



# Protection of Children Act 1978

## 1978 CHAPTER 37

An Act to prevent the exploitation of children by making indecent photographs of them; and to penalise the distribution, showing and advertisement of such indecent photographs. [20th July 1978]

### 1 Indecent photographs of children.

- (1) [<sup>F1</sup>Subject to sections 1A and 1B,] it is an offence for a person—
  - (a) to take, or permit to be taken [<sup>F2</sup>or to make], any indecent photograph [<sup>F2</sup>or pseudo-photograph] of a child <sup>F3</sup>. . .; or
  - (b) to distribute or show such indecent photographs [<sup>F4</sup>or pseudo-photographs]; or
  - (c) to have in his possession such indecent photographs [<sup>F4</sup>or pseudo-photographs], with a view to their being distributed or shown by himself or others; or
  - (d) to publish or cause to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such indecent photographs [<sup>F4</sup>or pseudo-photographs], or intends to do so.
- (2) For purposes of this Act, a person is to be regarded as distributing an indecent photograph [<sup>F5</sup>or pseudo-photograph] if he parts with possession of it to, or exposes or offers it for acquisition by, another person.
- (3) Proceedings for an offence under this Act shall not be instituted except by or with the consent of the Director of Public Prosecutions.
- (4) Where a person is charged with an offence under subsection (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 [<sup>F6</sup>or pseudo-photographs] or (as the case may be) having them in his possession; or
  - (b) that he had not himself seen the photographs [<sup>F6</sup>or pseudo-photographs] and did not know, nor had any cause to suspect, them to be indecent.

*Status: Point in time view as at 01/04/2005.*

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- (5) References in the <sup>M1</sup>Children and Young Persons Act 1933 (except in sections 15 and 99) to the offences mentioned in Schedule 1 to that Act shall include an offence under subsection (1)(a) above.
- (6) ..... <sup>F7</sup>
- (7) In paragraph 1 of the Schedule of Visiting Forces Act 1952 (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 United Kingdom court), after sub-paragraph (b)(viii) (inserted by the Sexual Offences Act 1956) there shall be added—  
“(ix) section 1(1)(a) of the Protection of Children Act 1978”.

#### Textual Amendments

- F1** Words in s. 1(1) inserted (1.5.2004) by [Sexual Offences Act 2003 \(c. 42\), s. 141, Sch. 6 para. 24](#); [S.I. 2004/874, art. 2](#)
- F2** Words in s. 1(1)(a) inserted (3.2.1995) by [1994 c. 33, s. 84\(2\)\(a\)](#); [S.I. 1995/127, art. 2\(1\), Sch 1](#)
- F3** Words in s. 1(1)(a) repealed (3.2.1995) by [1994 c. 33, ss. 84\(2\)\(a\), 168\(3\), Sch. 11](#); [S.I. 1995/127, art. 2\(1\), Sch 1](#)
- F4** Words in s. 1(1)(b)-(d) inserted (3.2.1995) by [1994 c. 33, s. 84\(2\)\(b\)](#); [S.I. 1995/127, art. 2\(1\), Sch 1](#)
- F5** Words in s. 1(2) inserted (3.2.1995) by [1994 c. 33, s. 84\(2\)\(c\)](#); [S.I. 1995/127, art. 2\(1\), Sch 1](#)
- F6** Words in s. 1(4)(a)(b) inserted (3.2.1995) by [1994 c. 33, s. 84\(2\)\(d\)](#); [S.I. 1995/127, art. 2\(1\), Sch 1](#)
- F7** S. 1(6) repealed by [Extradition Act 1989 \(c. 33, SIF 48\), s. 37, Sch. 2](#)

#### Modifications etc. (not altering text)

- C1** Ss. 1(3), 2(3), 3, 7 amended by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\), s. 160\(4\), Sch. 8 para. 16](#)
- C2** The text of s. 1(7) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

#### Marginal Citations

- M1** [1933 c. 12.](#)

### [<sup>F8</sup>1A Marriage and other relationships

- (1) This section applies where, in proceedings for an offence under section 1(1)(a) of taking or making an indecent photograph of a child, or for an offence under section 1(1)(b) or (c) relating to an indecent photograph of a child, the defendant proves that the photograph was of the child aged 16 or over, and that at the time of the offence charged the child and he—
- were married, or
  - lived together as partners in an enduring family relationship.
- (2) Subsections (5) and (6) also apply where, in proceedings for an offence under section 1(1)(b) or (c) relating to an indecent photograph of a child, the defendant proves that the photograph was of the child aged 16 or over, and that at the time when he obtained it the child and he—
- were married, or
  - lived together as partners in an enduring family relationship.
- (3) This section applies whether the photograph showed the child alone or with the defendant, but not if it showed any other person.

