Illegal content judgements

Section 192 of Act

- A1.37 Further to section 192(1) of the Act, this guidance sets out the approach to be taken where:
- a) a system or process¹¹ operated or used by a provider of a service for the purpose of compliance with relevant requirements; or
 - b) risk assessments required to be carried out by service;
- involve a judgement by a provider about whether content is illegal content.
- A1.38 Such judgements are to be made on the basis of all relevant information that is reasonably available to the provider (see paragraphs A1.64-A1.70, below).
- A1.39 In making such judgements, the approach to be followed is whether a provider has “reasonable grounds to infer that content is illegal content” (see paragraphs A1.48-A1.59 below).
- A1.40 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.”
- A1.41 In our view, the information available for an average or larger service that is relevant to an illegal content judgement is also reasonably available to the smallest services.
- A1.42 We have recommended three automated content technologies in our Codes of Practice; hashing technology recognising child sexual abuse material; URL detection technology recognising URLs which have previously been identified as hosting child sexual abuse material (CSAM); and search to detect content containing keywords strongly associated

¹¹ Systems and processes are a series of actions taken by a service, including actions that mitigate the risk of harm arising from illegal content being encountered. These may include any human or automated systems or processes, such as technology.

with the sale of stolen credentials (i.e. articles for use in fraud). These technologies do not offer an additional class of information that human moderators could not. We therefore take a 'technology-agnostic approach' to illegal content judgements.

Reasonable grounds to infer

Background

- A1.43 All offences comprise three elements, each of which need 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 associated with the commission of the offence (legally known as the 'mens rea')¹²; and
 - c) any **relevant defences**. In this context, if a defence could be reasonably inferred to be present, the content is not illegal content. There are some general defences and some offence specific defences.
- A1.44 The three elements of each priority offence are set out in the legal annex accompanying this guidance.
- A1.45 Content may be reasonably inferred to be illegal content where all of the following criteria are satisfied:
- a) A service has reasonable grounds to infer that the action or conduct element of the offence is present or satisfied;
 - b) A service has reasonable grounds to infer that the state of mind or mental element of the offence is present or satisfied; and
 - c) A service does *not* have reasonable grounds to infer that a defence to the offence may be successfully relied upon.
- A1.46 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.
- A1.47 We are aware that some services may choose to maintain bilateral relationships with law enforcement and/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.

¹² 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.

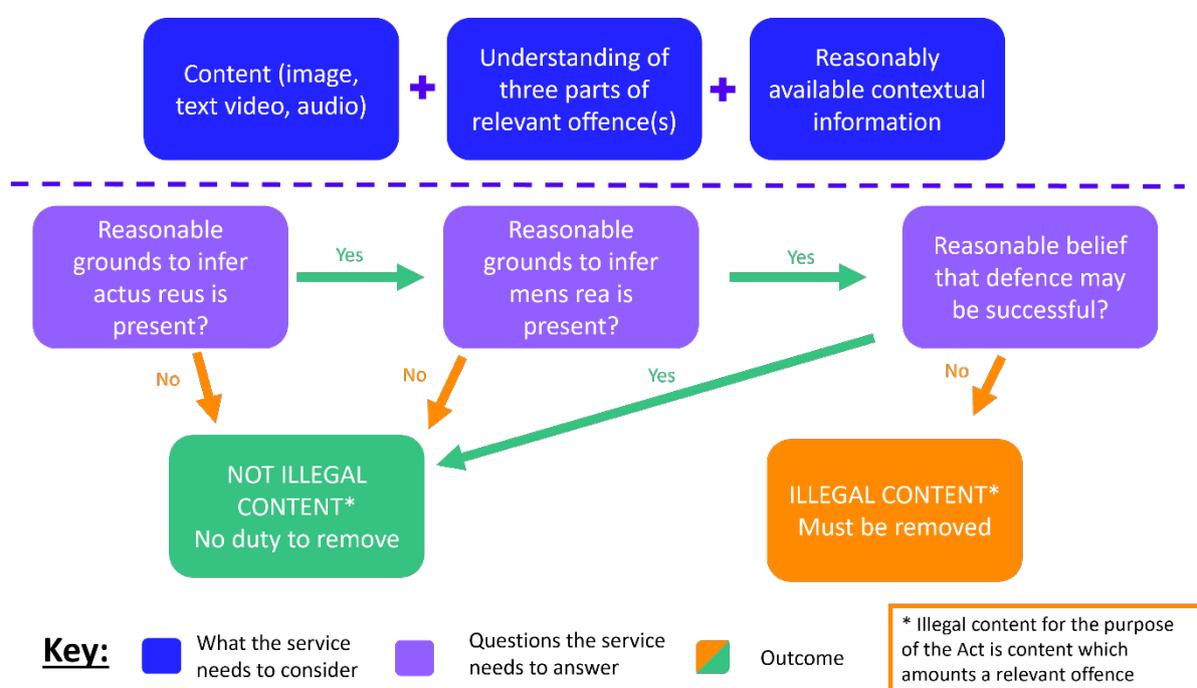
Establishing reasonable grounds to infer

A1.48 Services do not have to make illegal content judgements, if their own terms and conditions are sufficient to secure that all illegal content is taken down where appropriate. If making an illegal content judgement, services should ensure that they:

- Possess sufficient **understanding of UK law** (see the legal annex accompanying this guidance); and
- Take into account all relevant **‘reasonably available information’** (see paragraphs A1.64-A1.70, below)

A1.49 Figure 2 sets out how services may establish whether reasonable grounds to infer that content is illegal exist in any particular case. However, when making illegal content judgements services should consult the appropriate chapter in this guidance for offence-specific information including a summary of legal and contextual considerations.

Figure 1.2: Overview of reasonable grounds to infer



A1.50 Chapters 2-14 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 (and defences that must not be present) for it to be considered illegal content, and the information a service should consider in order to make such a judgement. However, as noted above in paragraphs [A1.18-20] these processes are not mandatory and services are free to tailor their approach to the needs of their service, so long as they are able to demonstrate that – in doing so – they are complying with their illegal content duties.

Attributing conduct and state of mind to individuals

A1.51 The Act requires services 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 services 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.

- A1.52 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.
- A1.53 Services 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 the 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

- A1.54 Bots are 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.
- A1.55 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.
- A1.56 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 2–14.

Inferring state of mind

- A1.57 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. The four most common types of mental element relating to the priority offences involve:
- a) Acting with **intent** (e.g. 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** (e.g. 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, i.e. 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, i.e. 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 as 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 determinative.) It is not dishonest to make a mistake, or to make a joke;
- d) Acting with **knowledge** (e.g. 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 have to know it, varies from offence to offence.

A1.58 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, about which we explain more below in relation to each of the priority offences. 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 service's compliance. When inferring state of mind as part of an illegal content judgement, services should rather be seeking to reach a *reasonable inference* based on the information available to them and the circumstances they are aware of, having regard to this guidance.

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

A1.59 In cases where the service 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 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 forwarding it.

Context generally

A1.60 We acknowledge that it is likely to be necessary for services 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.

A1.61 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. In order to make an illegal content judgement, a service needs to consider this context. It will not be possible to get these judgements perfectly right every time. Appropriately trained and culturally aware content moderators will need to be empowered to make sensible judgements having regard to the information they have.

- A1.62 Where services are relying upon illegality as the sole criteria for content removal, it will often be necessary to pay careful attention to contextual factors, above and beyond what may be necessary when making a judgement based on compliance with Terms of Service.
- A1.63 More information on the contextual factors that should be considered in each case is given in the offence-specific guidance in Chapters 2-14.

Reasonably available information

- A1.64 Illegal content judgements should be made with reference to all information that is both relevant and reasonably available to a service. 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 A1.43. Services should only process as much personal data as is necessary (having regard to the principle of data minimisation under the UK GDPR¹³). The type of information that is relevant to a content judgement will vary depending on the offence being considered.
- A1.65 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 2-14. Services will need to consider what is reasonably available on a case-by-case basis as what may be relevant and reasonably available for the illegal content judgement may differ depending on the type of content, the offence it may amount to, the service's Terms of Service or Publicly Available Statement and what other information is available.
- A1.66 For example, depending on the context, reasonably available information may include:
- a) **Content information:** The type of information that is most likely to be reasonably available to services when making an illegal content judgement is the information contained within the content itself e.g., what the text displayed within an image reads.
 - b) **Complaints information:** Services may also want to consider information they receive which is contained in a complaint from a third party (e.g. law enforcement, a trusted flagger, a user). When using this type of information, the service may also want to consider who that third party is and how robust and reliable the information may be based on this.
 - c) **User profile information:** This refers to information relating to the user that may be found on their profile. A user might for example give details about their age when they register a user profile or in other user profile features such as in their 'bio'. This information may not be routinely accessible to moderators and services would need to consider privacy and data protection laws.

¹³ The ICO. [Principle \(c\): Data minimisation](#). [Accessed 20 September, 2023].

- d) **User profile activity:** This refers to other content posted on a profile, for example content posted immediately before and after the content being considered. This information may not be routinely accessible to moderators and services would need to consider privacy and data protection laws. It could also refer to other kinds of information, for example user behaviour monitoring. However, we do not require services to use any user behaviour monitoring technology and so we do not consider that information derived from such technology would be ‘reasonably available’.
- e) **Published information:** Finally, services may need to consider information that has been published where it is credible and relevant, e.g. whether an entity appears on the list of the Financial Conduct Authority’s regulated entities or not.

A1.67 We recognise that services 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, services should consider this information as appropriate¹⁴. Services will need to ensure that they comply with data protection law when processing this information.

Law enforcement flags or reporting

A1.68 Where a service has been given information by law enforcement that implicates a piece of content in a trial that has led to conviction, this information should trigger an illegal content judgement about this piece of content.

A1.69 If the service has been made aware by law enforcement that the user has been convicted over the content in question, it should be concluded that the service should have reasonable grounds to infer that the content is illegal content. However, where law enforcement only has suspicion that an offence being committed, this is not sufficient *in itself* to reach the reasonable grounds to infer threshold, and services should only consider this as part of a wider assessment of the content’s illegality.

A1.70 If any personal data is provided to a service from law enforcement, services will need to ensure they comply with data protection law in relation to it.

Malicious reporting

A1.71 In some cases, the existence or details of a user complaint may help services 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 a material constituent of an offence, and a user report may be used to evidence this.

A1.72 When considering reporting information as part of an illegal content judgement in this way, services 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. Where a service has internal knowledge of

¹⁴ 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 A1.43, above)

malicious reporting practices, these should inform illegal content judgements as appropriate.

How to use the remainder of this document

- A1.73 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.
- A1.74 In order to assist services, we have included examples of the types of content that may fall into these offences. However, when a service 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 as prescribed by the Act. Services 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 services to take a common-sense approach which makes use of the everyday meaning of the terms concerned.
- A1.75 When they have encountered potential illegal content, services 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.
- A1.76 We have kept the main body of this document as simple as possible. For legal references, and detailed definitions, services should refer to the Legal Annex accompanying this document.
- A1.77 As noted above, this guidance should not be regarded as a substitute for any regulation or law and is not legal advice. Where required, services should seek their own independent advice to enable them to understand and comply with their duties under the Act.

A2. Terrorism

Priority terrorism offences

- A2.1 The priority terrorism offences are listed in Schedule 5 of the Act. They comprise:
- a) [A series of offences relating to ‘proscribed organisations’](#);
 - b) [Offences related to information likely to be of use to a terrorist](#);
 - c) [Offences relating to training for terrorism](#);
 - d) [Other offences involving encouraging terrorism or disseminating terrorist materials](#);
 - e) [Miscellaneous, more specific terrorism offences](#); and
 - f) [Offences relating to financing terrorism](#).
- A2.2 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 proscribed. For all the other offences, it will be necessary to look at the legal definition of terrorism.
- A2.3 [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.](#)
- A2.4 On the other hand, [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). It is also *not* an offence to make jokes about terrorism, even where these are offensive or in poor taste. Services should consider the purpose and meaning of content when making illegal content judgements, having regard to the whole context in which it appears. Ofcom would take into account a user’s right to freedom of expression in enforcing the safety duty.
- A2.5 [Content may need to be considered under more than one of the terrorism offences listed in Schedule 5, and may also involve other offences such as hate or harassment.](#) In particular, in the event of the livestreaming of a suspected terrorist attack, services 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)).
- A2.6 For more information on harms relating to priority terrorism offences see Chapter 6B of the Register of Risks on ‘Terrorism’.

Notices from constables

- A2.7 [Services 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 services that content – defined as “statement or article or record” – is unlawfully terrorism-related.](#) A notice like this has the effect of making the service itself liable to be prosecuted for a terrorism offence if it

does not take appropriate action. This guidance does not address what a service 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 services 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.

- A2.8 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.”

Proscribed organisations offences

- A2.9 When considering content as potential terrorist illegal content, services should first consider whether it relates to a **‘proscribed organisation’**.
- A2.10 [A list of proscribed terrorist organisations has been published by the Government here.](#) The Secretary of State may amend this list. Services should ensure they keep up to date with these developments. It is worth looking at the list closely as some services may not be aware of all the terrorist organisations that are proscribed in the UK.
- A2.11 If content relates to a terrorist organisation, group or movement that is not on the list, services should move on to consider the terrorism offences below, which are not dependent on the terrorist organisation being proscribed.
- A2.12 Unless there is strong evidence to suggest the contrary, services 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.
- A2.13 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.
- A2.14 Services which are aware of logos, flags or other iconography associated with proscribed organisations should factor these into content judgements where appropriate. This could be ascertained through in-house specialist teams or through engagement with third party organisations that maintain databases of such information. Services 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. The content must amount to one of the offences set out below.
- A2.15 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 user posting the content *belongs to a proscribed organisation*.¹⁵

¹⁵ A service should infer that no defence is available unless the content concerned pre-dates the date on which the organisation was proscribed and the user concerned has taken steps to distance themselves from it since its proscription. Given that the most obvious step to take in this regard would be for the user to delete the content themselves, services may infer that no defence is available without investigating the matter. If the

- 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.* 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 (e.g. 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.
- 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 user is a member or supporter of a proscribed organisation.* Services do not need to investigate further whether or not they are a member 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 therefore not be considered illegal as it is not supporting the organisation.

A2.16 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 services should always take account of (hyper)local considerations when making judgements of this kind. This includes the different forms of humour deployed by online subcultures.

A2.17 However, services 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 whole 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” or “joking” 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.

A2.18 Content which does none of the above, but which relates somehow to a proscribed organisation, may still be illegal content. Services should also consider the offence of preparation of terrorist acts, below.

user complains, this may give rise to the inference that the user has not in fact distanced themselves from the organisation since its proscription.

State of mind

- A2.19 Other than in determining the true nature of the content, when considering content relating to proscribed organisations, services do *not* need to think about the state of mind of the user who uploaded it.

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 requesting viewers to join a proscribed organisation.
- A lecture uploaded to a video sharing platform, or livestreamed, in which a speaker expresses support for a proscribed organisation and/or encourages listeners to join.
- A user seeking donations in support of a proscribed organisation.

References

Legal annex: Section A3 of Annex 1

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

The definition of terrorism

- A2.20 The remaining terrorism offences use the concept of **'terrorism'**, so services will need an understanding of what terrorism is as a matter of UK law.
- A2.21 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.
- A2.22 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 public¹⁶; and**
 - b) for the purpose of **advancing a political, religious, racial or ideological cause.**

¹⁶ It should be noted that these definitions preclude actions taken in the context of a war between two nation states, nor can it be attributed to State actors.

- A2.23 The terms used in A2.20 have no special legal meaning, and should therefore be understood to carry their everyday definition.
- A2.24 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.
- A2.25 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 above.
- A2.26 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. Services need to consider the offences which use the definition, below.

Information likely to be of use to a terrorist

- A2.27 Services should first consider whether the content is information that is, of its very nature, designed 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 and state of mind either of the user posting the content, or of other users who are viewing such content.
- A2.28 However, content that may be useful to a terrorist, but which also has clear legitimate uses – for example a map or public transport information – cannot be information 'likely to be of use to a terrorist'.
- A2.29 Services do not need to consider state of mind for this offence, because all that is required is for one of the persons posting or viewing the content to be broadly aware of what the content contains, and whether by its very nature, it is designed to provide assistance to commit or prepare an act of terrorism.
- A2.30 Guidance from one user to another on how to navigate to where a type of information likely to be of use to a terrorist is stored or may be obtained, or a link to such content on another service, may not be "information likely to be of use to a terrorist" in itself, but may 'encourage' or 'assist' another user to view or access it. Where this is the case, the service should infer that action and state of mind tests are met, unless there is reliable evidence that the user posting the content did not intend other users to follow the link.

Relevant defences

- A2.31 Information that is, of its very nature, designed 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.

- A2.32 Reasonable excuse is unlikely to exist where information has been posted to an online location accessible by the general public.¹⁷ 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.
- A2.33 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. However, services 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 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.
- A2.34 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, services 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.

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 Manual¹⁸ 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,¹⁹ where it is clear on the face of the content that the purpose is terrorist in nature

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

Terrorist training offences

- A2.35 This section looks at the offences relating to terrorist training, comprising:

¹⁷ 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.

¹⁸ BBC, 2017. [White supremacist jailed for five years over hate crime offences, 23 February. \[accessed 19 September 2023\].](#)

¹⁹ 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.

- 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.

- A2.36 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**
- A2.37 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.
- A2.38 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.
- A2.39 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.
- A2.40 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, services are not required to ask the users posting and users viewing the content about their purposes, before making an illegal content judgement.

Usage examples

- A bomb-making video uploaded to a social media service
- Instructions on how to make a suicide vest
- Websites containing instructions on how to make a gun, with intent that it be used for terrorist purposes

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)²⁰

Other common terrorism offences

- A2.41 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. Services will need to consider the remaining offences one by one.
- A2.42 This section covers:
- e) dissemination of terrorist publications;
 - f) encouragement of terrorism (inside and outside of the UK)
 - g) incitement of terrorism overseas²¹; and
 - h) preparation of terrorist acts.

Dissemination of terrorist publications

- A2.43 Services should next consider whether the content amounts to an offence of **disseminating a terrorist publication** (see below).
- A2.44 In order for content to amount to this offence there must be reasonable grounds to infer that the content is a **publication** (see paragraphs A2.48-A2.50, below) which:
- i) *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;
 - j) *or* 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;
 - k) *and* 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*
 - l) *and* 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.
- A2.45 For content to be illegal there must be reasonable grounds to infer that criteria c) and d) are true, along with *either* criterion a) *or* criterion b).

²⁰ BBC, 2017. '[Cufflink terrorist' Samata Ullah jailed for eight years, 2 May. \[accessed 19 September 2023\].](#)

²¹ Incitement of terrorism in a domestic setting is covered by other offences (see above).

- A2.46 An example of something that may indirectly encourage terrorism is content which glorifies terrorism (whether past, future or generally) in a way that suggests it should be emulated now. This could include content which glorifies the preparation of acts of terrorism, for example glorifying someone constructing or putting on a suicide vest. 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.
- A2.47 When considering whether content amounts to an offence of disseminating terrorist publications, services should carefully consider whether the publication in question could be considered 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.

What is a publication?

- A2.48 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.
- A2.49 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.
- A2.50 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 user shares it together with a comment disavowing it or implying that it has been circulated as a joke (but see defences, below).

Inferring access by someone who could be encouraged to commit terrorism

- A2.51 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.
- A2.52 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, services should always consider whether a defence applies (see below).

State of mind

- A2.53 In order for content to be considered illegal under this offence, there must be reasonable grounds to infer that the user 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.
- A2.54 Services are unlikely to be in a position to infer intent unless the user concerned has either:
- m) said what they intend, either in the content concerned or in other content they have posted at the same time; or

- n) taken steps to disguise the nature of the content with a view to avoiding take down.

A2.55 However, recklessness may be inferred in most cases where content which meets the criteria set out in [A2.43] and no defences are inferable (see below). In these cases, it should be assumed that the user posting it would have recognised the risk in doing so, *except* where the service has clear evidence that the user did not. Services need not actively seek out such evidence before making an illegal content judgement.

Defences

- A2.56 No defence applies if the publication is practically useful to a terrorist, or if the user intended to encourage terrorism.
- A2.57 If the content encourages terrorism and there is no evidence of intent, then a defence may be available. If the user has made it clear that the content does not express their views and that the user doesn't endorse the content, then there will be grounds for a defence and the content will not be illegal. However, services should consider carefully whether a reasonable person reading the post would consider the way in which the person has distanced themselves from the content to be genuine, or whether it is a deliberate attempt to avoid content take down.

Usage examples

- Publishing on the internet publications authored by known terrorists, e.g. 'shooter manifestos' such as Anders Behring Breivik's manifesto
- Publishing on the internet publications known to be distributed by terrorist network (for example Siege by James Mason)
- A 'martyrdom video' uploaded to a forum, showing a prospective suicide bomber explaining their rationale

References

Legal annex: Section A3 of Annex 1

Statute: Section 2 of the Terrorism Act 2006

Encouraging terrorism

- A2.58 The offence of encouraging terrorism 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.²²
- A2.59 A members-only group which may be joined or accessed by any user without prior approval from an administrator or similar should still be considered accessible to the public. A service 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

²² 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.

prior-approval-only group or to a private social media account where follow requests must be approved.

- A2.60 If content has not been published to members of the public, services need not consider the offence of “encouraging terrorism” any further, and should go on to consider the offence of “inciting terrorism overseas”, below.
- A2.61 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 A2.64-A2.65; referred to in this section as ‘an offence of encouragement’).
- A2.62 Content must be a direct or indirect encouragement to the commission, preparation or instigation of either:
- a) acts of terrorism; or
 - b) Convention offences.
- A2.63 When thinking about this offence, services should consider carefully whether in its full context the content does encourage terrorism. 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).

What is an act of terrorism?

- A2.64 An **‘act of terrorism’** is anything done for the purposes of terrorism, as defined in paragraphs A2.20-A2.26). 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), services do not need to determine the precise nature of the act being encouraged.

What are Convention offences?

- A2.65 If the purpose is not clear on the face of the content, services should consider whether the act being encouraged is a **‘Convention offence’**.²³ Convention offences may be committed either in or outside the UK. The majority are acts that a reasonable person would be likely to consider as terrorist in nature without needing any detailed guidance – for example, offences relating to:
- c) causing explosions to hurt people;
 - d) biological and chemical weapons;
 - e) importing or using radioactive materials;
 - f) hijackings and kidnappings; or

²³ The name ‘Convention offence’ derives from the fact that the offences in question were incorporated into UK law (via the Terrorism Act 2006) with the intention of implementing provisions of the Council of Europe Convention for the Prevention of Terrorism. The Terrorism Act 2006 as ‘an offence listed in Schedule 1 [of the Terrorism Act 2006] or an equivalent offence under the law of a country or territory outside the United Kingdom.’

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

A2.66 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.

State of mind and relevant defences

A2.67 For content to amount to an offence of encouragement there must be reasonable grounds to infer that the person posting:

- a) intended to encourage terrorism; *or*
- b) was reckless as to whether their post could encourage terrorism.

A2.68 Recklessness exists where it can be reasonably inferred that the user recognised (or *should* have reasonably recognised) the risk that the content would encourage terrorism, and posted anyway, *except* where there is evidence to show that the statement did not express their views or have their endorsement.

A2.69 Where content appears on its face to be encouraging terrorism, we consider it reasonable to infer that most users posting it would be aware of the risk that it might encourage terrorism, unless the service has positive evidence that the user does not. Examples of such content are given in the 'Usage examples' box below. We do not consider that services are required to search for such evidence before making an illegal content judgement. Services should take a common-sense approach based on the content in question.

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.

References

Legal annex: Section A3 of Annex 1

Statute: Section 1 of the Terrorism Act 2006

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

Inciting terrorism overseas

A2.70 If the content in question does not amount to dissemination of terrorist publications or encouraging terrorism, services should next consider whether the content **incites terrorism overseas** (i.e. outside the UK).

A2.71 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'.

- A2.72 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.
- A2.73 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.
- A2.74 In order to make an illegal content judgement, services need to establish that the user **intended** to incite terrorism. Services 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 user concerned 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 with a view to avoiding take down.

Usage examples

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

References

Legal annex: Section A3 of Annex 1

Statute: Sections 59-61 of the Terrorism Act 2000

Services should also note the provisions of section 3 of the Terrorism Act 2006, which provide for a constable to give notice to services that content is unlawfully terrorism-related

Preparation of terrorist acts

- A2.75 **Engaging in any conduct in preparation for giving effect to an intention of committing acts of terrorism or assisting others to commit such acts** is an offence.
- A2.76 The high state of mind requirement means that it is difficult to conceive of content which would amount to this offence but not also amount to one of the offences above. Clear evidence of intention would be needed. It should be noted, however, 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 services

when considering content relating to proscribed organisations which does not obviously fall within one of the specific proscribed organisation offences.

A2.77 In particular, an account belonging to or run on behalf of a proscribed organisation would be likely to comprise content amounting to this offence. Any content posted to such an account would be likely to be posted for the benefit of the organisation concerned. However, it may not be straightforward to identify such accounts in practice. Relevant factors would include:

- a) *Account Name*: The account 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*: 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 information such as 'bio' text, descriptive text on account and other user profile information*: Other information fields attached to the account 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.

A2.78 Reasonable grounds to infer that an account 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 amounts to a proscribed group offence.

References

Legal annex: Section A3 of Annex 1

Statute: Section 5 of the Terrorism Act 2006

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

Miscellaneous specific terrorism offences

A2.79 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

A2.80 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.

- A2.81 Information on the specific location or activity of military units during a specific current or future time period may meet this criteria.
- A2.82 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.

Usage examples

- Content detailing where a military unit will be at a specific time.
- Content allowing an individual constable, intelligence office or soldier etc. could be located at any given time (e.g. through the publication of their home address).

References

Legal annex: Section A3 of Annex 1

Statute: Section 58A of the Terrorism Act 2000

Threats: noxious substances or radioactive devices

Noxious substances

- A2.83 It is an offence for a person to make a **threat of action involving harmful substances 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.
- A2.84 Content should also be considered illegal where there are reasonable grounds to infer that it:
- a) encourages others to take any of the actions mentioned in A2.82; *or*
 - b) amounts to an offence of conspiring to commit an act outlined in A2.82;
 - c) *and* where the purpose to encourage *or* conspire is clear on the face of content.
- A2.85 In order to be judged to be illegal content, there must be reasonable grounds to infer that the person intends to induce in a person, anywhere in the world, fear that the threat is likely to be carried out. Context is important in inferring the satisfaction of these criteria. Jokes, fantasies and fiction are unlikely to meet this test.

Radioactive material

- A2.86 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. Again, context will be important and services should consider the possibility that content is fictional or a joke.

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

Directing a terrorist organisation

- A2.87 Content may be illegal content if it involves a user **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.
- A2.88 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.

References

Legal annex: Section A3 of Annex 1

Statute: Section 56 of the Terrorism Act 2000

Terrorist finance offences

- A2.89 The Act includes as priority offences a number of offences relating to terrorist fundraising. Of these, only the offence of inviting someone to provide money or other property for terrorism may be committed online through the posting of content.

Inviting someone to provide money for terrorism

- A2.90 In order for content to be considered illegal under 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. Services should consider the whole context in making this judgement, including whether the content is clearly a joke.
- A2.91 Content should not be treated as illegal where there are reasonable grounds to infer that the user 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.

Other terrorist financing offences

A2.92 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

A2.93 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). Services 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.

References

Legal annex: Section A3 of Annex 1

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

A3. Threats, abuse and harassment (including hate)

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

Offences covered in this section

- A3.1 The priority offences which relate to threats, abuse and harassment overlap with one another and with some non-priority or ‘other’ offences to a very significant degree. For the purposes of this section of the Illegal Content Judgements Guidance, 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)
 - d) [Flashing images](#) (‘epilepsy trolling’).
- A3.2 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, grooming, adult exploitation or foreign interference and the non-priority false communications offence.
- A3.3 For the purposes of identifying content as illegal content only, services 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, services 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.
- A3.4 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 it an offence to pursue a course of conduct that amounts to harassment of another. In comparison, section 2A of the same act makes it an offence to pursue a course of conduct that amounts to harassment of another

AND the course of conduct amounts to stalking. These offences have similar state of mind requirements. If a service identifies content which constitutes a course of conduct that amounts to harassment in relation to another person, the state of mind requirements have been satisfied and there are no defences available, then the content will be illegal content contrary to section 2 of the Protection from Harassment Act 1997. Having identified illegal content, services do not need to go on to consider whether the content is illegal because it also amounts to stalking for the purposes of the section 2A offence.

- A3.5 Services 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.
- A3.6 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 A3.4: if a service 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 should take down the content regardless. However, a proper consideration of risk in a risk assessment, and of 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 is disabled or transgender.
- A3.7 For more information on harms relating to the offences in this chapter see the following chapters of the Register of Risks: Chapter 6E on ‘Harassment, stalking threats and abuse offences’, Chapter 6F on ‘Hate offences’ and 6R on ‘Epilepsy trolling’ offence.

Context, nuance and humour

- A3.8 In considering the offences in this section, services 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

- A3.9 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.

Threats including hate

- A3.10 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, audio-visual content and images.
- A3.11 Services 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

- A3.12 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.

Threats and Threatening behaviour

- A3.13 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). For content which constitutes a threat likely to cause **harassment** or **distress**, please refer to the below section A3.21-A3.30.
- A3.14 Threatening behaviour may 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’

- A3.15 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 threatened because of characteristics they have is more likely to feel threatened.
- A3.16 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:
- 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.
 - The context in which the threat 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 threat makes up a part, etc.

A3.17 Services 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

A3.18 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

A3.19 The only specific defence to this offence is that the threatening behaviour was ‘reasonable’ in the particular circumstances in which it happened.

A3.20 Services 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 report someone to the police, if the context shows that the maker of the threat believes they have done or are about to do something criminal.

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 or persons.

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; section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995 (racially-aggravated harassment) so far as it relates to conduct causing alarm.

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

- A3.21 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.
- A3.22 Where content involves behaviour which is threatening 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**.
- A3.23 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/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 content is routinely viewed on smart phones.
- A3.24 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.
- A3.25 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’?

- A3.26 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. The harassment must be real. 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.
- A3.27 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 racial hatred, 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 below (see paragraphs A3.97-A3.98).
- A3.28 More information that may aid services in inferring harassment, alarm, or distress can be found in Ofcom’s Register of Risk.

State of mind

- A3.29 A service must also draw an inference that the person posting the content concerned was at least aware that that the behaviour may be threatening. Such awareness may reasonably be inferred if the threatening behaviour is very obviously likely to be distressing to most people and is posted somewhere with wide reach.
- A3.30 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

- A3.31 Content meeting the criteria above 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.
- A3.32 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 services 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.
- A3.33 There are two further defences: (1) 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 takedown decision (but of course if the person becomes aware as a result of the takedown decision that such a person was within hearing or sight, the content would become illegal content). (2) 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 on smart phones.

Usage examples

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

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); section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995 (racially-aggravated harassment)

Threats which are likely to stir up racial hatred

- A3.34 If content is threatening but has not met the threshold for takedown under the offences above, services should next consider whether it can be reasonably inferred to be a threat **likely to stir up racial hatred**.
- A3.35 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.
- A3.36 In the case of displays of written material and/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'?

- A3.37 Race refers to a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins. It includes, for example, Romany gypsies and Irish travellers. 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.
- A3.38 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.
- A3.39 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

- A3.40 If, having regard to all the circumstances, racial hatred is likely to be stirred up by the content, the service 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

- A3.41 A defence exists for content which stirs up racial hatred, but only if the user concerned did not *intend* to stir up racial hatred. Reasonable grounds to infer intent may arise in relation to the most egregious and provocative instances of such content.
- A3.42 In cases where there are no reasonable grounds to infer intent it is a defence for a person to show that he was not aware that the content might be threatening. However, positive grounds to infer this would need to be available to the service.

- A3.43 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.

Usage examples

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

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

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

- A3.44 If content is threatening but has not met the threshold for takedown 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**.
- A3.45 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

- A3.46 Religious hatred includes hatred against people defined by their religious belief, and hatred against people without religious belief (e.g. atheists and humanists).
- A3.47 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

- A3.48 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).
- A3.49 The following are examples of content which should *not* be considered to meet the threshold for stirring up hatred:
- c) The discussion or criticism of sexual conduct or practices or the urging of persons to refrain from acting upon their sexual orientation;
 - d) The expression of beliefs that a particular sexual orientation is ‘unnatural’, ‘forbidden’ or ‘against God’;
 - e) Any discussion or criticism of marriage between people of a particular sex.

State of mind

A3.50 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 provide reasonable grounds to infer that the user intended to stir up hatred, but clear words are needed. Intent to stir up disapproval is not intent to stir up hatred.

Defence

A3.51 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).

References

Legal annex: Section A4 of Annex 1

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

Threats which may provoke violence

A3.52 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 with either:

- a) 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.

A3.53 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 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 rare 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 or a genocidal campaign.

A3.54 The person posting the content must be at least aware that it is 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 user concerned was not aware.

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)

Abuse and insults including hate

- A3.55 This section considers abuse and insults. 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 online communication can constitute threatening behaviour. Abuse may be contained in any sort of content, including text, audio-visual content and images.
- A3.56 Differentiating between abuse amounting to illegal content and friendly 'banter' which appears abusive, or robust but lawful debate, is likely to be particularly difficult in the absence of a user complaint providing more context to frame the content in question.
- A3.57 Services 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 are often made as jokes, and the language associated with abuse and insult is commonly used in many other contexts too.
- A3.58 Services should also have careful regard to the possibility that the content, however misjudged it may be, is part of a robust but lawful 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

- A3.59 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.

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

- A3.60 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.
- A3.61 Abusive behaviour may amount to illegal content if it is likely to cause a **reasonable person** to suffer **fear or alarm**.
- A3.62 The word 'abusive' has no special legal definition and should be considered to carry its common-sense meaning.

A3.63 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'

A3.64 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 it to be reasonable for a person to feel fear or alarm as a result of abuse than it is as a result of threats.

A3.65 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

A3.66 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 user carrying out the abuse had the required state of mind.

Relevant defences

A3.67 The only specific defence to this offence is that the abusive behaviour was 'reasonable' in the particular circumstances in which it happened.

A3.68 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 judgments

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 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); 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; section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995 (racially-aggravated harassment) so far as it relates to conduct causing alarm.

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

- A3.69 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.
- A3.70 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.
- A3.71 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/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 content is routinely viewed on smart phones.
- A3.72 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.
- A3.73 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'?

