

*These notes refer to the Sexual Offences Act 2003 (c.42)
which received Royal Assent on 20 November 2003*

SEXUAL OFFENCES ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Sexual Offences

Section 46: Criminal proceedings, investigations etc.

93. This clause creates a limited defence to the offence of “making” an indecent photograph or pseudo-photograph of a child, under section 1(1)(a) of the Protection of Children Act 1978. “Making” covers, for example, the situation where a person downloads an image from the Internet or copies a computer hard drive. The defence applies where a person “making” such a photograph or pseudo-photograph can prove that it was necessary for him to do so for the purposes of the prevention, detection or investigation of crime, or for the purposes of criminal proceedings. The defence also applies to a member of the Security Service or GCHQ (Government Communications Headquarters) who can prove that it was necessary for him to “make” the photograph or pseudo-photograph for the exercise of the functions of the Security Service or GCHQ.