



Criminal Justice and Courts Act 2015

2015 CHAPTER 2

PART 1

CRIMINAL JUSTICE

Offences involving sexual grooming or pornographic images

37 Possession of pornographic images of rape and assault by penetration

(1) Part 5 of the Criminal Justice and Immigration Act 2008 is amended as follows.

(2) In section 63 (possession of extreme pornographic images)—

(a) after subsection (5) insert—

“(5A) In relation to possession of an image in England and Wales, an “extreme image” is an image which—

(a) falls within subsection (7) or (7A), and

(b) is grossly offensive, disgusting or otherwise of an obscene character.”,

(b) in subsection (6), for “An” substitute “In relation to possession of an image in Northern Ireland, an”, and

(c) after subsection (7) insert—

“(7A) An image falls within this subsection if it portrays, in an explicit and realistic way, either of the following—

(a) an act which involves the non-consensual penetration of a person’s vagina, anus or mouth by another with the other person’s penis, or

(b) an act which involves the non-consensual sexual penetration of a person’s vagina or anus by another with a part of the other person’s body or anything else,

and a reasonable person looking at the image would think that the persons were real.

Status: This is the original version (as it was originally enacted).

- (7B) For the purposes of subsection (7A)—
- (a) penetration is a continuing act from entry to withdrawal;
 - (b) “vagina” includes vulva.”
- (3) In section 66 (defence: participation in consensual acts)—
- (a) before subsection (1) insert—

“(A1) Subsection (A2) applies where in England and Wales—

 - (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 subsection (7)(a) to (c) or (7A) of that section (but does not portray an act within subsection (7)(d) of that section).

(A2) 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, and
 - (d) if the image portrays an act within section 63(7A), that what is portrayed as non-consensual penetration was in fact consensual.”, and
 - (b) in subsection (1)—
 - (i) for “This section” substitute “Subsection (2)”, and
 - (ii) after “where” insert “in Northern Ireland”.
- (4) In section 67 (penalties for possession of extreme pornographic images)—
- (a) in subsection (2), for “Except where subsection (3) applies to the offence” substitute “If the offence relates to an image that portrays any relevant act (with or without other acts)”,
 - (b) in subsection (3), for “act within section 63(7)(a) or (b)” substitute “relevant act”, and
 - (c) after subsection (4) insert—

“(5) In this section “relevant act” means—

 - (a) in relation to England and Wales, an act within section 63(7)(a) or (b) or (7A)(a) or (b);
 - (b) in relation to Northern Ireland, an act within section 63(7)(a) or (b).”
- (5) In Schedule 14 (special rules relating to providers of information society services)—
- (a) after paragraph 1(3) insert—

“(3A) For the purposes of sub-paragraph (2), “extreme pornographic image” has the meaning given by section 63(2) and in determining whether a domestic service provider is in possession of such an image—

Status: This is the original version (as it was originally enacted).

- (a) where the service provider is established in England and Wales, “extreme image” has the meaning given by section 63(5A);
 - (b) where the service provider is established in Northern Ireland, “extreme image” has the meaning given by section 63(6).”, and
- (b) omit paragraph 6(2).