- A3.74 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. The harassment must be real. 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.
- A3.75 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 racial hatred, 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).

- A3.76 More information that may aid services in inferring harassment, alarm, or distress can be found in Ofcom's Register of Risk.

State of mind

- A3.77 A service must also 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 distressing to 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

- A3.78 Content meeting the criteria above 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.
- A3.79 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 taken into account 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.
- A3.80 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 takedown decision (but of course if the person becomes aware as a result of the takedown decision that such a person was within hearing or sight, the content would become illegal content).
- A3.81 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.

Usage examples

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

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); section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995 (racially-aggravated harassment).

Abuse and insults which are likely to stir up racial hatred

- A3.82 If content is abusive or insulting but has not met the threshold for takedown 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**.
- A3.83 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.
- A3.84 In the case of displays of written material and/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'?

- A3.85 Race refers to a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins. It includes, for example, Romany gypsies and Irish travellers. 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.
- A3.86 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.
- A3.87 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

A3.88 If, having regard to all the circumstances, racial hatred is likely to be stirred up by the content, the service 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

A3.89 A defence exists for content which stirs up racial hatred, but only if the user concerned did not *intend* to stir up racial hatred. Reasonable grounds to infer intent may arise in relation to the most egregious and provocative instances of such content.

A3.90 In cases where there are no reasonable grounds to infer intent it is a defence for a person to show that he was not aware that the content might be insulting or abusive. However, positive grounds to infer this would need to be available to the service.

A3.91 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.

Usage examples

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

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.

Abuse and insults which may provoke violence

A3.92 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 with either:

- a) 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.

A3.93 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 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 rare 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 or a genocidal campaign. 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.

References

Legal annex: Section A4 of Annex 1

Statute: Section 4 of the Public Order Act 1986

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

- A3.94 Unlawful harassment occurs when a user 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. 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.
- A3.95 Given that content moderators will have already considered the offences set out above which relate to threatening, abusive and insulting content, services are most likely to need to consider this offence when they receive a complaint about content which is not necessarily problematic on its face.

What is harassment?

- A3.96 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 services to take a common sense view of whether they have reasonable grounds to infer that the content they are considering meets this test.
- A3.97 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 service 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.

- A3.98 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. 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 service to make a reasonable inference that this is the case.
- A3.99 There is no timeframe set on the period over which harassment can take place. Services should take a common-sense approach.

User reports

- A3.100 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.
- A3.101 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), services are usually entitled to place weight on the complaint itself in determining whether they have reasonable grounds to infer that the content is illegal. However, they 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.
- A3.102 Services 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, services should have due regard to the risk of a malicious, commercially-motivated or jealousy-motivated complaint.

Relevant defences

- A3.103 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 services should take a common-sense approach.
- A3.104 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 services should bear in mind that the right to free expression does not protect content which is 'gratuitously offensive'.

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); section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995 (racially aggravated harassment).

Epilepsy trolling

- A3.105 The offence of sending or showing flashing images electronically ‘epilepsy trolling’ is not a priority offence in the Act, therefore the duties that apply to content which amounts to this offence differ. However, due to the fact this offence is likely to occur primarily online and we expect that services are likely to encounter such content frequently, we have provided guidance on how to make illegal content judgements in regard to this offence.
- A3.106 ‘Epilepsy trolling’ occurs in content which consists of (or includes) flashing images, subject to a number of conditions, 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.
- A3.107 The sending of a hyperlink which, when followed, would allow another user to access a flashing image should be considered to be the same as sending a flashing image.

What is a ‘flashing image’?

- A3.108 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.
- A3.109 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

- A3.110 Intent can be reasonably inferred where context surrounding the communication suggests that the user sending it had recently been informed that one of the users likely to be exposed to their content had epilepsy.
- A3.111 Intent to cause harm cannot be reasonably inferred where the content concerned is prefaced by or includes a warning caption for those with epilepsy.

Relevant defences

A3.112 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.

References

Legal annex: Section A3 of Annex 2

Statute: Section 183 of the Online Safety Act

A4. 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

A4.1 This chapter provides guidance on the priority offences relating to child sexual abuse material. For offences relating to grooming and exploitation of children, see Chapter 5 of this guidance.

What is child sexual abuse material (CSAM)?

- A4.2 **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 CSAM.
- A4.3 For more information on harms relating to CSAM, see Chapter 6C of the Register of Risks (Child Sexual Exploitation and Abuse).

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

A4.4 The Act contains a duty on services to report all detected but unreported illegal CSEA 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 exploitation of children. When the section is brought into force and regulations about reports to the NCA have been made by the Secretary of State, we will update this guidance if necessary.

Priority CSAM offences

- A4.5 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.](#)

Offences relating to indecent images of a child

- A4.6 When making a judgement regarding potential CSAM content, services 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 services should infer the age of the subject in an image, see below.
- A4.7 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.
- A4.8 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).

What are indecent images or films?

- A4.9 Indecent images include indecent photographs or pseudo-photographs, and include indecent films (and photographs comprised in films), as explained further below.

Photographs

- A4.10 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).
- A4.11 For the avoidance of doubt, this captures digital photographs found online.

Film

- A4.12 References to a film include any form of video-recording.

Pseudo-photograph

- A4.13 A pseudo-photograph is an image or video made by computer-graphics or otherwise which appears to be a photograph or film. Images created through generative artificial

intelligence (AI) should be considered ‘pseudo-photographs’ where they appear to be a photograph or film.

- A4.14 In Ofcom’s view, ‘deepfakes’ 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.
- A4.15 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. Services should refer to paragraphs [A4.29-A4.36] of this chapter as appropriate.

‘Indecent’

- A4.16 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.
- A4.17 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.
- A4.18 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

- A4.19 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.
- A4.20 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 service should proceed on the basis that the content is an image of a child.

Inferring age from account information

- A4.21 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) Age estimation or age verification 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.

- A4.22 Services should have regard to the privacy implications of reviewing a user’s account activity and information 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. Services should have regard to their obligations under the laws relating to data protection.
- A4.23 In order to protect children from online harms, the Online Safety Act requires services that are likely to be accessed by children to use age estimation or age verification measures. We are continuing to build our evidence base in relation to available age estimation and verification measures and expect to return to this matter in our work focusing on the protection of children online.²⁴ Once this work is complete, many services will be expected to use age estimation or verification measures that are highly effective at determining whether or not a particular user is a child or not. This may make it easier for services to identify potential victims whom it is reasonable to infer are children, particularly in the case of self-generated content on U2U services.

Inferring age in the case of pseudo-photographs

- A4.24 A pseudo-photograph should be considered to be of a child where the impression or predominant impression conveyed by a pseudo-photograph 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.

State of mind

- A4.25 It is reasonable for services to infer that the state of mind requirements are met. Content which meets the criteria set out above should be taken down, absent defences set out below.

Relevant defences

- A4.26 We describe below the relevant defences to the offence of ‘making’ an indecent image.
- A4.27 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. 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 (which do not include where an image has been posted by a vigilante group). A statement by the user concerned should not be considered sufficient.
- A4.28 Defences are also available if the user is a member of the security services or GCHQ²⁵, and it was necessary for the user to make the content as part of their job. Services should not 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.²⁶

²⁴ For more information on our current position with regard to age assurance measures and our work focusing on protecting children, please see Volume 4, Chapter 21 of our Phase One consultation on ‘User Access’ paragraphs 21.106 – 21.110.

²⁵ 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.

²⁶ 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

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 video recording, still from a video recording or photograph depicting a naked child where the genitals, anus or female breasts are visible, regardless of context or setting.
- A computer-generated image which appears to be photographic, depicting either of the above for example, a 'deep fake'.

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)

A4.29 If the content in question has been judged *not* to contain an indecent image of a child as set out above, services 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.

What is a 'prohibited' image of a child?

A4.30 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) Pornographic²⁷ 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:
 - a. the performance by a person of an act of intercourse or oral sex with or in the presence of a child;

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 user 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.

²⁷ 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.

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

A4.31 All three criteria set out in paragraph [A4.30] 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.

A4.32 'Obscene' has no special legal meaning and should therefore be considered according to its common-sense definition, with 'grossly offensive' and 'disgusting' being two aspects of what is encompassed within the meaning of the word 'obscene.'

Inferring the age of the subject

A4.33 When inferring the age of the child depicted in the content, services 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

A4.34 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 services should understand the term in the common-sense 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. Services should therefore assume that this defence does not apply, absent very strong evidence to the contrary. Services should refer to the Legal Annex for the additional defences.

Exemption for 'classified works'

A4.35 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.

A4.36 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 [A4.30], 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, e.g. manga cartoons or anime.

- Computer-generated content of a fictional character from popular media normally depicted as under the age of 18, engaging in penetrative or non-penetrative sexual activity.

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

- A4.37 Content should also be considered illegal where it does not in itself contain an indecent or prohibited 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.
- A4.38 If the content concerned is a link to an indecent or prohibited image of a child or a paedophile manual/obscene article, services 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.²⁸
- A4.39 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 above), 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. In circumstances where content is advertising the distribution of prohibited images, a paedophile manual and/or obscene articles, 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 services should consider the nature of the advertisement. In many cases, services 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 service or promoting content of this nature.

Usage examples

- Hyperlinks (including shortened hyperlinks) to one or more indecent or prohibited images of a child.

²⁸ 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.

- 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.
- Users posting links that have been edited to evade detection to URLs that contain one or more indecent or prohibited images of a child.
- A post advertising indecent images of a child for sale.

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

Generative artificial intelligence

- A4.40 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 paragraph A4.13. 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.
- A4.41 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.
- A4.42 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.

Offences related to ‘paedophile manuals’ and obscene articles

Possession of a paedophile manual

- A4.43 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.
- A4.44 ‘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 2015.²⁹
- A4.45 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

²⁹ 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.

a child sex offence, sexual communication with a child, meeting a child following sexual grooming, and about the offences relating to indecent images of children.

- A4.46 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

- A4.47 One of the defences available to the user and where content may not be illegal is where there are reasonable grounds to infer that the user posting had a legitimate reason to be in possession of the item. A statement by the user concerned is not sufficient to show this.

Obscene articles

- A4.48 An obscene article on the internet which encourages others to carry out any of the CSAM offences, grooming/child sexual exploitation or sexual activity offences³⁰ is illegal content unless one of the defences below arises. An article is any kind of content and includes for example, chat messages and web pages. (It also includes images but if so, services 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 user to ‘publish’ an obscene article. Publishing means to an individual or a wider group of people.

- A4.49 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.

- A4.50 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. The person posting 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.

Relevant defences

- A4.51 There is a defence if the article concerned 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’.

- A4.52 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

³⁰ 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 child), 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).

ground that it is in the interests of drama, opera, ballet or any other art, or of literature or learning’.

- A4.53 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 services should be sceptical of claims that it has.

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),

A5. 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

- A5.1 This chapter focuses on behavioural child sexual exploitation and abuse ('CSEA') offences. It deals with the priority offences of grooming and 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)³¹ offences, services should refer to Chapter 4 first.
- A5.2 This chapter provides guidance on how services should identify content which amounts to grooming, but to read more about how grooming offences manifest online, please see Chapter 6C of the Register of Risks (Child Sexual Exploitation and Abuse).
- A5.3 In order to assist services, we have structured this section by looking at how much the service 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 service only needs to be able to draw inferences about the age of the potential victim. Services 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 services 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. Services should consider whether 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.
- A5.4 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 \(potential victim under 16\);](#)

³¹ 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.

- c) [‘Arranging’ together with ‘assisting’, ‘encouraging’ and ‘conspiring’ offences which could take place between adults and/or children \(potential victim\(s\) under 16\);](#)
and
- d) [Offences concerning the sexual exploitation of children and young people aged 17 or younger.](#)

Communication with a child

A5.5 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 irrelevant when judging whether content is illegal and it can be written messages, audio, video and images. 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

A5.6 The Act contains a duty on services to report all detected but unreported illegal CSEA content to the National Crime Agency (‘NCA’) (see section 66). CSEA content is here understood as any content which amounts to a relevant CSEA offence, whether relating to CSAM or to grooming and exploitation of children. When the section is brought into force and regulations about reports to the NCA have been made by the Secretary of State, we will update this guidance if necessary.

Sexual activity offences

A5.7 There are a number of priority offences which involve ‘sexual activity’ where the potential victim is a child.³² 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?

A5.8 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.

A5.9 Services 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.

A5.10 In line with legislation, we use the term ‘sexual activity’ to refer to any such activity, although we acknowledge that in the majority of cases the more appropriate term would be sexual abuse. Services are reminded that content containing images of sexual activity

³² 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.

with children is likely to be one of the CSAM offences and services should refer to Chapter 4 where appropriate.

- A5.11 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 be capable of amounting to one or more of the offences below.
- A5.12 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. We call these ‘**child-on-child offences**’, in line with current best practice. For content to be reasonably inferred as amounting to one of the priority offences of sexual activity with a child, however, services need only make inferences about the age of the potential victim.

Sexual activity offences where the potential victim is under 16

- A5.13 Where at least one party in a communication containing sexual activity appears to be a child, services should next 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 perpetrator *intends* to cause or incite the child to engage in sexual activity;
 - or*
 - b) **causes a child under 16 to watch sexual activity**³³ (for example by sending a pornographic video or gif to them, or during livestreaming); and the perpetrator *intends* to cause the child to watch sexual activity; and the content was posted for the purpose of the sexual gratification of the perpetrator. (Where both parties to the communication are children, then both may be perpetrators as well as victims).
- A5.14 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 services 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 services have received reports that a child has been ‘**caused**’ to engage in sexual activity by online content, either through information from law enforcement or where it has been raised through a user report, services can reasonably infer that the content in question is illegal.
- A5.15 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 potential perpetrator. 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, services 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. Such evidence might be that the content has been sent for

³³ The wording of this offence in statute is ‘a sexual act.’ We rephrase this as ‘sexual activity’ as explained above.

educational or medical reasons. If pornographic content is sent to a child under 16 years, it will be reasonable for services to infer that the child has been caused to watch it.

Inferring the potential victim's age as under 16

- A5.16 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 services that are likely to be accessed by children to use age estimation or age verification measures. We are continuing to build our evidence base in relation to available age estimation and verification measures and expect to return to this matter in our work focusing on the protection of children online³⁴. Once this work is complete, many services will be expected to use age estimation or verification measures that are highly effective at determining whether or not a particular user is a child or not. This may make it easier for services to identify potential victims whom it is reasonable to infer are children.
- A5.17 Reasonable grounds that a potential victim is a child should be presumed to exist where:
- a) a service explicitly markets itself to primary school aged children;
 - b) robust age estimation or age verification measures indicate that the *potential victim* is aged under 16;
 - c) a *potential victim* of grooming states in the content itself that they are aged under 16 or were aged under 16 at the time when the potentially illegal content was posted;
 - d) a *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; or
 - e) account information indicates that *the potential victim* is aged under 16, *except where* the user concerned has been using the service for more than 16 years.
- A5.18 Services should have regard to the privacy implications of reviewing a potential victim's account activity and information 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. Services should have regard to their obligations under the laws relating to data protection.

State of mind

- A5.19 If the service has grounds to infer that the child is *under 13* (for example, because the child has told them so), and the service 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.
- A5.20 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 potential perpetrator did not *reasonably* believe that the child in question was 16 or over. Services 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

³⁴ For more information on our current position with regards to age assurance measures and our work focusing on protecting children, please see Volume 4, Chapter 21 of our Phase One consultation on 'User Access' paragraphs 21.106 – 21.110.

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 and taken down, *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

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

A5.21 If none of the offences above has 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 service should next consider the age of the potential perpetrator.

Sexual communication with a child

A5.22 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 must be 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.

A5.23 Inferences about the age of the potential victim in question should be made using the principles outlined in paragraphs A5.17.

A5.24 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'?

A5.25 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.

A5.26 Communication which encourages a child to themselves communicate in a sexual way is encompassed within this definition.

A5.27 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 (e.g. 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).

A5.28 Services 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.

A5.29 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

A5.30 As part of their moderation efforts, services 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.

A5.31 Content which involves sexual communication with an adult credibly posing as a child should also be considered illegal 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

- A5.32 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.
- A5.33 Services 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.
- A5.34 Services must have regard to the fact that reviewing a user’s account activity and 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. Services should have regard to their obligations under the laws relating to data protection.

State of mind

- A5.35 As above, services 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.
- A5.36 The service is unlikely to have any direct evidence as to the user’s true state of mind. However, if the service 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

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

- A5.37 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. It is not necessary that such persons are over the age of 16. Content may be illegal even where the perpetrators are themselves under the age of 16.
- A5.38 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) engagement in sexual activity with a child;
 - ii) engaging in sexual activity in the presence of a child;
 - iii) causing a child to engage in sexual activity; or
 - iv) causing a child to watch a sexual act.
- A5.39 These offences will also commonly occur at the same time as an offence of sexual communication, and where this is the case, services should always consider that offence first (see paragraphs [A5.22-A5.36] above).
- A5.40 This section focuses only on content which could amount to an offence listed in paragraph A5.38 *without* amounting to a sexual communication or an indecent image offence.

What is ‘arranging or facilitating?’

- A5.41 The terms ‘arranging or facilitating’ have no special legal meaning and should therefore be understood to carry their everyday definition. ‘Arranging’ should therefore be taken to mean planning or settling the details of something beforehand. ‘Facilitating’ should be understood as making something easy or easier, promoting it or moving it forward.
- A5.42 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.
- A5.43 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.
- A5.44 Where content does not reach the threshold of arranging, for example because it is not specific enough or because the plan is not made, services should consider the offences of

encouraging, assisting, attempting and conspiracy in relation to the offences of engagement in sexual activity with a child, 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. All of these require **intent**.

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.

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

- A5.45 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.
- A5.46 The priority offences concerning the sexual exploitation of children and young people comprise:
- a) **arranging and/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’).
- A5.47 As there is significant overlap between these offences, we consider them all together.

A5.48 These offences may be committed by any person, regardless of age and regardless their relationship with the child in question.

What is sexual exploitation?

A5.49 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.³⁵ 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.³⁶

Inferring the age of the potential victim

A2.50 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 [A5.17] above, excluding [A5.17 a)]. Services should note in particular the importance of privacy implications (see paragraph [A5.18]).

Inciting the sexual exploitation of a child

A5.51 The offence of **inciting the sexual exploitation of a child aged 17 or younger**, which does not necessarily require services to make reasonable inferences about other events, is the most likely offence to be relevant.

Relevant 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):

- 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.

A5.52 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.

A5.53 In circumstances where services have received information either from law enforcement or a user report that a child aged 17 or younger exists who has been exploited by the making of indecent images, for example through livestreaming, or 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), the associated content should be inferred to be illegal and should be removed.

Arranging or facilitating the sexual offences of a child

A5.54 If content does not amount to an offence of inciting the sexual exploitation of a child, services should next consider whether content amounts to **arranging or facilitating** the

³⁵ 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.

³⁶ A definition of indecent imagery is given in Chapter 4 on offences relating to child sexual abuse material (CSAM).

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' should be taken to mean content which plans or settles the details of something beforehand and 'facilitating' should be understood as content which makes something easy or easier, promoting it or moving it forward.

A5.55 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

A5.56 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.

A5.57 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 services, and so the reasonable grounds to infer threshold is unlikely to be met in most instances. However, where services do have evidence that a child has provided sexual services (for example, through information provided by law enforcement), unless there are reasonable grounds to suggest the report is untrue, the content should be reasonably inferred to be illegal.

State of mind

A5.58 When the potential victim is over 13, content should be judged to be illegal under these offences only where there are reasonable grounds to infer that the person arranging the services did *not* reasonably believe that the child was over the age of 18.

A5.59 If the service 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.

A5.60 These offences, whether the victim is under or over 13, also have a state of mind requirement of **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 suggest 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

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).

A6. Fraud and other financial offences

Priority fraud and other financial offences

- A6.1 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](#).
- A6.2 Though these offences all relate to fraud and financial activity, they require very different inferences to be made and services should therefore consider the most appropriate offence to start with based on the content in question.
- A6.3 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, services should check that claim against the FS Register. A service 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.
- A6.4 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 services to reasonably infer the existence of dishonesty, this is likely to be possible in some cases based on a consideration of the content in question.
- A6.5 Other financial services offences may also be relevant. These are complex offences for which services will likely require a high degree of technical knowledge. In most cases, it will be appropriate for services to rely on expert and/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.
- A6.6 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's attention through user reports.

- A6.7 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). 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 is likely to be able to be reached.
- A6.8 For more information on harms relating to fraud and other financial offences see Chapter 6O of the Register of Risks ('Fraud and Financial services offences') and for information on harms relating to proceeds of crime see Chapter 6N of the Register of Risks ('Proceeds of crime offences').
- A6.9 We have only provided usage examples in the section dealing with articles for use in fraud. For most other offences, context is likely to be needed.

False claims to be authorised or exempt for the purposes of carrying on regulated activity

- A6.10 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

- A6.11 Services should first look for whether the content contains a claim by a person³⁷ (hereafter referred to as firm, which could include an individual) to be authorised by the FCA or Prudential Regulation Authority ('PRA'). If it does, services 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. Services should check the particular status of a firm as listed on the FS Register in order to determine whether they are authorised.
- A6.12 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 cryptoasset firms and electronic money and payment services firms. Such persons will not necessarily be authorised persons. Services should therefore be careful to ensure that the FS Register shows the status of 'authorised' where a person is claiming simply to be authorised by the FCA or PRA.

³⁷ In accordance with the Interpretation Act 1978, any person, including a body of persons corporate or unincorporate (that is, a natural person, a legal person and, for example, a partnership).

- A6.13 When services 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. Services should be alert to the activities of ‘clone firms’. Clone firms are not authorised but may try to convince consumers they are. They will often use the name and address of a genuine firm, or they may copy an FRN³⁸, 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.
- A6.14 If the firm is included as an authorised person on the FS Register, it is reasonable for a service to conclude without further investigation that the content is lawful unless the FCA or PRA publishes a decision that it is not. There is no need to go on to consider the rest of this FSMA priority offences section. Services may however wish to refer complainants to the FCA or PRA.
- A6.15 A service 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. Services 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.]”.
- A6.16 Particular care should be taken when a firm is listed on the FCA Register as unauthorised (usually in red) and/or included in the FCA Warning List here. 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. 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. For more information on the use of the FCA’s Warning List, see paragraph A6.53-A6.54 below.³⁹
- A6.17 Services should note that the unauthorised firms listed on the FCA Register and/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

- A6.18 In circumstances where the content makes reference to a firm or individual acting as appointed representative of another firm or individual, services 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 such services to infer any person doing so is not, in fact, an appointed representative and the content should be considered to be illegal content.

References

Legal annex: Section A7 of Annex 1

³⁸ Financial Conduct Authority, 2023. [Clone firms and individuals](#) [Accessed 19 September 2023].

³⁹ Firms in red in the Register, or included on the Warning List, are unauthorised persons which the FCA is concerned are carrying on regulated business unlawfully.

Fraud by false representation

- A6.19 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 and participating in a fraudulent business carried on by a sole trader are likely to be less identifiable in content online, and when they are, it is difficult to imagine circumstances in which content would not also amount to fraud by false representation (for these offences please see A6.44 – A6.46 below). Services should therefore consider fraud by false representation first of all, and we have provided the most substantive guidance on this offence.
- A6.20 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, services do *not* need to infer that the representation resulted in an actual gain or loss.
- A6.21 It will not be possible for services to identify all instances of this sort of illegal content. A service 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 services to draw these inferences. Although services 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 A6.30-A6.33 below.
- A6.22 In this section, we first set out some of the key concepts, and then describe how services might approach them in practice.

User reporting and fraud by false representation

- A6.23 User reports or flags are likely to be particularly important in alerting services to untrue or misleading representations, particularly where there are a large number of reports from different users. 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 viewing other messages, the service should take these into account.

Multiple pieces of content amounting to one instance of false representation

- A6.24 In some cases, reasonable grounds to infer fraud by false representation may be reached by taking into account additional contextual indicators (based on IP address or information the user has included in their account's biography section) alongside the information contained in an individual item of posted content. While one of these pieces of content in isolation may be insufficient to make a reasonable inference of a false representation, considered together they are more likely to meet the threshold.

- A6.25 Services should take a common-sense approach to factors in other pieces of content where appropriate, and consider the interaction of such content when making content judgements.

What is 'a false representation'?

- A6.26 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 misleading. It can be expressed or made clear without explicit language, e.g. through the use of imagery or symbols.
- A6.27 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.
- A6.28 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. At present Ofcom is not aware of any examples of this in the context of regulated services, but technology may change.
- A6.29 We recognise that making inferences about what is true in an online context may be challenging for services. In many cases, services will not be able to ascertain the facts of the case. However, as set out below it may be possible for services to infer that a representation is false, from information they have available.

Dishonesty

- A6.30 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.
- A6.31 We recognise that making inferences about dishonesty in an online context is particularly challenging. In many cases, services will not be able to ascertain the user's actual state of knowledge or belief as to the facts. However, as set out below it is possible for services to infer a user's knowledge or belief as to the facts from the nature of their content and/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'.⁴⁰

Intention to make a gain or to cause another person loss

- A6.32 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.
- A6.33 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. Services 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

⁴⁰ This phrase is taken from case law regarding the meaning of dishonesty in a legal setting.

cause a loss will not amount to an offence of fraud by false representation. Below we provide guidance regarding how services 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

- A6.34 In the guidance below we have provided an example of a ‘filter system’ to assist services to identify content amounting to an offence of fraud by false representation. This system provides a list of ‘red flag indicators’ (including indicators of dishonesty) which, when combined, may provide reasonable grounds to infer that content amounts to an offence.
- A6.35 Services should consider the three groups of indicators below to assess the risk that the content in question amounts to this offence. Where content contains an element from all three of the groups it may be reasonable to infer that content amounts to an offence of fraud by false representation except where services have evidence to suggest the contrary. This approach is intended to help services capture fraud by false representation by taking into account context, such as the behaviour of the account making the representation.
- A6.36 The examples in each group below are illustrative rather than exhaustive. It is important to underline that the majority of the examples provided are not, in isolation, capable of constituting illegal content. Services 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, based on all the information available to them.

Group 1: Disguised account information or activity

- A6.37 Where the user posting the content being considered has taken steps to mask their identity or location, this may amount to a false representation, and services should be alerted that dishonest activity could follow. No single example provided below, in isolation, provides sufficient grounds to reasonably infer that the content amounts to this offence. There are many legitimate reasons why a person might mask their identity or location on a platform. However, examples in this group may raise concerns regarding dishonest intent and, where they are present alongside other indicators from group 2 and group 3, the reasonable grounds to infer threshold may be met. In some cases, marked, it is likely to be reasonable to infer that the content is illegal with just one indicator from each of group 1 and group 2.
- A6.38 Examples of masking identity or location may include the following:
- a) Stating a profile or account location which consistently differs from IP address location, device language or time zone settings.
 - b) Claims that the investment or firm concerned is regulated by a body which does not exist. (The presence of this example, in addition to one group 2 indicator will be sufficient to provide reasonable grounds to infer that content is illegal).
 - c) 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.
 - d) A ‘copycat’ account 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 as a parody. (One group 2 indicator will be sufficient).

Group 2: Requests, invitations or inducements to invest, send money, send identification documents, or send financial information

A6.39 Services should next consider whether the content in question contains a request, invitation or inducement to invest or send money, monetary instruments or digital assets (e.g. gift cards, crypto currency, in-game currency/items etc.), or to send other private financial or identification information, such as bank documents, bank details or identification documents. Examples of how these representations may manifest in online content include:

- a) a user asking others for any of the following:
 - i) to send money;
 - ii) to send ID documents, bank details, personal information, or contact information;
 - iii) to pay an upfront fee for something which would not normally require this;
 - iv) for a fee to apply for a job or opportunity, especially in an industry where this is not common practice; or
 - v) to send money or gift cards to claim a prize or reward;
- b) a user claiming to be a friend or a relative in an emergency;
- c) posts using enticing language to suggest unrealistic gains; for example, 'easy money' or 'fast cash';
- d) posts which offer investment opportunities with a high, unrealistic rate of return within the time frame for investment or current environment, or which otherwise seem 'too good to be true'; or
- e) posts which exert pressure on those being requested to send money or invest, including time pressure which is not warranted.

A6.40 If combined with other factors in group 1 and (if needed) group 3, these may be part of the service's grounds to infer that a representation is false and that the false representation is for the purpose of causing the potential perpetrator (or another) to make a gain or to cause a loss.

Group 3: Account and content characteristics commonly associated with fraudulent behaviour

A6.41 Services should also consider whether the content in question demonstrates common characteristics which are associated with fraudulent behaviour as it manifests in online content. Such characteristics include:

- a) The use of apparently deliberately misspelt words to evade automated filters (e.g. 'One million dOllars');
- b) Accounts that are frequently flagged or reported by other users, particularly through dedicated reporting channels (see paragraph A6.51-A6.52 below), unless the flags appear to be malicious (e.g. made by competitors);
- c) 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;

- d) 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; or
- e) 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.

A6.42 The following characteristics are also commonly associated with fraudulent behaviour, but services should note that legitimate accounts often feature these characteristics too. They should therefore not be taken as signs of fraudulent behaviour in isolation, only in conjunction with features outlined at paragraphs A6.37-A6.39:

- a) user accounts which heavily feature content which contains wealth signifiers (e.g. currency, luxury cars, private airplanes, snapshots of bank accounts), where these appear to have been gathered from multiple sources and are being used to back up claims about investments;
- b) use of a stock profile image or other non-genuine, publicly available image as a profile image, especially where this is easily found using a reverse image search; or
- c) use of language that suggests urgency in the time limit within which an investment can be made.

Usage examples

We have not given any usage examples here, due to the particularly strong importance of context to these judgments. Services should refer to the lists of identifiers above when identifying examples of content which are likely to meet the threshold for illegality.

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

Fraud by abuse of position and participating in fraudulent business carried on by sole trader etc

A6.43 As set out in paragraph A6.19, 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

A6.44 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 user 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.

A6.45 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 the satisfaction of criteria a) above).

Participating in fraudulent business carried on by sole trader etc

A6.46 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.

References

Legal annex: Section A7 of Annex 1

Statute: Sections 4 and 9 of the Fraud Act 2006

Financial services offences

A6.47 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, services 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.

A6.48 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 (set out in paragraphs [A6.10 - A6.18]) as the ‘**FSMA priority offences**’.

Persons neither claiming to be authorised nor an appointed representative

A6.49 In many cases, online content encountered by services 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.

A6.50 The remaining FSMA offences involve a high level of technical complexity. Services with their own legal teams may find more information on FSMA offences by consulting the [FCA Handbook](#), and the legal annex accompanying this guidance.⁴¹

Notifications through dedicated reporting channels

A6.51 Services will have reasonable grounds to infer that content amounts to an offence where they receive a reasonable explanation of the illegality of a particular piece of content through a dedicated reporting channel, *except where* they have evidence to suggest the contrary. For more information dedicated reporting channels see the Chapter 16 on ‘User Reporting and Complaints’ in our Phase One consultation.

A6.52 The illegal content Codes recommend that the following entities are able to provide reports through dedicated reporting channels:

- 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 (NEVCU)
- d) National Crime Agency (NCA), including the National Economic Crime Centre (NECC)
- e) National Cyber Security Centre (NCSC)
- f) Dedicated Card Payment Crime Unit (DCPCU)
- g) Financial Conduct Authority (FCA)

Use of the FCA’s warning list

A6.53 Services 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 *not* be considered proof that a person is operating lawfully.

⁴¹ See particularly: Financial Conduct Authority, 2005. [FCA Handbook: PERG 8.23 Regulated activities](#). [accessed 19 September 2023].

A6.54 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, services 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, services will have reasonable grounds to infer that content amounts to a FSMA offence *except* where the service has evidence to suggest the contrary.

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

A6.55 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.

A6.56 Content should be treated as illegal where there are reasonable grounds to infer that the following criteria are met:

- a) Either:
 - i) a user 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, a user *dishonestly* conceals any material facts.
- b) The user 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**.

A6.57 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.

A6.58 The offence poses a particular challenge to content judgements because of its high level of technical complexity. Services with their own legal teams may find more information in the legal annex accompanying this guidance.⁴²

A6.59 However, in most cases, a service is likely to become aware that a statement meets the criteria set out in paragraph in A6.56 only when it has been alerted to this by law

⁴² See particularly: Financial Conduct Authority, 2005. [FCA Handbook: PERG 8.23 Regulated activities](#). [accessed 19 September 2023].

enforcement after a successful prosecution, or by a regulator with appropriate expertise such as the FCA.

References

Legal annex: Section A7 of Annex 1

Statute: Sections 89 and 90 of the Financial Services Act 2012

Articles for use in frauds

- A6.60 This section looks at the priority offence of making or supplying articles for use in frauds.
- A6.61 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.
- A6.62 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.⁴³ Data of this kind is commonly advertised for sale using the term 'fullz'⁴⁴ or 'dump'⁴⁵; for example in phrases such as 'PIN dump' or 'credit card dump.'
- A6.63 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. (Services 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 etc. That is not how the word 'offer' should be considered for the purposes of this offence. It should take its ordinary English meaning.)
- A6.64 In practice, most 'making', 'adapting' and the 'supply' of tangible items (i.e. other than data) will take place offline, meaning services are unlikely to encounter content which amounts to the 'making' and 'adapting' offences, or the 'supply' of tangible items *directly*. However, services 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 user has **intent**. This may be particularly relevant where, for example, a user has posted content directing other users to another location to find articles for use in frauds.
- A6.65 It is not uncommon for users to be open about the likely use of articles offered for supply online. Services should infer knowledge and/or intent where the user says that the article

⁴³ Such software or programs may include card-skimming software or apps.

⁴⁴ 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.

⁴⁵ 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.

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 in response to an unconnected user's request for help in committing frauds, it is reasonable to infer intent.

A6.66 Otherwise, when considering the user's state of mind, services 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

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

A6.67 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 become 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.

A6.68 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.

A6.69 If a person states in a post that money depicted is stolen (and that claim is not evidently a joke) services 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 user knew this.

A6.70 In practice, we are not aware of circumstances in which these offences would give rise directly to any illegal content. Services should consider whether content amounts to an offence of encouraging a person to do any of the above. Very clear words would be needed for this, showing that the user concerned was both aware that the property was criminal property, and was encouraging another person to commit the offence in relation to it.

Relevant defences

A6.71 Content should not be judged to be illegal where there is reasonable grounds to infer that:

- a) The user 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.

