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*Changes to legislation: There are currently no known outstanding effects for the Justice Act (Northern Ireland) 2016, SCHEDULE 4. (See end of Document for details)*

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## SCHEDULES

### SCHEDULE 4

Section 51.

#### PRIVATE SEXUAL PHOTOGRAPHS ETC: PROVIDERS OF INFORMATION SOCIETY SERVICES

##### *Exceptions for mere conduits*

1.—(1) A service provider is not capable of committing an offence under section 51 in respect of anything done in the course of providing so much of an information society service as consists in—

- (a) the provision of access to a communication network, or
- (b) the transmission in a communication network of information provided by a recipient of the service,

if the condition in sub-paragraph (2) is satisfied.

(2) The condition is that the service provider does not—

- (a) initiate the transmission,
- (b) select the recipient of the transmission, or
- (c) select or modify the information contained in the transmission.

(3) For the purposes of sub-paragraph (1)—

- (a) the provision of access to a communication network, and
- (b) the transmission of information in a communication network,

includes the automatic, intermediate and transient storage of the information transmitted so far as the storage is solely for the purpose of carrying out the transmission in the network.

(4) Sub-paragraph (3) does not apply if the information is stored for longer than is reasonably necessary for the transmission.

##### *Exception for caching*

2.—(1) This paragraph applies where an information society service consists in the transmission in a communication network of information provided by a recipient of the service.

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(2) The service provider is not capable of committing an offence under section 51 in respect of the automatic, intermediate and temporary storage of information so provided, if—

- (a) the storage of information is solely for the purpose of making more efficient the onward transmission of the information to other recipients of the service at their request, and
- (b) the condition in sub-paragraph (3) is satisfied.

(3) The condition is that the service provider—

- (a) does not modify the information,
- (b) complies with any conditions attached to having access to the information, and
- (c) where sub-paragraph (4) applies, expeditiously removes the information or disables access to it.

(4) This sub-paragraph applies if the service provider obtains actual knowledge that—

- (a) the information at the initial source of the transmission has been removed from the network,
- (b) access to it has been disabled, or
- (c) a court or administrative authority has ordered the removal from the network of, or the disablement of access to, the information.

#### *Exception for hosting*

3.—(1) A service provider is not capable of committing an offence under section 51 in respect of anything done in the course of providing so much of an information society service as consists in the storage of information provided by a recipient of the service if sub-paragraph (2) [F<sup>1</sup>, (2A)] or (3) is satisfied.

(2) This sub-paragraph is satisfied if [F<sup>2</sup>, in the case of information which consists of or includes a private sexual photograph or film,] the service provider had no actual knowledge when the information was provided—

- (a) that it consisted of or included a private sexual photograph or film,
- (b) that it was provided without the consent of an individual who appears in the photograph or film, or
- (c) that the photograph or film was provided with the intention of causing distress to that individual.

[F<sup>3</sup>(2A) This sub-paragraph is satisfied if, in the case of information which consists of or includes a threat to disclose a private sexual photograph or film, the service provider had no actual knowledge when the information was provided—

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- (a) that it consisted of or included a threat to disclose a private sexual photograph or film in which another individual appears,
  - (b) that the threat was made with the intention of causing distress to that individual, or
  - (c) that the disclosure would be made without the consent of that individual.]
- (3) This sub-paragraph is satisfied if, on obtaining such knowledge, the service provider expeditiously removed the information or disabled access to it.
- (4) Sub-paragraph (1) does not apply if the recipient of the service is acting under the authority or control of the service provider.

#### Textual Amendments

- F1** Word in Sch. 4 para. 3(1) inserted (27.11.2023) by Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022 (c. 19), ss. 6(4)(a), 30(2); S.R. 2023/188, art. 3(a)
- F2** Words in Sch. 4 para. 3(2) inserted (27.11.2023) by Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022 (c. 19), ss. 6(4)(b), 30(2); S.R. 2023/188, art. 3(a)
- F3** Sch. 4 para. 3(2A) inserted (27.11.2023) by Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022 (c. 19), ss. 6(4)(c), 30(2); S.R. 2023/188, art. 3(a)

#### Interpretation

- 4.—(1) This paragraph applies for the purposes of this Schedule.
- (2) “Photograph or film” has the meaning given in [<sup>F4</sup>section 52].
- [<sup>F5</sup>(3) “Information society service” means any service normally provided—
- (a) for remuneration,
  - (b) at a distance (namely, the service is provided without the parties being simultaneously present),
  - (c) by electronic means (namely, the service is—
    - (i) sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and
    - (ii) entirely transmitted, conveyed and received by wire, radio, optical means or other electromagnetic means), and
  - (d) at the individual request of a recipient of services (namely, the service is provided through the transmission of data on individual request).]

(4) “Recipient”, in relation to a service, means a person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible.

(5) “Service provider” means a person providing an information society service.

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#### **Textual Amendments**

- F4** Words in Sch. 4 para. 4(2) substituted (27.11.2023) by Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022 (c. 19), **ss. 6(4)(d)**, 30(2); S.R. 2023/188, art. 3(a)
- F5** Sch. 4 para. 4(3) substituted (27.11.2023) by Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022 (c. 19), **ss. 6(4)(e)**, 30(2); S.R. 2023/188, art. 3(a)

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