



Criminal Justice and Licensing (Scotland) Act 2010

2010 asp 13

PART 2

CRIMINAL LAW

Sexual offences

42 Extreme pornography

(1) In section 51 of the 1982 Act (obscene material)—

(a) for subsection (3) substitute—

“(3) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a period not exceeding 12 months or to a fine not exceeding the statutory maximum or to both, or

(b) on conviction on indictment—

(i) in a case where the obscene material is or includes an extreme pornographic image, to imprisonment for a period not exceeding 5 years or to a fine or to both, or

(ii) in any other case, to imprisonment for a period not exceeding 3 years or to a fine or to both.”, and

(b) in subsection (8)—

(i) before the definition of “material” insert—

““extreme pornographic image” is to be construed in accordance with section 51A;”, and

(ii) the definition of “prescribed sum” is repealed.

(2) After section 51 of that Act insert—

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“51A Extreme pornography

- (1) A person who is in possession of an extreme pornographic image is guilty of an offence under this section.
- (2) An extreme pornographic image is an image which is all of the following—
 - (a) obscene,
 - (b) pornographic,
 - (c) extreme.
- (3) An image is pornographic if it is of such a nature that it must reasonably be assumed to have been made solely or principally for the purpose of sexual arousal.
- (4) Where (as found in the person's possession) an image forms part of a series of images, the question of whether the image is pornographic is to be determined by reference to—
 - (a) the image itself, and
 - (b) where the series of images is such as to be capable of providing a context for the image, its context within the series of images,and reference may also be had to any sounds accompanying the image or the series of images.
- (5) So, for example, where—
 - (a) an image forms an integral part of a narrative constituted by a series of images, and
 - (b) having regard to those images as a whole, they are not of such a nature that they must reasonably be assumed to have been made solely or principally for the purpose of sexual arousal,the image may, by virtue of being part of that narrative, be found not to be pornographic (even if it may have been found to be pornographic where taken by itself).
- (6) An image is extreme if it depicts, in an explicit and realistic way any of the following—
 - (a) an act which takes or threatens a person's life,
 - (b) an act which results, or is likely to result, in a person's severe injury,
 - (c) rape or other non-consensual penetrative sexual activity,
 - (d) sexual activity involving (directly or indirectly) a human corpse,
 - (e) an act which involves sexual activity between a person and an animal (or the carcase of an animal).
- (7) In determining whether (as found in the person's possession) an image depicts an act mentioned in subsection (6), reference may be had to—
 - (a) how the image is or was described (whether the description is part of the image itself or otherwise),
 - (b) any sounds accompanying the image,
 - (c) where the image forms an integral part of a narrative constituted by a series of images—
 - (i) any sounds accompanying the series of images,

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- (ii) the context provided by that narrative.
- (8) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a period not exceeding 12 months or to a fine not exceeding the statutory maximum or to both,
 - (b) on conviction on indictment, to imprisonment for a period not exceeding 3 years or to a fine or to both.
- (9) In this section, an “image” is—
- (a) a moving or still image (made by any means), or
 - (b) data (stored by any means) which is capable of conversion into such an image.

51B Extreme pornography: excluded images

- (1) An offence is not committed under section 51A if the image is an excluded image.
- (2) An “excluded image” is an image which is all or part of a classified work.
- (3) An image is not an excluded image where—
- (a) it has been extracted from a classified work, and
 - (b) it must be reasonably be assumed to have been extracted (whether with or without other images) from the work solely or principally for the purpose of sexual arousal.
- (4) In determining whether (as found in the person's possession) the image was extracted from the work for the purpose mentioned in subsection (3)(b), reference may be had to—
- (a) how the image was stored,
 - (b) how the image is or was described (whether the description is part of the image itself or otherwise),
 - (c) any sounds accompanying the image,
 - (d) where the image forms an integral part of a narrative constituted by a series of images—
 - (i) any sounds accompanying the series of images,
 - (ii) the context provided by that narrative.
- (5) In this section—
- “classified work” means a video work in respect of which a classification certificate has been issued by a designated authority,
 - “classification certificate” and “video work” have the same meanings as in the Video Recordings Act 1984 (c.39),
 - “designated authority” means an authority which has been designated by the Secretary of State under section 4 of that Act,
 - “extract” includes an extract of a single image,
 - “image” is to be construed in accordance with section 51A.

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51C Extreme pornography: defences

- (1) Where a person (“A”) is charged with an offence under section 51A, it is a defence for A to prove one or more of the matters mentioned in subsection (2).
 - (2) The matters are—
 - (a) that A had a legitimate reason for being in possession of the image concerned,
 - (b) that A had not seen the image concerned and did not know, nor had any cause to suspect, it to be an extreme pornographic image,
 - (c) that A—
 - (i) was sent the image concerned without any prior request having been made by or on behalf of A, and
 - (ii) did not keep it for an unreasonable time.
 - (3) Where A is charged with an offence under section 51A, it is a defence for A to prove that—
 - (a) A directly participated in the act depicted, and
 - (b) subsection (4) applies.
 - (4) This subsection applies—
 - (a) in the case of an image which depicts an act described in subsection (6)(a) of that section, if the act depicted did not actually take or threaten a person's life,
 - (b) in the case of an image which depicts an act described in subsection (6)(b) of that section, if the act depicted did not actually result in (nor was it actually likely to result in) a person's severe injury,
 - (c) in the case of an image which depicts an act described in subsection (6)(c) of that section, if the act depicted did not actually involve non-consensual activity,
 - (d) in the case of an image which depicts an act described in subsection (6)(d) of that section, if what is depicted as a human corpse was not in fact a corpse,
 - (e) in the case of an image which depicts an act described in subsection (6)(e) of that section, if what is depicted as an animal (or the carcase of an animal) was not in fact an animal (or a carcase).
 - (5) The defence under subsection (3) is not available if A shows, gives or offers for sale the image to any person who was not also a direct participant in the act depicted.
 - (6) In this section “image” and “extreme pornographic image” are to be construed in accordance with section 51A.”
- (3) In Schedule 3 to the Sexual Offences Act 2003 (c.42) (sexual offences for the purposes of Part 2 of that Act), after paragraph 44 insert—

“44A An offence under section 51A of the Civic Government (Scotland) Act 1982 (c.45) (possession of extreme pornography) if—

- (a) the offender—

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- (i) was 18 or over, and
 - (ii) is or has been sentenced in respect of the offence to imprisonment for a term of more than 12 months, and
- (b) in imposing sentence, the court determines that it is appropriate that Part 2 of this Act should apply in relation to the offender.”.

Commencement Information

II S. 42 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch. (with Sch.)

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