A6.72 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).

References

Legal annex: Section A7 of Annex 1

Statute: Section 327, 328 and 329 of the Proceeds of Crime Act 2002

A7. Drugs and psychoactive substances

- A7.1 The drugs and psychoactive substances offences in the Act encompass the unlawful supplying, or offering to supply of controlled drugs, articles used for the administration or preparation of controlled drugs ('drugs articles'), and psychoactive substances.
- A7.2 For more information on harms related to the supply of drugs and psychoactive substances online see Chapter 6H of Ofcom's Register of Risks.

Priority drugs and psychoactive substances offences

- A7.3 The priority offences relating to drugs and psychoactive substances offences comprise:
- [The unlawful supply, or offer to supply, of controlled drugs;](#)
 - [The unlawful supply, or offer to supply, of articles for administering or preparing controlled drugs;](#)
 - [The supply, or offer to supply, of psychoactive substances; and](#)
 - [Inciting any offence under the Misuse of Drugs Act 1971.](#)
- A7.4 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, and conspiracy.
- A7.5 Where content relates to the exploitation of others for the purpose of the supply of drugs, services should first consider whether the content amounts to a relevant human trafficking offence (see Chapter 11 of this document: 'Unlawful immigration and human trafficking').

Controlled drugs (offer to supply)

- A7.6 Services 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 below, the content should be considered to be illegal.
- A7.7 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.
- A7.8 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.
- A7.9 Services 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 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

A7.10 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 users within the United Kingdom (for example, where the content states that the offer is *not* extended to users within the United Kingdom or that is extended *only* to users or buyers in a specific territory outside the United Kingdom).

What are controlled drugs?

A7.11 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.⁴⁶ Services should ensure they keep up to date with these developments.

A7.12 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).

A7.13 Given the strict regulation, it is our provisional 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 and/or its derivative in a lawful way under a relevant exemptions. Services should take a pragmatic view, considering the context available and whether controlled drugs appear to be sold in the UK.

Controlled drug names

A7.14 Services should keep in mind that users 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. Services should refer to the most up to date information they have.

A7.15 Services which have access to it should also refer to the list of common drug slang provided to them by the National Crime Agency.

Table 1: List of commonly used street names for controlled drugs⁴⁷

<u>A</u>	<u>B</u>	<u>C</u>
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⁴⁶ 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 services are aware of this, they should be treated in the same way as a controlled drug. Content offering to supply such substances should be removed.

⁴⁷ This list also includes trade names for prescription medication, in addition to street names or slang

<p>Acid (lysergide and other N-alkyl derivatives of lysergamide)</p> <p>AMT (alpha-methyl tryptamine)</p> <p>Anadrol (oxymetholone)</p> <p>Anabolic steroids (including nandrolone and testosterone)</p> <p>Angel dust (phencyclidine)</p> <p>Anavar (oxymetholone)</p> <p>Ayahuasca (dimethyltryptamine)</p>	<p>Benzodiazepines or Benzos (including alprazolam, diazepam, lorazepam and nitrazepam)</p> <p>Blow (cocaine)</p>	<p>Captagon (fenethylamine)</p> <p>Charlie (cocaine)</p> <p>Coke (cocaine)</p> <p>Crack (cocaine)</p> <p>Crystal meth (methylamphetamine)</p>
<u>D</u>	<u>E</u>	<u>F</u>
<p>Dianabol or Dbol (methandienone)</p> <p>DMT (dimethyltryptamine)</p> <p>Dope (cannabis and cannabis resin)</p>	<p>E (a derivative of phenethylamine)</p> <p>Ecstasy (a derivative of phenethylamine)</p> <p>Edibles (tetrahydrocannabinol infused sweets)</p> <p>Equipoise or EQ (boldenone undecylenate)</p>	<p>Flavours (cannabis)</p> <p>Fenty or Fetty (fentanyl)</p>
<u>G</u>	<u>H</u>	<u>K</u>
<p>GHB (gamma-hydroxybutyrate)</p> <p>GBL (gamma-butyrolactone)</p> <p>Gear (diamorphine)</p> <p>Gelato (cannabis)</p>	<p>Halo or halotestin (fluoxymesterone)</p> <p>Hash or Hashish (cannabis)</p> <p>Haze (cannabis)</p> <p>HCG (chorionic gonadotrophin)</p> <p>Herb (Cannabis and cannabis resin)</p> <p>Heroin (Diamorphine)</p>	<p>K (ketamine)</p> <p>Ket (ketamine)</p>
<u>L</u>	<u>M</u>	<u>N</u>

<p>Laughing gas (nitrous oxide)⁴⁸</p> <p>LSD (lysergide and other N-alkyl derivatives of lysergamide)</p> <p>Lyrica (pregabalin)</p>	<p>Magic brownies (baked goods which contain cannabis)</p> <p>Magic mushrooms (psilocin)</p> <p>Marijuana (cannabis and cannabis resin)</p> <p>M-CAT (mephedrone)</p> <p>MD (a derivative of phenethylamine)</p> <p>MDMA (a derivative of phenethylamine)</p> <p>Meow meow (mephedrone)</p> <p>Meph (mephedrone)</p> <p>Meth (methylamphetamine)</p> <p>Methamphetamine (methylamphetamine)</p> <p>Molly (methylenedioxy-methamphetamine; a derivative of phenethylamine)</p>	<p>Nos (nitrous oxide)</p>
<u>O</u>	<u>P</u>	<u>R</u>
<p>Oxandrin (oxandrolone)</p> <p>OxyContin or Oxy (oxycodone)</p>	<p>PCP (phencyclidine)</p> <p>Pills (a derivative of phenethylamine)</p> <p>Pot (cannabis)</p> <p>Powder (cocaine)</p> <p>Pub grub (cocaine)</p>	<p>Resin (cannabis resin)</p>
<u>S</u>	<u>T</u>	<u>U</u>
<p>Shrooms (psilocin)</p> <p>Skag (diamorphine)</p> <p>Skunk (cannabis)</p> <p>Smack (diamorphine)</p>	<p>Tabs (lysergide and other N-alkyl derivatives of lysergamide)</p> <p>Tickets (cocaine)</p>	<p>Uppers (amphetamine)</p>

⁴⁸ At the time of publication, nitrous oxide is not a controlled drug. However, on 5th September 2023 the Government has brought forward secondary legislation which will designate nitrous oxide as a Class C substance under the Misuse of Drugs Act 1971. We therefore include its street name in this list in anticipation of the designation coming into force.

Snow (cocaine)		
Speed (amphetamine)		
Special K (ketamine)		
Strains (cannabis)		
<u>W</u>	X	
Weed (cannabis)	Xanax (alprazolam)	
White (cocaine)		
Winstrol or Winny (stanozolol)		

Usage examples

- A social media post offering to supply a controlled drug to another user
- 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 user

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.

Psychoactive substances (offer to supply)

- A7.16 If content is not judged to be illegal under the terms set out above, services 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.
- A7.17 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 A7.6-A7.9, above).

What is a psychoactive substance?

- A7.18 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 A7.17, below).

- A7.19 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.
- A7.20 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

References

Legal annex: Section A8 of Annex 1

Statute: Section 5 of the Psychoactive Substances Act 2016

Drugs articles (offer to supply)

- A7.21 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; and/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.
- A7.22 The user must have a belief that the article is to be used in circumstances where the administration is unlawful.
- A7.23 As set out above, 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 services are unlikely to encounter this exempted content online.
- A7.24 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.

- A7.25 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.

References

Legal annex: Section A8 of Annex 1

Statute: Section 9A of the Misuse of Drugs Act 1971

Inciting any offence under the Misuse of Drugs Act 1971, encouraging or assisting

- A7.26 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.
- A7.27 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.

Usage examples

- Instructions on cultivation and production of cannabis

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

A8. Firearms and other weapons

Priority firearms and other weapons offences

- A8.1 This section considers 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.
- A8.2 It first considers 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.
- A8.3 Services should turn to this section whenever they are considering content involving a weapon, a part of a weapon or ammunition. The inclusion of some weapons in the firearms section may not be intuitive to services. 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 services check both the 'firearms' and the 'offensive weapons' lists carefully if unsure where a weapon may be dealt with.
- A8.4 It should be noted that merely depicting a firearm or other weapon, including its active use, is *not* illegal.
- A8.5 For more information on harms relating to firearms and other weapons offences see Chapter 6I of the Register of Risks on 'Firearms and other weapons offences'.

Firearms etc.

- A8.6 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).
- A8.7 Although this section is called 'Firearms etc.', not all the weapons it covers are 'firearms'. 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.
- A8.8 In what follows we have structured the reasoning with a view to securing that services can consider the easiest questions first. If the weapon in the content looks as if it may be, or be a component part of, some sort of gun or projectile weapon powered by something other than a drawstring or a person's breath, or it looks like the ammunition used by such a weapon, services should work their way through the questions in this section.

- A8.9 Component parts includes:
- a) any barrel, chamber or cylinder;
 - b) any frame, body or receiver;
 - c) any breech, block or bolt (or any other mechanism for containing the charge at the rear of the chamber); or
 - d) any action, any part of a firearm which directly bears the pressure caused by firing and any magazine.

A8.10 It is an offence to **expose weapons caught 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.

A8.11 The firearm offences covered in this section are complex. Below, we provide a process by which services may make illegal content judgements in relation to priority firearms offences, based on the consideration of a sequence of key questions, outlined below (questions A to F). Services should consider each question sequentially.

A. Is the content exposing a possible ‘firearms’ weapon, weapon part or ammunition for sale?

A8.12 Services should first consider whether the possible ‘firearms’ weapon, part or ammunition in question is being exposed for sale.

A8.13 If it is not being exposed for sale, the content should *not* be considered illegal content under a priority firearms offence.

A8.14 ‘Expose for sale’ means exposed for the purposes of sale. An item is exposed for sale if it is exposed 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.

A8.15 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.

A8.16 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.

A8.17 If there is an exposure for sale, the content is not necessarily illegal, but it could still be, so services 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?

A8.18 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.

- A8.19 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.
- A8.20 The exemption also only applies if the weapon is being exposed for sale as a curiosity or ornament. Express words would be needed for this to be the case.
- A8.21 If this exemption does not apply, the content is not necessarily illegal, but it could still be, so services need to go on to consider the following questions.

C. Is the possible ‘firearms’ weapon a ‘prohibited weapon’?

- A8.22 Prohibited weapons are a special class of weapons, which have particularly strict limitations on sale, transfer, possession etc. If the weapon in question *is* a prohibited weapon, services should refer to questions C1 and C2. If it *isn’t*, services should skip questions C1 and C2 and go to question D.
- A8.23 A list of prohibited weapons can be found [here](#). Services should also consider the following weapons⁴⁹:
- 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 60.96 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.
- A8.24 Services 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 missile⁵⁰;

⁴⁹ As contained in Art.45 of the Firearms (Northern Ireland) Order 2004/702 (S.I. 2004/702 (N.I. 3)

⁵⁰ Air rifles which contain a separate reservoir of compressed gas, or which require the addition of a CO₂ bulb or canister in order to fire, are not ‘self-contained’ and are therefore not 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 electricity⁵¹ or any noxious liquid, gas or other thing; e.g. front-venting blank firers, stun guns, electric shock devices and CS gas (but *not* cattle prods in most cases); and
- g) any firearm disguised as another object, e.g. 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.

A8.25 It should be assumed that any items with a realistic appearance of being a prohibited weapon *are* real, except where there is strong evidence to suggest that the item in question is an imitation firearm. Where there is evidence to suggest that the item is not real, services should refer to paragraphs A8.85-A8.88.

A8.26 If the weapon *is* a prohibited weapon, services should move on to consider questions C1 and C2. If the weapon is *not* a prohibited weapon, services should move on to consider question D.

C1. (In the case of prohibited weapons) Is the prohibited weapon being exposed for sale by way of a trade or business?

A8.27 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.

A8.28 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) law enforcement provides evidence that the person is acting by way of a trade or business.

A8.29 In addition, we consider it reasonable for services 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 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.

A8.30 It is reasonable to infer that a person is exposing the weapon for sale from the UK if *any* of the following is true:

- 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 sterling;
- c) the user gives a UK location or phone number;

⁵¹ Art.45(f) of the Firearms (Northern Ireland) Order 2004 (S.I. 2004/702 (N.I. 3))

- d) the user's IP address is in the UK; or
- e) evidence is provided to the service by a law enforcement agency that the user is located in the UK.

Exposure for sale from outside the United Kingdom

- A8.31 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 users within the United Kingdom. For example, where the content specifically states that the offer is not extended to users 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'.
- A8.32 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 services need to go on to consider the following question.

C2. (In the case of prohibited weapons) Is the seller appropriately authorised?

- A8.33 If a service 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 and taken down.
- A8.34 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.
- A8.35 As set out above, it is reasonable to infer that it is from the UK if any of the following is true:
- 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 sterling;
 - c) the user gives a UK location or phone number;
 - d) the user's IP address is in the UK; or
 - e) evidence is provided to the service by a law enforcement agency that the user is located in the UK.
- A8.36 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.
- A8.37 Services may also have reasonable grounds to infer that a trader is unauthorised if evidence is provided to them by law enforcement.
- A8.38 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

- A8.39 If all the above criteria are met in relation to an exposure for sale of a prohibited weapon, the content is illegal content and should be taken down.

D. (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?

- A8.40 The following questions (questions D-J) refer to other types of firearms-types weapons, ammunition or parts (that is, other than prohibited weapons). Section F below deals with exactly what these are, but they include (for example) shotguns and air weapons. Services will only need to consider the detail of the weapon type in section F if sections D and E do not rule the content out from being illegal content.
- A8.41 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.
- A8.42 It is reasonable to infer that a weapon is being exposed for sale by way of a trade or business if:
- 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; and
 - c) law enforcement provides evidence that the person is acting by way of a trade or business.

Exposure for sale from outside the United Kingdom

- A8.43 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 users within the United Kingdom. For example, where the content specifically states that the offer is not extended to users 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'.
- A8.44 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 services need to go on to consider the following question.

E. Is the seller authorised to sell, exchange or transfer the firearm in question?

- A8.45 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 seller in question is not authorised.
- A8.46 If the seller is authorised, the content should not be considered illegal under a priority firearms offence.

- A8.47 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 authorised or unauthorised. However, services may have reasonable grounds to infer that a trader is unauthorised if evidence is provided to them by law enforcement.
- A8.48 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 an authorised seller.
- A8.49 Services may also have reasonable grounds to infer that a trader is unauthorised if evidence is provided to them by law enforcement.
- A8.50 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.

F. Is the weapon in question of a type that falls under the law relating to firearms etc?

- A8.51 If the weapon is being exposed for sale in the course of a trade or business by an unauthorised seller, services will need to consider in more detail, exactly what type of weapon it is.
- A8.52 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**⁵², 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:—
 - 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

⁵² Section 1(3)(a) of the Firearms Act 1968

- iii) blank cartridges not more than one inch in diameter measured immediately in front of the rim or cannellure of the base of the cartridge;
- f) **Air weapons**⁵³; 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**⁵⁴; except blank cartridges not more than 25.4 millimetres in diameter measured immediately in front of the rim or cannellure of the base of the cartridge (*as set out in (e) above with different unit of measurement*)
 - h) **Other shotguns**⁵⁵ 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**⁵⁶ 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.
 - j) 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
 - k) the component parts of an air weapon described in sub-paragraph J directly above.

Conclusion on other firearms-type weapons, ammunition or parts

A8.53 If all the above criteria are met in relation to an exposure for sale of other firearms-type weapons, ammunition or parts, the content should be considered illegal content and taken down.

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.

⁵³ Section 1(3)(b) of the Firearms Act 1968

⁵⁴ Section 2 of the Firearms (Northern Ireland) Order 2004/702

⁵⁵ Section 2 of the Firearms (Northern Ireland) Order 2004/702

⁵⁶ Section 1 of the Air Weapons and Licensing (Scotland) Act 2015 asp 10

- A listing on a marketplace advertising any firearm which is on the list of prohibited weapons above as being for sale to the UK.

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

- A8.54 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, services should consider the content in question in relation to the offences relating to firearms training (see paragraphs A2.34-A2.39 of the Terrorism chapter of this document), noting that these offences do not necessarily require there to be a terrorist purpose.
- A8.55 The exception is where there are reasonable grounds to infer that the instructions were given for a purpose wholly *other* than terrorism.

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

- A8.56 Where the content in question displays a knife or weapon (other than a firearm etc discussed above), services 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 below is being exposed for sale without a relevant defence, the content in question should be considered illegal and removed.

What is 'exposure for sale'?

- A8.57 'Expose for sale' means exposed for the purposes of sale. An item is exposed for sale if it is exposed 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.

- A8.58 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.
- A8.59 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

- A8.60 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 users within the United Kingdom (for example, where the content specifically states that the offer is not extended to users within the United Kingdom or that is extended only to users or buyers in a specific territory outside the United Kingdom).

What is a banned knife or offensive weapon?

- A8.61 A full list of banned knives and 'offensive' weapons can be found under the heading 'Banned knives and weapons' [here](#). Services should consult the full list when making an illegal content judgement. 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 which 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) Zombie knives: a knife with a cutting edge, a serrated edge *and* images or words suggesting it is used for violence;
 - 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.
- A8.62 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 (e.g. craft knives, Stanley knives, small Swiss Army knives).

State of mind

A8.63 If a banned knife or offensive weapon is being exposed for sale then it is reasonable to infer that the user posting the content has the state of mind for the offence.

Relevant defences

A8.64 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 or gravity knife:
 - i) 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 show. 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:
 - i) 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

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

- A8.65 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, services should consider whether the content in question is marketing the knife in an unlawful manner (see below).
- A8.66 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.⁵⁷ 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 removed.

Marketing from outside the UK

- A8.67 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 users within the United Kingdom. For example, where the content specifically states that the offer is not extended to users 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?

- A8.68 Content should be considered unlawful if it markets a knife in a way which:

⁵⁷ 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.

- 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.

- A8.69 '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.
- A8.70 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.
- A8.71 Services should consider the context of the content, including the photograph, 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.
- A8.72 Services 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.⁵⁸

State of mind

- A8.73 If a banned knife or offensive weapon is being exposed for sale then it is reasonable to infer that the user posting the content has the state of mind for the offence.

Relevant defences

- A8.74 It is a defence if the user 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.
- A8.75 It is also a defence if there are reasonable grounds to infer that the knife was being marketed:
- c) for the use of the armed forces in any country; or
 - d) 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.

⁵⁸ Crown Prosecution Service, 2023. [Offensive Weapons, Knife Crime Practical Guidance](#) [Accessed 19 September 2023]

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

References

Legal annex: Section A9 of Annex 1

Statute: Sections 1 and 2 of the Knives Act 1997

Encouraging, assisting, conspiracy etc.

- A8.76 The Act includes a series 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, being involved art and part etc, would be needed for there to be any illegal content.
- A8.77 For the purposes of service risk assessments, services 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

- A8.78 Content which encourages or assists a person in the UK to buy firearms or ammunition without authorisation, and in particular prohibited weapons, may be illegal content. It must be reasonable to infer, on the face of the content, that the user 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.
- A8.79 Content could also amount to an offence if the user 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.
- A8.80 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

- A8.81 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.
- A8.82 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).

A8.83 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 user 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 checks will be made.

A8.84 Content could also amount to an offence if the user 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.

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

A8.85 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.

A8.86 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.⁵⁹

A8.87 For all these offences, which take place offline, identifying a specific item of illegal content would require a service 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.

A8.88 For the purposes of risk assessments, if a service 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.

A8.89 However, when considering individual items of content for the purposes of the takedown duty, absent information from law enforcement or another credible 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 services to go on to consider the following.

A8.90 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.

A8.91 The user 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.

A8.92 Content could also amount to an offence if the user 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.

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

⁵⁹ Crossbows sold to under 18s could be added to this list but would be more easily dealt with under the buying offence above.

(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

A8.93 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 services 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 user concerned:

- 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.

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

A8.94 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**.

A8.95 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.

A8.96 Content could also amount to an offence if the user 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 importation of an offensive weapon and/or a realistic imitation firearm.

A8.97 For weapons other than flick knives and gravity knives, there is a defence if there are reasonable grounds to infer 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 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.

- A8.98 In relation to importing a realistic imitation firearm, it is a defence for a person to show that 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 Her 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.

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).

A9. Sexual exploitation of adults

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

- A9.1 This section covers 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).
- A9.2 This chapter should be considered alongside the human trafficking offences set out in Chapter 11 of this document ('Unlawful immigration and human trafficking').
- A9.3 In order to accurately reflect the relevant legislation, the terms 'prostitute' and/or 'prostitution' have been used throughout the below chapter when necessary. We recognise that some readers are likely to consider this term outdated, and we refer to 'sex workers' and 'sex work' where statute is not being referenced.
- A9.4 It is important to note that the priority offences we are considering in this section relate to third parties, and not to the sex worker themselves. 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.
- A9.5 For more information on harms relating to the sexual exploitation of adults see Chapter 6K of the Register of Risks.

Priority sexual exploitation of adults offences

- A9.6 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.
- A9.7 A service should consider both offences if the content in question shows or implies reference to an exchange of sexual activities for something.
- A9.8 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:
- c) Whatever its circumstances or any person's purpose in relation to it, it is, because of its nature, sexual; or
 - d) 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.
- A9.9 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

- A9.10 A service 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 themselves or a third party.**
Incitement involves some form of encouragement and includes the use of threats or other forms of pressure.
- A9.11 Content of this kind may be illegal where the service has reasonable grounds to infer the following:
- the content causes or incites another to become a prostitute, where the person is not a prostitute;
 - the content has come to the attention of a potential victim; *and*
 - 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.
- A9.12 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.
- A9.13 Where the content has been posted in a public forum *other than* a service primarily or solely used for the selling of sexual services (where the likelihood would be that those seeing the content are already prostitutes), reasonable grounds to infer that criterion (b) has been satisfied may exist where internally-held viewing metrics indicate that the content has been viewed by another person, absent evidence that the person is already a prostitute.

State of mind

- A9.14 In order for content to be considered illegal, there must be reasonable grounds to infer that the user posting the content **intends to cause or incite another person to become a prostitute.**
- A9.15 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 services should consider the possibility that the post was made as satire, in jest or as part of a fictional work. Services should also take into account any information about intent provided as a result of user reports or appeals.

Usage examples

- An advertisement on a rental forum (or other service *not* primarily used to advertise sexual services) offering free rent in return for sexual acts or a sexual relationship.

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

- A9.16 Services should also consider whether the content amounts to an offence of **controlling a prostitute for gain**.
- A9.17 Content of this kind may be illegal content where the service has reasonable grounds to infer the following:
- a) the user uploading 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.
- A9.18 Services are likely to need information from credible third parties, for example law enforcement, to make a reasonable inference about whether the person posting the content is or is not the same individual whose sexual services are being advertised.

State of mind

- A9.19 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. But services should consider the possibility that the post was made as satire, in jest or as part of a fictional work. Services should also take into account any information about intent provided as a result of user reports or appeals.

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.

A10. Image-based adult sexual offences

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

Priority and ‘other’ image-based adult sexual offences

- A10.1 This section covers 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 \(intimate image abuse\)](#)
- A10.2 The Online Safety Act also created 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.
- A10.3 Cyberflashing is not a priority offence in the Act therefore the duties that apply to content which amounts to this offence differ. However, due to the fact that cyberflashing is likely to occur primarily online and we expect that services are likely to encounter such content relatively frequently, we have provided guidance on how to make illegal content judgements in regard to this offence.
- A10.4 For more information on harms relating to image-based adult sexual offences see the following chapters of the Register of Risks: 6L on ‘Extreme pornography offence’, 6M on ‘Intimate image abuse offences’ and 6S on “‘Cyberflashing’ offence’.

Age and the image-based sexual offences in this chapter

- A10.5 While children can be victims of both the intimate image abuse and cyberflashing offences, 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.⁶⁰ Similarly, a piece of extreme pornography involving a child would automatically be classed as child sexual abuse material (CSAM).
- A10.6 Unlike the offences being discussed in this chapter, the CSAM offences have a low enough state of mind requirement that it is reasonable to infer it is met (see paragraph A4.25 of Chapter 4). It is therefore more straightforward for services to make inferences about the CSAM offences, and so any image-based sexual content which portray a person who can be reasonably inferred to be a child (that is under the age of 18) should be considered first against a relevant CSAM offence rather than against the offences mentioned in this

⁶⁰ 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 sent by a child, the image itself would be classed as an indecent image of a child.

chapter. 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

A10.7 If the content in question involves adult nudity or image-based sexual content, services should first ask whether it amounts to an **extreme pornographic image**.⁶¹

What is an 'image'?

A10.8 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.

What is extreme pornography?

A10.9 Content 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 with the other person's penis; or
 - vi) 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.

A10.10 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.

'Pornographic'

A10.11 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 uploading user or any viewer of it.

'Grossly offensive, disgusting or otherwise obscene'

A10.12 'Grossly offensive' should be given its ordinary meaning. 'Obscene' should also be given its ordinary meaning ("repulsive", "filthy", "loathsome" or "lewd").

⁶¹ Under section 59(3)(b) of the Act, content is illegal content if its possession amounts to an offence.

'Explicit and realistic' portrayal

A10.13 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, edited or manipulated images or videos such as 'deep-fakes' 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

A10.14 Content which depicts hanging, suffocation or sexual assault involving a threat with a weapon are likely to portray an act which threatens life. Acts of choking or strangulation do so only where the act is extreme, persistent and appears to represent a credible threat to life. Consensual acts of bondage, domination and sadomasochism are unlikely to threaten life except where they involve any of the aspects mentioned above.

Non-consensual sexual penetration

A10.15 Non-consensual penetration means that the person being penetrated did not or could not consent to the act in question. Examples where consent cannot be given include when a person is asleep or otherwise unconscious.

A10.16 The portrayal of violence or fear of violence could indicate a lack of consent but is not in itself enough to infer that consent was not given (although services should consider whether such violence amounts to a threat to a person's life or whether it could result in serious injury to a person's anus, breasts or genitals).

A10.17 We recognise that inferring consent in these cases is very complex. Where appropriate, services should take into account contextual information such as content titles or descriptions when making a judgement as to whether the acts depicted are non-consensual. User reports should also be taken into account where they suggest that consent was not given to the act portrayed.

State of mind

A10.18 The state of mind requirement for this offence can be assumed to be met by virtue of the image being posted.

Relevant defences

A10.19 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 service) has a **legitimate reason** for being in possession of the image concerned; or
- b) the image is an '**excluded image**'.

A10.20 **Legitimate reasons** are not set out in statute and services 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 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.

- A10.21 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 illegal, as should content posted for the purpose of exposing an offender or offenders.
- A10.22 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.

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

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)

Intimate image abuse

What is intimate image abuse?

- A10.23 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 need not be pornographic. As a result, this is not a term used in this chapter.
- A10.24 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.
- A10.25 Services 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?

- A10.26 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.

A10.27 The inclusion of the 'appears to show' criteria of the offence means that 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 equal to a photograph or video actually depicting such a situation.

A10.28 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'?

A10.29 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.

A10.30 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

A10.31 Services 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 (e.g. 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'.

A10.32 If the person portrayed consented to the disclosure the content is not illegal content.

Images that have been shared, forwarded or reposted

A10.33 Users sharing content onwards from a site that explicitly identifies itself as containing images that are hacked or shared without consent, or which content is identified as having been posted for malicious reasons, will not have a reasonable belief in consent.

A10.34 However, even where it is not possible to infer a criminal state of mind on the part of the user who reshared content, the service will still have obligations in data protection law towards the person depicted in the image. The harm caused by the first illegal upload is exacerbated greatly by onward sharing of it by persons unaware of its origin. Where content is known to have been posted without consent, it should be taken down.

Threats to disclose

A10.35 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

A10.36 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

A10.37 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, services 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.

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

References

Legal annex: Section A11 of Annex 1

Statute: Section 66(B) of the Sexual Offences Act 2003.

Notes: The following offence is not considered separately. For the purposes of making illegal content judgments, it overlaps in whole or in part with the offence above: section 2 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016. We have treated this as the main offence for the purposes of threats above.

'Cyberflashing'

A10.38 If the content in question is not extreme pornography or intimate image abuse, but it displays genitalia, services should next consider whether it amounts to an offence of cyberflashing.

A10.39 Content may be illegal content where the following is true:

- a) The content must contain 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 must have 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 must have 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 must have 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.

What is a 'photograph or film'?

A10.40 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.

A10.41 Copies of photographs or films, or data which can be converted to create a photograph or film (e.g. a zipped file) should be treated as equivalent to the photograph or film itself.

State of mind

A10.42 The state of mind requirement for this offence is **intent to cause distress, alarm, or humiliation** or **recklessness** as to whether this would be caused, combined with a purpose of sexual gratification in sending the photograph or film.

A10.43 The state of mind requirement outlined above is unlikely to be able to be reasonably inferred in most cases, except where there is explicit evidence of the intent behind sending the message, for example in the form of a statement of intent on the face of the content or in surrounding contextual information (such as subsequent messages in a conversation).

Intent or recklessness may also be able to be inferred where the user sending the image has previously received warnings that sending such images is likely to cause distress. Finally, reasonable grounds to infer intent may also be established where services have been given notice by law enforcement that the content in question has been part of a successful conviction, so long as they do not have evidence to suggest that inferring intent is *not* appropriate.

Usage examples

- A moving image or GIF taken from a pornographic film, sent over direct message (DM) to another user, where it appears to have been sent against the recipient's wishes, and/or without warning or context in a way which caused alarm or distress
- A photograph or video of a person's genitals sent over direct message (DM) to another user, where it appears to have been sent against the recipient's wishes, and/or without warning or context in a way which caused alarm or distress

References

Legal annex: Section A4 of Annex 2

Statute: Section 66A of the Sexual Offences Act 2003

A11. Unlawful immigration and human trafficking

A11.1 This section of the Illegal Content Judgements Guidance considers offences of unlawful immigration and human trafficking. These are priority offences as set out in the Online Safety Act.

Priority offences related to unlawful immigration and human trafficking

A11.2 The priority offences relating to immigration and human trafficking offences comprise:

- a) [Offences relating to illegal entry into the UK](#);
- b) [Assisting unlawful immigration](#); and
- c) [The human trafficking offences](#).

A11.3 These priority offences centre around an individual being involved in the illegal movement of people, either across borders or within countries.

A11.4 Where content which appears to offer false passports or other false travel documentation for sale, services should refer first to paragraphs A6.60-A6.66 of Chapter 6, 'Fraud and other financial offences' (articles for use in frauds).

A11.5 The human trafficking offence further involves the exploitation of children or adults in some way. Services should consider this chapter alongside the chapters on child sexual exploitation and sexual exploitation of adults.

A11.6 For more information on harms relating to unlawful immigration and human trafficking, see Chapter 6J of the Register of Risks ('Unlawful immigration and human trafficking offences').

Illegal entry and assisting unlawful immigration to a member state or to the UK

A6.7 It is an offence under section 24 of the Immigration Act 1971 for a person to:

- i. **knowingly enter the United Kingdom in breach of a deportation order (A1)**
- ii. **knowingly enter the United Kingdom without necessary leave (B1)**
- iii. **knowingly remain beyond the time limited leave** (when the person has limited leave to enter or remain in the United Kingdom), **(C1) or**
- iv. **knowingly arrive in the United Kingdom in breach of entry clearance under immigration rules if required (D1).**

A6.8 The posting of content cannot amount to an act of illegal entry, remaining or arrival. However, in some circumstances it may be possible that online content could amount to an offence of encouraging or assisting one of these offences. For this to be true services would 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 be committed and that this act will encourage or assist its commission.

A6.9 Whether or not content amounts to encouraging or assisting an illegal entry offence will be fact specific and services will need to make judgements on a case-by-case basis dependent on the nature of the content. The encouragement or assisting must relate to an offence, not just encouraging another to enter the United Kingdom, in other words, it must be clear that the person uploading the content intends to encourage or assist someone behaving illegally or believing that an offence will (not may) be committed *and* that their act will (not may) encourage the commission of that offence. By way of example, services should have regard to the immediate context as well as the nature of the content itself in determining whether it is reasonable to infer that an entry being encouraged is an entry in breach of a deportation order. Where content contains warnings and references to legal immigration *only*, this may be an indication that content is legal.

A6.10 Reasonable grounds to infer that content is illegal may exist in cases where the following has been made available to services via law enforcement:

- a) information justifying an inference of intent; and
- b) information that the entry being encouraged or assisted is illegal; or
- c) information justifying an inference that the person uploading the content believes an offence will (not may) be committed and their act will (not may) encourage the commission of that offence; and
- d) information that the entry being encouraged or assisted is illegal.

Assisting unlawful immigration

A11.11 Under section 25 of the Immigration Act 1971, it is also 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**. In order for services 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 (or the United Kingdom) and which controls, in some respect of some or all persons who are not nationals of the member state (or the United Kingdom) entitlement to:
 - a. Enter or arrive in a member state (or the United Kingdom);
 - b. Transit across the member state (or the United Kingdom); or
 - c. Be in the member state (or the United Kingdom).
- c) The person posting must have knowledge or reasonable cause for believing that the act of posting content facilitates the breach or attempted breach and knowledge or reasonable cause for believing that the individual is not a national of the United Kingdom.

A11.12 In cases where information justifying this inference has been made available to services by law enforcement or a court order, reasonable grounds to infer may exist.

References

Legal annex: Section A12 of Annex 1

Statute: Section 24(A1), (B1), (C1) and (D1); section 25 of the Immigration Act 1971

Caselaw: *R. v Bani (Samyar Ahmadii)* [2021] EWCA Crim 1958

Human trafficking

- A11.13 Human trafficking is broadly defined as the ‘recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control of another person, for the purpose of exploitation.’⁶²
- A11.14 Human trafficking is an offence under UK law. Specifically, it is an offence for a person (Person A) to **take a “relevant action” with a view to another person (Person B) being exploited**. In the context of online content, “relevant actions” are most likely to be the recruitment of another person, the arrangement or facilitation of (offline) acts of transport or transfer, or of harbouring, or of receiving of another person – so long as all of these actions are done with a view to exploiting the person involved.
- A11.15 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?

