



# Criminal Justice and Immigration Act 2008

## 2008 CHAPTER 4

### PART 5

#### CRIMINAL LAW

#### *Pornography etc.*

#### **66 Defence: participation in consensual acts**

- (1) This section applies where—
  - (a) a person (“D”) is charged with an offence under section 63, and
  - (b) the offence relates to an image that portrays an act or acts within paragraphs (a) to (c) (but none within paragraph (d)) of subsection (7) of that section.
- (2) It is a defence for D to prove—
  - (a) that D directly participated in the act or any of the acts portrayed, and
  - (b) that the act or acts did not involve the infliction of any non-consensual harm on any person, and
  - (c) if the image portrays an act within section 63(7)(c), that what is portrayed as a human corpse was not in fact a corpse.
- (3) For the purposes of this section harm inflicted on a person is “non-consensual” harm if—
  - (a) the harm is of such a nature that the person cannot, in law, consent to it being inflicted on himself or herself; or
  - (b) where the person can, in law, consent to it being so inflicted, the person does not in fact consent to it being so inflicted.