

CRIMINAL JUSTICE AND COURTS ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Criminal Justice

Offences involving intent to cause distress etc

Section 34: Meaning of “disclose” and “photograph or film”

356. *Section 34* defines the terms “disclose” and “photograph or film” for the purposes of the offence in section 33.
357. By virtue of *subsections (2) and (3)* a disclosure takes place where a defendant, by any means, gives or shows the photograph or film to another person or makes it available to another person irrespective of whether the material in question had previously been disclosed to that person and whether or not the disclosure was for reward. Disclosure therefore includes electronic disclosure of a photograph or film, for example by posting it on a website or e-mailing to someone. It also includes the disclosure of a physical document, for example by giving a printed photograph to another person or displaying it in a place where other people would see it.
358. *Subsection (4)* defines “photograph or film”. *Subsection (4)(a)* makes clear that the offence applies only to material which appears to be, or to contain, a photographed or filmed image. A photographed or filmed image is a still or moving image (or part of an image) originally captured by photography or by the making of a film recording (*subsections (6) and (7)*). For example, an image, even if derived from a photograph, which has been digitally altered to look entirely like a drawing would not satisfy the test. But if a drawing had a photographed image or part of a photographed image transposed onto it, it would do so.
359. Where an image appears wholly or partly photographic, it will only fall within the terms of the offence if it is in fact derived wholly or partly from one or more photographed or filmed images (as to which see *subsection (4)(b)* and *subsections (6) and (7)*, discussed above). The offence therefore does not apply if the disclosed material looks like a photograph but does not in fact contain any photographic element (for example because it had been generated entirely by computer).
360. By virtue of *subsection (5)* an image is still considered to be a photograph or film for the purpose of the offence if it satisfied the requirement in *subsection (4)(b)*, even if the original photograph or film recording has been altered in any way (for instance by being digitally enhanced). However, this is subject to *subsections (4) and (5)* of section 35.
361. *Subsection (8)* makes clear that references to a photograph or film include a negative version of a still or moving image that is a photograph or film and stored data that can be converted into such a still or moving image – for instance data stored on a hard drive or disc.