- A11.16 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 the 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;
 - c) the victim or potential victim of a number of child and/or adult sexual offences including but not limited to sexual exploitation and/or indecent images;
 - d) encouraged, required or expected to do anything which might relate to the illegal removal of organs;
 - e) subject to force, threats or deception 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; or

⁶² United Nations, 2000. Article 3 of [UN Protocol to Prevent, Suppress and Punish Trafficking in Persons](#) (‘Palermo Protocol’). [accessed 19 September 2023]

- f) The victim or potential victim is a child or vulnerable adult and is used to provide a service or benefit of any kind to another person, or to enable another person to acquire benefits of any kind.

- A11.17 It is irrelevant whether the person being exploited consents to any part of the actions or circumstances mentioned above.
- A11.18 Services 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.⁶³
- A11.19 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. Services should have regard to any evidence provided by UK law enforcement agencies that in their view there are reasonable grounds to infer that content is posted for the purposes of exploitation.

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 or potential victim themselves

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.))

⁶³ The UK Government defines county lines as follows: ‘County lines is a term used to describe gangs and organised criminal networks involved in exporting illegal drugs into one or more importing areas within the UK, using dedicated mobile phone lines or other form of “deal line”. They are likely to exploit children and vulnerable adults to move and store the drugs and money and they will often use coercion, intimidation, violence (including sexual violence) and weapons.’ Source: Home Office, 2018. [Criminal Exploitation of children and vulnerable adults: County Lines guidance](#). [accessed 19 September 2023]

A12. Assisting or encouraging suicide

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

- A12.1 The offence of [assisting or encouraging suicide](#) is a priority offence under the Act.
- A12.2 This offence requires intent, which will likely be difficult in practice to reasonably infer that content amounts to this offence. However, this chapter sets out the principles according to which reasonable grounds to infer may be reached.
- A12.3 The Online Safety Act created the offence of [encouraging or assisting serious self-harm](#). This offence is not a priority offence in the Act therefore the duties that apply to content which amounts to this offence differ. However, due to the fact that this offence is likely to occur online, and we expect services are likely to encounter such content, we have provided guidance on how to make illegal content judgements in regard to this offence.
- A12.4 For more information on the harms related to suicide and self-harm, see Chapter 6D of the Register of Risks on ‘Encouraging or assisting suicide (or attempted suicide) or serious self-harm offences’.

Assisting or encouraging suicide

- A12.5 It is an offence 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 an attempt of suicide. In order for content to be illegal, there must be reasonable grounds to infer both the act of encouraging or assisting *and* the intent.
- A12.6 For content to be illegal it is not necessary that the post be encouraging or assisting a specific act of (attempted) suicide, nor for it to be targeted towards a specific person or persons.
- A12.7 It should be emphasised that it is *not* a crime to take one’s own life (‘commit suicide’) or to attempt to, nor is it an offence to express suicidal ideation. Content related to suicide is very likely to be posted by people suffering acute distress. In these cases, online spaces may be a place to connect with others who may be experiencing similar feelings. Services are encouraged to take a pragmatic and compassionate approach towards such content which takes into account the risk of harm to the poster as well as other users viewing the content.

What is ‘assistance’?

- A12.8 Content which provides specific, practical information on suicide methods is the content most likely to reach the threshold for illegality under this offence. Where such content comes to services’ 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.
- A12.9 It is unlikely to be reasonable to infer intent in the case of fictional descriptions of suicide attempts, discussions of the merits of assisted dying or reports of suicides.

A12.10 Where the content is posted to a forum or within a chat in which suicidal ideation is discussed, it may be reasonable to infer that intent to assist (attempted) suicide exists by virtue of the information having been posted. In these cases, content which provides specific, practical or instructive information about suicide methods should be treated as illegal and taken down.

What is ‘encouragement’?

A12.11 Encouragement can be by any act including a course of conduct. It can be by hostile threats or pressure or by friendly persuasion. It may be implied as well as expressed directly, but glorification of suicide is not sufficient to amount to encouragement. Examples of content which may encourage suicide are blackmail, or ‘egging someone on.’ However, it will be necessary in all cases to make a reasonable inference of intent.

A12.12 Therefore, where content (such as messages or comments) appears to encourage such an action on behalf of another person, content moderators should always consider whether the encouragement was made in earnest with the intent that the person should take their own life. Flippant comments (e.g. ‘you should kill yourself’), while unpleasant and offensive, are unlikely to be enough for an inference of intent. However, inferring intent may be more appropriate in relation to comments which ‘egg on’ or encourage an act of suicide or attempted suicide. For example, when there is what appears to be a credible threat that a person is about to take their own life, it may be reasonable to assume that any comment encouraging such an action was made with intent.

A12.13 Similarly, jokes in poor taste cannot be said to have intent and so such content cannot be said to meet the threshold of reasonable grounds to infer that content amounts to an offence. Services should keep in mind the popularity of ‘dark’ or ‘edgy’ comedy amongst particular communities, and consider the likelihood that content is a joke in poor taste.

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
- Persistent, targeted messages or comments which ‘egg on’ a person showing intention of taking their own life

References

Legal annex: Section A13 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

Assisting or encouraging serious self-harm

- A12.14 It is an offence to **do an 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 order for content to be illegal, there must be reasonable grounds to infer both the act of encouraging or assisting *and* the intent.
- A12.15 It is not necessary that the post be encouraging or assisting 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 resulted in an actual act of self-harm, only that the act was capable of encouraging or assisting this.
- A12.16 Again, services should note that acts of self-harm themselves are not illegal, nor is discussion of self-harm. People posting self-harm content, including illegal self-harm content, are likely to be suffering from psychological distress and services are encouraged to take a pragmatic and compassionate approach which takes into account the risk of harm to the poster as well as other users viewing the content.
- A12.17 The offence of assisting or encouraging serious self-harm is a new offence created by Online Safety Act 2023. It is, as such, largely untested in the courts. Ofcom will revisit its guidance where case law emerges that gives greater clarity to the limits and definitions of the offence.

What is 'serious self-harm'?

- A12.18 'Serious self-harm' is self-harm which would amount to 'severe injury' or grievous bodily harm, which itself has been described in the courts 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.
- A12.19 Self-harm may also take a passive or active form. That is, it might result from a positive action or from *inaction*. Both types of actions may meet the definition of 'serious self-harm' if they have the capacity to result in really serious harm and/or severe injury. This means that, for example, content which explicitly encourages another person to starve themselves to the point of really serious harm and/or severe injury may be illegal content.

What is 'assistance'?

- A12.20 Content which provides specific, practical information on how a person may effectively undertake an act of really serious self-harm may be illegal content if intent can be reasonably inferred. Where such content comes to services' attention, the context around the post should always be considered as this may indicate a presence or absence of intent.
- A12.21 It is unlikely to be reasonable to infer intent in the case of fictional descriptions of self-harm or discussions of a person's own self harm.
- A12.22 Where the content is posted to a forum or within a chat in which self-harm is discussed in positive terms, it may be reasonable to infer that intent to assist self-harm exists by virtue of the information having been posted.

What is ‘encouragement’?

A12.23 Encouragement can be by any act including a course of conduct. It can be by hostile threats or pressure or by friendly persuasion. It may be implied as well as express, but glorification of self-harm is not enough. Examples of content which may encourage self-harm are blackmail, or egging someone on. However, it will be necessary in all cases to infer intent.

A12.24 Again, services should always consider the possibility that content which appear to be encouragement has been posted flippantly and without thinking about the possible consequences. In these cases, intent *cannot* be reasonably inferred.

Usage examples

- Messages or comments which ‘egg on’ a person already engaging in an act of serious self-harm

References

Legal annex: Section A5 of Annex 2

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)

A13. Foreign interference and false communications

- A13.1 This section of the Illegal Content Judgements Guidance considers the priority offence of foreign interference and the non-priority false communication offence created by the Online Safety Act.
- A13.2 The Online Safety Act created the False Communications offence. This offence is not a priority offence in the Act therefore the duties that apply to content which amounts to this offence differ. However, due to the fact that this offence is likely to occur online, and we expect services are likely to encounter such content, we have provided guidance on how to make illegal content judgements in regard to this offence.

Offences

Foreign interference

- A13.3 The National Security Act 2023 created a new offence of foreign interference in order to “create a more challenging operating environment for, and to deter and disrupt the activities of, foreign states who seek to undermine UK interests, our institutions, political system, or our rights, and ultimately prejudice our national security.”⁶⁴ The foreign interference offence is a priority offence, as set out in Schedule 7 of Online Safety Act.
- A13.4 For more information on harms relating to the foreign interference offence see Chapter 6P of the Register of Risks on ‘Foreign Interference Offence’.
- A13.5 Under the National Security Act, it is an offence for a person to **engage in “prohibited conduct” with the intention of having an “interference effect” (or being reckless as to whether it will have an interference effect), where the “foreign power condition” is met in relation to the prohibited conduct.**
- A13.6 It is also an offence for a person (P) to **engage in a course of conduct⁶⁵: with one or more other persons, where the ‘foreign power condition’ is met in relation to P’s conduct and P intends the course of conduct to have an interference effect.** As part of this course of conduct, another person, other than P, engages in ‘prohibited conduct’ and P intends or believes that, as part of the course of conduct, the other person will engage in prohibited conduct.
- A13.7 The meaning of “prohibited conduct”, “foreign power condition” and “interference effect” will be set out in paragraphs A13.9, A13.10 to A13.12 and A13.13 to A13.14 respectively.

⁶⁴ Home Office, 2023. [Foreign interference: National Security Bill factsheet](#). [accessed 25 September 2023]

⁶⁵ ‘Course of conduct’ is defined in section 13(4) of the National Security Act. However, as a legal term it has no precise definition; specifically, 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 carried out by the same individual or entity.

A13.8 In order for content to amount to the offence, services will need to have reasonable grounds to infer that all three conditions of prohibited conduct, foreign power condition and interference effect are satisfied.

Prohibited Conduct

A13.9 There are three forms of prohibited conduct for the purposes of the National Security Act 2023. 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 but not limited to coercion by using or threatening to use violence against that person or damaging or threatening to cause financial loss⁶⁶; 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.⁶⁷

Foreign power condition

A13.10 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 power⁶⁸; 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.

A13.11 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.

A13.12 The foreign power condition is also met in relation to a person's conduct if the person intends the conduct in question is to benefit a foreign power, even if it does not meet any of the criteria in A13.10 or A13.11.

⁶⁶ For all examples, please refer to section 15 of the National Security Act 2023: Foreign interference: meaning of "prohibited conduct"

⁶⁷ For further detail, please refer to section 14 of the National Security Act 2023: Foreign interference: meaning of "interference effect"

⁶⁸ The definition of "foreign power" is given in section 32 of the National Security Act 2023

Interference effect

- A13.13 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;
 - 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.
- A13.14 Services in the first instance should consider whether they have reasonable grounds to infer that the foreign power condition is satisfied. Next, services should consider in the round whether particular content amounts to prohibited conduct and whether that prohibited conduct will have an interference effect as set out in paragraph A13.13.

Patterns suggesting foreign interference behaviour and bots

- A13.15 We acknowledge that identifying online content amounting to the foreign interference offence is likely to be challenging, particularly in relation to individual items of content.
- A13.16 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 is not available to many service providers, and we do not have sufficient information about them at this stage to make specific recommendations. Absent this type of technology, we expect that evidence would need to be provided by UK law enforcement agencies or other credible third parties, for services to draw reasonable inferences.
- A13.17 Bots play an important role in generating and spreading content which is likely to amount to a foreign interference offence.⁶⁹ A number of larger service providers already have proactive technology which allows them to detect signals which indicate foreign interference tactics in order to 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.
- A13.18 Services who 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,

⁶⁹ Bots are 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, however, bots may also be used to spread spam and malicious content, including misinformation and phishing attempts.

inferences should be made about the state of mind of the person (assumed to be) controlling the bot.

References

Legal annex: Section A14 of Annex 1

Legislation: Section 13 of the National Security Act 2023

False communications

- A13.19 It is an offence for a person to **send a message which conveys information that they know to be false if 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**⁷⁰. However, in order for content to amount to an offence, the user must have **no reasonable excuse** for sending the message.
- A13.20 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.
- A13.21 Alongside this guidance for content relating to false communications, services should also consider the guidance provided on fraud by false representation 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)).

State of mind

- A13.22 It will not be possible for services to identify all instances of content amounting to this offence. A service will not always be in a position to know whether a user posting the content knows it is false and what the intent of the person is in making it. However, in some cases, it will be appropriate for services to draw these inferences.
- A13.23 When making an illegal content judgement, services will need to have reasonable grounds to infer that both the following are true:
- a) the user sending the message knew it was false; *and*
 - b) the user sending the message conveying false information intended to cause non-trivial psychological or physical harm to a likely audience.
- A13.24 We note the issues around freedom of expression and the difficulty for services in determining falsity. However, we anticipate there are certain instances when services may be able to infer that the user posting the content knows the content to be false. Services should consider the following questions:
- c) Is the message *actually* false? If there are no reasonable grounds for the service to infer that it is, the content cannot be judged to be illegal.

⁷⁰ For the purposes of this offence 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.

- d) Is there evidence (either as part of the content or established through contextual information) to illustrate that the user posting the content knows the content is false?
- e) Is there evidence (either as part of the content or established through contextual information) that suggests that the user posting the content intends to cause non-trivial psychological or physical harm?

A13.25 If the questions above are answered in the affirmative, then it is likely that the service will have reasonable grounds to infer that the content is illegal content for the purposes of the Online Safety Act.

A13.26 Reasonable grounds to infer that content amounts to a false communications offence will also exist where information justifying this inference has been made available to services by law enforcement or a court order (except where the service has evidence to suggest the contrary).

A13.27 We anticipate that it will be challenging for service providers to make these judgements based on content alone. This offence is not intended to capture all 'fake news'. Misinformation – that is, misleading or untrue information which is shared by a user who genuinely believes it to be true – is *not* captured by this offence.

References

Legal annex: Section A6 of Annex 2

Statute: Section 179 of the Online Safety Act 2023

A14. Relevant non-priority offences ('other' offences)

A14.1 This section provides guidance on how services should approach the non-priority or 'other' offences which have not already been covered in previous sections.

A14.2 A service's duty to take down illegal content is not limited to content amounting to the priority offences set out in schedules 5 to 7 of the Act. Services are also required to fulfil the illegal content takedown duty with regard to certain non-priority offences (i.e. where these offences meet certain criteria). In section 59(5-6) of the Act these offences are referred to as 'other offences'. However, to avoid confusion between statutory 'other offences', which can give rise to illegal content, and offences, outside the scope of section 59(5-6), in this section we use the term 'relevant non-priority offences'.

What is a relevant 'non-priority offence'?

A14.3 An offence is a 'relevant non-priority offence' when it meets the following criteria⁷¹:

- 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 Council⁷²
 - 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).

A14.4 It should be noted that the scope of relevant non-priority offences includes not just offences created by Acts 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

⁷¹ These criteria can be found in Sections 53(5) and 53(6) of the Act.

⁷² An Order in Council is a type of legislation made by the King acting on the advice of the Privy Council.

services to infer. Conspiracy requires the content to amount to an agreement between two people.

A14.5 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.

A14.6 Services should ensure that they respond appropriately to information given to them by law enforcement or through a court order regarding content that has been implicated in a successful conviction of a non-priority offence, or (taking legal advice as appropriate) where a reasoned case is put to them by a law enforcement body. This applies in the case of both priority and 'other' offences.

Illegal content judgements guidance

Annex 1: The priority offences

Last updated: 9 November 2023

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'	Tables 1-23
'Child sexual exploitation and abuse offences' (Schedule 6)	Chapter 4, 'Child sexual abuse and exploitation (CSEA): Offences relating to child sexual abuse material (CSAM), including 'paedophile manuals' and obscene articles' and Chapter 5, 'Child sexual exploitation and abuse exploitation (CSEA): Grooming and exploitation of children'	Tables 49-88
'Assisting suicide' offence (Schedule 7)	Chapter 12, 'Assisting or encouraging suicide and serious self-harm'	Table 13
'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)'	Tables 24-48
'Drugs and psychoactive substances' offences (Schedule 7)	Chapter 7, 'Drugs and psychoactive substances'	Tables 102-104
'Firearms and other weapons' offences (Schedule 7)	Chapter 8, 'Firearms and other weapons'	Tables 105-128
'Assisting illegal immigration' and 'Human trafficking' offences (Schedule 7)	Chapter 11, 'Unlawful immigration and human trafficking'	Tables 134-138
'Sexual exploitation' offences (Schedule 7)	Chapter 9, 'Sexual exploitation of adults'	Tables 129-130
'Sexual images' offences (Schedule 7)	Chapter 10, 'Image-based adult sexual offences'	Tables 131-133

Offence grouping	ICJG chapter	Annex
'Proceeds of crime', 'Fraud' and 'Financial services' offences (Schedule 7)	Chapter 6, 'Fraud and other financial offences'	Tables 89-101
'Foreign interference' offence	Chapter 13, 'Foreign interference and false communications'	Table 140

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 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 in this sub-paragraph (a), or an equivalent offence under the law of a country or 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 *antiques*:
 - 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

Conduct (actus reus)	State of mind (mens rea)	Defences
1. Membership of a proscribed organisation – s. 11 Terrorism Act 2000		
P belongs or professes to belong to a proscribed organisation .	P intends to profess to belong to the proscribed organisation : (<i>Pwr v DPP</i> [2022] 1 WLR 789).	(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.
<p><i>Definitions and interpretation:</i></p> <p>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.</p> <p>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 <i>DPP v Collins</i> [2006] UKHL 40 and <i>Chambers v DPP</i> [2012] EWHC 2157 (the “Twitter bomb joke” case).</p> <p>Proscribed organisation: An up to date list of proscribed organisations can be found here.</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>2. Inviting support for a proscribed organisation – s. 12(1) Terrorism Act 2000</p>		
<p>P invites support for a proscribed organisation, where the support is not, or is not restricted to, the provision of money or other property.</p>	<p>P knows that he is inviting support for the proscribed organisation, at the time he makes the invitation: (<i>R v Choudary (Anjem)</i> [2016] EWCA 61)</p> <p>P does not need to know that the organisation is proscribed: (<i>Pwr v DPP</i> [2022] 1 WLR 789 at para 39.)</p>	<p>No statutory defences.</p>
<p><i>Definitions and interpretation:</i></p> <p>Proscribed organisation: An up-to-date list of proscribed organisations can be found here.</p> <p>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. (<i>R v Choudary (Anjem)</i> [2016] EWCA 61)</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p><i>Further notes:</i></p> <ul style="list-style-type: none"> 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. 		
<h3>3. Expressing an opinion or belief supportive of a proscribed organisation – s. 12(1A) Terrorism Act 2000</h3>		
<p>P expresses an opinion or belief that is supportive of a proscribed organisation.</p>	<p>P is EW reckless as to whether a person to whom the expression is directed will be encouraged to support a proscribed organisation</p>	<p>No statutory defences.</p>
<p><i>Definitions and interpretation:</i></p> <p>Proscribed organisation: An up-to-date list of proscribed organisations can be found here.</p> <p><i>Further notes:</i></p> <ul style="list-style-type: none"> 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. 		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>4. Arranging a meeting supportive of a proscribed organisation – s. 12(2) Terrorism Act 2000</p>		
<p>P arranges, manages or assists in arranging or managing a meeting:</p> <ul style="list-style-type: none"> (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. 	<p>P knows the purpose of the meeting.</p>	<p>In relation to (c) only, the meeting being private and the defendant having no reasonable cause to believe that the address would support a proscribed organisation or further its activities.</p>
<p><i>Definitions and interpretation:</i></p> <p>Proscribed organisation: An up-to-date list of proscribed organisations can be found here.</p> <p>Meeting: A meeting of three or more persons, whether or not the public are admitted (s. 12(5)(a) Terrorism Act 2000).</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>Private: A meeting is private if the public are not admitted (s. 12(5)(b)).</p>		
<p>5. Publishing an image of uniform or article of proscribed organisation in a way that arouses suspicion – s. 13(1A) Terrorism Act 2000</p>		
<p>P publishes an image of –</p> <p>(a) an item of clothing, or</p> <p>(b) any other article,</p> <p>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.</p>	<p>P knows he is publishing the image: <i>Pwr v DPP</i> [2022] 1 WLR 789</p>	<p>No statutory defences.</p>
<p><i>Definitions and interpretation:</i></p> <p>Proscribed organisation: An up to date list of proscribed organisations can be found here.</p> <p>Image: A still or moving image (produced by any means) (s.13(1B) Terrorism Act 2000)</p> <p><i>Further notes:</i></p> <ul style="list-style-type: none"> Whether the clothing or article in question arouses the requisite reasonable suspicion is an objective test: <i>Pwr v DPP</i> [2022] 1 WLR 789. An example of this test being applied is <i>Rankin v Murray</i> [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. 		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>6. Terrorist fund-raising – s. 15 Terrorism Act 2000</p>		
<p>P —</p> <ul style="list-style-type: none"> (1) invites another to provide money or other property, or (2) receives money or other property, or (3) provides money or other property. 	<p>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.</p>	<p>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:</p> <ul style="list-style-type: none"> (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. <p>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.</p>
<p><i>Definitions and interpretation:</i></p> <p>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)</p> <p>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: <i>R v Lane and Letts</i> [2018] UKSC 36.</p> <p>Terrorism: See ‘General Interpretation’.</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
7. Use or possession of money or property for terrorist purposes – s. 16 Terrorism Act 2000		
P uses or possesses money or other property for the purposes of terrorism .	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 .	<p>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:</p> <ul style="list-style-type: none"> (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. <p>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.</p>
<p><i>Definitions and interpretation:</i></p> <p>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: <i>R v Lane and Letts</i> [2018] UKSC 36.</p> <p>Terrorism: See ‘General Interpretation’.</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<h3>8. Involvement in terrorist funding arrangements – s. 17 Terrorism Act 2000</h3>		
<p>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.</p>	<p>P intends that the money or other property will be used, or have reasonable cause to suspect that it may be used, for the purposes of terrorism.</p>	<p>P has a defence if they are acting with the express authority of a constable: s 21(1).</p> <p>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:</p> <ul style="list-style-type: none"> (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. <p>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.</p>
<p><i>Definitions and interpretation:</i></p> <p>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: <i>R v Lane and Letts</i> [2018] UKSC 36.</p> <p>Terrorism: See ‘General Interpretation’.</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>9. Laundering of terrorist property – s. 18 Terrorism Act 2000</p>		
<p>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 —</p> <ul style="list-style-type: none"> (a) by concealment, (b) by removal from the jurisdiction, (c) by transfer to nominees, or (d) in any other way. 	<p>No mens rea requirement (but see defences).</p>	<p>P did not know and had no reasonable cause to suspect that the arrangement related to terrorist property: Section 18(2).</p>
<p><i>Definitions and interpretation:</i></p> <p>Terrorist property: Means—</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>(a) money or other property which is likely to be used for the purposes of <i>terrorism</i> (including any <i>resources</i> of a <i>proscribed organisation</i>),</p> <p>(b) proceeds of the commission of acts of terrorism, and</p> <p>(c) <i>proceeds of acts</i> carried out for the purposes of <i>terrorism</i> (s.14 Terrorism Act 2000)</p> <p><i>Proscribed organisation</i>: An up to date list of proscribed organisations can be found here.</p> <p><i>Terrorism</i>: See 'General Interpretation'</p> <p><i>Proceeds of acts</i>: 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</p> <p><i>Resources</i>: 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).</p>		
<p>10. Providing weapons training – s. 54(1) Terrorism Act 2000</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>P provides instruction or training in the making or use of —</p> <ul style="list-style-type: none"> (a) firearms, (aa) radioactive material or weapons designed or adapted for the discharge of any radioactive material, (b) explosives, or (c) chemical, biological or nuclear weapons. 	<p>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”.</p>	<p>Prove that his action or involvement was wholly for a purpose other than assisting, preparing for or participating in terrorism.</p>
<p><i>Definitions and interpretation:</i></p> <p>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).</p> <p>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).</p> <p>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).</p> <p>Firearms: see ‘General Interpretation’</p> <p>Radioactive material: radioactive material capable of endangering life or causing harm to human health. (S.55 Terrorism Act 2000)</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>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).</p>		
<p>11. Inviting another to receive weapons training – s. 54(3) Terrorism Act 2000</p>		
<p>P invites another to receive instruction or training when the receipt—</p> <p>(a) would constitute an offence under subsection (2), or</p> <p>(b) would constitute an offence under subsection (2) but for the fact that it is to take place outside the United Kingdom.</p> <p>Subsection (2) creates an offence where a person receives instruction or training in the making or use of—</p> <p>(a) firearms,</p>	<p>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: <i>R v Choudary (Anjem)</i> [2016] EWCA 61.</p>	<p>P proves that his action or involvement was wholly for a purpose other than assisting, preparing for or participating in terrorism.</p>

Conduct (actus reus)	State of mind (mens rea)	Defences
(aa) radioactive material or weapons designed or adapted for the discharge of any radioactive material, (b) explosives , or (c) chemical, biological or nuclear weapons .		
<p><i>Definitions and interpretation:</i></p> <p>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).</p> <p>Firearms: See ‘General Interpretation.’</p> <p>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).</p> <p>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).</p> <p>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).</p> <p>Radioactive material: radioactive material capable of endangering life or causing harm to human health. (S.55 Terrorism Act 2000).</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>12. Directing a terrorist organisation – s. 56 Terrorism Act 2000</p>		
<p>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</p>	<p>Intention is implicit in the actus reus of “directs”.</p>	<p>No statutory defences.</p>
<p><i>Definitions and interpretation:</i></p> <p>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.</p> <p>Terrorism: See ‘General Interpretation’.</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>13. Collection of information likely to be of use to a terrorist – s. 58 Terrorism Act 2000</p>		
<p>P commits an offence if —</p> <ul style="list-style-type: none"> (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. 	<p>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): <i>R v G; R v J</i> [2009] UKHL 13.</p>	<p>P had a reasonable excuse for his action or possession.</p> <p>The cases in which a person has a reasonable excuse for the purposes of subsection include (but are not limited to) those in which —</p> <ul style="list-style-type: none"> (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— <ul style="list-style-type: none"> (i) carrying out work as a journalist, or (ii) academic research.

Conduct (actus reus)	State of mind (mens rea)	Defences
<p><i>Definitions and interpretation:</i></p> <p>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).</p> <p>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, designed to provide practical assistance to a person committing or preparing an act of terrorism. <i>R v G; R v J</i> [2009] UKHL 13, at para 43. The information must also be not the sort of information that is in every day use by members of the public (e.g. published maps or timetables): <i>R v Muhammed</i> [2010] EWCA Crim 227.</p> <p>Record: Includes a photographic or electronic record.</p> <p>Terrorism: See 'General Interpretation'.</p> <p><i>Further notes:</i></p> <ul style="list-style-type: none"> • The putative person committing or preparing an act of terrorism could be the collector of the information himself or a third party: <i>R v G; R v J</i> [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: <i>R v G; R v J</i> [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): <i>R v F</i> [2007] EWCA Crim 243. 		

Conduct (actus reus)	State of mind (mens rea)	Defences
14. Publishing information about members of the armed forces etc – s. 58A Terrorism Act 2000		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>P —</p> <p>(a) elicits or attempts to elicit information about an individual who is or has been —</p> <p>(i) a member of the UK’s armed forces,</p> <p>(ii) (ii) a member of any of the intelligence services, or</p> <p>(iii) (iii) a constable,</p> <p>which is of a kind likely to be useful to a person committing or preparing an act of terrorism, or</p> <p>(b) publishes or communicates any such information.</p>	<p>Not specified, but by analogy with Section 58 Terrorism Act 2000, it is likely to require</p> <p>(a) an intention to elicit, publish or communicate, and</p> <p>(b) knowledge of the broad nature of what the information contains, although not necessarily every detail within it.</p>	<p>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.</p>

Conduct (actus reus)	State of mind (mens rea)	Defences
<p><i>Definitions and interpretation:</i></p> <p>Constable: A UK police officer (non-statutory definition provided by Ofcom to help overseas readers).</p> <p>Intelligence services: The Security Service, the Secret Intelligence Service and GCHQ (s.58A(4) Terrorism Act 2000).</p> <p>Terrorism: See 'General Interpretation.'</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
15. Inciting terrorism outside the UK – ss. 59 to 61 Terrorism Act 2000		

<p>P incites another person to commit an act of terrorism wholly or partly outside the United Kingdom, where the act would, if committed:</p> <p>(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;</p> <p>(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</p>	<p>P intends that the other person should commit the crime: <i>R v Jones (James)</i> [2010] EWCA Crim 925.</p>	<p>No statutory defences.</p>
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Conduct (actus reus)	State of mind (mens rea)	Defences
<p>offence under the SI 1977/426 (NI 4). Criminal Damage (Northern Ireland) Order 1977 of endangering life by damaging property</p> <p>(c) in Scotland, constitute murder, assault to severe injury, or reckless conduct which causes actual injury.</p>		
<p><i>Definitions and interpretation:</i></p> <p>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. (<i>R v Jones (James)</i> [2010] EWCA Crim 925). The definition from the South African case of <i>R v Nkosiyama</i> (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”.</p> <p>Terrorism: See ‘General Interpretation’.</p>		
<p>16. Use of noxious substances or things – s. 113 of the Anti-terrorism, Crime and Security Act 2001</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>(1) P takes any action which—</p> <ul style="list-style-type: none"> (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) <p>(2) Action has an effect falling within this subsection if it —</p> <ul style="list-style-type: none"> (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 	<p>The action “is designed to influence the government [or an international governmental organisation] or to intimidate the public or a Section of the public.”</p>	<p>No statutory defences.</p>

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>health or safety of the public or a Section of the public; or</p> <p>(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;</p> <p>but any effect on X is to be disregarded.</p>		
<p><i>Definitions and interpretation:</i></p> <p>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).</p> <p>Noxious: Defined in the context of the Offences Against the Person Act 1861 as “injurious, hurtful, harmful, unwholesome”: <i>R v Marcus</i> [1981] 2 All ER 833, and has been held to cover substances such as urine or faeces thrown at officers in prison: <i>R v Veysey</i> [2019] EWCA Crim 1332.</p> <p>Public: Includes the public of a country other than the United Kingdom s.113(5) Anti-Terrorism Crime and Security Act 2001.</p> <p>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).</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>17. Threaten to use noxious substances or things – s. 113 of the Anti-terrorism, Crime and Security Act 2001</p>		
<p>P makes a threat that he or another will take any action which constitutes an offence under Row 16</p>	<p>P intends thereby to induce in a person anywhere in the world the fear that the threat is likely to be carried out</p>	<p>No statutory defences.</p>
<p><i>Definitions and interpretation:</i></p> <p>overnment: 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)</p> <p>Noxious: Defined in the context of the Offences Against the Person Act 1861 as “injurious, hurtful, harmful, unwholesome”: <i>R v Marcus</i> [1981] 2 All ER 833, and has been held to cover substances such as urine or faeces thrown at officers in prison: <i>R v Veysey</i> [2019] EWCA Crim 1332.</p> <p>Public: Includes the public of a country other than the United Kingdom s.113(5) Anti-Terrorism Crime and Security Act 2001.</p> <p>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).</p>		
<p>18. Encouragement of terrorism – s. 1 Terrorism Act 2006</p>		
<p>P publishes or causes another to publish a statement that is likely to be</p>	<p>P intends members of the public to be directly or indirectly encouraged</p>	<p>Only where the state of mind is recklessness, i.e. not where it is intent prima facie case is proved on the basis of recklessness) it is a defence to show —</p>

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>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.</p>	<p>or otherwise induced by the statement to commit, prepare or instigate acts of terrorism or Convention offences; or</p> <p>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.</p>	<p>(a) that the statement neither expressed X's views nor had his endorsement; and</p> <p>(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.</p>
<p><i>Definitions and interpretation:</i></p> <p>Convention offences: See 'General Interpretation.'</p> <p>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 —</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>(a) glorifies the commission or preparation (whether in the past, in the future or generally) of such acts or offences; and</p> <p>(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).</p> <p>Glorification includes any form of praise or celebration, and cognate expressions are to be construed accordingly (s.20 Terrorism Act 2006).</p> <p>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).</p> <p>Terrorism: See 'General Interpretation.'</p>		
<h3>19. Dissemination of terrorist publications – s. 2 Terrorism Act 2006</h3>		
<p>P —</p> <p>(a) distributes or circulates a terrorist publication;</p> <p>(b) gives, sells or lends such a publication;</p> <p>(c) offers such a publication for sale or loan;</p> <p>(d) provides a service to others that enables them to obtain, read,</p>	<p>(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;</p> <p>(b) P intends an effect of his</p>	<p>P shows —</p> <p>(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</p> <p>(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.</p> <p>However this defence does <i>not</i> apply where X intends to encourage terrorism <i>or</i> 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</p>

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>listen to or look at such a publication, or to acquire it by means of a gift, sale or loan;</p> <p>(e) transmits the contents of such a publication electronically; or</p> <p>(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).</p>	<p>conduct to be the provision of assistance in the commission or preparation of such acts; or</p> <p>(c) P is reckless as to whether his conduct has an effect mentioned in paragraph (a) or (b).</p>	<p>available to them, wholly or mainly for the purpose of being so useful to them. (S.2(3))</p>
<p><i>Definitions and interpretation:</i></p> <p>Reckless: See 'General Interpretation'.</p> <p>Terrorism: See 'General Interpretation'.</p> <p>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</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>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—</p> <ul style="list-style-type: none"> (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. <p>The question whether a publication is a terrorist publication in relation to particular conduct must be determined—</p> <ul style="list-style-type: none"> (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. <p>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)).</p> <p>With a view to: Interpreted at first instance as meaning “with intent to” in <i>R v Faraz</i> [2012] EWCA Crim 2820.</p> <p><i>Further notes:</i></p> <ul style="list-style-type: none"> • P is not to be convicted simply for expressing political or religious views (<i>R v Faraz</i> [2012] EWCA Crim 2820). 		
<h2>20. Preparation of terrorist acts – s. 5 Terrorism Act 2006</h2>		
<p>P engages in any conduct in preparation for giving effect to his intention.</p>	<p>P intends</p>	<p>No statutory defences.</p>

Conduct (actus reus)	State of mind (mens rea)	Defences
	(a) committing acts of terrorism , or (b) assisting another to commit such acts.	
<p><i>Definitions and interpretation:</i></p> <p>Terrorism: See 'General Interpretation'.</p>		
<p>21. Training for terrorism (providing)– s. 6 Terrorism Act 2006</p>		
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	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— (i) for or in connection with the commission or preparation of acts of terrorism or	No statutory defences.

