
STATUTORY INSTRUMENTS

1978 No. 1047 (N.I. 17)

NORTHERN IRELAND

**The Protection of Children
(Northern Ireland) Order 1978**

<i>Made</i>	<i>25th July 1978</i>
<i>Laid before Parliament</i>	<i>8th August 1978</i>
<i>Coming into Operation</i>	<i>26th August 1978</i>

ARRANGEMENT OF ORDER

Article

1. Title and commencement.
2. Interpretation.
3. Indecent photographs of children.
4. Entry, search and seizure.
5. Forfeiture.
6. Supplementary provisions relating to forfeiture proceedings.
7. Evidence.
8. Offences by bodies corporate.
9. Amendment of the Visiting Forces Act 1952 and the Children and Young Persons Act (Northern Ireland) 1968.

At the Court at Buckingham Palace, the 25th day of July 1978

Present,

The Queen's Most Excellent Majesty in Council

Whereas this Order in Council operates only so as to make for Northern Ireland provisions corresponding to the Protection of Children Act 1978 (a):

Now, therefore, Her Majesty, in exercise and of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 (b) in accordance with section 8 of the said Act of 1978, and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Title and commencement

1. This Order may be cited as the Protection of Children (Northern Ireland) Order 1978 and shall come into operation on the expiration of one month after the day on which it is made.

(a) 1978 c. 37.

(b) 1974 c. 28.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 (a) shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“child” means a person under the age of sixteen;

“film” includes any form of video-recording;

“indecent photograph” includes an indecent film, a copy of an indecent photograph or film, and an indecent photograph comprised in a film;

“photograph” includes the negative as well as the positive version.

(3) For the purposes of this Order—

(a) a person is to be regarded as distributing an indecent photograph if he parts with possession of it to, or exposes or offers it for acquisition by, another person; and

(b) photographs (including those comprised in a film) shall, if they show children and are indecent, be treated as indecent photographs of children.

Indecent photographs of children

3.—(1) Any person who—

(a) takes, or permits to be taken, any indecent photograph of a child; or

(b) distributes or shows such indecent photographs; or

(c) has in his possession such indecent photographs, with a view to their being distributed or shown by himself or others; or

(d) publishes or causes to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such indecent photographs or intends to do so,

shall be guilty of an offence.

(2) Proceedings for an offence under paragraph (1) shall not be instituted except by or with the consent of the Director of Public Prosecutions for Northern Ireland.

(3) Where a person is charged with an offence under paragraph (1) (b) or (c), it shall be a defence for him to prove—

(a) that he had a legitimate reason for distributing or showing the photographs or (as the case may be) having them in his possession; or

(b) that he had not himself seen the photographs and did not know, nor had any cause to suspect, that the photographs were indecent.

(4) A person guilty of an offence under paragraph (1) shall be liable—

(a) on conviction on indictment, to a fine or to imprisonment for a term not exceeding three years or to both.

(b) on summary conviction to a fine not exceeding £1,000 or to imprisonment for a term not exceeding six months or to both.

Entry, search and seizure

4.—(1) Upon a complaint being made to a justice of the peace by or on behalf of the Director of Public Prosecutions for Northern Ireland or by a

(a) 1954 c. 33 (N.I.).

member of the Royal Ulster Constabulary if the justice is satisfied that there is reasonable ground to suspect—

- (a) that there are indecent photographs of children in any premises in the petty sessions district for which he acts; and
- (b) that such photographs—
 - (i) are or have been taken there; or
 - (ii) are or have been shown there, or are kept there with a view to their being distributed or shown,

he may grant a warrant under his hand authorising any member of the Royal Ulster Constabulary to enter, if necessary by force, and search the premises within fourteen days from the date of the warrant, and to seize and remove any articles which he believes with reasonable cause to be or include indecent photographs of children taken or shown on the premises, or kept there with a view to their being distributed or shown.

(2) Paragraph (1) and Article 5 apply in relation to any stall or vehicle as they apply in relation to premises, with the necessary modifications of references to premises and the substitution of references to use for references to occupation.

Forfeiture

5.—(1) Articles seized under the authority of a warrant issued under Article 4 (1) and not returned to the occupier of the premises shall be brought before a justice of the peace acting for the same petty sessions district as the justice who issued the warrant.

(2) The justice before whom any articles are brought in pursuance of paragraph (1) may issue a summons to the occupier of the premises to appear on a day specified in the summons before a court of summary jurisdiction for that petty sessions district to show cause why the articles should not be forfeited.

(3) If the court is satisfied that the articles are in fact indecent photographs of children, taken on the premises or shown there or kept there with a view to their being distributed or shown, the court shall, subject to paragraph (4), order them to be forfeited.

