



# Protection of Children Act 1978

## 1978 CHAPTER 37

An Act to prevent the exploitation of children by making indecent photographs of them; and to penalise the distribution, showing and advertisement of such indecent photographs. [20th July 1978]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### **1 Indecent photographs of children**

- (1) It is an offence for a person—
  - (a) to take, or permit to be taken, any indecent photograph of a child (meaning in this Act a person under the age of 16); or
  - (b) to distribute or show such indecent photographs ; or
  - (c) to have in his possession such indecent photographs, with a view to their being distributed or shown by himself or others ; or
  - (d) 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 intends to do so.
- (2) For purposes of this Act, a person is to be regarded as distributing an indecent photograph if he parts with possession of it to, or exposes or offers it for acquisition by, another person.
- (3) Proceedings for an offence under this Act shall not be instituted except by or with the consent of the Director of Public Prosecutions.
- (4) Where a person is charged with an offence under subsection (1)(b) or (c), it shall be a defence for him to prove—
  - (a) that he had a legitimate reason for distributing or showing the photographs or (as the case may be) having them in his possession ; or

- (b) that he had not himself seen the photographs and did not know, nor had any cause to suspect, them to be indecent.
- (5) References in the Children and Young Persons Act 1933 (except in sections 15 and 99) to the offences mentioned in Schedule 1 to that Act shall include an offence under subsection (1)(a) above.
- (6) Offences under this Act shall be included—
- (a) in the list of extradition crimes contained in Schedule 1 to the Extradition Act 1870 ; and
  - (b) among the descriptions of offences set out in Schedule 1 to the Fugitive Offenders Act 1967 ;
- and sections 17 and 22 of the 1870 Act and sections 16 and 17 of the 1967 Act (application to Channel Islands, Isle of Man and United Kingdom dependencies) extend to this subsection.
- (7) In paragraph 1 of the Schedule to the Visiting Forces Act 1952 (offences against the person in the case of which a member of a visiting force is in certain circumstances not liable to be tried by a United Kingdom court), after sub-paragraph (6)(viii) (inserted by the Sexual Offences Act 1956) there shall be added—
- “(ix) section 1(1)(a) of the Protection of Children Act 1978”.

## 2 Evidence

- (1) On a charge of an offence under section 1(1)(a) of this Act, the wife or husband of the accused shall be competent to give evidence at every stage of the proceedings, whether for the defence or for the prosecution, and whether the accused is charged solely or jointly with any other person:

Provided that—

- (a) the wife or husband shall not be compellable either to give evidence or, in giving evidence, to disclose any communications made to her or him during the marriage by the accused ; and
- (b) the failure of a wife or husband of the accused to give evidence shall not be made the subject of any comment by the prosecution.

This subsection shall not affect section 1 of the Criminal Evidence Act 1898 (competency of witnesses in criminal cases), or any case where the wife or husband of the accused may at common law be called as a witness without the consent of the accused.

- (2) In section 27(4) of the Children and Young Persons Act 1963 (definition of " sexual offence " for purposes of provisions of that section about calling children's evidence), after " the Indecency with Children Act 1960 " there shall be inserted " or section 1(1) (a) of the Protection of Children Act 1978 ".
- (3) In proceedings under this Act 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 he was then under the age of 16.

## 3 Offences by corporations

- (1) Where a body corporate is guilty of an offence under this Act and it is proved that the offence occurred with the consent or connivance of, or was attributable to any

neglect on the part of, any director, manager, secretary or other officer of the body, or any person who was purporting to act in any such capacity he, as well as the body corporate, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

- (2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

#### **4 Entry, search and seizure**

- (1) The following applies where a justice of the peace is satisfied by information on oath, laid by or on behalf of the Director of Public Prosecutions or by a constable, that there is reasonable ground for suspecting that, in any premises in the petty sessions area for which he acts, there are indecent photographs of children and that such photographs—
  - (a) are or have been taken there ; or
  - (b) are or have been shown there, or are kept there with a view to their being distributed or shown.
- (2) The justice may issue a warrant under his hand authorising any constable to enter (if need be by force) and search the premises within fourteen days from the date of the warrant, and to seize and remove any articles which he believes (with reasonable cause) to be or include indecent photographs of children taken or shown on the premises, or kept there with a view to their being distributed or shown.
- (3) Articles seized under the authority of the warrant, and not returned to the occupier of the premises, shall be brought before a justice of the peace acting for the same petty sessions area as the justice who issued the warrant.
- (4) This section and section 5 below apply in relation to any stall or vehicle, as they apply in relation to premises, with the necessary modifications of references to premises and the substitution of references to use for references to occupation.

