

POLICE AND JUSTICE ACT 2006

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 5: Miscellaneous

Schedule 11: Schedule to be inserted into the Protection of Children Act 1978

312. *Schedule 11* inserts a new Schedule into the Protection of Children Act 1978. This Schedule creates a mechanism whereby the police can forfeit indecent images of children and the devices that hold them. For example, computer hard drives that contain indecent images where deletion of the indecent images only is not technically possible. The existing procedure applies only if such articles were seized under a warrant under the Protection of Children Act 1978 or following conviction for an offence in which the items were used. This new Schedule applies irrespective of the power the material is seized under, so will include indecent material inadvertently seized in investigations into other matters. For example, computers seized in a fraud investigation may on subsequent analysis be found to contain both the business records sought and child pornography.
313. The inserted Schedule gives the police the power to forfeit such articles and creates an avenue of appeal for owners and third parties. Paragraphs 1 to 4 of the inserted Schedule provide that once the police no longer have a legitimate reason for possessing the articles and if they believe they are suitable for forfeiture on the grounds they are indecent photographs of children, they are obliged under the Schedule to issue a notice of forfeiture to those persons that they believe to be owners of the articles, the occupier of the premises they were seized from, and the person from whom they were seized.
314. *Paragraph 4* requires the notice of forfeiture to describe the articles and explain how a notice of claim against forfeiture should be pursued. A notice of claim is made under paragraph 5 to a constable at a police station in the police area where the articles were seized. Paragraph 6 sets out what must be in a notice and that it must be made within one month from the date of the giving of the notice of forfeiture. Under paragraph 7 if no notice has been given the articles can be automatically forfeited by the police.
315. If a notice of claim is received, the constable who has custody of the property must decide under paragraphs 8 and 9 whether to return the property or take proceedings to ask the court to condemn the property.
316. *Paragraphs 10 to 12* set out the procedure for forfeiture proceedings, and permit the court, when considering an application for forfeiture from the police, to condemn or return the property or a separable part of the property. The court must return the property in question to the person claiming it, if it concludes that the property is neither an indecent image of a child, nor material which it is not reasonably possible to separate from such an image. The court must also return the property to the person claiming it if it is satisfied that although the property is an indecent image of a child, that person has a legitimate reason for possessing it. For example, under the Criminal Justice Act

*These notes refer to the Police and Justice Act 2006
(c.48) which received Royal Assent on 8 November 2006*

1988 it is not an offence to possess an indecent photograph of one's spouse if he or she is over 16 (see paragraph 21).

317. Under paragraph 11 the court in considering a forfeiture claim is also able to order the copying of data by the police and has the power to order payment of costs for any steps that it orders to be taken. For example, a computer hard drive may have on it both indecent photographs and business records. If it is not possible to delete one but not the other, the court can order that the business records be copied before the hard drive is forfeited and then destroyed by the police.