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>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</p> <p>(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.</p>	<p>Convention offences; or</p> <p>(ii) for assisting the commission or preparation by others of such acts or offences.</p>	
<p><i>Definitions and interpretation:</i></p> <p>Noxious substance: Means—</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>(a) a dangerous substance within the meaning of Part 7 of the Anti-terrorism, Crime and Security Act 2001 (c 24); or</p> <p>(b) any other substance which is hazardous or noxious or which may be or become hazardous or noxious only in certain circumstances;</p> <p>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.</p> <p>Terrorism: See ‘General Interpretation.’</p> <p>Further notes:</p> <ul style="list-style-type: none"> • It is irrelevant whether any instruction or training that is provided is provided to one or more particular persons or generally • It is irrelevant — <ul style="list-style-type: none"> (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 		
<h2>22. Training for terrorism (receiving) – s. 6 Terrorism Act 2006</h2>		
<p>P receives instruction in</p> <p>(a) the making, handling or use of a noxious substance, or of substances of a</p>	<p>At the time P receives the instruction or training, he intends to use the skills in which he is being instructed or trained—</p>	<p>No statutory defences.</p>

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>description of such substances;</p> <p>(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</p> <p>(c) the design or adaptation for the purposes of terrorism, or in connection with the commission or</p>	<p>(i) for or in connection with the commission or preparation of acts of terrorism or Convention offences; or</p> <p>(ii) for assisting the commission or preparation by others of such acts or offences.</p>	

Conduct (actus reus)	State of mind (mens rea)	Defences
preparation of an act of terrorism or Convention offence, of any method or technique for doing anything.		
<p><i>Definitions and interpretation:</i></p> <p>Noxious substance: Means—</p> <p>(c) a dangerous substance within the meaning of Part 7 of the Anti-terrorism, Crime and Security Act 2001 (c 24); or</p> <p>(d) any other substance which is hazardous or noxious or which may be or become hazardous or noxious only in certain circumstances;</p> <p>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.</p> <p>Terrorism: See ‘General Interpretation.’</p> <p><i>Further notes:</i></p> <ul style="list-style-type: none"> • It is irrelevant — <ul style="list-style-type: none"> (c) 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 (d) 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 		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>23. Terrorist threats relating to radioactive devices etc – s. 11 Terrorism Act 2006</p>		
<p>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 —</p> <ul style="list-style-type: none"> (i) for the supply to himself or to another of a radioactive device or of radioactive material; (ii) for a nuclear facility to be made available to himself or to another; or (iii) (iii) for access to such a facility to be given to himself or to another; and supporting the demand with a threat that he or another will take 	<p>“For the purposes of terrorism” connotes a specific intent.</p>	<p>No statutory defences.</p>

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>action if the demand is not met;</p> <p>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> <p>P, in the course of or in connection with the commission of an act of terrorism or for the purposes of terrorism, makes:</p> <ul style="list-style-type: none"> (i) a threat to use radioactive material; (ii) a threat to use a radioactive device; or (iii) a threat to use or damage a nuclear facility in a manner 		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>that releases radioactive material or creates or increases a risk that such material will be released;</p> <p>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>		
<p><i>Definitions and interpretation:</i></p> <p>Nuclear facility: Means—</p> <ul style="list-style-type: none"> (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).) <p>Radioactive device: Means</p> <ul style="list-style-type: none"> (a) a nuclear weapon or other nuclear explosive device; 		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>(b) a radioactive material dispersal device;</p> <p>(c) a radiation-emitting device.</p> <p>For further definition of the terms used in this definition, see Section 9 Terrorism Act 2006.</p> <p>Radioactive material means nuclear material or any other radioactive substance which—</p> <p>(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</p> <p>(b) is capable, owing to its radiological or fissile properties, of</p> <ul style="list-style-type: none"> (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. <p>For further definition of the terms used in this definition, see Section 9 Terrorism Act 2006.</p>		

A4. Threats, abuse and harassment (including hate)

Conduct (actus reus)	State of mind (mens rea)	Defences
24. Threats to kill – s. 16 Offences Against the Persons Act 1861		
P makes to another a threat to kill that other or a third person.	P intends that the other would fear it would be carried out, to kill that other or a third person.	P has a lawful excuse for making the threat.
<p><i>Definitions and interpretation:</i></p> <p>None applicable</p> <p><i>Further notes:</i></p> <ul style="list-style-type: none"> An implied threat can amount to the act: <i>R v Solanke</i> [1970] 1 WLR 1 		
25. Fear or provocation of violence – s. 4 Public Order Act 1986		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>P —</p> <p>(d) uses towards another person threatening, abusive or insulting words or behaviour, or</p> <p>(e) distributes or displays to another person any writing, sign or other visible representation which is threatening abusive or insulting.</p> <p>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.</p>	<p>P either -</p> <p>(a) intends his words or behaviour, or the writing, sign or other visible representation, to be threatening, abusive or insulting, or</p> <p>(b) is aware that it may be threatening, abusive or insulting (s.6(3) Public Order Act 1986).</p> <p>and</p> <p>P —</p> <p>(a) intends to cause that person to believe that immediate unlawful violence will be used against him or another by any person, or</p>	<p>No statutory defence</p>

Conduct (actus reus)	State of mind (mens rea)	Defences
	<p>(b) intends to provoke the immediate use of unlawful violence by that person or another, or</p> <p>(c) whereby that person is likely to believe that such violence will be used, or</p> <p>(d) it is likely that such violence will be provoked.</p>	
<p><i>Definitions and interpretation:</i></p> <p>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).</p> <p>Violence: Means any violent conduct, so that —</p> <p>(a) except in the context of affray, it includes violent conduct towards property as well as violent conduct towards persons, <i>and</i></p> <p>(b) 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).</p> <p>Such violence: as used in this offence means 'immediate unlawful violence' (<i>Horse-ferry Road Metropolitan Stipendiary Magistrate, ex parte Siadatan</i> [1991] 1 QB 260)</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
26. Intentional harassment, alarm, or distress – s. 4A Public Order Act 1986		
<p>P —</p> <ul style="list-style-type: none"> (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 <p>thereby causing that or another person harassment, alarm or distress.</p> <p>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.</p>	<p>P intends to cause a person harassment, alarm or distress.</p>	<p>It is a defence for P to prove:</p> <ul style="list-style-type: none"> (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.
<p><i>Definitions and interpretation:</i></p> <p>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</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>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.’: <i>Southard v DPP</i> [2006] EWHC 3449 (Admin)</p> <p>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).</p>		
<h2>27. Harassment, alarm or distress – s. 5 Public Order Act 1986</h2>		
<p>P —</p> <ul style="list-style-type: none"> (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, <p>within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby.</p> <p>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</p>	<p>P —</p> <ul style="list-style-type: none"> (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). 	<p>It is a defence for P to prove:</p> <ul style="list-style-type: none"> (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).

Conduct (actus reus)	State of mind (mens rea)	Defences
other person is also inside that or another dwelling.		
<p><i>Definitions and interpretation:</i></p> <ul style="list-style-type: none"> • 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.’: <i>Southard v DPP</i> [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). 		
<p>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)</p>		
<p>P uses threatening, abusive or insulting words or behaviour, or displays any written material which is threatening, abusive or insulting.</p> <p>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</p>	<p>P intends there to stir up racial hatred</p>	<p>It is a defence for P to prove –</p> <p>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.</p>

Conduct (actus reus)	State of mind (mens rea)	Defences
are not heard or seen except by other persons in that or another dwelling .		
<p><i>Definitions and interpretation:</i></p> <p>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).</p> <p>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).</p> <p>Written material: Includes any sign or other visible representation (s.29 of the Public Order Act 1986).</p> <p><i>Further notes:</i></p> <ul style="list-style-type: none"> • 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 <i>programme service</i>. <ul style="list-style-type: none"> ○ <i>Programme service:</i> “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. 		
<p>29. Acts likely to stir up racial hatred – use of words or behaviour or display of written material – s. 18 Public Order Act 1986 (No intention)</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>P uses threatening, abusive or insulting words or behaviour, or displays any written material which is threatening, abusive or insulting, if having regard to all the circumstances racial hatred is likely to be stirred up thereby.</p> <p>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.</p>	<p>See the defence at s.18(5) of the Public Order Act 1986 (or subsection (b) in defence column)</p>	<p>It is a defence for P to prove –</p> <ul style="list-style-type: none"> 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. b) 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).
<p><i>Definitions and interpretation:</i></p> <p>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).</p> <p>Written material: Includes any sign or other visible representation (s.29 Public Order Act 1986).</p> <p>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).</p> <p><i>Further notes:</i></p>		

Conduct (<i>actus reus</i>)	State of mind (<i>mens rea</i>)	Defences
<ul style="list-style-type: none"> • 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 <i>programme service</i>. <ul style="list-style-type: none"> ○ <i>Programme service</i>: “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. 		
<h3>30. Acts intended to stir up racial hatred – distribution or publication of written material – s. 19 Public Order Act 1986 (Intention)</h3>		
P publishes or distributes written material which is threatening, abusive or insulting	P intends thereby to stir up racial hatred .	No statutory defences
<p><i>Definitions and interpretation:</i></p> <p>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)</p> <p>Written material: Includes any sign or other visible representation (s.29 Public Order Act 1986).</p> <p>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).</p> <p><i>Further notes:</i></p> <ul style="list-style-type: none"> • Section 29K of the Public Order Act 1986 provides a saving for reports of parliamentary or judicial proceedings. 		

Conduct (actus reus)	State of mind (mens rea)	Defences
31. Acts likely to stir up racial hatred – distribution or publication of written material – s. 19 Public Order Act 1986 (No intention)		
P publishes or distributes written material which is threatening, abusive or insulting, if having regard to all the circumstances racial hatred is likely to be stirred up thereby.	See the defence at s.19(2) of the Public Order Act 1986 (or subsection (a) in defence column).	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.
<p><i>Definitions and interpretation:</i></p> <p>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).</p> <p>Written material: Includes any sign or other visible representation (s.29 Public Order Act 1986).</p> <p>Publication or distribution of written material refers to publication or distribution to the public or a section of the public (s.19(3) of the Public Order Act 1986).</p> <p><i>Further notes:</i></p> <ul style="list-style-type: none"> • 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)	State of mind (mens rea)	Defences
P distributes, or shows or plays a recording of visual images or sounds which are threatening, abusive or insulting.	P intends to stir up racial hatred	No statutory defences
<p><i>Definitions and interpretation:</i></p> <p>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).</p> <p>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).</p> <p><i>Further notes:</i></p> <ul style="list-style-type: none"> • 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). • Section 29K of the Public Order Act 1986 provides a saving for reports of parliamentary or judicial proceedings. 		
<p>33. Acts likely to stir up racial hatred – distributing, showing or playing a recording– s. 21 Public Order Act 1986 (No intention)</p>		
P distributes, or shows or plays a recording of visual images or sounds which are threatening, abusive or insulting if having regard to all the circumstances racial hatred is likely to be stirred up thereby.	See the defence at s.21(3) of the Public Order Act 1986 (or subsection (a) in defence column)	It is a defence for P who is not shown to have intended to stir up racial hatred to prove that – <ul style="list-style-type: none"> a) 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
<p>Racial hatred: Hatred against a group of persons . . . defined by reference to colour, race, nationality (including citizenship) or ethnic or national</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>origins (s.17 Public Order Act 1986).</p> <p>Recording: means 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).</p> <p><i>Further notes:</i></p> <ul style="list-style-type: none"> • 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). • Section 29K of the Public Order Act 1986 provides a saving for reports of parliamentary or judicial proceedings. 		
<p>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</p>		
<p>P uses threatening words or behaviour, or display any written material which is threatening.</p> <p>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).</p>	<p>P intends to stir up religious hatred or hatred on the grounds of sexual orientation</p>	<p>It is a defence for the P to prove –</p> <p>(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)</p>

Conduct (actus reus)	State of mind (mens rea)	Defences
<p><i>Definitions and interpretation:</i></p> <p>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).</p> <p>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).</p> <p>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.29N of the Public Order Act 1986)</p> <p>Written material: includes any sign or other visible representation (s.29N of the Public Order Act 1986)</p> <p><i>Further notes:</i></p> <ul style="list-style-type: none"> • 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.'⁷³ • Section 29J Public Order Act 1986 Protection of freedom of expression: <ul style="list-style-type: none"> ○ 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): 		

⁷³ Ministry of Justice, 2010. '[Offences of stirring up hatred on the grounds of sexual orientation](#)'. *The National Archives* [accessed 19 October, 2023].

Conduct (actus reus)	State of mind (mens rea)	Defences
<ul style="list-style-type: none"> ○ 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.’”⁷⁴ ● 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). ● Section 29K of the Public Order Act 1986 provides a saving for reports of parliamentary or judicial proceedings. 		
<p>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</p>		
<p>P publishes or distributes written material which is threatening.</p>	<p>P intends to stir up religious hatred or hatred on the grounds of sexual orientation</p>	<p>No statutory defence</p>
<p><i>Definitions and interpretation:</i></p>		

⁷⁴ Ministry of Justice, 2010. [‘Offences of stirring up hatred on the grounds of sexual orientation’](#). *The National Archives* [accessed 19 October, 2023].

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>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).</p> <p>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).</p> <p>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).</p> <p>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.29N of the Public Order Act 1986).</p> <p>Written material: Includes any sign or other visible representation (s.29N of the Public Order Act 1986).</p> <p><i>Further notes:</i></p> <ul style="list-style-type: none"> • 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.'⁷⁵ • Section 29J Public Order Act 1986 Protection of freedom of expression: <ul style="list-style-type: none"> ○ 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. 		

⁷⁵ Ministry of Justice, 2010. [Offences of stirring up hatred on the grounds of sexual orientation](#). *The National Archives* [accessed 19 October, 2023].

Conduct (actus reus)	State of mind (mens rea)	Defences
<ul style="list-style-type: none"> • Section 29JA Public Order Act 1986 Protection of freedom of expression (sexual orientation): <ul style="list-style-type: none"> ○ 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.’”⁷⁶ • Section 29K of the Public Order Act 1986 provides a saving for reports of parliamentary or judicial proceedings. 		
36. Acts intended to stir up religious hatred or hatred on the grounds of sexual orientation – distributing, showing or playing a recording material – s. 29E Public Order Act 1986		
P distributes, or shows or plays, a recording of visual images or sounds which are threatening	P intends to stir up religious hatred or hatred on the grounds of sexual orientation	No statutory defence

⁷⁶ Ministry of Justice, 2010. [Offences of stirring up hatred on the grounds of sexual orientation](#). *The National Archives* [accessed 19 October, 2023].

Definitions and interpretation:

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)

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).

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 Public Order Act 1986).

Written material: 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.'⁷⁷
- **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.

Conduct (actus reus)	State of mind (mens rea)	Defences
<ul style="list-style-type: none"> ○ 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.’”⁷⁸ ● Section 29K of the Public Order Act 1986 provides a saving for reports of parliamentary or judicial proceedings. ● 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). 		
<h3>37. Racially-aggravated harassment – s.50A Criminal Law (Consolidation) (Scotland) Act 1995</h3>		
<p>P —</p> <p>(a) pursues a racially aggravated course of conduct which amounts to harassment of a person, or occurs in circumstances where it would appear to a reasonable person that it would amount to harassment of that person</p>	<p>In the case of subsection (a) —</p> <p>(a) P intends for the course of conduct pursued to amount to harassment of that person, or</p> <p>(b) the course of conduct was deliberately pursued and</p>	<p>No statutory defences.</p>

⁷⁷ Ministry of Justice, 2010. [Offences of stirring up hatred on the grounds of sexual orientation](#). *The National Archives* [accessed 19 October, 2023].

⁷⁸ Ibid.

Conduct (actus reus)	State of mind (mens rea)	Defences
(b) acts in a manner which is a racially aggravated .	<p>would appear to a reasonable person that it would amount to harassment of that person</p> <p>In the case of subsection (b),</p> <p>(a) P intends to cause the person alarm or distress by acting in a racially aggravated manner, or</p> <p>(b) P deliberately acts in a racially aggravated manner which caused alarm or distress.</p>	
<p><i>Definitions and interpretation:</i></p> <p>Conduct: Includes speech (s.50A(6) of the Criminal Law (Consolidation) (Scotland) Act 1995).</p> <p>Course of conduct: must involve conduct on at least two occasions (s.50A(6) of the Criminal Law (Consolidation) (Scotland) Act 1995).</p> <p>Harassment: ‘Harassment’ of a person includes causing the person alarm or distress.</p> <p>Racially aggravated: A course of conduct or action is racially aggravated if —</p> <p>(a) immediately before, during or immediately after carrying out the course of conduct or action the offender evinces towards the person affected malice and ill-will based on that person’s <i>membership (or presumed membership) of a racial group</i>; or</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>(b) the course of conduct or action is motivated (wholly or partly) by malice and ill-will towards members of a <i>racial group</i> based on their <i>membership</i> of that group (s.50A(2) of the Criminal Law (Consolidation) (Scotland) Act 1995).</p> <p><i>Membership:</i> In relation to a racial group, includes association with members of that group (s.50A(3) of the Criminal Law (Consolidation) (Scotland) Act 1995).</p> <p><i>Presumed:</i> Means presumed by the offender (s.50A(3) of the Criminal Law (Consolidation) (Scotland) Act 1995).</p>		
<p>38. Harassment - Article 4 Protection from Harassment (Northern Ireland) Order 1997 (S.I. 1997/1180 (N.I. 9))</p>		
<p>P pursues a course of conduct which amounts to harassment of another.</p>	<p>P knows or ought to know it amounts to harassment of the other.</p>	<p>It is a defence for P to prove -</p> <ul style="list-style-type: none"> (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.
<p><i>Definitions and interpretation:</i></p> <p>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).</p> <p>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).</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>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)</p>		
<p>39. Harassment – s. 2 Protection from Harassment Act 1997</p>		
<p>P pursues a course of conduct that —</p> <p>(a) amounts to harassment of another, <i>or</i></p> <p>(b) involves harassment of two or more persons.</p>	<p><i>Please see corresponding state of mind requirement for each subsection</i></p> <p>In the case of subsection (a), P knows or ought to know that it amounts to harassment.</p> <p>In the case of subsection (b), P</p> <ul style="list-style-type: none"> • knows or ought to know amounts to harassment of those persons, and • by which he intends to persuade any person (whether or not one of those mentioned above)— <ul style="list-style-type: none"> ○ not to do something that he is entitled or required to do, or 	<p>It is a defence for P to prove that -</p> <p>(a) The course of conduct was pursued for the purpose of preventing or detecting crime;</p> <p>(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</p> <p>(c) In the circumstances the course of conduct was reasonable.</p>

Conduct (actus reus)	State of mind (mens rea)	Defences
	<ul style="list-style-type: none"> ○ (ii) to do something that he is not under any obligation to do. 	
<p><i>Definitions and interpretation:</i></p> <p>Course of conduct: A “course of conduct” must involve —</p> <ul style="list-style-type: none"> (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. <p>Harassment: References to harassing a person include alarming the person or causing the person distress (s.7 of the Protection from Harassment Act).</p> <p><i>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></p> <ul style="list-style-type: none"> “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. 		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>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..."</p> <p>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."</p> <p>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).</p>		
<h4>40. Stalking - s.2A Protection from Harassment Act 1997</h4>		
<p>P —</p> <p>(a) pursues a course of conduct that amounts to harassment of another, and</p> <p>(b) the course of conduct amounts to stalking.</p>	<p>P knows or ought to know that it amounts to harassment.</p>	<p>It is a defence for P to prove that -</p> <p>a) The course of conduct was pursued for the purpose of preventing or detecting crime.</p> <p>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.</p> <p>c) In the circumstances the course of conduct was reasonable.</p>
<p><i>Definitions and interpretation:</i></p> <p>Course of conduct: A "course of conduct" must involve conduct on at least two occasions in relation to that person.</p> <p>Amounts to stalking: A person's course of conduct amounts to stalking of another person if—</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>(a) it amounts to harassment of that person,</p> <p>(b) the acts or omissions involved are ones associated with stalking, <i>and</i></p> <p>(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).</p> <p>The following are examples of acts or omissions which, in particular circumstances, are ones associated with stalking—</p> <p>(a) following a person,</p> <p>(b) contacting, or attempting to contact, a person by any means,</p> <p>(c) publishing any statement or other material—</p> <p style="padding-left: 20px;">(i) relating or purporting to relate to a person, or</p> <p style="padding-left: 20px;">(ii) purporting to originate from a person,</p> <p>(d) monitoring the use by a person of the internet, email or any other form of electronic communication,</p> <p>(e) loitering in any place (whether public or private),</p> <p>(f) interfering with any property in the possession of a person,</p> <p>(g) watching or spying on a person (s.2A(3) of the Protection from Harassment Act 1997).</p> <p>Harassment: References to harassing a person include alarming the person or causing the person distress (s.7 of the Protection from Harassment Act) (<i>see row 39 Harassment – s. 2 of the Protection from Harassment Act 1997 of this table for additional detail</i>)</p> <p>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).</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>41. Putting people in fear of violence – Art. 6 Protection from Harassment (Northern Ireland) Order 1997 (S.I. 1997/1180 (N.I. 9))</p>		
<p>P's course of conduct causes another to fear, on at least two occasions, that violence will be used against him.</p>	<p>P knows or ought to know that his course of conduct will cause the other so to fear on each of those occasions.</p>	<p>It is a defence for P to show that—</p> <ul style="list-style-type: none"> (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.
<p><i>Definitions and interpretation:</i></p> <p>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).</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>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).</p> <p>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)</p>		
<p>42. Putting people in fear of violence – s.4 Protection from Harassment Act 1997</p>		
<p>P's course of conduct causes another to fear, on at least two occasions, that violence will be used against him.</p>	<p>P knows or ought to know that his course of conduct will cause the other so to fear on each of those occasions.</p>	<p>It is a defence for a person charged with an offence under this section to show that—</p> <ul style="list-style-type: none"> (a) his course of conduct was pursued for the purpose of preventing or detecting crime, (b) his 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 his course of conduct was reasonable for the protection of himself or another or for the protection of his or another's property.

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>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).</p> <p>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).</p>		
<h3>43. Stalking involving fear of violence or serious alarm or distress – s. 4A Protection from Harassment Act 1997</h3>		
<p>P's course of conduct amounts to stalking of another person (B) and either —</p> <ul style="list-style-type: none"> (a) causes B to fear on at least 2 occasions that violence will be used against B, <i>or</i> (b) causes B serious alarm or distress which has a substantial adverse effect on B's usual day to day activities. 	<p>P —</p> <ul style="list-style-type: none"> (a) knows or ought to know that the course of conduct amounts to harassment of the other person, and knows or ought to know that their course of conduct <ul style="list-style-type: none"> (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 	<p>It is a defence for P to show that —</p> <ul style="list-style-type: none"> 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.

Conduct (actus reus)	State of mind (mens rea)	Defences
	a substantial adverse effect on B's usual day to day activities.	
<p><i>Definitions and interpretation:</i></p> <p>Amounts to stalking: A person's course of conduct amounts to stalking of another person if—</p> <ul style="list-style-type: none"> (a) it amounts to harassment of that person, <i>and</i> (b) the acts or omissions involved are ones associated with stalking, <i>and</i> (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 <p>The following are examples of acts or omissions which, in particular circumstances, are ones associated with stalking—</p> <ul style="list-style-type: none"> (a) following a person, (b) contacting, or attempting to contact, a person by any means, (c) publishing any statement or other material— <ul style="list-style-type: none"> (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. 		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>Course of conduct: A “course of conduct” must involve conduct on at least two occasions in relation to that person.</p> <p>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).</p> <p>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).</p>		
<p>44. Racially or religiously aggravated public order offences – s.31 Crime and Disorder Act 1998</p>		
<p>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-</p> <ul style="list-style-type: none"> (a) Section 4 (fear or provocation of violence) (b) Section 4A (intentional harassment, alarm or distress), or (c) Section 5 (harassment, alarm or distress) 	<p>See state of mind requirements for relevant offences as set out above, which is racially or religiously motivated</p>	<p>See defence for relevant offences as set out above</p>
<p><i>Definitions and interpretation:</i></p> <p>Racially or religiously aggravated: An offence is racially or religiously aggravated if —</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>(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 <i>membership</i> (or <i>presumed</i> membership) of a racial or religious group, or</p> <p>(b) the offence is motivated (wholly or partly) by hostility towards members of a racial or religious group based on their <i>membership</i> of that group (s.28(1) of the Crime and Disorder Act 1998).</p> <p><i>Membership</i>: "Membership", in relation to a racial group, includes association with members of that group.</p> <p><i>Presumed</i>: Means presumed by P (s.28(2) of the Crime and Disorder Act 1998).</p> <p><i>Racial group</i>: 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).</p> <p><i>Religious group</i>: 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).</p> <p>Also see definitions and interpretation for relevant offences as set out in rows 25, 26 and 27 above.</p>		
<h3>45. Racially or religiously aggravated harassment etc – s.32 Crime and Disorder Act 1998</h3>		
<p>P commits an offence under the following sections, which is racially or religiously aggravated:</p> <p>(a) Section 2 or 2A of the Protection from Harassment Act 1997 (offences of harassment and stalking)</p> <p>(b) Section 4 or 4A of the Protection from Harassment Act 1997 (putting people in fear of violence and stalking involving</p>	<p>See state of mind requirements for relevant offences as set out above, which is racially or religiously motivated</p>	<p>See defence for relevant offences as set out above</p>

Conduct (actus reus)	State of mind (mens rea)	Defences
fear of violence or serious alarm or distress)		
<p><i>Definitions and interpretation:</i></p> <p>Racially or religiously aggravated: An offence is racially or religiously aggravated if —</p> <p>(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 <i>membership</i> (or <i>presumed membership</i>) of a racial or religious group, or</p> <p>(b) the offence is motivated (wholly or partly) by hostility towards members of a racial or religious group based on their <i>membership</i> of that group (s.28(1) of the Crime and Disorder Act 1998).</p> <p><i>Membership:</i> “Membership”, in relation to a racial group, includes association with members of that group (s.28(2) of the Crime and Disorder Act 1998).</p> <p><i>Presumed:</i> Means presumed by P.</p> <p><i>Racial group:</i> A group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins (s.28(4) Crime and Disorder Act 1998).</p> <p><i>Religious group:</i> 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).</p> <p><i>Further notes:</i></p> <ul style="list-style-type: none"> • Also see definitions and interpretation for relevant offences as set out in 39, 40, 42 and 43 above. 		
<p>46. Threatening or Abusive Behaviour – s. 38 Criminal Justice and Licensing (Scotland) Act 2010 (asp 13)</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
P — (a) behaves in a threatening or abusive manner, <i>and</i> (b) the behaviour would be likely to cause a reasonable person to suffer fear or alarm	P — (a) intends by the behaviour to cause fear or alarm, <i>or</i> (b) is reckless as to whether the behaviour would cause fear or alarm.	It is a defence to P to show that the behaviour was, in the particular circumstances, reasonable.
<p><i>Definitions and interpretation:</i></p> <p>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)).</p> <p>Reckless: See 'General Interpretation'.</p>		
<h3>47. Stalking – s.39 Criminal Justice and Licensing (Scotland) Act 2010 (asp 13)</h3>		
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	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	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. (c) was, in the particular circumstances, reasonable.

Conduct (actus reus)	State of mind (mens rea)	Defences
	would be likely to cause B to suffer fear or alarm.	
<p><i>Definitions and interpretation:</i></p> <p>Course of conduct: involves <i>conduct*</i> on at least two occasions (s.39(6) of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13)).</p> <p><i>Conduct*</i> means:</p> <ul style="list-style-type: none"> (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— <ul style="list-style-type: none"> (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)). 		

Conduct (actus reus)	State of mind (mens rea)	Defences
48. Controlling or coercive behaviour in an intimate or family relationship – s. 76 Serious Crime Act 2015		
<p>P —</p> <ul style="list-style-type: none"> (a) repeatedly or continuously engages in behaviour <i>towards</i> another person (B) that is controlling or coercive, <i>and</i> (b) at the time of the behaviour, P and B are personally connected, <i>and</i> (c) the behaviour has a serious effect on B. <p>P does not commit an offence under this section if at the time of the behaviour in question:</p> <ul style="list-style-type: none"> 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. 	<p>P knows or ought to know that the behaviour will have a serious effect on B.</p>	<p>It a defence for P to show that —</p> <ul style="list-style-type: none"> (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. * <p>* However, the above defence is <i>not</i> available to P in relation to behaviour that causes B to fear that violence will be used against B.</p>
<p><i>Definitions and interpretation:</i></p> <p>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).</p> <p>Personally connected: P and B are “personally connected” if any of the following applies —</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>(a) they are, or have been, married to each other;</p> <p>(b) they are, or have been, civil partners of each other;</p> <p>(c) they have agreed to marry one another (whether or not the agreement has been terminated);</p> <p>(d) they have entered into a civil partnership agreement (whether or not the agreement has been terminated);</p> <p>(e) they are, or have been, in an intimate personal relationship with each other;</p> <p>(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));</p> <p>(g) they are relatives (s.76(6) of the Serious Crime Act 2015).</p> <p>For the purposes of subsection (6)(f) a person has a parental relationship in relation to a child if —</p> <p>(a) the person is a parent of the child, or</p> <p>(b) the person has parental responsibility for the child (s.76(6A) of the Serious Crime Act 2015).</p> <p><i>Civil partnership agreement:</i> Has the meaning given by Section 73 of the Civil Partnership Act 2004.</p> <p><i>Child:</i> A person under the age of 18 years.</p> <p><i>Parental responsibility:</i> Has the same meaning as in the Children Act 1989.</p> <p><i>Relative:</i> has the meaning given by section 63(1) of the Family Law Act 1996.</p> <p>Serious effect: P’s behaviour has a “serious effect” on B if—</p> <p>(i) it causes B to fear, on at least two occasions, that violence will be used against B, or</p> <p>(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).</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences

A5. Child sexual exploitation and abuse (CSEA): Offences relating to child sexual abuse material (CSAM), including ‘paedophile manuals’ and obscene articles

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>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 Sched 6 of the Online Safety Act – s. 2 of the Obscene Publications Act 1959</p>		
<p>P —</p> <ul style="list-style-type: none"> (1) publishes, whether for gain or not, an obscene article; or (2) has an obscene article for publication for gain (whether to gain for themselves or another). 	<p>In the case of offence (2), P intends to publish for gain.</p>	<p>P shall not be convicted of an offence if they prove that —</p> <ul style="list-style-type: none"> (a) 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 against this section of this Act (s.2(5) of the Obscene Publications Act 1959); (b) 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,

Conduct (actus reus)	State of mind (mens rea)	Defences
		<p>literature, art or learning, or of other objects of general concern (s.4(1) of the Obscene Publications Act 1959); or</p> <p>(c) 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).</p>
<p><i>Definitions and interpretations:</i></p> <p>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).</p> <p>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: <i>R v Perrin</i> [2002] EWCA Crim 747, as do web chats: <i>R v GS</i> [2012] EWCA Crim 398.</p>		
<p>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</p>		
P —	P’s act of making is deliberate and intentional, with knowledge that the image is or is likely to be an	<p>P is not guilty of an offence if they prove that —</p> <p>(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</p>

<p>(a) takes any indecent photograph or pseudo-photograph of a child;</p> <p>(b) permits any indecent photograph or pseudo-photograph of a child to be taken; or</p> <p>(c) makes any indecent photograph or pseudo-photograph of a child.</p>	<p>indecent image of a child: <i>R v Smith</i> [2002] EWCA Crim 683.</p> <p>Taking (i.e. the photographing or filming itself) is a deliberate act by P: <i>R v WP</i> [2016] EWCA Crim 745.</p>	<p>for the purposes of criminal proceedings, in any part of the world;</p> <p>(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</p> <p>(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</p> <p>(s.1B(1) of the Protection of Children Act 1978 and Article 3A(1) of the Protection of Children (Northern Ireland) Order 1978).</p> <p>P is not guilty of an offence if they prove that —</p> <p>(a) the photograph or pseudo-photograph was of the child aged 16 or over; and</p> <p>(b) at the time of the offence charged the child and P —</p> <p>(i) were married or civil partners of each other; or</p> <p>(ii) lived together as partners in an enduring family relationship;</p> <p>unless it is proved that the child did not consent to the photograph or pseudo-photograph being</p>
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Conduct (actus reus)	State of mind (mens rea)	Defences
		<p>taken or made and P did not reasonably believe that the child so consented</p> <p>(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).</p> <p>(a)</p>
<p><i>Definitions and interpretations:</i></p> <p>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).</p> <p>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).</p> <p>Indecent: An indecent photograph is one which is indecent by reference to recognised standards of propriety: <i>R v Stamford</i> [1972] 56 Cr App R 398. It is an objective test.</p> <p>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:</p> <ul style="list-style-type: none"> (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) — <ul style="list-style-type: none"> (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 		

Conduct (actus reus)

State of mind (mens rea)

Defences

(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)	State of mind (mens rea)	Defences
<p>P —</p> <ul style="list-style-type: none"> (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. 	<p>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: <i>Smart v HM Advocate</i> [2006] SCCR 120.</p> <p>Taking (i.e. the photographing or filming itself) is a deliberate act by P: <i>Smart v HM Advocate</i> [2006] SCCR 120.</p>	<p>P is not guilty of an offence if —</p> <ul style="list-style-type: none"> (a) either — <ul style="list-style-type: none"> (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 — <ul style="list-style-type: none"> (i) married to or civil partners of each other; or (ii) partners in an established relationship; and (c) either — <ul style="list-style-type: none"> (i) the child consented to the photograph being taken or made; or (ii) P reasonably believed that to be so <p>(s.52(1) and (2) of the Civic Government (Scotland) Act 1982).</p>

Definitions and interpretation:

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.

Conduct (actus reus)**State of mind (mens rea)****Defences**

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:

- 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).

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>2. 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</p>		
<p>P distributes or shows any indecent photograph or pseudo-photograph of a child.</p>	<p>No statutory mens rea.</p>	<p>It is a defence for P to prove that —</p> <ul style="list-style-type: none"> (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 <p>(s.1(4) of the Protection of Children Act 1978 and Article 3(3) of the Protection of Children (Northern Ireland) Order 1978).</p> <p>P is not guilty of an offence if they prove that —</p> <ul style="list-style-type: none"> (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 — <ul style="list-style-type: none"> (i) were married or civil partners of each other; or (ii) lived together as partners in an enduring family relationship;

Conduct (actus reus)	State of mind (mens rea)	Defences
		<p>unless it is proved that the showing or distributing was to a person other than the child.</p> <p>(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).</p>

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

Conduct (actus reus)**State of mind (mens rea)****Defences**

(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.

