

CORONERS AND JUSTICE ACT 2009

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 2 - Criminal offences

Chapter 2: Images of children

Section 62: Possession of prohibited images of children

363. *Subsection (1)* creates a new offence in England and Wales and Northern Ireland of possession of a prohibited image of a child.
364. *Subsections (2) to (8)* set out the definition of a “prohibited image of a child”. Under subsection (2), in order to be a prohibited image, an image must be pornographic, fall within subsection (6) and be grossly offensive, disgusting or otherwise of an obscene character. The definition of “pornographic” is set out in subsection (3). An image must be of such a nature that it must reasonably be assumed to have been produced solely or mainly for the purpose of sexual arousal. Whether this threshold has been met will be an issue for a jury to determine. Subsection (4) makes it clear that where (as found in a person’s possession) an individual image forms part of a series of images, the question of whether it is pornographic must be determined by reference both to the image itself and the context in which it appears in the series of images.
365. Subsection (5) expands on subsection (4). It provides that, where an image is integral to a narrative (for example a mainstream or documentary film) which when it is taken as a whole could not reasonably be assumed to be pornographic, the image itself may not be pornographic, even though if considered in isolation the contrary conclusion might have been reached.
366. Subsection (6) and (7) provide that a prohibited image for the purposes of the offence is one which focuses solely or principally on a child’s genitals or anal region or portrays any of a list of acts set out in subsection (7).
367. Subsection (8) provides that for the purposes of subsection (7) penetration is a continuing act from entry to withdrawal.
368. *Subsection (9)* requires proceedings to be instituted by or with the consent of the Director of Public Prosecutions.