



Sexual Offences Act 2003

2003 CHAPTER 42

PART 1

SEXUAL OFFENCES

Indecent photographs of children

45 Indecent photographs of persons aged 16 or 17

- (1) The Protection of Children Act 1978 (c. 37) (which makes provision about indecent photographs of persons under 16) is amended as follows.
- (2) In section 2(3) (evidence) and section 7(6) (meaning of “child”), for “16” substitute “18”.
- (3) After section 1 insert—

“1A Marriage and other relationships

- (1) This section applies where, in proceedings for an offence under section 1(1) (a) of taking or making an indecent photograph of a child, or for an offence under section 1(1)(b) or (c) relating to an indecent photograph of a child, the defendant proves that the photograph was of the child aged 16 or over, and that at the time of the offence charged the child and he—
 - (a) were married, or
 - (b) lived together as partners in an enduring family relationship.
- (2) Subsections (5) and (6) also apply where, in proceedings for an offence under section 1(1)(b) or (c) relating to an indecent photograph of a child, the defendant proves that the photograph was of the child aged 16 or over, and that at the time when he obtained it the child and he—
 - (a) were married, or
 - (b) lived together as partners in an enduring family relationship.

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- (3) This section applies whether the photograph showed the child alone or with the defendant, but not if it showed any other person.
 - (4) In the case of an offence under section 1(1)(a), if sufficient evidence is adduced to raise an issue as to whether the child consented to the photograph being taken or made, or as to whether the defendant reasonably believed that the child so consented, the defendant is not guilty of the offence unless it is proved that the child did not so consent and that the defendant did not reasonably believe that the child so consented.
 - (5) In the case of an offence under section 1(1)(b), the defendant is not guilty of the offence unless it is proved that the showing or distributing was to a person other than the child.
 - (6) In the case of an offence under section 1(1)(c), if sufficient evidence is adduced to raise an issue both—
 - (a) as to whether the child consented to the photograph being in the defendant's possession, or as to whether the defendant reasonably believed that the child so consented, and
 - (b) as to whether the defendant had the photograph in his possession with a view to its being distributed or shown to anyone other than the child, the defendant is not guilty of the offence unless it is proved either that the child did not so consent and that the defendant did not reasonably believe that the child so consented, or that the defendant had the photograph in his possession with a view to its being distributed or shown to a person other than the child.”
- (4) After section 160 of the Criminal Justice Act 1988 (c. 33) (possession of indecent photograph of child) insert—

“160A Marriage and other relationships

- (1) This section applies where, in proceedings for an offence under section 160 relating to an indecent photograph of a child, the defendant proves that the photograph was of the child aged 16 or over, and that at the time of the offence charged the child and he—
 - (a) were married, or
 - (b) lived together as partners in an enduring family relationship.
- (2) This section also applies where, in proceedings for an offence under section 160 relating to an indecent photograph of a child, the defendant proves that the photograph was of the child aged 16 or over, and that at the time when he obtained it the child and he—
 - (a) were married, or
 - (b) lived together as partners in an enduring family relationship.
- (3) This section applies whether the photograph showed the child alone or with the defendant, but not if it showed any other person.
- (4) If sufficient evidence is adduced to raise an issue as to whether the child consented to the photograph being in the defendant's possession, or as to whether the defendant reasonably believed that the child so consented, the defendant is not guilty of the offence unless it is proved that the child did not

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so consent and that the defendant did not reasonably believe that the child so consented.”