Ofcom: Means the Office of Communications.

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).

3. Distributing or showing indecent photographs or pseudo-photographs of a child – s. 52(1)(b) of the Civic Government (Scotland) Act 1982

P **distributes** or shows any **indecent photograph** or **pseudo-photograph** of a **child**.

The **distribution** is a deliberate act:
Peebles v HM Advocate [2007] JC 93.

It is a defence for P to prove that —

- (a) P had a legitimate reason for **distributing** or showing the photographs or **pseudo-photographs**

Conduct (actus reus)	State of mind (mens rea)	Defences
		<p>or (as the case may be) having them in their possession; or</p> <p>(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</p> <p>(s.52(5) of the Civic Government (Scotland) Act 1982).</p> <p>P is not guilty of an offence if —</p> <p>(a) either —</p> <ul style="list-style-type: none"> (i) the photograph was of the child aged 16 or over; or (ii) P reasonably believed that to be so; <p>(b) at the time of the offence charged or at the time when P obtained the photograph, P and the child were —</p> <ul style="list-style-type: none"> (i) married to or civil partners of each other; or (ii) partners in an established relationship; <p>(c) either —</p> <ul style="list-style-type: none"> (i) the child consented to the photograph being taken or made; or (ii) P reasonably believed that to be so; and <p>(d) the showing or distributing of the photograph was only to the child</p> <p>(s.52B(4) of the Civic Government (Scotland) Act 1982).</p>

Conduct (actus reus)**State of mind (mens rea)****Defences***Definitions and interpretation:*

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).

Conduct (actus reus)

State of mind (mens rea)

Defences

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 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(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

P **possesses** any **indecent** photograph or **pseudo-photograph** of a **child**.

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.

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 —

- (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;
- (c) 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

Conduct (actus reus)	State of mind (mens rea)	Defences
		<p>(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</p> <p>(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).</p>

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

Conduct (actus reus)**State of mind (mens rea)****Defences**

- (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.

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).

Conduct (actus reus)

State of mind (mens rea)

Defences

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

P possesses any **indecent** photograph or **pseudo-photograph** of a **child**.

P has a **view to** the photograph or pseudo-photograph being **distributed** or shown by themselves or others.

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 —

Conduct (actus reus)	State of mind (mens rea)	Defences
		<ul style="list-style-type: none"> (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 <p>(s.52B(6) of the Civic Government (Scotland) Act 1982).</p>

Definitions and interpretation:

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

Conduct (actus reus)**State of mind (mens rea)****Defences**

- (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 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).

Conduct (actus reus)

State of mind (mens rea)

Defences

6. Publication 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

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**.

No statutory mens rea.

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) —

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- (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).

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) 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:

- 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.
- It is also an offence to intend to publish or cause to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such indecent photographs or pseudo-photographs. However, this aspect of the offence cannot lead to illegal content online and is therefore not included here.
- For the avoidance of doubt, the definition and interpretation notes set out above apply equally to the offences in Article 3(1)(d) Protection of Children (Northern Ireland) Order 1978 (see Article 2) and s.52(1)(d) of the Civic Government (Scotland) Act 1982 (see s.52).

Conduct (actus reus)

State of mind (mens rea)

Defences

7. Publication 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

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**.

No statutory mens rea.

No statutory defences.

Definitions and interpretation:

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

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State of mind (mens rea)

Defences

- (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:

- 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.
- It is also an offence to intend to publish or cause to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such indecent photographs or pseudo-photographs. However, this aspect of the offence cannot lead to illegal content online and is therefore not included here.

58. Possession of an indecent photograph of a child – s. 160 Criminal Justice Act 1988

P has an **indecent photograph** or **pseudo-photograph** of a child in his possession

No statutory mens rea

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

Conduct (actus reus)	State of mind (mens rea)	Defences
		<p>(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</p> <p>(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.</p> <p>(s.160(2) Criminal Justice Act 1988).</p> <p>P is not guilty of an offence if they prove that –</p> <p>(a) the photograph or pseudo-photograph was of the child aged 16 or over; and</p> <p>(b) at the time of the offence charged the child and P –</p> <p>—</p> <p>(iii) were married or civil partners of each other; or</p> <p>(iv) lived together as partners in an enduring family relationship;</p> <p>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</p> <p>(s.160A Criminal Justice Act 1988)</p>
<i>Definitions and interpretation:</i>		

Conduct (actus reus)**State of mind (mens rea)****Defences**

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:

- (iii) a copy of an **indecent** pseudo-photograph, or

Conduct (actus reus)**State of mind (mens rea)****Defences**

- (iv) 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.

9. Possession of indecent photographs of children – s. 52A Civic Government (Scotland) Act 1982

P has an **indecent photograph** or **pseudo-photograph** of a **child** in their possession.

No statutory mens rea.

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 —

Conduct (actus reus)	State of mind (mens rea)	Defences
		<ul style="list-style-type: none"> (i) the photograph was of the child aged 16 or over; or (ii) P reasonably believed that to be so; <p>(b) at the time of the offence charged or at the time when P obtained the photograph, P and the child were —</p> <ul style="list-style-type: none"> (i) married to or civil partners of each other; or (ii) partners in an established relationship; and <p>(c) either —</p> <ul style="list-style-type: none"> (i) the child consented to the photographs being in P’s possession; or (ii) P reasonably believed that to be so <p>(s.52B(8) Civic Government (Scotland) Act 1982).</p>

Definitions and interpretation:

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:

Conduct (actus reus)

State of mind (mens rea)

Defences

- (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

<p>P possesses any item that contains advice or guidance about abusing children sexually.</p>	<p>No statutory mens rea.</p>	<p>It is a defence for P to prove that —</p> <ul style="list-style-type: none"> (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; or (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 <p>(s.69(2) Serious Crime Act 2015).</p>
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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

P possess a prohibited image of a child	No statutory mens rea	It is a defence for P to prove that — <ul style="list-style-type: none"> (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
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		person, and did not keep it for an unreasonable time.
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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

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>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))</p>		
<p>P causes or incites another person (B) under 13 to engage in an activity, and the activity is sexual.</p>	<p>P intends to cause or incite B to engage in sexual activity.</p>	<p>No statutory defences.</p>
<p><i>Definitions and interpretation:</i></p> <p>Incite: Includes proposals, requests and invitations: <i>R v Mumford</i> (Unreported, 11 November 2014). This is consistent with the old common law definition of incitement, summarised in <i>R v Jones (James)</i> [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 <i>R v Nkosiyama</i> (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.</p> <p>Sexual: Under s. 78, activity that is sexual includes penetration, touching or any other activity is sexual if a reasonable person would consider that —</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
(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.		
63. Causing a young child to participate in sexual activity – s. 21 Sexual Offences (Scotland) Act 2009		
P causes a child (B) who has not attained the age of 13 years to participate in a sexual activity .	Intention to cause B to participate in sexual activity .	No statutory defences. It is specifically <i>not</i> a defence that P believed that B had not attained the age of 13 years (s. 27).
<i>Definitions and interpretation:</i> 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). 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))		
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	P intends to cause or incite B to engage in sexual activity, and – if B is between the ages of 13 or over but under 16 – P did not	No statutory defences.

Conduct (actus reus)	State of mind (mens rea)	Defences
(i) B is 13 or more and under 16, or (ii) B is under 13.	reasonably believe that B was under 13.	
<p><i>Definitions and interpretation:</i></p> <p>Incite: Includes proposals, more requests and invitations: <i>R v Mumford</i> (Unreported, 11 November 2014). This is consistent with the old common law definition of incitement, summarised in <i>R v Jones</i> (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 <i>R v Nkosiyama</i> (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.”</p> <p>The incitement constitutes an offence whether or not the activity incited actually takes place.</p> <p>Sexual: Under s. 78, activity that is sexual includes penetration, touching or any other activity is sexual if a reasonable person would consider that —</p> <ul style="list-style-type: none"> (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. 		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>65. Causing an older child to participate in sexual activity – s. 31 of the Sexual Offences Act (Scotland) 2009</p>		
<p>P has attained the age of 16 years and causes a child (B), who —</p> <ul style="list-style-type: none"> (a) has attained the age of 13 years, but (b) has not attained the age of 16 years, <p>to participate in a sexual activity.</p>	<p>P intends to cause B to engage in a sexual activity.</p>	<p>P reasonably believed that B had attained the age of 16 years. This defence is <i>not</i> available if —</p> <ul style="list-style-type: none"> (a) P has previously been charged by the police with a sexual offence, (b) P has a previous conviction for a relevant foreign offence committed against a person under the age of 16, or (c) there is in force in respect of B a risk of sexual harm order. <p>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.</p> <p>It is specifically <i>not</i> a defence that P believed that B had not attained the age of 13 years (s.39).</p>
<p><i>Definitions and interpretation:</i></p> <p>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). This is a wholly objective test.</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
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))		
<p>P is aged 18 or over and engages in activity where —</p> <ul style="list-style-type: none"> (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 — <ul style="list-style-type: none"> (i) B is under 16, or (ii) B is under 13. 	<p>P —</p> <ul style="list-style-type: none"> (a) intends to engage in the activity; (b) for the purpose of obtaining sexual gratification, he engaged in the sexual activity in the presence of B (or in a place from which he can be observed by B); (c) for the purpose of obtaining sexual gratification, he engaged in the sexual act knowing or believing that B is aware, or intends that B should be aware, that he is engaging in the activity, and (d) if B is 13 or over but under 16, P does not 	<p>No statutory defences.</p>

Conduct (actus reus)	State of mind (mens rea)	Defences
	reasonably believe that B is 16 or over.	
<p><i>Definitions and interpretation:</i></p> <p>Observe (observation): References to observation (however expressed) are to observation whether direct or by looking at an image (s.79(7)).</p> <p>Sexual: Under s.78, activity that is sexual includes penetration, touching or any other activity is sexual if a reasonable person would consider that —</p> <ul style="list-style-type: none"> (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. 		
<p>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))</p>		
<p>P is over 18 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 —</p> <ul style="list-style-type: none"> (c) the activity is sexual, and (d) either <ul style="list-style-type: none"> (iii) B is 13 or more and under 16, or (iv) B is under 13. 	<p>P —</p> <ul style="list-style-type: none"> (a) intended to cause B to watch or look as described, and (b) acted for the purpose of obtaining sexual gratification. 	<p>No statutory defences.</p>
<p><i>Definitions and interpretation:</i></p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>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)).</p> <p>Sexual: Under s.78, activity that is sexual includes penetration, touching or any other activity is sexual if a reasonable person would consider that —</p> <ul style="list-style-type: none"> (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. 		
<p>68. Causing a young child to look at a sexual image – s. 23 Sexual Offences (Scotland) Act 2009</p>		
<p>P causes a child (B) who has not attained the age of 13 years to look at a sexual image.</p>	<p>P —</p> <ul style="list-style-type: none"> (a) intended to cause the child to look at the sexual image, and (b) acted for the purpose of <ul style="list-style-type: none"> (i) obtaining sexual gratification, or (ii) humiliating, distressing or alarming B. 	<p>No statutory defences.</p>
<p><i>Definitions and interpretation:</i></p> <p>Sexual image: An image (produced by whatever means and whether or not a moving image) of —</p> <ul style="list-style-type: none"> (a) P engaging in a <i>sexual activity</i> or of a third person or imaginary person so engaging; 		

Conduct (actus reus)	State of mind (mens rea)	Defences
(b) P's genitals or the genitals of a third person or imaginary person.		
<i>Sexual activity:</i> An activity is sexual if a reasonable person would, in all the circumstances of the case, consider it to be sexual (s. 60). This is a wholly objective test.		
<p>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))</p>		
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 if he were aged 18.	See relevant offence.	See relevant offence.
<p><i>Definitions and interpretation:</i></p> <p>None applicable.</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
70. Causing an older child to look at a sexual image – s. 33 Sexual Offences (Scotland) Act 2009		
<p>P has attained the age of 16 years and causes a child (B), who —</p> <ul style="list-style-type: none"> (a) has attained the age of 13 years, but (b) has not attained the age of 16 years <p>to look at a sexual image.</p>	<p>P —</p> <ul style="list-style-type: none"> (a) intended to cause the child to look at the sexual image, and (b) acted for the purpose of <ul style="list-style-type: none"> (i) obtaining sexual gratification, or (ii) humiliating, distressing or alarming B. 	<p>P reasonably believed that B had attained the age of 16 years.</p> <p>This defence is <i>not</i> available if:</p> <ul style="list-style-type: none"> (a) P has previously been charged by the police with a sexual offence, (b) P has a previous conviction for a relevant foreign offence committed against a person under the age of 16, or (c) there is in force in respect of B a risk of sexual harm order. <p>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.</p> <p>It is specifically <i>not</i> a defence that P believed that B had not attained the age of 13 years (s. 39).</p>
<p><i>Definitions and interpretation:</i></p> <p>Sexual image: An image (produced by whatever means and whether or not a moving image) of —</p> <ul style="list-style-type: none"> (a) P engaging in a <i>sexual activity</i> or of a third person or imaginary person so engaging; (b) P’s genitals or the genitals of a third person or imaginary person. <p><i>Sexual activity:</i> An activity is sexual if a reasonable person would, in all the circumstances of the case, consider it to be sexual (s. 60). This is a wholly objective test.</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>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))</p>		
<p>P arranges or facilitates something, when doing it will involve the commission of an offence under any of Sections 9 to 13 of the Sexual Offences Act 2003.</p>	<p>P —</p> <ul style="list-style-type: none"> (a) intends to arrange or facilitate, and (b) either <ul style="list-style-type: none"> (i) intends to do, (ii) intends or for another to do, (iii) or believes that another person will do <p>in any part of the world, the thing amounting to an offence.</p>	<p>P does not commit an offence if he</p> <ul style="list-style-type: none"> (a) arranges or facilitates something that he believes another person will do, but he does <i>not</i> intend to do it or intend another person to do it, and (b) any offence within subsection (1)(b) would be an offence against a child for whose protection he acts.
<p><i>Definitions and interpretation:</i></p> <p>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 —</p> <ul style="list-style-type: none"> (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 within subsection (1)(b) or the child's participation in it. 		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>72. Incitement to commit certain sexual acts outside Scotland – s. 54 Sexual Offences (Scotland) Act 2009</p>		
<p>If P does an act in Scotland which would amount to the offence of incitement to commit a listed offence but for the fact that “<i>the relevant conduct</i>” is intended to occur in a country outside [Scotland], then—</p> <ul style="list-style-type: none"> (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. <p>A person who is not a habitual resident of Scotland, or a UK national, commits this offence <i>only if</i> 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.</p>	<p>Intention for the relevant conduct to occur in a country outside Scotland.</p>	<p>See relevant offence.</p>
<p><i>Definitions and interpretation:</i></p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>Country: Includes territory.</p> <p>Habitual resident of Scotland: Means an individual who was at the time the act mentioned in subsection (1) took place habitually resident in Scotland.</p> <p>Listed offence: Means an offence listed in Part 1 of schedule 4.</p> <p>UK national: means an individual who was at the time the [act mentioned in subsection (1)] took place —</p> <ul style="list-style-type: none"> (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. <p><i>Further notes:</i></p> <ul style="list-style-type: none"> • The condition that the relevant conduct needs to involve the commission of an offence under the law in force in the <i>country</i> where the whole or any part of it was intended to take place (in order for a person who is not a <i>habitual resident of Scotland</i>, or a <i>UK national</i>, 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 — <ul style="list-style-type: none"> (a) stating that, on the facts as alleged with respect to the relevant conduct, the condition is not in the accused's opinion satisfied, (b) setting out the grounds for the accused's opinion, and (c) requiring the prosecutor to prove that the condition is satisfied. 		
<p>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))</p>		
<p>P is aged 18 or over and —</p> <ul style="list-style-type: none"> (a) P has met or communicated with another person (B) on one 	<p>P —</p> <ul style="list-style-type: none"> (a) Intends to meet B, (b) Intends to do anything to or in respect of B, during or after 	<p>No statutory defences.</p>

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>or more occasions and subsequently —</p> <ul style="list-style-type: none"> (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, <p>and</p> <p>(b) B is under 16.</p>	<p>the meeting mentioned in paragraph (a)(i) to (iii) and in any part of the world, which if done will involve the commission by A of a relevant offence, and</p> <p>(c) P does not reasonably believe that B is 16 or over.</p>	
<p><i>Definitions and interpretation:</i></p> <p>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.”</p> <p>Relevant offence: A “relevant offence” is —</p> <ul style="list-style-type: none"> (i) any offence in Part I of the Act (sections 1-79), (ii) an offence within any of paragraphs 61 to 92 of Schedule 3 (transitional provisions for older offences), or (iii) anything done outside England and Wales and Northern Ireland which is not an offence within sub-paragraph (i) or (ii) but would be an offence within sub-paragraph (i) if done in England and Wales. 		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>74. Meeting a child following certain preliminary contact – s. 1 Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005</p>		
<p>Having met or communicated with another person (B) on at least one earlier occasion, P —</p> <p>(a) either</p> <p>(i) meets B,</p> <p>(ii) travels with the intention of meeting B in any part of the world, or</p> <p>(iii) makes arrangements, in any part of the world, with the intention of meeting B in any part of the world;</p> <p>and</p> <p>(b) B is under 16 or a constable, and</p> <p>(c) at least one of the following is the case:</p> <p>(iv) prior meeting / communication has a Scottish connection,</p>	<p>P —</p> <p>(a) intends to meet B,</p> <p>(b) at the time, intends to engage in unlawful sexual activity involving B or in the presence of B during or after the meeting and 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</p> <p>(c) does <i>not</i> reasonably believe that B is 16 or over.</p>	<p>No statutory defences.</p>

Conduct (actus reus)	State of mind (mens rea)	Defences
(v) subsequent meeting / travelling / arrangements have a Scottish connection, or (vi) P is a British citizen or UK resident.		
<p><i>Definitions and interpretation:</i></p> <p>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)).</p>		
<p>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))</p>		
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.	Where communication is sexual, P — (a) intends to communicate with B, (b) communicates with P for the purpose of sexual gratification, and (c) does not reasonably believe that B is 16 or over. Where communication is non-sexual, P —	

Conduct (actus reus)	State of mind (mens rea)	Defences
	<ul style="list-style-type: none"> (a) intends to communicate with B, (b) communicates with P for the purpose of sexual gratification, (c) does not reasonably believe that B is 16 or over, and (d) intended to encourage B to make (whether to P or to another) a communication that is sexual. 	
<p><i>Definitions and interpretation:</i></p> <p>Sexual: Under s. 78, activity that is sexual includes penetration, touching or any other activity is sexual if a reasonable person would consider that —</p> <ul style="list-style-type: none"> (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. 		
<p>76. Communicating indecently with a young child etc – s. 24 Sexual Offences (Scotland) Act 2009</p>		
(1) P —	<p>In the case of both offence (1) and (2), P —</p> <ul style="list-style-type: none"> (a) acts intentionally, and 	No statutory defences.

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>(a) sends, by whatever means, a sexual written communication, or</p> <p>(b) directs, by whatever means, a sexual verbal communication at, a child (B) who has not attained the age of 13 years.</p> <p>(2) P causes B (under 13 years) to see or hear, by whatever means, a sexual written or verbal communication.</p>	<p>(b) acts for the purpose of either</p> <p>(i) obtaining sexual gratification, or</p> <p>(ii) humiliating, distressing or alarming B.</p>	
<p><i>Definitions and interpretation:</i></p> <p>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.</p> <p>Verbal communication: Under s 24(4), a communication in whatever verbal form, and without prejudice to that generality includes —</p> <p>(a) communication which comprises sounds of sexual activity (whether actual or simulated), and</p> <p>(b) a communication by means of sign language.</p> <p>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)).</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>77. Communicating indecently with an older child etc – s. 34 Sexual Offences (Scotland) Act 2009</p>		
<p>(1) P, who has attained the age of 16 years —</p> <ul style="list-style-type: none"> (a) sends, by whatever means, a sexual written communication to a child (B) who, or (b) directs, by whatever means, a sexual verbal communication at B, and (c) B — <ul style="list-style-type: none"> (i) has attained the age of 13 years, but (ii) has not attained the age of 16 years <p>(2) P, who has attained the age of 16 years —</p> <ul style="list-style-type: none"> (a) causes another person (“B”), to see or hear, by whatever means, a sexual written communication or sexual verbal communication, and 	<p>In the case of both offence (1) and (2), P —</p> <ul style="list-style-type: none"> (a) acts intentionally, and (b) acts for the purpose of either <ul style="list-style-type: none"> (i) obtaining sexual gratification, or (ii) humiliating, distressing or alarming B. 	<p>P reasonably believed that B had attained the age of 16 years. This defence is <i>not</i> available if:</p> <ul style="list-style-type: none"> (a) P has previously been charged by the police with a sexual offence, (b) P has a previous conviction for a relevant foreign offence committed against a person under the age of 16, or (c) there is in force in respect of B a risk of sexual harm order. <p>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.</p> <p>It is specifically <i>not</i> a defence that P believed that B had not attained the age of 13 years (s 39).</p>

Conduct (actus reus)	State of mind (mens rea)	Defences
(b) B is a child who has attained the age of 17 years but has not attained the age of 16 years.		
<p><i>Definitions and interpretation:</i></p> <p>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.</p> <p>Verbal communication: Under s 24(4), a communication in whatever verbal form, and without prejudice to that generality includes —</p> <ul style="list-style-type: none"> (a) communication which comprises sounds of sexual activity (whether actual or simulated), and (b) a communication by means of sign language. <p>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)).</p>		
<p>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))</p>		
<p>P obtains -</p> <ul style="list-style-type: none"> (a) for himself the sexual services of another person (B), and (b) either — <ul style="list-style-type: none"> (i) B is under 13, or (ii) B is 13 to under 18 and requisite mens rea, <p>and</p>	<p>P intends to obtain the sexual services of B, and where B is between 13 and 18, P does not reasonably believe that B is 18 or over.</p>	<p>No statutory defences.</p>

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>(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.</p>		
<p><i>Definitions and interpretation:</i></p> <p>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)).</p> <p>Sexual: Under s. 78, activity that is sexual includes penetration, touching or any other activity is sexual if a reasonable person would consider that —</p> <ul style="list-style-type: none"> (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. 		
<p>79. Causing or inciting the sexual exploitation of a child – s. 48 Sexual Offences Act 2003</p>		
<p>P —</p> <ul style="list-style-type: none"> (a) causes or incites B to be sexually exploited in any part of the world, and (b) either 	<p>P intends to cause or incite B to be sexually exploited, and where B is between 13 and 18, P does not reasonably believe that B is above 18.</p>	<p>No statutory defences.</p>

Conduct (actus reus)	State of mind (mens rea)	Defences
(i) B is under 18 and P does not reasonably believe that B is over 18, or (ii) B is under 13.		
<p><i>Definitions and interpretation:</i></p> <p>Sexually exploited: Under s. 51, a person (B) is sexually exploited if —</p> <p>(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 <i>payment</i> or a promise of <i>payment</i> to B or a third person, or</p> <p>(b) an indecent image of B is recorded or streamed or otherwise transmitted.</p> <p><i>Payment:</i> 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)).</p>		
<p>80. Causing or inciting child prostitution or pornography – Article 38 Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2))</p>		
P — (a) causes or incites B to become a prostitute or to be involved in pornography in any part of the world, and (b) either (i) B is under 18 and P does not reasonably believe that B is over 18, or	P intends to cause or incite and where B is between 13 and 18, P does not reasonably believe that B is above 18.	No statutory defences.

Conduct (actus reus)	State of mind (mens rea)	Defences
(ii) B is under 13.		
<p><i>Definitions and interpretation:</i></p> <p>Involved in pornography: A person is involved in pornography if an <i>indecent</i> image of that person is recorded; and similar expressions, and “pornography”, are to be interpreted accordingly.</p> <p><i>Indecent:</i> Indecency is to be interpreted by reference to recognised standards of propriety: <i>R v Stamford</i> [1972] 56 Cr App R 398.</p> <p><i>Further notes:</i></p> <ul style="list-style-type: none"> This offence refers to causing or inciting a person to “become” a prostitute, so does not apply if the person in question is already involved in prostitution. 		
<p>81. Controlling a child in relation to sexual exploitation – s. 49 Sexual Offences Act 2003</p>		
<p>P —</p> <p>(c) controls any activities of B relating to B’s sexual exploitation in any part of the world, and</p> <p>(d) either</p> <p>(i) B is under 18 and P does not reasonably believe that B is over 18, or</p> <p>(ii) B is under 13.</p>	<p>P intends to control any of B’s activities relating to their sexual exploitation, and where B is between 13 and 18, P does not reasonably believe that B is above 18.</p>	<p>No statutory defences.</p>
<p><i>Definitions and interpretation:</i></p> <p>Sexual exploitation: Under s 51, a person (B) is sexually exploited if —</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>(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 <i>payment</i> or a promise of <i>payment</i> to B or a third person, or</p> <p>(b) an indecent image of B is recorded or streamed or otherwise transmitted.</p> <p><i>Payment</i>: 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)).</p>		
<p>82. Controlling a child prostitute or a child involved in pornography – Article 39 Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2))</p>		
<p>P —</p> <p>(a) controls any activities of B relating to prostitution or involvement in pornography in any part of the world, and</p> <p>(b) either</p> <p>(i) B is under 18 and P does not reasonably believe that B is over 18, or</p> <p>(ii) B is under 13.</p>	<p>P intends to control any of B’s activities relating to prostitution or involvement in pornography, and where B is between 13 and 18, P does not reasonably believe that B is above 18.</p>	<p>No statutory defences.</p>
<p><i>Definitions and interpretation:</i></p> <p>Involved in pornography: A person is involved in pornography if an <i>indecent</i> image of that person is recorded; and similar expressions, and “pornography”, are to be interpreted accordingly.</p> <p><i>Indecent</i>: Indecency is to be interpreted by reference to recognised standards of propriety: <i>R v Stamford</i> [1972] 56 Cr App R 398.</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>Prostitution: A prostitute is 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 <i>payment</i> or a promise of <i>payment</i> to A or a third person; and “prostitution” is to be interpreted accordingly.</p> <p><i>Payment:</i> 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)).</p>		
<p>83. Arranging or facilitating sexual exploitation of a child – s. 50 Sexual Offences Act 2003</p>		
<p>P —</p> <p>(a) arranges or facilitates the sexual exploitation of another person (B) in any part of the world, and</p> <p>(b) either</p> <p>(i) B is under 18 and P does not reasonably believe that B is over 18, or</p> <p>(ii) B is under 13.</p>	<p>P intends to arrange or facilitate B’s sexual exploitation, and where B is between 13 and 18, P does not reasonably believe that B is above 18.</p>	<p>No statutory defences.</p>
<p><i>Definitions and interpretation:</i></p> <p>Sexual exploitation: Under s 51, a person (B) is sexually exploited if —</p> <p>(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 <i>payment</i> or a promise of <i>payment</i> to B or a third person, or</p> <p>(b) an indecent image of B is recorded or streamed or otherwise transmitted.</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p><i>Payment</i>: 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)).</p>		
<p>84. Arranging or facilitating child prostitution or pornography – Article 40 Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2))</p>		
<p>P —</p> <p>(c) arranges or facilitates the prostitution or involvement in pornography in any part of the world of another person (B) to in any part of the world, and</p> <p>(d) either</p> <p>(i) B is under 18 and P does not reasonably believe that B is over 18, or</p> <p>(ii) B is under 13.</p>	<p>P intends to arrange or facilitate B's prostitution or involvement in pornography, and where B is between 13 and 18, P does not reasonably believe that B is above 18.</p>	<p>No statutory defences.</p>
<p><i>Definitions and interpretation:</i></p> <p>Involved in pornography: A person is involved in pornography if an <i>indecent</i> image of that person is recorded; and similar expressions, and “pornography”, are to be interpreted accordingly.</p> <p><i>Indecent</i>: Indecency is to be interpreted by reference to recognised standards of propriety: <i>R v Stamford</i> [1972] 56 Cr App R 398.</p> <p>Prostitution: A prostitute is 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 <i>payment</i> or a promise of <i>payment</i> to A or a third person; and “prostitution” is to be interpreted accordingly.</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p><i>Payment:</i> 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)).</p>		
<p>85. Paying for sexual services of a child – s. 9 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005</p>		
<p>P –</p> <ul style="list-style-type: none"> (a) obtains for himself or herself the sexual services of another person (“B”); (b) before obtaining those services, P– <ul style="list-style-type: none"> (i) makes or promises payment for those services to B or to a third person; or (ii) knows that another person has made or promised such a payment; <p>and</p> <ul style="list-style-type: none"> (c) either– <ul style="list-style-type: none"> (i) B is aged under 18; or (ii) B is aged under 13. 	<p>P intentionally obtains the sexual services of B;</p> <ul style="list-style-type: none"> (a) where P has not made or promised payment for the services, P knows that another person has made or promised payment for those services; and (b) where B is aged under 18, P does not reasonably believe that B is aged 18 or over. 	
<p><i>Definitions and interpretation:</i></p> <p>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.</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>Sexual services: Means —</p> <p>(a) the performance of sexual activity; or</p> <p>(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,</p> <p>and a person's sexual services are obtained where what is obtained is the performance of such an activity by the person.</p>		
<p>86. Causing or inciting provision by child of sexual services or child pornography - s.10 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005</p>		
<p>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 —</p> <p>B is aged under 18; or</p> <p>B is aged under 13.</p>	<p>P intentionally causes or incites B to become a provider of sexual services, or to be involved in pornography.</p> <p>If B is aged under 18, P does not reasonably believe that B is aged 18 or over.</p>	<p>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)).</p>
<p><i>Definitions and interpretation:</i></p> <p>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)).</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>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)).</p> <p>Sexual services: Means —</p> <ul style="list-style-type: none"> (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, <p>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)).</p>		
<p>87. Controlling a child providing sexual services or involved in pornography - s.11 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005</p>		
<p>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 —</p> <ul style="list-style-type: none"> (i) B is aged under 18; or (ii) B is aged under 13. 	<p>P intentionally controls any of the activities of another person (“B”) relating to B’s provision of sexual services or involvement in pornography.</p> <p>Where B is aged under 18 P does not reasonably believe that B is aged 18 or over.</p>	<p>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)).</p>
<p><i>Definitions and interpretation:</i></p> <p>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)).</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>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)).</p> <p>Sexual services: Means —</p> <ul style="list-style-type: none"> (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, <p>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)).</p>		
<p>88. Arranging or facilitating provision by child of sexual services or child pornography - s.12 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005</p>		
<p>P –</p> <ul style="list-style-type: none"> (a) arranges or facilitates the– <ul style="list-style-type: none"> (i) provision of sexual services in any part of the world by; or (ii) involvement in pornography in any part of the world of, another person (“B”); and (b) either– 	<p>P intentionally arranges or facilitates the provision of sexual services or involvement in pornography.</p> <p>B is aged under 18, and P does not reasonably believe that B is aged 18 or over;</p>	<p>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)).</p>

Conduct (actus reus)	State of mind (mens rea)	Defences
(i) B is aged under 18; or (ii) B is aged under 13.		
<p><i>Definitions and interpretation:</i></p> <p>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)).</p> <p>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)).</p> <p>Sexual services: Means —</p> <ul style="list-style-type: none"> (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, <p>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)).</p>		

A7. Fraud

Conduct (actus reus)	State of mind (mens rea)	Defences
89. Fraud by false representation – s. 2 Fraud Act 2006		
P makes a false representation .	P — <ul style="list-style-type: none"> (a) has knowledge that the representation is false; (b) is dishonest in making the representation (c) intends by making the representation <ul style="list-style-type: none"> (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. 	No statutory defences.
<p><i>Definitions and interpretation:</i></p> <p>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 can be express or implied (s. 2(4)), in words or conduct, written, spoken, posted on a website (Explanatory Note, para. 1 at 14).</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>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 without any need for human involvement (s. 2(5) and Explanatory Note, para. 1 at 17).</p> <p>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: <i>Ivey v Genting Casinos (UK) (trading as Crockfords Club)</i> [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?: <i>Barton and Booth</i> [2020] EWCA Crim 575.</p> <p>Gain and loss: “Gain” includes a gain by keeping what one has, as well as a gain by getting what one does not have. “Loss” includes a loss by not getting what one might get, as well as a loss by parting with what one has. 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. There does not have to be an actual gain or an actual loss: <i>R v Pennock</i> [2014] 2 Cr. App. R. 10; [2014] EWCA Crim 498, para. 6(d).</p>		
<h2>90. Fraud by abuse of position – s. 4 Fraud Act 2006</h2>		
<p>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.</p>	<p>P —</p> <ul style="list-style-type: none"> (a) is dishonest, (b) intends by means of the abuse of position <ul style="list-style-type: none"> (i) to make a gain for himself or another, or (ii) to cause loss to another or to 	<p>No statutory defences.</p>

Conduct (actus reus)	State of mind (mens rea)	Defences
	expose another to a risk of loss.	
<p><i>Definitions and interpretation:</i></p> <p>Abuse: Intended to capture a wide range of conduct (Explanatory Note, para. 1 at 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 <i>expectation</i> that arises because of that position: <i>R v Pennock</i> [2014] 2 Cr. App. R. 10; [2014] EWCA Crim 498, para. 4.</p> <p>Expectation: The ‘expectation’ is that of the reasonable member of the public as personified by the jury: <i>R v Pennock</i> [2014] 2 Cr. App. R. 10; [2014] EWCA Crim 498, para. 6(1).</p> <p>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: <i>R v Pennock</i> [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, para. 1 at 20, which refers to the Law Commission report (Law Com No.276) on Fraud, para. 7.38).</p> <p>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: <i>Ivey v Genting Casinos (UK) (trading as Crockfords Club)</i> [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?: <i>Barton and Booth</i> [2020] EWCA Crim 575.</p> <p>Gain and loss: “Gain” includes a gain by keeping what one has, as well as a gain by getting what one does not have. “Loss” includes a loss by not getting what one might get, as well as a loss by parting with what one has. The “gain” or “loss” must relate to money or any other</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
property, but it can be a temporary gain or loss or a permanent one. There does not have to be an actual gain or an actual loss: <i>R v Pennock</i> [2014] 2 Cr. App. R. 10; [2014] EWCA Crim 498, para. 6(d).		
91. Participating in fraudulent business carried on by sole trader etc – s. 9 Fraud Act 2006		
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).	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 .	No statutory defences.
<p><i>Definitions and interpretation:</i></p> <p>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: <i>R. v Hunter (Peter)</i> [2021] EWCA Crim 1785).</p> <p>Knowledge: Can be found where a person who manages or controls a business turns a blind eye to the truth: <i>Bank of India v Morris</i> [2005] EWCA Civ 693.</p> <p><i>Further notes:</i></p> <ul style="list-style-type: none"> • This offence applies where there is an intention to defraud creditors of a business, as well as to frauds on customers of the company. • The following are within the reach of Section 993 of the Companies Act 2006 — <ul style="list-style-type: none"> (a) a company (as defined in <u>Section 1(1)</u> of the <u>Companies Act 2006</u>), (b) a person to whom that section applies (with or without adaptations or modifications) as if the person were a company; and 		