#### **5 Forfeiture**

- (1) The justice before whom any articles are brought in pursuance of section 4 above may issue a summons to the occupier of the premises to appear on a day specified in the summons before a magistrates' court for that petty sessions area to show cause why they should not be forfeited.
- (2) If the court is satisfied that the articles are in fact indecent photographs of children, taken on the premises or shown there or kept there with a view to their being distributed or shown, the court shall order them to be forfeited; but if the person summoned does not appear, the court shall not make an order unless service of the summons is proved.
- (3) In addition to the persons summoned, any other person being the owner of the articles brought before the court, or the persons who made them, or any other person through whose hands they had passed before being seized, shall be entitled to appear before the court on the day specified in the summons to show cause why they should not be forfeited.
- (4) Where any of the articles are ordered to be forfeited under subsection (2), any person who appears, or was entitled to appear, to show cause against the making of the order may appeal to the Crown Court.

- (5) If as respects any articles brought before it the court does not order forfeiture, the court may if it thinks fit order the person on whose information the warrant for their seizure was issued to pay such costs as the court thinks reasonable to any person who has appeared before it to show cause why the photographs should not be forfeited; and costs ordered to be paid under this subsection shall be recoverable as a civil debt.
- (6) Where indecent photographs of children are seized under section 4 above, and a person is convicted under section 1(1) of offences in respect of those photographs, the court shall order them to be forfeited.
- (7) An order made under subsection (2) or (6) above (including an order made on appeal) shall not take effect until the expiration of the ordinary time within which an appeal may be instituted or, where such an appeal is duly instituted, until the appeal is finally decided or abandoned ; and for this purpose—
  - (a) an application for a case to be stated or for leave to appeal shall be treated as the institution of an appeal; and
  - (b) where a decision on appeal is subject to a further appeal, the appeal is not finally decided until the expiration of the ordinary time within which a further appeal may be instituted or, where a further appeal is duly instituted, until the further appeal is finally decided or abandoned.

## 6 Punishments

- (1) Offences under this Act shall be punishable either on conviction on indictment or on summary conviction.
- (2) A person convicted on indictment of any offence under this Act shall be liable to imprisonment for a term of not more than three years, or to a fine or to both.
- (3) A person convicted summarily of any offence under this Act shall be liable—
  - (a) to imprisonment for a term not exceeding six months; or
  - (b) to a fine not exceeding the prescribed sum for the purposes of section 28 of the Criminal Law Act 1977 (punishment on summary conviction of offences triable either way: £1,000 or other sum substituted by order under that Act), or to both.

## 7 Interpretation

- (1) The following subsections apply for the interpretation of this Act.
- (2) References to an indecent photograph include an indecent film, a copy of an indecent photograph or film, and an indecent photograph comprised in a film.
- (3) Photographs (including those comprised in a film) shall, if they show children and are indecent, be treated for all purposes of this Act as indecent photographs of children.
- (4) References to a photograph include the negative as well as the positive version.
- (5) " Film " includes any form of video-recording.

## 8 Similar provision for Northern Ireland

An Order in Council under paragraph 1(1) (b) of Schedule 1 to the Northern Ireland Act 1974 (legislation for Northern Ireland in the interim period) which contains

a statement that it operates only so as to make for Northern Ireland provision corresponding to this Act—

- (a) shall not be subject to paragraph 1(4) and (5) of that Schedule (affirmative resolution of both Houses of Parliament); but
- (b) shall be subject to annulment by a resolution of either House.

## **9 Short title, extent and commencement**

- (1) This Act may be cited as the Protection of Children Act 1978.
- (2) This Act except section 1(6) shall not extend to Scotland and except for that subsection, and subject also to section 8 shall not extend to Northern Ireland.
- (3) Section 8 of this Act shall come into force forthwith, but otherwise this Act shall come into force at the expiration of one month beginning with the date it is passed.