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- (4) In the case of an offence under section 1(1)(a), if sufficient evidence is adduced to raise an issue as to whether the child consented to the photograph being taken or made, or as to whether the defendant reasonably believed that the child so consented, the defendant is not guilty of the offence unless it is proved that the child did not so consent and that the defendant did not reasonably believe that the child so consented.
- (5) In the case of an offence under section 1(1)(b), the defendant is not guilty of the offence unless it is proved that the showing or distributing was to a person other than the child.
- (6) In the case of an offence under section 1(1)(c), if sufficient evidence is adduced to raise an issue both—
  - (a) as to whether the child consented to the photograph being in the defendant’s possession, or as to whether the defendant reasonably believed that the child so consented, and
  - (b) as to whether the defendant had the photograph in his possession with a view to its being distributed or shown to anyone other than the child,the defendant is not guilty of the offence unless it is proved either that the child did not so consent and that the defendant did not reasonably believe that the child so consented, or that the defendant had the photograph in his possession with a view to its being distributed or shown to a person other than the child.]

**Textual Amendments**

**F8** S. 1A inserted (1.5.2004) by [Sexual Offences Act 2003 \(c. 42\)](#), **ss. 45(3)**, 141; S.I. 2004/874, art. 2

**[<sup>F9</sup>1B Exception for criminal proceedings, investigations etc.**

- (1) In proceedings for an offence under section 1(1)(a) of making an indecent photograph or pseudo-photograph of a child, the defendant is not guilty of the offence if he proves that—
  - (a) it was necessary for him to make the photograph or pseudo-photograph for the purposes of the prevention, detection or investigation of crime, or for the purposes of criminal proceedings, in any part of the world,
  - (b) at the time of the offence charged he was a member of the Security Service, and it was necessary for him to make the photograph or pseudo-photograph for the exercise of any of the functions of the Service, or
  - (c) at the time of the offence charged he was a member of GCHQ, and it was necessary for him to make the photograph or pseudo-photograph for the exercise of any of the functions of GCHQ.
- (2) In this section “GCHQ” has the same meaning as in the Intelligence Services Act 1994.]

**Textual Amendments**

**F9** S. 1B inserted (1.5.2004) by [Sexual Offences Act 2003 \(c. 42\)](#), **ss. 46(1)**, 141; S.I. 2004/874, art. 2

**2 Evidence.**

- (1) ..... **F10**

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- (2) ..... <sup>F11</sup>
- (3) In proceedings under this Act [<sup>F12</sup>relating to indecent photographs of children] 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 [<sup>F13</sup>18].

#### Textual Amendments

- F10** S. 2(1) repealed by [Police and Criminal Evidence Act 1984 \(c. 60, SIF 95\)](#), s. 119(2), **Sch. 7 Pt. V**
- F11** S. 2(2) repealed by [Magistrates' Courts Act 1980 \(c. 43, SIF 82\)](#), **Sch. 9**
- F12** Words in s. 2(3) inserted (3.2.1995) by [1994 c. 33, s. 168\(2\)](#), **Sch. 10 para. 37(2)**; S.I. 1995/127, art. 2(1), **Sch1** Appendix B
- F13** Word in s. 2(3) substituted (1.5.2004) by [Sexual Offences Act 2003 \(c. 42\)](#), **ss. 45(2)**, 141; S.I. 2004/874, art. 2

#### Modifications etc. (not altering text)

- C3** Ss. 1(3), 2(3), 3, 7 amended by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 160(4), **Sch. 8 para. 16**

### 3 Offences by corporations.

- (1) Where a body corporate is guilty of an offence under this Act and it is proved that the offence occurred with the consent or connivance of, or was attributable to any neglect on the part of, any director, manager, secretary or other officer of the body, or any person who was purporting to act in any such capacity he, as well as the body corporate, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) 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.