Conduct (actus reus)	State of mind (mens rea)	Defences
(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		
<p>(1) P contravenes the general prohibition in Section 19 of the Financial Services and Markets Act 2000.</p> <p>(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.</p>	No state of mind requirements.	It is a defence for P to show that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.
<p><i>Definitions and interpretation:</i></p> <p>Authorised person: The list of authorised persons may be found on the FCA’s Financial Services Register.</p> <p>Credit-related regulated activities: The FCA Handbook provides a list of credit-regulated regulated activity.</p> <p>Exempt person: The categories of persons who are exempt depends on the nature of the activity. The FCA Handbook can also be searched for exemptions within each type of activity. For example, it contains a guide to those exempt from credit-related activities. The list of entities which are exempt is available in The Financial Services and Markets Act 2000 (Exemption) Order 2001, SI 2001/1201.</p> <p>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 <i>authorised person</i>; or an <i>exempt person</i>.</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>Regulated activity: The FCA Handbook contains a list of regulated activities.</p>		
<p>93. False claims to be authorised or exempt - s. 24 Financial Services and Markets Act 2000</p>		
<p>P, who is neither an authorised person nor, in relation to the regulated activity in question, an exempt person —</p> <ul style="list-style-type: none"> (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 <ul style="list-style-type: none"> (i) an authorised person, or (ii) an exempt person in relation to the regulated activity. 	<p>No statutory mens rea.</p>	<p>P took all reasonable precautions and exercised all due diligence to avoid committing the offence.</p>
<p><i>Definitions and interpretation:</i></p> <p>Authorised person: The list of authorised persons may be found on the FCA’s Financial Services Register.</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>Exempt person: The categories of persons who are exempt depends on the nature of the activity. The FCA Handbook can also be searched for exemptions within each type of activity. For example, it contains a guide to those exempt from credit-related activities. The list of entities which are exempt is available in The Financial Services and Markets Act 2000 (Exemption) Order 2001, SI 2001/1201.</p> <p>Regulated activity: The FCA Handbook contains a list of regulated activities.</p>		
<p>94. Contravention of restrictions on financial promotion - s. 25 Financial Services and Markets Act 2000</p>		
<p>P contravenes Section 21(1) of the Financial Services and Markets Act 2000 by, acting in the course of business, communicate an invitation or inducement —</p> <p>(a) engaging in investment activity; or</p> <p>(b) engaging in claims management activity.</p>	<p>No state of mind requirement</p>	<p>P is an authorised person (s. 21(2)(a))</p> <p>The content of the communication is approved for the purposes of Section 21 of the Financial Services and Markets Act 2000 by an authorised person (s. 21(2)(b)).</p> <p>P shows that he believed on reasonable grounds that the content of the communication was prepared, or approved for the purposes of Section 21, by an authorised person (s. 25(2)(a)).</p> <p>P shows that he took all reasonable precautions and exercised all due diligence to avoid committing the offence (s. 25(2)(b)).</p>
<p>Definitions and interpretation:</p> <p>Acting in the course of business: Circumstances may be specified by order by the Treasury (s. 21(4)).</p> <p>Authorised person: The list of authorised persons may be found on the FCA's Financial Services Register.</p> <p>Communicate: Includes causing a communication to be made (s. 21(13)).</p> <p>Engaging in investment activity: Means (s. 21(8))—</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>(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</p> <p>(b) exercising any rights conferred by a controlled investment to acquire, dispose of, underwrite or convert a controlled investment (specified in Schedule 2).</p> <p>Controlled activity “Controlled activities” are listed in Part I of Schedule 1 of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005. See also the FCA Handbook list of controlled activities.</p> <p>Controlled investment: “Controlled investments” are listed in Part II of Schedule 1 of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005.</p> <p>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 (specified in Schedule 2). Controlled claims management activities are listed in Part IA of Schedule 1 of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005.</p> <p>Investment: Includes any asset, right or interest (s .21(14)).</p> <p>Further notes:</p> <ul style="list-style-type: none"> • 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)). 		
<h2>95. Misleading Statements – s. 89 Financial Services Act 2012</h2>		
<p>P makes a statement which is false or misleading in a material respect, or dishonestly conceals any material facts.</p> <p>The offence requires a UK connection.</p>	<p>P —</p> <p>(a) intends to induce another person (whether or not the person to whom the statement is made) —</p> <p>(i) to enter into or offer to enter into, or to refrain from</p>	<p>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 —</p> <p>(a) price stabilising rules (i.e. rules made under section 137Q of Financial Services and Markets Act 2000),</p>

Conduct (actus reus)	State of mind (mens rea)	Defences
	<p>entering or offering to enter into, a relevant agreement, or</p> <p>(ii) to exercise, or refrain from exercising, any rights conferred by a relevant investment.</p> <p>or</p> <p>(b) is reckless as to whether it may induce the same,</p> <p>and P either —</p> <p>(a) has knowledge that the statement is false or misleading;</p> <p>(b) is reckless as to whether it is false or misleading; or</p> <p>(c) is dishonest in concealing the facts.</p>	<p>(b) control of information rules (i.e. rules made under section 137P of Financial Services and Markets Act 2000), or</p> <p>(c) the relevant provisions of Article 5 (exemption for buy-back programmes and stabilisation) of the Buyback and Stabilisation Regulation (2273/2003/EC).</p>
<p>Definitions and interpretation:</p> <p>Control of information rules: Has the same meaning as in Financial Services and Markets Act 2000 (s93(8)).</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>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?: Barton and Booth [2020] EWCA Crim 575.</p> <p>Relevant agreement: Defined in Section 93(3) as an agreement —</p> <ul style="list-style-type: none"> (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. <p>Activity of a kind specified in an order made by the Treasury: The activities specified are listed in article 2 of the Financial Services Act 2012 (Misleading Statements and Impressions) Order 2013. They include —</p> <ul style="list-style-type: none"> (a) a “controlled activity” as defined by the FCA Handbook, or (b) The following items in the list of terms that are part of the definition of a “regulated activity” as defined by the FCA Handbook: <ul style="list-style-type: none"> (i) Article 45 (sending dematerialised instructions), (ii) Article 51ZA (managing a UCITS), (iii) Article 51ZB (acting as a trustee or depositary of a UCITS), (iv) Article 51ZC (managing an AIF), (v) Article 51ZD (acting as a trustee or depositary of an AIF), (vi) Article 51ZE (establishing etc a collective investment scheme), (vii) Article 52 (establishing etc a pension scheme), or 		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>(viii) Article 57 (managing the underwriting capacity of a Lloyd’s syndicate);</p> <p>(c) or, if they relate to a contract of insurance, the following items in the list of terms that are part of the definition of “regulated activity” as defined in the FCA Handbook:</p> <ul style="list-style-type: none"> (i) Article 14 (dealing in investments as principal), (ii) Article 21 (dealing in investments as agent), (iii) Article 25(1) or (2) (arranging deals in investments), (iv) Article 39A (assisting in the administration and performance of a contract of insurance), (v) Article 53 (advising on investments), (vi) So far as relevant to any of these: Article 64. <p>Relevant investment: Defined by Section 93(5) and Article 4 of the Financial Services Act 2012 (Misleading Statements and Impressions) Order 2013 as a “controlled investment.”</p> <p>Price stabilising rules: Has the same meaning as in the Financial Services and Markets Act 2000 (s93(8)).</p> <p>UK connection: There is a ‘UK connection’ if —</p> <ul style="list-style-type: none"> (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. 		
<h2>96. Misleading Impressions – s. 90 Financial Services Act 2012</h2>		
<p>P does any act or engages in any course of conduct which creates a false or misleading</p>	<p>P intends to create the impression and (either or both) —</p>	<p>It is a defence for P to show that:</p>

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>impression as to the market in or the price or value of any relevant investments.</p> <p>This offence requires a UK connection.</p>	<p>(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</p> <p>(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 awareness that creating the impression is likely to produce those results):</p> <p>(i) making of gain for P or another person, or</p> <p>(ii) causing of loss to another person or</p>	<p>(a) If the offence involves an intention to induce ((a) 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</p> <p>(b) P acted or engaged in the conduct—</p> <p>(i) for the purpose of stabilising the price of investments, and</p> <p>(ii) in conformity with price stabilising rules; or</p> <p>(c) P acted or engaged in the conduct in conformity with control of information rules, or</p> <p>(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.</p>

Conduct (actus reus)	State of mind (mens rea)	Defences
	the exposing of another person to the risk of loss.	
<p><i>Definitions and interpretation:</i></p> <p>Control of information rules: Has the same meaning as in Financial Services and Markets Act 2000 (s93(8)).</p> <p>Gain: Includes a gain by keeping what one has, as well as a gain by getting what one does not have. “Gain” —</p> <ul style="list-style-type: none"> (a) extends only to gain in money or other property of any kind, and (b) includes such gain whether temporary or permanent. <p>Loss: Includes a loss by not getting what one might get, as well as a loss by parting. “Loss” —</p> <ul style="list-style-type: none"> (a) extends only to loss in money or other property of any kind, and (b) includes such loss whether temporary or permanent. <p>Price stabilising rules: Has the same meaning as in the Financial Services and Markets Act 2000.</p> <p>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.</p>		
<p>97. Making or supplying articles for use in frauds – s. 7 Fraud Act 2006</p>		
P makes, adapts, supplies or offers to supply any article .	P — (a) has knowledge that the article is designed or adapted for use in the	No statutory defences.

Conduct (actus reus)	State of mind (mens rea)	Defences
	course of or in connection with fraud, or (b) intends that it be used to commit, or assist in the commission of fraud.	
Definitions and interpretation: 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		
P makes, adapts, supplies or offers to supply any article .	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.	No statutory defences.
Definitions and interpretation:		

Conduct (actus reus)	State of mind (mens rea)	Defences
Article: includes any program or data held in electronic form (s. 8(1)).		
99. Concealing etc criminal property – s. 327 Proceeds of Crime Act 2002		
<p>P —</p> <ul style="list-style-type: none"> (a) conceals criminal property, (b) disguises criminal property, (c) converts criminal property, (d) transfers criminal property, or (e) removes criminal property from England and Wales or from Scotland or from Northern Ireland. 	<p>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).</p>	<p>P does not commit such an offence if:</p> <ul style="list-style-type: none"> (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. <p>Nor does P commit an offence if:</p> <ul style="list-style-type: none"> (a) P knows, or believes on reasonable grounds, that the relevant criminal conduct occurred in a

Conduct (actus reus)	State of mind (mens rea)	Defences
		<p>particular country or territory outside the United Kingdom, and</p> <p>(b) the relevant criminal conduct —</p> <p>(i) was not, at the time it occurred, unlawful under the criminal law then applying in that country or territory, and</p> <p>(ii) is not of a description prescribed by an order made by the Secretary of State.</p>
<p><i>Definitions and interpretation:</i></p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>Relevant criminal conduct: The “relevant criminal conduct” is the criminal conduct by reference to which the property concerned is criminal property.</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>100. Arrangements facilitating acquisition etc of criminal property – s. 328 Proceeds of Crime Act 2002</p>		
<p>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.</p>	<p>(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, or (s.328(1)).</p> <p>(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)).</p>	<p>P does not commit an offence if:</p> <p>(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.</p> <p>(b) P intended to make such an authorised disclosure under Section 338 but had a reasonable excuse for not doing so.</p> <p>(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.</p> <p>Nor does P commit an offence if:</p> <p>(a) P knows, or believes on reasonable grounds, that the relevant criminal conduct occurred in a</p>

Conduct (actus reus)	State of mind (mens rea)	Defences
		<p>particular country or territory outside the United Kingdom, and</p> <p>(b) the relevant criminal conduct —</p> <p>(i) was not, at the time it occurred, unlawful under the criminal law then applying in that country or territory, and</p> <p>(ii) is not of a description prescribed by an order made by the Secretary of State.</p>
<p><i>Definitions and interpretation:</i></p> <p>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)).</p> <p>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)).</p> <p>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: <i>R. v GH</i> [2015] UKSC 24 at para. 27.</p> <p>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: <i>R. v GH</i> [2015] UKSC 24 at para. 40.</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>Relevant criminal conduct: The “relevant criminal conduct” is the criminal conduct by reference to which the property concerned is criminal property.</p>		
<p>101. Acquisition, use and possession of criminal property – s. 329 Proceeds of Crime Act 2002</p>		
<p>P —</p> <ul style="list-style-type: none"> (a) acquires criminal property, (b) uses criminal property, or (c) has possession of criminal property. 	<p>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).</p>	<p>P does not commit such an offence if:</p> <ul style="list-style-type: none"> (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. <p>Nor does P commit an offence if:</p>

Conduct (actus reus)	State of mind (mens rea)	Defences
		<p>(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</p> <p>(b) the relevant criminal conduct —</p> <p>(i) was not, at the time it occurred, unlawful under the criminal law then applying in that country or territory, and</p> <p>(ii) is not of a description prescribed by an order made by the Secretary of State.</p>
<p><i>Definitions and interpretation:</i></p> <p>Adequate consideration: For the purposes of this section (s.329(3)) —</p> <p>(a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property;</p> <p>(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;</p> <p>(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.</p> <p>The effect of the defence in subsection (2)(c) is that persons, such as tradesmen, who are paid for ordinary consumable goods and services in money that comes from crime are not under any obligation to question the source of the money. Subsection (3)(c) makes it clear that the provision of goods or services that help a person to carry out criminal conduct would not be a defence. However, Section 329(3)(c) only negates the defence in Section 329(2)(c) if the person who provides the goods or services knows or suspects that they will help the recipient to carry out criminal conduct (Explanatory Note, para. 12 at 477).</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>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)).</p> <p>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)).</p> <p>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: <i>R. v GH</i> [2015] UKSC 24 at para. 27.</p> <p>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: <i>R. v GH</i> [2015] UKSC 24 at para. 40.</p> <p>Relevant criminal conduct: The “relevant criminal conduct” is the criminal conduct by reference to which the property concerned is criminal property (s. 327(2B)).</p>		

A8. Drugs

Conduct (actus reus)	State of mind (mens rea)	Defences
102. Unlawful supply, or offer to supply, of controlled drugs – s. 4(3) of the Misuse of Drugs Act 1971		
<p>(1) P supplies or offers to supply a controlled drug to another.</p> <p>(2) P is concerned in the supplying of a controlled drug to another.</p> <p>(3) P is concerned in the making to another of an offer to supply a controlled drug.</p>	<p>P intends to make an offer.</p> <p>In the case of (2) and (3): P has knowledge of the enterprise: <i>R v Coker</i> [2019] EWCA 420.</p>	<p>In the case of (2) and (3), P will be acquitted if they prove that:</p> <ul style="list-style-type: none"> (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 <p>(s.28(3) of the Psychoactive Substances Act 2016).</p>
<p><i>Definitions and interpretation:</i></p> <p>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).</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>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: <i>R v Kray</i> [1999] 2 Archbold News 3.</p> <p>Supplying: Includes "distributing" (s.37(1) of the Misuse of Drugs Act 1971).</p>		
<p>103. Prohibition of supply etc of articles for administering or preparing controlled drugs – s. 9A Misuse of Drugs Act 1971</p>		
<p>(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.</p> <p>(2) P supplies or offers to supply any article which may be used to prepare a controlled drug for administration by any person to himself or another.</p>	<p>P believes that the article (or the article as adapted) is to be used in circumstances where the administration is unlawful.</p>	<p>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).</p>
<p><i>Definitions and interpretation:</i></p> <p>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).</p> <p>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).</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>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: <i>R v Kray</i> [1999] 2 Archbold News 3.</p> <p>Supplying: Includes “distributing” (s.37(1) of the Misuse of Drugs Act 1971).</p> <p>Unlawful administration: Any administration of a controlled drug is unlawful except the administration by any person of a —</p> <ul style="list-style-type: none"> (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 <p>(s.9A(4) of the Misuse of Drugs Act 1971).</p>		
<h3>104. Inciting any offence under the Misuse of Drugs Act – s. 19 Misuse of Drugs Act 1971</h3>		
<p>P incites another to commit an offence under any provision of the Misuse of Drugs Act 1971.</p>	<p>P intends to incite.</p>	<p>No statutory defences.</p>
<p><i>Definitions and interpretation:</i></p> <p>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: <i>R v Jones (James)</i> [2010] EWCA Crim 925. One who incites is</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>“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”: <i>R v Nkosiyama</i> (1966) 4 SA 655.</p>		
<p>105. Supplying, or offering to supply, a psychoactive substance – s. 5 Psychoactive Substances Act 2016</p>		
<p>(1) P supplies a psychoactive substance to another person.</p> <p>(2) P offers to supply a psychoactive substance to another person (R).</p>	<p>In the case of (1):</p> <ul style="list-style-type: none"> (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. <p>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</p>	<p>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).</p>

Conduct (actus reus)	State of mind (mens rea)	Defences
	<p>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.</p>	
<p><i>Definitions and interpretation:</i></p> <p>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).</p> <p>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).</p> <p>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; 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).</p> <p>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).</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>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: <i>R v Kray</i> [1999] 2 Archbold News 3.</p> <p>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).</p> <p>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).</p> <p>Supply: Any reference to supplying a substance includes a reference to distributing it (s.59(1) of the Psychoactive Substances Act 2016).</p>		

A9. Firearms and other weapons

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>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</p>		
<p>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:</p> <ul style="list-style-type: none"> (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”). 	<p>No statutory mens rea.</p>	<p>P’s conduct was only for the purposes of making the knife available to a museum or gallery which does not distribute profits.</p>
<p><i>Definitions and interpretation:</i></p> <p>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.</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
107. Importation of flick knives – ss. 1(2) Restriction of Offensive Weapons Act 1959		
<p>P imports:</p> <p>(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</p> <p>(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”).</p>	No statutory mens rea.	No statutory defences.
<p><i>Definitions and interpretations</i></p> <p>None applicable.</p>		
108. Purchase etc of firearms or ammunition without Certificate – s. 1(1) Firearms Act 1968		
<p>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> <p>P has in their possession, or purchases or acquires, any [relevant ammunition] without holding a</p>	No statutory mens rea.	No statutory defences.

Conduct (actus reus)	State of mind (mens rea)	Defences
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.		
<p><i>Definitions and interpretation:</i></p> <p>Firearm: See ‘General interpretation.’</p> <p>Relevant ammunition: Any ammunition for a firearm, except the following articles, namely —</p> <ul style="list-style-type: none"> (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 cannellure of the base of the cartridge. <p>Relevant firearm: Every firearm except —</p> <ul style="list-style-type: none"> (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; <p>and,</p> <ul style="list-style-type: none"> (b) an air weapon (that is to say, an air rifle, air gun or air pistol which is not a <i>prohibited weapon</i> 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). <p>Ofcom does not include in this section an exception for a <i>shot gun</i> 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.</p> <p><i>Prohibited weapon:</i> For the meaning of “prohibited weapon” and associated terms see General Interpretation under the heading ‘firearm’.</p>		
109. Purchase etc of shot gun without certificate – s. 2(1) Firearms Act 1968		
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.	No statutory mens rea.	No statutory defences.
<i>Definitions and interpretation:</i>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>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.</p>		
<p>110. Dealing etc in firearms or ammunition by way of trade or business without being registered – s. 3(1) Firearms Act 1968</p>		
<p>P, by way of a trade or business,</p> <ul style="list-style-type: none"> (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>P is exempt from the offences of ‘possessing’, ‘purchasing’ or acquiring 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.</p> <p>Other exemptions exist for possession but are unlikely to manifest online.</p>	<p>No statutory mens rea.</p>	<p>No statutory defences.</p>

Conduct (actus reus)	State of mind (mens rea)	Defences
<p><i>Definitions and interpretation:</i></p> <p>Firearm: For the meaning of firearm and associated terms see General Interpretation under the heading ‘firearm’.</p> <p>Relevant ammunition: Any ammunition for a firearm, except the following articles, namely —</p> <ul style="list-style-type: none"> (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 cannellure of the base of the cartridge. <p>Relevant firearm: Every firearm except —</p> <ul style="list-style-type: none"> (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; <p>and,</p> <ul style="list-style-type: none"> (b) an air weapon (that is to say, an air rifle, air gun or air pistol which is not a <i>prohibited weapon</i> 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). <p>Ofcom does not include in this section an exception for a <i>shot gun</i> 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.</p> <p><i>Prohibited weapon:</i> For the meaning of “prohibited weapon” and associated terms see General Interpretation under the heading ‘firearm’.</p>		
<p>III. Sale etc of firearms or ammunition to person other than registered dealer – s. 3(2) Firearms Act 1968</p>		
<p>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</p>	<p>No statutory mens rea.</p>	<p>No statutory defences.</p>

Conduct (actus reus)	State of mind (mens rea)	Defences
shot gun certificate, or shows that he is entitled to purchase or acquire it without holding a certificate.		
<p><i>Definitions and interpretation:</i></p> <p>Firearm: See ‘General interpretation.’</p> <p>Relevant ammunition: Any ammunition for a firearm, except the following articles, namely —</p> <ul style="list-style-type: none"> (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 cannellure of the base of the cartridge. <p>Relevant firearm: Every firearm except —</p> <ul style="list-style-type: none"> (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; <p>and,</p> <ul style="list-style-type: none"> (b) an air weapon (that is to say, an air rifle, air gun or air pistol which is not a <i>prohibited weapon</i> 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). <p>Ofcom does not include in this section an exception for a <i>shot gun</i> 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.</p> <p><i>Prohibited weapon:</i> For the meaning of “prohibited weapon” and associated terms see General Interpretation under the heading ‘firearm’.</p>		
<p>112. Purchase, sale etc of prohibited weapons – ss. 5(1), (1A) or (2A) Firearms Act 1968</p>		
<p>P, without authority, possesses, or purchases or acquires a prohibited weapon.</p> <p>P manufactures any category 1 prohibited weapon, device or ammunition</p>	<p>No statutory mens rea.</p>	<p>No statutory defence.</p>

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>P sells or transfers any prohibited weapon or prohibited ammunition</p> <p>P has in his possession for sale or transfer any prohibited weapon or prohibited ammunition, or</p> <p>P purchases or acquires for sale or transfer any prohibited weapon or prohibited ammunition</p> <p>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.</p> <p>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.</p>		
<p><i>Definitions and interpretation:</i></p> <p>Prohibited weapon: For the meaning of “prohibited weapon” and associated terms see General Interpretation under the heading ‘firearm’.</p> <p>Authority: The “authority” referred to in this section is the authority given in writing by the Secretary of State (or for Scotland, Scottish Ministers).</p>		
<p>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</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>P sells or transfer 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:</p> <ul style="list-style-type: none"> (a) persons previously convicted of crimes and sentenced to imprisonment for 3 years or more; or (b) persons previously convicted of crimes and sentenced to imprisonment for less than 3 years, but less than 5 years has passed sine their release date; or (c) persons released subject to conditions that they not have a firearm or ammunition in their possession. 	<p>No statutory mens rea.</p>	<p>No statutory defences.</p>
<p><i>Definitions and interpretation:</i></p> <p>Firearm and ammunition: For the meaning of firearm and associated terms see General Interpretation under the heading ‘firearm’.</p>		
<p>114. Purchase etc of firearms or ammunition by person under 18 – s. 22(1) Firearms Act 1968</p>		
<p>P, under the age of eighteen, purchases or hires any firearm or ammunition</p>	<p>No statutory mens rea</p>	<p>No statutory defences.</p>
<p><i>Definitions and interpretation:</i></p> <p>Firearm: See ‘General interpretation.’</p>		
<p>115. Supplying firearms to minors – s. 24 Firearms Act 1968</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>P sells or lets on hire any firearm or ammunition to a person under the age of eighteen.</p> <p>P makes a gift of or lends any relevant firearm or ammunition to a person under the age of fourteen.</p> <p>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 by a UK firearms certificate.</p>	<p>No statutory mens rea.</p>	<p>No statutory defences.</p>
<p><i>Definitions and interpretation:</i></p> <p>Firearm: See ‘General interpretation.’</p> <p>Relevant ammunition: Any ammunition for a firearm, except the following articles, namely —</p> <ul style="list-style-type: none"> (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 cannellure of the base of the cartridge. <p>Relevant firearm: Every firearm except —</p> <ul style="list-style-type: none"> (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; <p>and,</p> <ul style="list-style-type: none"> (b) an air weapon (that is to say, an air rifle, air gun or air pistol which is not a <i>prohibited weapon</i> 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). <p>Ofcom does not include in this section an exception for a <i>shot gun</i> 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.</p> <p><i>Prohibited weapon:</i> For the meaning of “prohibited weapon” and associated terms see General Interpretation under the heading ‘firearm’.</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
116. Supplying imitation firearms to minors – section 24A Firearms Act 1968; Article 66A of the Firearms (Northern Ireland) Order 2004		
<p>P, under the age of 18, purchases an imitation firearm.</p> <p>P sells an imitation firearm to someone under the age of 18.</p>	<p>No statutory mens rea.</p>	<p>For the ‘selling’ offence only: P believed the other person to be aged eighteen or over; and had reasonable ground for that belief.</p>
<p><i>Definitions and interpretation:</i></p> <p>Imitation firearm: Anything which has the appearance of being a <i>firearm</i> (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.</p> <p><i>Firearm:</i> See ‘General interpretation.’</p>		
117. Sale and letting on hire of crossbow – s.1 Crossbows Act 1987		
<p>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.</p>	<p>P does not believe the person to be eighteen years of age or older.</p>	<p>P believes the person to whom the crossbow or part was sold or let on hire to be aged 18 or over, and either—</p> <ul style="list-style-type: none"> (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>P is to be treated as having taken reasonable steps to establish the purchaser or hirer's age if and only if—</p> <ul style="list-style-type: none"> (a) P was shown any of the documents mentioned below, and

Conduct (actus reus)	State of mind (mens rea)	Defences
		<p>(b) the document would have convinced a reasonable person. Those documents are any document bearing to be—</p> <p>(a) a passport, (aa) a UK driving licence, (b) a European Union photocard driving licence, or (c) 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)).</p>
<p><i>Definitions and interpretation:</i></p> <p>This does not apply to crossbows with a draw weight of less than 1.4 kilograms.</p>		
<p>118. Purchase and hiring of crossbow – s.2 Crossbows Act 1987</p>		
<p>P, under the age of 18, buys or hires a crossbow or part of a crossbow</p>	<p>No statutory mens rea.</p>	<p>No statutory defences.</p>
<p><i>Definitions and interpretation:</i></p> <p><i>Further notes:</i></p> <ul style="list-style-type: none"> This does not apply to crossbows with a draw weight of less than 1.4 kilograms. 		
<p>119. Sale etc of offensive weapons – s. 141(1) Criminal Justice Act 1988</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>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.</p>		<p>P's conduct was only for the purposes of functions carried out on behalf of the Crown or of a visiting force; or</p> <p>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> <p>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> <p>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> <p>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> <p>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> <p>P's conduct relates to a curved sword and was for the purpose only of making the sword available for</p>

Conduct (actus reus)	State of mind (mens rea)	Defences
		presentation by a Sikh to another person at a religious ceremony or other ceremonial event.
<p><i>Definitions and interpretation:</i></p> <p>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.</p> <p>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.</p> <p>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).</p> <p>Offensive weapon: See ‘General Interpretation.’</p> <p>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.</p> <p>Third parties: Includes participants in, and spectators of, a historical re-enactment or sporting activity and members of the public.</p>		
<p>120. Import of offensive weapons – s.141(4) Criminal Justice Act 1988</p>		
P imports an offensive weapon .	No statutory mens rea.	No defences.
<p><i>Definitions and interpretation:</i></p> <p>Offensive weapon: See ‘General Interpretation.’</p>		
<p>121. Sale of knives etc to persons under 18 – s. 141A Criminal Justice Act 1988; Article 54 of the Criminal Justice (Northern Ireland) Order 1996</p>		
P sells or lets on hire 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	No statutory mens rea.	(1) P believed the person to whom the article was sold or let on hire to be of or above the relevant age, and either—

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>which is made or adapted for use for causing injury to the person, to a person under the age of eighteen years.</p> <p>This does not apply if the person is aged 16 or over and the knife or blade is designed for domestic use.</p>		<ul style="list-style-type: none"> (i) P had taken reasonable steps to establish the purchaser or hirer's age, or (ii) 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>P is to be treated as having taken reasonable steps to establish the purchaser or hirer's age if and only if—</p> <ul style="list-style-type: none"> (a) P was shown any of the documents mentioned below, and (b) the document would have convinced a reasonable person. <p>Those documents are any document bearing to be—</p> <ul style="list-style-type: none"> (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)). <p>(2) P was not in the presence of the purchaser or hirer and met all the four conditions A to D below:</p> <p>(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.</p>

Conduct (actus reus)	State of mind (mens rea)	Defences
		<p>(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.</p> <p>(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.</p> <p>(D) P did not deliver the package, or arrange for its delivery, to a locker.</p>
<p><i>Definitions and interpretation:</i></p> <p>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 seller and the buyer (s.141B and 141C Criminal Justice Act 1988)</p>		
<p>122. Unlawful marketing of knives - section 1 of the Knives Act 1997</p>		
<p>P markets a knife in a way which—</p> <p>(a) indicates, or suggests, that it is suitable for combat; or</p> <p>(b) is otherwise likely to stimulate or encourage violent behaviour involving the use of the knife as a weapon.</p>	<p>No statutory mens rea.</p>	<p>(1) The knife was marketed—</p> <p>(a) either</p> <p>(i) for use by the armed forces of any country;</p> <p>(ii) as an antique or curio;</p> <p>and</p> <p>(b) it was reasonable for the knife to be marketed in that way;</p> <p>and</p> <p>(c) there were no reasonable grounds for suspecting that a person into whose</p>

Conduct (actus reus)	State of mind (mens rea)	Defences
		<p>possession the knife might come in consequence of the way in which it was marketed would use it for an unlawful purpose.</p> <p>(2) P did not know or suspect, and had no reasonable grounds for suspecting, that the way in which the knife was marketed—</p> <ul style="list-style-type: none"> (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. <p>(3) P took all reasonable precautions and exercised all due diligence to avoid committing the offence.</p>
<p><i>Definitions and interpretation:</i></p> <p>Knife: An instrument which has a blade or is sharply pointed.</p> <p>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.</p> <p>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).</p> <p>Violent behaviour: An unlawful act inflicting injury on a person or causing a person to fear injury (s.10 Knives Act 1997).</p> <p><i>Further notes:</i></p> <ul style="list-style-type: none"> • 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. 		
<p>123. Publication of material in connection with marketing of knives – s. 2 Knives Act 1997</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>P publishes any written, pictorial or other material in connection with the marketing of any knife and that material—</p> <ul style="list-style-type: none"> (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. 	<p>No statutory mens rea.</p>	<p>(1) The knife was marketed—</p> <ul style="list-style-type: none"> (a) either <ul style="list-style-type: none"> (iii) for use by the armed forces of any country; (iv) as an antique or curio; <p>and</p> <ul style="list-style-type: none"> (b) it was reasonable for the knife to be marketed in that way; <p>and</p> <ul style="list-style-type: none"> (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. <p>(2) P did not know or suspect, and had no reasonable grounds for suspecting, that the way in which the knife was marketed—</p> <ul style="list-style-type: none"> (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. <p>(3) P took all reasonable precautions and exercised all due diligence to avoid committing the offence</p>
<p><i>Definitions and interpretation:</i></p> <p>Knife: An instrument which has a blade or is sharply pointed.</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>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.</p> <p>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).</p> <p>Violent behaviour: An unlawful act inflicting injury on a person or causing a person to fear injury (s.10 Knives Act 1997).</p> <p><i>Further notes:</i></p> <ul style="list-style-type: none"> 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. 		
<p>124. Sale etc of firearms or ammunition without certificate - Article 24 Firearms (Northern Ireland) Order 2004</p>		
<p>P, by way of trade or business—</p> <p>(a) manufactures, sells, transfers, repairs, tests or proves any firearm or ammunition; or</p> <p>(b) exposes for sale or transfer, or has in his possession for sale, transfer, repair, test or proof any firearm or ammunition,</p> <p>without holding a firearms dealer's certificate or otherwise than as authorised by a firearms dealer's certificate.</p> <p>There are exceptions for auctioneers and for holders of occasional permits.</p>	<p>No statutory mens rea.</p>	<p>No statutory defences.</p>
<p><i>Definitions and interpretation:</i></p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>Firearm and ammunition: For the meaning of firearm and associated terms see General Interpretation under the heading ‘firearm’, subject to the following differences:</p> <ul style="list-style-type: none"> • 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 cannellure of the base of the cartridge. • In the definition of prohibited weapon: <ul style="list-style-type: none"> ○ The following is <u>not</u> 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. <p>Relevant component part: Also includes any action, any part of a firearm which directly bears the pressure caused by firing and any magazine.</p>		
<p>125. Sale etc of firearms or ammunition to person without certificate etc - Article 37(1) Firearms (Northern Ireland) Order 2004</p>		
<p>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—</p> <ul style="list-style-type: none"> (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. <p>Exemptions exist for: registered firearms dealers, auctioneers, carriers and warehousemen, animal</p>	<p>No statutory mens rea.</p>	<p>No statutory defences.</p>

