

Data (Use and Access) Bill [HL]

AMENDMENTS TO BE MOVED ON REPORT

[Supplementary to the Marshalled List]

After Clause 132

LORD PONSONBY OF SHULBREDE

After Clause 132, insert the following new Clause—

“Creating purported sexual image of adult

- (1) The Sexual Offences Act 2003 is amended in accordance with subsections (2) and (3).
- (2) After section 66A insert—

“66AA Creating purported sexual image of adult

- (1) A person (A) commits an offence if—
 - (a) A intentionally creates a purported sexual image of another person (B),
 - (b) A does so with the intention of causing B alarm, distress or humiliation, and
 - (c) B does not consent to the creation of the purported sexual image.
- (2) A person (A) commits an offence if—
 - (a) A intentionally creates a purported sexual image of another person (B),
 - (b) A does so for the purpose of A or another person obtaining sexual gratification,
 - (c) B does not consent to the creation of the purported sexual image, and
 - (d) A does not reasonably believe that B consents.
- (3) “Purported sexual image” of a person means an image which—
 - (a) appears to be or include a photograph or film of the person (but is not, or is not only, a photograph or film of the person),
 - (b) appears to be of an adult, and

- (c) appears to show –
 - (i) the person participating or engaging in a sexual act which is not of a kind ordinarily done in public,
 - (ii) the person doing a sexual thing which is not of a kind ordinarily done in public,
 - (iii) all or part of the person’s exposed genitals or anus, or
 - (iv) all or part of the person’s exposed breasts, except where what appears to be shown is something of a kind ordinarily seen in public.
- (4) In this section, a reference to creating a purported sexual image of a person does not include doing so by modifying a photograph or film of the person where what is created by the modification is an image which –
 - (a) appears to show the person, and
 - (b) does not appear to show something within subsection (3)(c)(i) to (iv) which, or a person who, is not shown in the photograph or film.
- (5) A person who commits an offence under this section is liable on summary conviction to a fine.

66AB Creating purported sexual image of adult: definitions etc

- (1) This section applies for the purposes of section 66AA.
 - (2) “Consent” to the creation of a purported sexual image includes general consent covering the particular act of creation as well as specific consent to that particular act.
 - (3) Whether a belief is “reasonable” is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.
 - (4) A reference to an “image”, “photograph” or “film” includes data stored by any means which is capable of conversion into an image, photograph or film.
 - (5) An image of a person appears to be an image of an adult if –
 - (a) the impression conveyed by the image is that the person shown is aged 18 or over, or
 - (b) the predominant impression conveyed by the image is that the person shown is aged 18 or over (even if some of the physical characteristics shown are those of a person under 18).
 - (6) An act or thing is “sexual” if a reasonable person would, in all the circumstances but regardless of any person’s purpose, consider it to be sexual.”
- (3) In section 79(5) (meaning of references to image of a person), after “a person” insert “(except in sections 66AA and 66AB)”.

(4) In the Sentencing Code, after section 154 insert –

“154A Purported sexual images to be treated as used for purpose of certain offences

- (1) This section applies where a person commits an offence under section 66AA(1) or (2) of the Sexual Offences Act 2003 (creating purported sexual image of adult).
- (2) The purported sexual image to which the offence relates, and anything containing it, is to be regarded for the purposes of section 153 (and section 157(3)(b)) as used for the purposes of committing the offence (including where it is committed by aiding, abetting, counselling or procuring).”

Member's explanatory statement

This clause creates offences of creating a purported sexual image of an adult and provides that deprivation orders can be made under the Sentencing Code in connection with the offences.

BARONESS OWEN OF ALDERLEY EDGE

After Clause 132, insert the following new Clause –

“Non-consensual sexually explicit photograph or film

In the Sexual Offences Act 2003, after section 66D, insert –

“66E Taking, or soliciting the taking of, a non-consensual sexually explicit photograph or film

- (1) A person (A) commits an offence if –
 - (a) A intentionally takes, or solicits the taking of, a sexually explicit photograph or film of another person (B),
 - (b) B does not consent to the taking, or solicitation of the taking, of the photograph or film, and
 - (c) A does not reasonably believe that B consents.
- (2) It is a defence for a person charged with an offence under subsection (1) to prove that the person had a reasonable excuse for taking, or soliciting the taking of, the photograph or film.
- (3) The exemptions in section 66C(1) to (5) apply to an offence under this section.
- (4) A person who commits an offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding the maximum term for summary offences or a fine (or both).
- (5) In this section, “taking” in relation to a photograph or film, means –
 - (a) filming, recording, taking or otherwise capturing the photograph or video, or
 - (b) digitally creating the photograph or video.

- (6) In relation to section 127(1) of the Magistrates' Court Act 1980 (limitation of time) the date on which the "matter of complaint" arose will be taken as the date on which B becomes aware that an offence under this section may have been committed."

Clause 135

LORD PONSONBY OF SHULBREDE

Clause 135, page 168, line 37, at end insert –

- “(c) section (*Creating purported sexual image of adult*) (creating purported sexual image of adult) extends to England and Wales only.”

Member's explanatory statement

This clause provides that New Clause (Creating purported sexual image of adult) extends to England and Wales only.

Title

LORD PONSONBY OF SHULBREDE

Title, line 18, after “services;” insert “to make provision about the creation of purported sexual images;”

Member's explanatory statement

This amendment is consequential on New Clause (Creating purported sexual image of adult).

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