[GB] New communications offences enacted by the Online Safety Act 2023

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The Online Safety Act 2023 (OSA) introduced a range of measures intended to improve online safety in the UK, including duties on internet platforms about having systems and processes in place to manage illegal and harmful content on their sites. On 31 January 2024, Part 10 of the Act came into effect, introducing a series of new criminal offences which represent a significant leap forward in tackling complex challenges surrounding online communications safety.

Section 179 of the OSA establishes the criminal offence of *sending false communications* and seeks to target, among others, internet trolls. It is now deemed an offence if an individual (a) sends a message containing knowingly false information; (b) intends, at the time of sending, to cause non-trivial psychological or physical harm to a likely audience; and (c) lacks a reasonable excuse for sending the message. Recognised news publishers and broadcasters are exempt. The offence does not apply to public screenings of cinema films either. It can be committed by individuals outside the UK if they are habitually resident in England, Wales, or Northern Ireland. Penalties include imprisonment for up to six months, a fine, or both. It is hoped the new offence will help clamp down on disinformation and election interference online.

Section 181 establishes the criminal offence of *sending threatening communications*. This is committed when an individual sends a message containing a threat of death, serious harm (e.g. bodily injury, rape, assault by penetration), or serious financial loss, with the intent to instil fear in the recipient that the threat will be carried out (whether by the sender or someone else). In cases of threats involving financial loss, a defence is available if the threat was used to support a reasonable demand, and the sender reasonably believed it was an appropriate way to reinforce that demand. This offence applies to individuals residing in England, Wales, or Northern Ireland, even if the sender is located outside the UK. Penalties include up to five years of imprisonment, a fine, or both. In March 2024, Essex law enforcement achieved a significant milestone by obtaining one of the earliest convictions under the new OSA, resulting in an eight-month jail sentence for Karn Statham. Statham harassed a woman by sending threatening messages and making repeated visits to her address after being instructed to cease contact.

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A new criminal offence under section 183, dubbed "Zach's law", aims to protect people from "*epilepsy trolling*". The campaign against such conduct began when eight-year-old Zach, who has epilepsy, was raising funds for the Epilepsy Society. Trolls inundated the Society's profile with images and GIFs meant to induce seizures in people with epilepsy. While Zach was unharmed, others with the condition reported seizures after engaging with the fundraiser online. The Act creates the offence of deliberately sending or showing flashing images to individuals with epilepsy with the intent to cause harm, defined as inducing a seizure, alarm, or distress. Particular conditions (specified in the Act) must be met before a conviction is secured, both in respect to *sending* and *showing* flashing images electronically. Recognised news publishers, broadcasters, public screenings of cinema films as well as healthcare professionals cannot be guilty of this offence (which can similarly be committed by individuals outside the UK if they are habitually resident in England, Wales, or Northern Ireland). Penalties include imprisonment for up to five years, a fine, or both.

Moreover, section 184 outlaws *encouraging or assisting serious self-harm*. To be guilty of this offence, an individual must perform an act intended to encourage or assist serious self-harm in another person, whether through direct communication, publication or sending (or giving) items with stored electronic data. Serious self-harm encompasses actions leading to grievous bodily harm, including acts of omission such as encouraging someone to neglect their health regimen. The identity of the person harmed need not be known to the offender. The offence can occur regardless of whether self-harm is carried out and it is irrelevant who created the content in question (it is the *sending* that matters). The offence is punishable by imprisonment for up to five years, a fine, or both, and likewise, it applies to individuals habitually resident in England, Wales, or Northern Ireland, even if they are outside the UK.

Cyber-flashing on dating apps, AirDrop and other platforms will also result in perpetrators facing up to two years in prison. Section 187 of the Act introduces a new offence under the Sexual Offences Act 2003 pertaining to the sending of photographs or films of a person's genitals to another individual. A person (A) is deemed to commit the offence if they intentionally send or provide a photo or video of another person's genitals to another individual (B) under the following conditions: either A intends for B to view the genitals and experience alarm, distress, or humiliation; or A sends or provides such material with the aim of obtaining sexual gratification and is reckless as to whether B will experience alarm, distress, or humiliation. "Sending" covers sending through any means, including electronic methods, showing it to another person, or placing it for someone to find. A conviction for this offence could also lead to inclusion on the sex offenders' register. In February 2024, an Essex Police team secured the UK's first cyber-flashing conviction, with Nicholas Hawkes pleading guilty to sending explicit images via WhatsApp to cause distress. On 19 March 2024, Hawkes was

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sentenced to 66 weeks in prison. He was also made subject to a restraining order for 10 years and a Sexual Harm Prevention Order for 15 years. .

Finally, the OSA repeals the legislation first introduced to tackle 'revenge porn' offences (sections 33-35 of the Criminal Justice and Courts Act 2015) and introduces a set of *intimate image sharing offences*. Specifically, section 188 of the OSA introduces a new *base* offence of sharing of intimate images without consent, carrying a penalty of imprisonment for up to six months. This applies when an individual intentionally shares an image portraying another person in an intimate context without their consent and without a reasonable belief in consent. Two *more serious* offences are established on top of that, both reflecting the offender's higher culpability and carrying greater penalties: namely (a) intentionally causing alarm, distress, or humiliation to the person in the image; and (b) seeking sexual gratification from the act (these are outlined in sections 66B(2) and (3) of the Sexual Offences Act 2003). *Threatening* to share an intimate image of a person has also been made an offence where the perpetrator either intends to cause fear that the threat will be carried out or acts recklessly in doing so (this is found under section 66B(4) of the aforementioned 2003 Act). The new offences also fall under the sexual offender notification requirements. These new intimate image offences are also designed to tackle "deepfakes" and "down-blousing" (i.e. capturing images typically of a person's chest area, from a downward angle, often without their knowledge or consent). They also come with various exemptions (outlined under section 66C of the Sexual Offences Act 2003), e.g. where the photograph or film involves a child and is of a kind normally shared among family and friends.

While there is some overlap between existing offences, the new offences consolidate previous ones or address gaps. For example, the intimate image sharing offence widens the meaning of the photographs or films, from "private sexual" to "intimate" and makes it easier for those caught sharing such content online without the other person's consent to be prosecuted, as it removes the requirement for any harm to be intended to the subject of the photograph or film. The updated guidance of the Crown Prosecution Service aims to delineate the appropriate charge for each circumstance. The introduction of the new offences is anticipated to fortify protections against online misconduct.

DSIT Press Release, Cyber-flashing, epilepsy-trolling and fake news to put online abusers behind bars from today

https://www.gov.uk/government/news/cyberflashing-epilepsy-trolling-and-fake-news-to-put-online-abusers-behind-bars-from-today

Crown Prosecution Service press release, Illegal sexual behaviour online including sharing and threatening to share intimate images and cyber-flashing targeted in new CPS guidance

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https://www.cps.gov.uk/cps/news/illegal-sexual-behaviour-online-including-sharing-and-threatening-share-intimate-images

BBC News, WhatsApp image sender becomes first convicted cyber-flasher

https://www.bbc.co.uk/news/uk-england-essex-68279259

Essex Police press release, Colchester: Man sentenced under new Online Safety Act

https://www.essex.police.uk/news/essex/news/news/2024/march/online-safety-act-sentencing/

Crown Prosecution Service press release, Prison sentence in first cyber-flashing case (19 March 2024)

https://www.cps.gov.uk/east-england/news/prison-sentence-first-cyberflashing-case

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