Conduct (actus reus)	State of mind (mens rea)	Defences
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		
<p><i>Definitions and interpretation:</i></p> <p>Firearm and ammunition: For the meaning of firearm and associated terms see General Interpretation under the heading ‘firearm’, subject to the following differences:</p> <ul style="list-style-type: none"> • The definition of ammunition <u>excludes</u> blank cartridges which are not more than 25.4 millimetres in diameter measured immediately in front of the rim or cannellure of the base of the cartridge. • In the definition of prohibited weapon: <ul style="list-style-type: none"> ○ The following is <u>not</u> 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. <p>Relevant component part: Also includes any action, any part of a firearm which directly bears the pressure caused by firing and any magazine.</p>		
<p>126. Purchase, sale etc of prohibited weapons - Article 45(1) or (2) of the Firearms (Northern Ireland) Order 2004</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>P has in his possession, or purchases or acquires, or manufactures, sells or transfers a Category 1 prohibited weapon.</p> <p>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.</p> <p>There are exceptions for Category 1 prohibited weapons for those holding firearms certificates in connection with the treatment of animals,</p> <p>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.</p>	<p>No statutory mens rea.</p>	<p>No statutory defences.</p>
<p><i>Definitions and interpretation:</i></p> <p>Firearm and ammunition: For the meaning of firearm and associated terms see General Interpretation under the heading ‘firearm’, subject to the following differences:</p> <ul style="list-style-type: none"> • The definition of ammunition <u>excludes</u> blank cartridges which are not more than 25.4 millimetres in diameter measured immediately in front of the rim or cannellure of the base of the cartridge. • In the definition of prohibited weapon: 		

Conduct (actus reus)	State of mind (mens rea)	Defences
<ul style="list-style-type: none"> ○ The following is <u>not</u> 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. <p>Relevant component part: Also includes any action, any part of a firearm which directly bears the pressure caused by firing and any magazine.</p>		
<p>127. Sale etc of realistic imitation firearms – s. 36(1)(c) or (d) Violent Crime Reduction Act 2006</p>		
<p>P manufactures a realistic imitation firearm; modifies an imitation firearm so that it becomes a realistic imitation firearm; sells a realistic imitation firearm; or brings a realistic imitation firearm into Great Britain or causes one to be brought into Great Britain.</p>		<p>(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:</p> <ul style="list-style-type: none"> (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. <p>(2) P’s conduct—</p>

Conduct (actus reus)	State of mind (mens rea)	Defences
		<ul style="list-style-type: none"> (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. <p>(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:</p> <ul style="list-style-type: none"> (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. (Violent Crime Reduction Act 2006 (Realistic Imitation Firearms) Regulations 2007 (SI 2007/2606))
<p><i>Definitions and interpretation:</i></p> <p>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)).</p> <p>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)).</p> <p>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)).</p> <p>Realistic imitation firearm: An imitation firearm which —</p> <ul style="list-style-type: none"> (a) has an appearance that is so realistic as to make it indistinguishable, for all practical purposes, from a real firearm; and 		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>(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 —</p> <ul style="list-style-type: none"> (a) by an expert; (b) on a close examination; or (c) as a result of an attempt to load or to fire it. <p>In determining whether an imitation firearm is distinguishable from a real firearm—</p> <ul style="list-style-type: none"> (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. <p>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. (Violent Crime Reduction Act 2006 (Realistic Imitation Firearms) Regulations 2007 (SI 2007/2606))</p> <p>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. (Violent Crime Reduction Act 2006 (Realistic Imitation Firearms) Regulations 2007 (SI 2007/2606))</p> <p>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)).</p>		
<h3>128. Requirement for air weapon certificate – s. 2 Air Weapons and Licensing (Scotland) Act 2015</h3>		
<p>P uses, possesses, purchases or acquires, an air weapon without holding an air weapon certificate, unless they are exempt from needing one.</p> <p>Exemptions exist for: approved air weapon clubs, registered firearms dealers and their employees, auctioneers, carriers and warehouse keepers,</p>	<p>No statutory mens rea.</p>	<p>No statutory defences.</p>

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>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.</p>		
<p><i>Definitions and interpretation:</i></p> <p>Air weapon: An air rifle, air gun or air pistol which is not a <i>prohibited weapon</i> 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 —</p> <ul style="list-style-type: none"> (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. <p>But the expression does not include—</p> <ul style="list-style-type: none"> (a) an air weapon which is not a <i>firearm</i>, 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). <p>Ofcom does not include in this section an exception for a <i>shot gun</i> 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.</p> <p><i>Firearm, prohibited weapon and shotgun:</i> For the meaning of firearm, prohibited weapon and associated terms see General Interpretation under the heading 'firearm'.</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
129. Restrictions on sale etc of air weapons – s. 24 Air Weapons and Licensing (Scotland) Act 2015		
<p>P, not being a registered firearms dealer, by way of a trade or business—</p> <p>(a) manufactures, sells, transfers, repairs or tests an air weapon,</p> <p>(b) exposes an air weapon for sale or transfer, or</p> <p>(c) possesses an air weapon for the purposes of its sale, transfer, repair or testing;</p> <p>or</p> <p>P sells or transfers an air weapon to another person unless —</p> <p>(a) that other person is a registered firearms dealer,</p> <p>(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,</p> <p>(c) P is a registered firearms dealer and is satisfied that—</p> <p>(i) in a case where the other person is an individual, the other person is aged 18 years or more, and</p> <p>(ii) the air weapon is to be delivered to a place outwith Great Britain, or to a registered firearms dealer in</p>	<p>No statutory mens rea</p>	<p>No statutory defences.</p>

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>England or Wales, without first coming into the other person's possession, or</p> <p>(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.</p> <p>or</p> <p>P manufactures, repairs or tests an air weapon for another person unless—</p> <ul style="list-style-type: none"> (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. <p>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.</p>		
<i>Definitions and interpretation:</i>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>Air weapon: An air rifle, air gun or air pistol which is not a <i>prohibited weapon</i> 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 —</p> <ul style="list-style-type: none"> (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. <p>But the expression does not include—</p> <ul style="list-style-type: none"> (a) an air weapon which is not a <i>firearm</i>, 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). <p>Ofcom does not include in this section an exception for a <i>shot gun</i> 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.</p> <p><i>Firearm, prohibited weapon and shotgun:</i> For the meaning of firearm, prohibited weapon and associated terms see General Interpretation under the heading 'firearm'.</p>		

A10. Sexual exploitation of adults

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>130. 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))</p>		
<p>P causes or incites another person to become a prostitute in any part of the world.</p>	<p>Person P intended to cause or incite prostitution, and they expect to gain for themselves or another.</p>	<p>No statutory defences.</p>
<p><i>Definitions and interpretation:</i></p> <p>Gain: Means —</p> <ul style="list-style-type: none"> (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). <p>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 <i>payment</i> or a promise of <i>payment</i> to A or a third person. “Prostitution” is to be interpreted accordingly (s.54(2) of the Sexual Offences Act 2003).</p> <p>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).</p> <p>Sexual: Penetration, touching or any other activity is sexual if a reasonable person would consider that —</p> <ul style="list-style-type: none"> (a) whatever its circumstances or any person's purpose in relation to it, it is because of its nature sexual, or 		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>(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).</p> <p><i>Further notes:</i></p> <ul style="list-style-type: none"> • 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:” (<i>Christian (1913)</i> 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 (<i>R v Ubolcharoen</i> [2009] EWCA Crim 3263). Advertisements aimed at people already involved in prostitution are therefore unlikely to be illegal content. • 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: <i>AG of Hong Kong v Tse Hung-lit</i> [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. • 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. 		
<p>131. Controlling a prostitute for gain – s. 53 Sexual offences Act 2003 and Article 63 Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2))</p>		
<p>P controls any of the activities of another person relating to that person's prostitution in any part of the world.</p>	<p>P intends to control, and they expect to gain for themselves or a third person.</p>	<p>No statutory defences.</p>
<p><i>Definitions and interpretation:</i></p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>Gain: Means —</p> <p>(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</p> <p>(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).</p> <p>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 <i>payment</i> or a promise of <i>payment</i> to A or a third person. “Prostitution” is to be interpreted accordingly (s.54(2) of the Sexual Offences Act 2003).</p> <p>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).</p> <p>Sexual: Penetration, touching or any other activity is sexual if a reasonable person would consider that —</p> <p>(c) whatever its circumstances or any person's purpose in relation to it, it is because of its nature sexual, or</p> <p>(d) 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).</p> <p>Further notes:</p> <ul style="list-style-type: none"> • 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: <i>R v Massey</i> [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

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>132. Possession of extreme pornographic images – s. 63 Criminal Justice and Immigration Act 2008</p>		
<p>P is in possession of an extreme pornographic image.</p>	<p>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: <i>R v Pin Chen Cheung</i> [2009] EWCA Crim 2965.</p>	<p>It is a defence for P to prove that they:</p> <ul style="list-style-type: none"> (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; (ii) that the act or acts did not involve the infliction of any non-consensual harm on any person; (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

Conduct (actus reus)	State of mind (mens rea)	Defences
		<p>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).</p> <p>Also:</p> <p>(e) The offence does not apply to excluded images (s.64 of the Criminal Justice and Immigration Act 2008).</p>
<p><i>Definitions and interpretation:</i></p> <p>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).</p> <p>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</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>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).</p> <p>Extreme pornographic image: An image which is both pornographic and an extreme image (s.63(2) of the Criminal Justice and Immigration Act 2008).</p> <p>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).</p> <p>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).</p> <p><i>Further notes:</i></p> <ul style="list-style-type: none"> • D bears the burden of establishing the “direct participation” defence set out in point (d) under “Defences” above: <i>R v Pin Chen Cheung</i> [2009] EWCA Crim 2963. 		
<h3>133. Disclosing, or threatening to disclose, an intimate photograph or film – s. 2 Abusive Behaviour and Sexual Harm (Scotland) Act 2016</h3>		
<p>P —</p> <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</p> <p>(b) the photograph or film has not previously been disclosed to the</p>	<p>By disclosing the photograph or film,</p> <p>P —</p> <p>(a) intends to cause B fear, alarm or distress; or</p> <p>(b) is reckless as to whether B will be caused fear, alarm or distress.</p>	<p>P has a defence if any of the following facts or matters is established:</p> <p>(a) B consented to the photograph or film being disclosed;</p> <p>(b) P reasonably believed that B consented to the photograph or film being disclosed;</p>

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>public at large, or any section of the public, by B or with B's consent.</p>		<p>(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;</p> <p>(d) P reasonably believed that disclosure of the photograph or film was in the public interest; or</p> <p>(e) B was in the intimate situation shown in the photograph or film; 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</p> <p>(s.2(3) and (5) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016).</p>
<p><i>Definitions and interpretation:</i></p> <p>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).</p> <p>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).</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>Film: A moving image in any form, whether or not the image has been altered in any way, that was originally captured by making a recording, on any medium, from which a moving image may be produced, including a copy of the image (s.3(2) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016).</p> <p>Intimate situation: A person is in an “intimate situation” if —</p> <ul style="list-style-type: none"> (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 <p>(s.3(1) of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016).</p> <p>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).</p> <p>Reckless (Scot): See ‘General Interpretation.’</p> <p><i>Further notes:</i></p> <ul style="list-style-type: none"> • 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). 		
<p>134. Sharing or threatening to share intimate photograph or film – s. 66B Sexual Offences Act 2003</p>		
<p>(1) P —</p> <ul style="list-style-type: none"> (a) Shares a photograph or film which shows, or appears to show, another person (B) in an intimate state; and 	<p>In the case of (1): P intends to share the photograph or film and does not reasonably believe that B consents.</p> <p>In the case of (2): P intends to share the photograph or film and does so</p>	<p>In the case of (1):</p> <ul style="list-style-type: none"> (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).

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>(b) B does not consent to the sharing of the photograph or film.</p> <p>(2) P —</p> <p>(a) Shares a photograph or film which shows, or appears to show, another person (B) in an intimate state; and</p> <p>(b) B does not consent to the sharing of the photograph or film.</p> <p>(3) P —</p> <p>(a) Shares a photograph or film which shows, or appears to show, another person (B) in an intimate state; and</p> <p>(b) B does not consent to the sharing of the photograph or film.</p> <p>(4) P —</p> <p>(a) Threatens to share a photograph or film which shows, or appears to show, another person (B) in an intimate state.</p>	<p>with the intention of causing B alarm, distress or humiliation.</p> <p>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.</p> <p>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.</p>	<p>(b) P does not commit an offence if:</p> <ul style="list-style-type: none"> (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 <p>(s.66C(4) of the Sexual Offences Act 2003).</p> <p>(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).</p> <p>In the case of (1), (2) and (3):</p> <p>(a) P does not commit an offence if the photograph or film:</p> <ul style="list-style-type: none"> (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);

Conduct (actus reus)	State of mind (mens rea)	Defences
		<ul style="list-style-type: none"> (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). <p>(b) P does not commit an offence if:</p> <ul style="list-style-type: none"> (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). <p>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).</p>
<p><i>Definitions and interpretation:</i></p> <p>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).</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>Exposed: A reference to all or part of a person’s “exposed” genitals, buttocks or breasts includes —</p> <ul style="list-style-type: none"> (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) <p>(s.66D(6) of the Sexual Offences Act 2003).</p> <p>Film: A moving image. References to a film also include—</p> <ul style="list-style-type: none"> (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) <p>(ss.66A(4), (5) and 66D(4) of the Sexual Offences Act 2003).</p> <p>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—</p> <ul style="list-style-type: none"> (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 		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>(s.66D(5), (8) and (9) of the Sexual Offences Act 2003).</p> <p>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).</p> <p>Photograph: Includes the negative as well as the positive version. References to a photograph also include—</p> <ul style="list-style-type: none"> (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) <p>(ss.66A(3), (5) and 66D(4) of the Sexual Offences Act 2003).</p> <p>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).</p> <p>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).</p> <p>Reckless: See ‘General Interpretation.’</p> <p>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).</p> <p><i>Further notes:</i></p> <ul style="list-style-type: none"> • In the case of the offence at (4), it is not necessary to prove — <ul style="list-style-type: none"> (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 <p>(s.66B(7) of the Sexual Offences Act 2003).</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<ul style="list-style-type: none">• 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).		

A12. Unlawful immigration and human trafficking

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>135. Illegal entry and similar offences – s. 24(A1), (B1), (C1) or (D1) Immigration Act 1971</p>		
<p>P —</p> <p>(A1) enters the United Kingdom in breach of a deportation order;</p> <p>(B1) requires leave to enter the United Kingdom under this Act and enters the United Kingdom without such leave;</p> <p>(C1) has only a limited leave to enter or remain in the United Kingdom and remains beyond the time limited by the leave; or</p> <p>(D1) requires entry clearance under the immigration rules and knowingly arrives in the United Kingdom without a valid entry clearance.</p>	<p><i>Please see corresponding state of mind requirement for each subsection.</i></p> <p>P —</p> <p>(A1) knowingly enters the United Kingdom in breach of a deportation order;</p> <p>(B1) knowingly enters the United Kingdom without such leave;</p> <p>(C1) knowingly remains beyond the time limited by the leave; or</p> <p>(D1) knowingly arrives in the United Kingdom without a valid entry clearance.</p>	<p>No statutory defences.</p>
<p><i>Definitions and interpretation:</i></p> <p>None applicable.</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>136. Assisting unlawful immigration – s. 25 of the Immigration Act 1971</p>		
<p>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</p>	<p>P —</p> <ul style="list-style-type: none"> (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 	<p>Section 25BA and 25BB of the Immigration Act 1971 provide defences for rescuers and stowaways respectively</p>
<p><i>Definitions and interpretation:</i></p> <p>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—</p> <ul style="list-style-type: none"> (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. <p>National of the United Kingdom: Means —</p> <ul style="list-style-type: none"> (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. <p><i>Further notes:</i></p> <ul style="list-style-type: none"> • 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: <i>R v Bani</i> [2021] EWCA Crim 1958 • A reference to a member State includes a reference to Norway or Iceland 		

Conduct (actus reus)	State of mind (mens rea)	Defences
137. Human trafficking - s. 2 of the Modern Slavery Act 2015		
P arrange or facilitate the travel of another person (“V”) with a view to V being exploited .	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 .	No statutory defences.
<p><i>Definitions and interpretation:</i></p> <p>Travel: Means —</p> <ul style="list-style-type: none"> (a) arriving in, or entering, any country, (b) departing from any country, (c) travelling within any country. <p>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.</p> <p><i>Slavery, servitude and forced or compulsory labour:</i> The person is the victim of behaviour—</p> <ul style="list-style-type: none"> (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). <p><i>Sexual exploitation:</i> Something is done to or in respect of the person—</p> <ul style="list-style-type: none"> (a) which involves the commission of an offence under — <ul style="list-style-type: none"> (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). <p><i>Removal of organs etc:</i> The person is encouraged, required or expected to do anything—</p> <ul style="list-style-type: none"> (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 		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>(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).</p> <p><i>Securing services etc by force, threats or deception:</i> The person is subjected to force, threats or deception designed to induce him or her—</p> <p>(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).</p> <p><i>Securing services etc from children and vulnerable persons:</i> 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—</p> <p>(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).</p> <p><i>Further notes:</i></p> <ul style="list-style-type: none"> • 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). 		
<h3>138. Human trafficking - s. 1 of the Human Trafficking and Exploitation (Scotland) Act 2015 (asp 12)</h3>		
P takes a relevant action and does so with a view to another person being exploited	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 .	No statutory defences
<p><i>Definitions and interpretation:</i></p> <p>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—</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>(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))</p> <p>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.</p> <p><i>Slavery, servitude and forced or compulsory labour:</i> The person is the victim of conduct which—</p> <p>(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))</p> <p><i>Prostitution and sexual exploitation:</i> 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)).</p> <p>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))</p> <p>The person is the victim of conduct which—</p> <p>(a) involves the commission of an offence under—</p> <p>(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))</p> <p><i>Removal of organs etc.:</i> The person is encouraged, required or expected to do anything—</p> <p>(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.),</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>(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</p> <p>(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))</p> <p><i>Securing services and benefits:</i> The person is subjected to force, threats or deception designed to induce the person —</p> <p>(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))</p> <p>Another person uses or attempts to use the person for any purpose within subsection (7)(a), (b) or (c), where—</p> <p>(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))</p> <p><i>Further notes:</i></p> <ul style="list-style-type: none"> 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)) 		
<h3>139. Human trafficking – s. 2 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015</h3>		
P arranges or facilitates the travel of another person ('B') with a view to B being exploited .	P either - (a) intends to exploit B (in any part of the world) during or after the travel , or	No statutory defence

Conduct (actus reus)	State of mind (mens rea)	Defences
	(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 .	
<p><i>Definitions and interpretation:</i></p> <p>Travel: Means—</p> <ul style="list-style-type: none"> (a) arriving in, or entering, any country, (b) departing from any country, or (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) <p>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.</p> <p><i>Slavery, servitude and forced or compulsory labour:</i> The person is the victim of behaviour—</p> <ul style="list-style-type: none"> (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(3) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 c. 2) <p><i>Sexual exploitation:</i> Something is done to or in respect of the person —</p> <ul style="list-style-type: none"> (a) which involves the commission of an offence under — <ul style="list-style-type: none"> (i) Article 3(1)(a) of the Protection of Children (Northern Ireland) Order 1978 (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) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 c. 2) <p><i>Removal of organs etc.:</i> The person is encouraged, required or expected to do anything —</p> <ul style="list-style-type: none"> (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. Securing services etc. by force, threats or deception (s.3(4) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 c. 2) 		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p><i>Securing services:</i> The person is subjected to force, threats, abduction, coercion, fraud or deception designed to induce him or her —</p> <p>(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) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 c. 2)</p> <p><i>Securing services etc. from children and vulnerable persons:</i> 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—</p> <p>(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) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 c. 2)</p> <p><i>Further notes:</i></p> <ul style="list-style-type: none"> • 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. Encouraging or assisting suicide

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>140. Encouraging or assisting suicide – s. 2 Suicide Act 1961 and s. 13 Criminal Justice Act (Northern Ireland) 1966 (c. 20 (N.I.))</p>		
<p>P does an act capable of encouraging or assisting the suicide or attempted suicide of another person.</p>	<p>P intends to encourage or assist suicide or an attempt at suicide.</p>	<p>No statutory defences.</p>
<p><i>Definitions and interpretation:</i></p> <p>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).</p> <p><i>Further notes:</i></p> <ul style="list-style-type: none"> • 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). 		

Conduct (actus reus)	State of mind (mens rea)	Defences
<ul style="list-style-type: none">• 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).		

A14. Foreign interference offence and false communications

Conduct (actus reus)	State of mind (mens rea)	Defences
141. Foreign interference offence – s.13 National Security Act 2023		
<p>(1) P commits an offence where —</p> <p>(c) P engages in prohibited conduct, <i>and</i></p> <p>(d) the foreign power condition is met in relation to the prohibited conduct</p> <p>(2) P commits an offence where -</p> <p>(a) P engages in a course of conduct with one or more other persons,</p> <p>(b) the foreign power condition is met in relation to conduct of P which forms part of the course of conduct, <i>and</i></p> <p>(c) as part of the course of conduct, a person other than P engages in prohibited conduct.</p>	<p>In the case of offence (1), either</p> <p>(a) P intends the prohibited conduct, or a course of conduct of which it forms part, to have an interference effect, <i>or</i></p> <p style="text-align: center;">•</p> <p>(b) P is reckless as to whether the prohibited conduct, or a course of conduct of which it forms part, will have an interference effect.</p> <p>In the case of offence (2), either</p> <p>(a) P intends the course of conduct to have an interference effect and P intends that, as part of the course of conduct, a</p>	

Conduct (actus reus)	State of mind (mens rea)	Defences
	<p>person other than P will engage in prohibited conduct, <i>or</i></p> <ul style="list-style-type: none"> • <p>(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.</p>	
<p><i>Definitions and interpretation:</i></p> <p>Course of conduct: For the purposes of a course of conduct as bolded in subsections 1(a) and 1(b) 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).</p> <p>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 —</p> <ul style="list-style-type: none"> (a) the conduct in question, or a course of conduct of which it forms part, is carried out for or <i>on behalf of a foreign power</i>, and (b) the person knows, or having regard to other matters known to them ought reasonably to know, that to be the case. <p><i>On behalf of a foreign power:</i> 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 —</p> <ul style="list-style-type: none"> (a) it is instigated by a foreign power, (b) it is under the direction or control of a foreign power, 		

Conduct (<i>actus reus</i>)	State of mind (<i>mens rea</i>)	Defences
<p>(c) it is carried out with financial or other assistance provided by a foreign power for that purpose, <i>or</i> (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).</p> <p>Subsections 31(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).</p> <p>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 <i>not</i> 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).</p> <p>Interference effect: Under s.14(1) of the National Security Act 2023, An “interference effect” means any of the following effects —</p> <ul style="list-style-type: none"> (a) interfering with the exercise by a particular person of a <i>Convention right</i> in the United Kingdom, (b) affecting the exercise by any person of their <i>public functions</i>, (c) interfering with whether, or how, any person makes use of services provided in the exercise of <i>public functions</i>, (d) interfering with whether, or how, any person (other than in the exercise of a public function) participates in <i>relevant political processes</i> or makes <i>political decisions</i>, (e) interfering with whether, or how, any person (other than in the exercise of a public function) participates in legal processes under the <i>law of the United Kingdom</i>, or (f) prejudicing the safety or interests of the United Kingdom. <p>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).</p> <p>Relevant political processes: Under s.14(5) of the National Security Act 2023, means—</p> <ul style="list-style-type: none"> (a) an election or referendum in the United Kingdom, (b) the proceedings of a local authority, 		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>(c) the proceedings of a <i>UK registered political party*</i>, or</p> <p>(d) the activities of an informal group consisting of or including members of—</p> <ul style="list-style-type: none"> (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). <p><i>Political decisions:</i> Under s.14(1)(d) of the National Security Act 2023, means decisions of —</p> <ul style="list-style-type: none"> (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 a <i>local authority*</i>. <p><i>Convention rights:</i> Has the meaning given by section 1 of the Human Rights Act 1998 (s.14(5) of the National Security Act 2023).</p> <p><i>Law of the United Kingdom:</i> Includes the law of any part of the United Kingdom (s.14(5) of the National Security Act 2023).</p> <p><i>Local authority*:</i> Under s.14(5) of the National Security Act 2023, means —</p> <ul style="list-style-type: none"> (a) in England — <ul style="list-style-type: none"> (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, 		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>(viii) the Sub-Treasurer of the Inner Temple, <i>or</i> (ix) the Under Treasurer of the Middle Temple;</p> <p>(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;</p> <p><i>Public functions:</i> Under s.14(1), means functions of a public nature —</p> <p>(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.</p> <p><i>UK registered political party*:</i> Means a political party registered under Part 2 of the Political Parties, Elections and Referendums Act 2000 (s.14(5)).</p> <p>Prohibited conduct: Conduct is “prohibited conduct” if —</p> <ol style="list-style-type: none"> 1. it constitutes an offence, <i>or</i> 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). <ul style="list-style-type: none"> • 2. it involves coercion of any kind, including coercion by — <ol style="list-style-type: none"> (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, <i>or</i> (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). 3. it involves making a <i>misrepresentation</i> (s15(3) of the National Security Act 2023). <p><i>Misrepresentation:</i> Further to s.15(4) of the National Security Act 2023, a “misrepresentation” is a representation —</p> <p>(a) that a reasonable person would consider to be false or misleading in a way material to the interference effect, <i>and</i></p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>(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 —</p> <ul style="list-style-type: none"> (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). 		

Illegal content judgements guidance

Annex 2: The relevant non-priority offences

Last updated: [9 November 2023]

A1. Index

A1.2 The below list is presented in the order of presentation in the Illegal Content Judgements Guidance.

Offence	ICJG chapter	Annex
Epilepsy trolling ⁷⁹	Chapter 3, 'Threats abuse and harassment (including hate'	Table 1
Cyberflashing ⁸⁰	Chapter 10, 'Adult image-based sexual offences'	Table 2
Assisting or encouraging serious self-harm	Chapter 12, 'Assisting and encouraging suicide and serious self-harm'	Table 3
False communications offence	Chapter 13, 'Foreign interference and false communications offences'	Table 4

⁷⁹ The offence of sending or showing flashing images.

⁸⁰ The offence of (sending etc photograph or film of genitals).

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 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.

“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).

“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.

A3. Epilepsy trolling

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>1. Sending or showing flashing images – s. 183 Online Safety Act 2023</p>		
<p>(1) P sends a communication by electronic means which consists of or includes flashing images and, 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.</p> <p>(2) P sends a communication by electronic means which consists of or includes flashing images.</p> <p>(3) P shows an individual (B) flashing images by means of an electronic communications device.</p>	<p>In the case of (1): P sends the communication with the intention that an individual with epilepsy will suffer harm as a result of viewing the flashing images.</p> <p>In the case of (2):</p> <p>(a) P believes that an individual (B) —</p> <p>(i) whom P knows to be an individual with epilepsy; or</p> <p>(ii) whom P suspects to be an individual with epilepsy will, or might, view it; and</p> <p>(b) P intends that B will suffer harm as a result of viewing the flashing images.</p>	<p>In the case of (1) and (2), an offence is not committed by P if they —</p> <p>(a) Have a reasonable excuse for sending the communication (s.183(1)(c) of the Online Safety Act 2023);</p> <p>(b) Are a recognised news publisher (ss. 180(1) and 183(5) of the Online Safety Act 2023);</p> <p>(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);</p> <p>(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);</p> <p>(e) Are the provider of an on-demand programme service in connection with anything done in the</p>

Conduct (actus reus)	State of mind (mens rea)	Defences
	<p>In the case of (3), when showing the images, P:</p> <ul style="list-style-type: none"> (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. 	<p>course of providing such a service (ss. 180(4) and 183(5) of the Online Safety Act 2023); or</p> <ul style="list-style-type: none"> (f) They 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). <p>In the case of (1), (2) and (3), an offence cannot be committed by a healthcare professional acting in that capacity (s.183(9) of the Online Safety Act 2023).</p> <p>In the case of (3), P has a reasonable excuse for showing the images (s.183(8)(d) of the Online Safety Act 2023).</p>
<p><i>Definitions and interpretations:</i></p> <p>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).</p> <p>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).</p> <p>Harm: Means (a) a seizure, or (b) alarm or distress (s.183(13) of the Online Safety Act 2023).</p> <p>Individual with epilepsy: Includes, but is not limited to, an individual with photosensitive epilepsy (s.183(13) of the Online Safety Act 2023).</p> <p>Multiplex licence: 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.183(11) of the Online Safety Act 2023).</p>		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>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.183(11) of the Online Safety Act 2023).</p> <p>Recognised news publisher: See ‘General Interpretation.’</p> <p>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).</p> <p>Showing flashing images: References to showing flashing images include references to causing flashing images to be shown (s.183(12)(b) of the Online Safety Act 2023).</p> <p>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).</p> <p><i>Further notes:</i></p> <ul style="list-style-type: none"> • For the purposes of cases (1) and (2), where the offence concerns a communication consisting of or including a hyperlink to other content, references to the communication are to be read as including references to content accessed directly via the hyperlink (s.183(7) of the Online Safety Act 2023). 		

A4. Cyberflashing

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>2. Sending etc photograph or film of genitals – s. 66A Sexual Offences Act 2003</p>		
<p>P intentionally sends or gives a photograph or film of any person’s genitals to another person (B).</p>	<p>P —</p> <ul style="list-style-type: none"> (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. 	<p>No statutory defences.</p>
<p><i>Definitions and interpretation:</i></p> <p>Film: A moving image. References to a film also include —</p> <ul style="list-style-type: none"> (d) an image, whether made by computer graphics or in any other way, which appears to be a film; (e) a copy of a film or image within paragraph (a); and (f) data stored by any means which is capable of conversion into a film or image within paragraph (a) 		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>(s.66A(4) and (5) of the Sexual Offences Act 2003).</p> <p>Photograph: Includes the negative as well as the positive version. References to a photograph also include —</p> <ul style="list-style-type: none"> (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) <p>(s.66A(3) and (5) of the Sexual Offences Act 2003).</p> <p>Reckless: See 'General Interpretation'.</p> <p>Sending / giving: References to sending or giving such a photograph or film to another person include, in particular —</p> <ul style="list-style-type: none"> (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 <p>(s.66A(2) of the Sexual Offences Act 2003).</p>		

A5. Encouraging or assisting serious self-harm

Conduct (actus reus)	State of mind (mens rea)	Defences
3. Encouraging or assisting serious self-harm – s. 184 Online Safety Act 2023		
P does a relevant act capable of encouraging or assisting the serious self-harm of another person .	P’s act was intended to encourage or assist the serious self-harm of another person .	No statutory defences.
<p><i>Definitions and interpretation:</i></p> <p>Act: 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).</p> <p>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).</p> <p>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).</p> <p>Relevant act: P “does a relevant act” if P —</p> <ul style="list-style-type: none"> (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; 		

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>(e) sends, gives, shows or makes available to a person —</p> <p>(i) material published as mentioned in paragraph (d); or</p> <p>(ii) any form of correspondence; or</p> <p>(f) sends, gives or makes available to a person an item on which data is stored electronically</p> <p>(s.184(2) of the Online Safety Act 2023).</p> <p>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 or omissions of self-harm which cumulatively reach that threshold (s.184(3) and (13) of the Online Safety Act 2023).</p> <p>Grievous bodily harm: Means “really serious bodily harm”: <i>DPP v Smith</i> [1961] AC 290; <i>R v Cunningham</i> [1982] AC 566; <i>R v Brown (A)</i> [1994] 1 AC 212; <i>R v Brown and Stratton</i> [1998] Crim LR 485. This includes psychiatric injury but not mere psychological harm: <i>R v Ireland</i> [1998] AC 147; <i>R v D</i> [2006] EWCA Crim 1139.</p> <p><i>Further notes:</i></p> <ul style="list-style-type: none"> • 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). 		

Conduct (actus reus)	State of mind (mens rea)	Defences
<ul style="list-style-type: none"><li data-bbox="309 304 1980 373">• 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).		

A6. False communications

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>4. False communications offence – s. 179 Online Safety Act 2023</p>		
<p>P sends a message that conveys information.</p>	<p>P —</p> <ul style="list-style-type: none"> (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, 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). 	<p>An offence is not committed by P if they —</p> <ul style="list-style-type: none"> (a) Have a reasonable excuse for sending the message (s.179(1)(d) of the Online Safety Act 2023); (b) Are a recognised news publisher (ss. 179(4) and 180(1) 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. 179(4) and 180(2) 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. 179(4) and 180(3) 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. 179(4) and 180(4) of the Online Safety Act 2023); or

Conduct (actus reus)	State of mind (mens rea)	Defences
		(f) They send the message in connection with the showing of a film made for cinema to members of the public (ss. 179(4) and 180(5) of the Online Safety Act 2023).
<p><i>Definitions and interpretation:</i></p> <p>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 —</p> <ul style="list-style-type: none"> (a) would encounter the message; or (b) in the online context, would encounter a subsequent message forwarding or sharing the content of the message <p>(s.179(2) of the Online Safety Act 2023).</p> <p>Multiplex licence: 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).</p> <p>On-demand programme service: Has the same meaning as in s.358A 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).</p> <p>Recognised news publisher: See ‘General Interpretation.’</p> <p>Sends a message: A person “sends a message” if the person —</p> <ul style="list-style-type: none"> (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, <p>and references to a message are to be read accordingly (s.182(2) of the Online Safety Act 2023).</p>		

Conduct (actus reus)**State of mind (mens rea)****Defences**

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.182(3) and (4) of the Online Safety Act 2023).

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).

A7. Threatening communications

Conduct (actus reus)	State of mind (mens rea)	Defences
<p>5. Threatening communications offence – s. 181 Online Safety Act 2023</p>		
<p>P sends a message which conveys a threat of death or serious harm.</p>	<p>At the time of sending the message, P —</p> <ul style="list-style-type: none"> (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). 	<p>If the offence relates to a threat of serious financial loss, it is a defence for P to show that —</p> <ul style="list-style-type: none"> (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 <p>(s.181(2) of the Online Safety Act 2023).</p>
<p><i>Definitions and interpretation:</i></p> <p>Encounter: In relation to a message means read, view, hear or otherwise experience the message (s.182(5) of the Online Safety Act 2023).</p> <p>Grievous bodily harm: Means “really serious bodily harm”: <i>DPP v Smith</i> [1961] AC 290; <i>R v Cunningham</i> [1982] AC 566; <i>R v Brown (A)</i> [1994] 1 AC 212; <i>R v Brown and Stratton</i> [1998] Crim LR 485. This includes psychiatric injury but not mere psychological harm: <i>R v Ireland</i> [1998] AC 147; <i>R v Dhaliwal</i> [2006] EWCA Crim 1139.</p>		

Conduct (actus reus)**State of mind (mens rea)****Defences**

Reckless: See 'General Interpretation'.

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.182(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.182(3) and (4) of the Online Safety Act 2023).

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).

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).

Conduct (actus reus)	State of mind (mens rea)	Defences
<ul style="list-style-type: none">• 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).• 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).		