#### Modifications etc. (not altering text)

- C4** Ss. 1(3), 2(3), 3, 7 amended by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\)](#), s. 160(4), **Sch. 8 para. 16**

### 4 Entry, search and seizure.

- (1) The following applies where a justice of the peace is satisfied by information on oath, laid by or on behalf of the Director of Public Prosecutions or by a constable, that there is reasonable ground for suspecting that, in any premises <sup>F14</sup>..., there [<sup>F15</sup>is an indecent photograph [<sup>F16</sup>or pseudo-photograph] of a child].
- (2) The justice may issue a warrant under his hand authorising any constable to enter (if need be by force) and search the premises <sup>F17</sup>... and to seize and remove any articles which he believes (with reasonable cause) to be or include indecent photographs [<sup>F18</sup>or pseudo-photographs] of children . . . <sup>F19</sup>.
- (3) Articles seized under the authority of the warrant, and not returned to the occupier of the premises, shall be brought before a justice of the peace acting [<sup>F20</sup>in the local justice area in which the articles were seized].

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- (4) This section and section 5 below 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.

#### Textual Amendments

- F14** Words in s. 4(1) omitted (1.4.2005) by virtue of Courts Act 2003 (c. 39), s. 110(1), Sch. 8 para. 199(2), **10**; S.I. 2005/910, art. 3(y)
- F15** Words substituted by Criminal Justice Act 1988 (c. 33, SIF 39:1), s. 170, Sch. 8 para. 16, **Sch. 15 para. 61(1)**
- F16** Words in s. 4(1) inserted (3.2.1995) by 1994 c. 33, s. 168(2), **Sch. 10 para. 37(3)(a)**; S.I. 1995/127, art. 2(1), **Sch.1** Appendix B
- F17** Words in s. 4(2) repealed (3.2.1995) by 1994 c. 33, s. 168(1)(3), Sch. 9 para. 23(a), **Sch.11**; S.I. 1995/127, art. 2(1), **Sch.1** Appendix C
- F18** Words in s. 4(2) inserted (3.2.1995) by 1994 c. 33, s. 168(2), **Sch. 10 para. 37(3)**; S.I. 1995/127, art. 2(1), **Sch.1** Appendix B
- F19** Words repealed by Criminal Justice Act 1988 (c. 33, SIF 39:1), s. 170, Sch. 8 para. 16, Sch. 15 para. 61(2), **Sch. 16**
- F20** Words in s. 4(3) substituted (1.4.2005) by Courts Act 2003 (c. 39), s. 110(1), **Sch. 8 para. 199(3)**; S.I. 2005/910, art. 3(y)

#### Modifications etc. (not altering text)

- C5** S. 4(2): power of seizure extended (*prosp.*) by 2001 c. 16, ss. 50, 52-55, 68, 138(2), **Sch. 1 Pt. 1 para. 21**  
S. 4(2) modified (*prosp.*) by 2001 c. 16, ss. 55, 68, 138(2), **Sch. 1 Pt. 3 para. 98** (with s. 57(3))
- C6** S. 4(2) powers of seizure extended (1.4.2003) by Criminal Justice and Police Act 2001 (c. 16), ss. 50, 138(2), **Sch. 1 para. 21** (with ss. 52-54, 68); S.I. 2003/708, art. 2(a)
- C7** S. 4(2) modified (1.4.2003) by Criminal Justice and Police Act 2001 (c. 16), ss. 55, 138(2), **Sch. 1 para. 98** (with ss. 57(3), 68); S.I. 2003/708, art. 2(a)
- C8** S. 4(3) applied (*prosp.*) by 2001 c. 16, ss. 70, 138(2), **Sch. 2 Pt. 1 para. 10(2)(b)**
- C9** S. 4(3)(5) applied (1.4.2003) by Criminal Justice and Police Act 2001 (c. 16), s. 138(2), **Sch. 2 para. 10(2)(b)**; S.I. 2003/708, art. 2(k); S.I. 2003/708, art. 2(k)

## 5 Forfeiture.

- (1) The justice before whom any articles are brought in pursuance of section 4 above may issue a summons to the occupier of the premises to appear on a day specified in the summons before a magistrates' court [<sup>F21</sup>acting in that local justice area] to show cause why they should not be forfeited.
- (2) If the court is satisfied that the articles are in fact indecent photographs [<sup>F22</sup>or pseudo-photographs] of children, . . . <sup>F23</sup> the court shall order them to be forfeited; but if the person summoned does not appear, the court shall not make an order unless service of the summons is proved.
- (3) In addition to the persons summoned, any other person being the owner of the articles brought before the court, or the persons who made them, or 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 they should not be forfeited.