(4) If the person summoned under paragraph (2) does not appear, the court shall not make an order under paragraph (3) unless service of the summons is proved.

(5) Where indecent photographs of children are seized under Article 4 (1) and a person is convicted under Article 3 (1) of offences in respect of those photographs, the court shall order them to be forfeited.

(6) In addition to the person summoned under paragraph (2), any other person being—

- (a) the owner of the articles brought before the court, or
- (b) the person who made them, or
- (c) any other person through whose hands they had passed before being seized,

shall be entitled to appear before the court on the day specified in the summons to show cause why the articles should not be forfeited.

Supplementary provisions relating to forfeiture proceedings

6.—(1) If the court does not order forfeiture as respects any articles brought before it, it may, if it thinks fit, order the person upon whose complaint the warrant for their seizure was issued to pay such costs as the court thinks

reasonable to any person who has appeared before it to show cause why the photographs should not be forfeited.

(2) Costs ordered to be paid under paragraph (1) shall be recoverable as a civil debt.

(3) Where any of the articles are ordered to be forfeited under Article 5 (3), any person who appears, or was entitled to appear, to show cause against the making of the order may appeal to the county court in accordance with Part XIII of the Magistrates' Courts Act (Northern Ireland) 1964 (a).

(4) An order made under Article 5 (3) or (5) (including an order made on appeal) shall not take effect until the expiration of the ordinary time within which an appeal may be instituted or where such an appeal is duly instituted, until the appeal is finally decided or abandoned; and for this purpose—

(a) an application for a case to be stated or for leave to appeal shall be treated as the institution of an appeal; and

(b) where a decision on appeal is subject to a further appeal, the appeal is not finally decided until the expiration of the ordinary time within which a further appeal may be instituted or, where a further appeal is duly instituted, until the further appeal is finally decided or abandoned.

Evidence

7.—(1) In proceedings under this Order a person is to be taken as having been a child at any material time if it appears, from the evidence as a whole, that he was then under the age of sixteen.

(2) Subject to the following provisions of this Article, on a charge of an offence under Article 3 (1) (a), the wife or husband of the accused shall be competent to give evidence at every stage of the proceedings, whether for the defence or for the prosecution, and whether the accused is charged solely or jointly with any other person.

(3) The wife or husband shall not be compellable either to give evidence or, in giving evidence, to disclose any communication made to her or him during the marriage by the accused.

(4) The failure of the wife or husband to give evidence shall not be made the subject of any comment by the prosecution.

(5) Nothing in paragraphs (2) to (4) shall affect section 1 of the Criminal Evidence Act (Northern Ireland) 1923 (b) or any case where the wife or husband may at common law be called as a witness without the consent of the accused.

Offences by bodies corporate

8. Section 20 (2) of the Interpretation Act (Northern Ireland) 1954 (liability of directors etc. for offences by body corporate) shall apply to an offence under this Order committed by any body corporate, whether the liability of its members is limited or not and where the affairs of any body corporate are managed by its members, that subsection shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(a) 1964 c. 21 (N.I.).

(b) 1923 c. 9 (N.I.).

Amendment of the Visiting Forces Act 1952 and the Children and Young Persons Act (Northern Ireland) 1968

9.—(1) In paragraph 1 of the Schedule to the Visiting Forces Act 1952 (a) (offences against the person in the case of which a member of a visiting force is in certain circumstances not liable to be tried by a court in the United Kingdom), after sub-paragraph (b) (vii) there shall be added the following—

“and

(vii) (A) Article 3 (1) (a) of the Protection of Children (Northern Ireland) Order 1978.”

(2) In the Children and Young Persons Act (Northern Ireland) 1968 (b)—
(a) references (except in sections 34 and 174) to the offences mentioned in Schedule 1 to that Act shall include an offence under Article 3 (1) (a);
and

(b) in section 58 (4) (definition of “sexual offence” for purposes of section 58 which relates to evidence of children in committal proceedings for sexual offences), after paragraph (f) there shall be added the following paragraph—

“or

(g) Article 3 (1) (a) of the Protection of Children (Northern Ireland) Order 1978;”.

N. E. Leigh,
Clerk of the Privy Council.

(a) 1952 c. 67.

(b) 1968 c. 34 (N.I.).

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order corresponds to the Protection of Children Act 1978. It creates certain offences in relation to the taking, distributing and showing of indecent films and photographs of children under sixteen. It also makes provision for the seizure and forfeiture of such films and photographs.

STATUTORY INSTRUMENTS

1978 No. 1047 (N.I. 17)

NORTHERN IRELAND

**The Protection of Children
(Northern Ireland) Order 1978**