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- (4) Where any of the articles are ordered to be forfeited under subsection (2), any person who appears, or was entitled to appear, to show cause against the making of the order may appeal to the Crown Court.
- (5) If as respects any articles brought before it the court does not order forfeiture, the court may if it thinks fit order the person on whose information 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 [<sup>F22</sup>or pseudo-photographs] should not be forfeited; and costs ordered to be paid under this subsection shall be recoverable as a civil debt.
- (6) Where indecent photographs [<sup>F22</sup>or pseudo-photographs] of children are seized under section 4 above, and a person is convicted under section 1(1) [<sup>F24</sup>or section 160 of the Criminal Justice Act 1988] of offences in respect of those photographs, the court shall order them to be forfeited.
- (7) An order made under subsection (2) or (6) above (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.

#### Textual Amendments

- F21** Words in s. 5(1) substituted (1.4.2005) by [Courts Act 2003 \(c. 39\), s. 110\(1\), Sch. 8 para. 200](#); S.I. 2005/910, art. 3(y)
- F22** Words in s. 5(2)(5)(6) inserted (3.2.1995) by [1994 c. 33, s. 168\(2\), Sch. 10 para. 37\(4\)](#); S.I. 1995/127, art. 2(1), [Sch.1 Appendix B](#)
- F23** Words repealed by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\), s. 170, Sch. 8 para. 16, Sch. 15 para. 62\(1\), Sch. 16](#)
- F24** Words inserted by [Criminal Justice Act 1988 \(c. 33, SIF 39:1\), ss. 123, 170, Sch. 8 para. 16, Sch. 15 para. 62\(2\)](#)

#### Modifications etc. (not altering text)

- C10** S. 5 applied (*prosp.*) by [2001 c. 16, ss. 70, 138\(2\), Sch. 2 Pt. 1 para. 10\(2\)\(b\)](#)

## 6 Punishments.

- (1) Offences under this Act shall be punishable either on conviction on indictment or on summary conviction.
- (2) A person convicted on indictment of any offence under this Act shall be liable to imprisonment for a term of not more than [<sup>F25</sup>ten] years, or to a fine or to both.
- (3) A person convicted summarily of any offence under this Act shall be liable—
  - (a) to imprisonment for a term not exceeding six months; or

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- (b) to a fine not exceeding the prescribed sum for the purposes of [F26]section 32 of the Magistrates' Courts Act 1980] (punishment on summary conviction of offences triable either way: £1,000 or other sum substituted by order under that Act), or to both.

#### Textual Amendments

- F25** Word in s. 6(2) substituted (11.1.2001) by 2000 c. 43, s. 41(1); S.I. 2000/3302, art. 2(a)  
**F26** Words substituted by Magistrates' Courts Act 1980 (c. 43, SIF 82), Sch. 7 para. 171

## 7 Interpretation.

- (1) The following subsections apply for the interpretation of this Act.
- (2) References to an indecent photograph include an indecent film, a copy of an indecent photograph or film, and an indecent photograph comprised in a film.
- (3) Photographs (including those comprised in a film) shall, if they show children and are indecent, be treated for all purposes of this Act as indecent photographs of children [F27]and so as respects pseudo-photographs].

[F28] (4) References to a photograph include—

- (a) the negative as well as the positive version; and  
(b) data stored on a computer disc or by other electronic means which is capable of conversion into a photograph.]

(5) “Film” includes any form of video-recording.

[F29] (6) “Child”, subject to subsection (8), means a person under the age of [F30]18].

(7) “ Pseudo-photograph ” means an image, whether made by computer-graphics or otherwise howsoever, which appears to be a photograph.

(8) If the impression conveyed by a pseudo-photograph is that the person shown is a child, the pseudo-photograph shall be treated for all purposes of this Act as showing a child and so shall a pseudo-photograph where the predominant impression conveyed is that the person shown is a child notwithstanding that some of the physical characteristics shown are those of an adult.

(9) References to an indecent pseudo-photograph include—

- (a) a copy of an indecent pseudo-photograph; and  
(b) data stored on a computer disc or by other electronic means which is capable of conversion into a pseudo-photograph.]

#### Textual Amendments

- F27** Words in s. 7(3) inserted (3.2.1995) by 1994 c. 33, s. 84(3)(a); S.I. 1995/127, art. 2(1), Sch 1  
**F28** S. 7(4) substituted (3.2.1995) by 1994 c. 33, s. 84(3)(b); S.I. 1995/127, art. 2(1), Sch 1  
**F29** S. 7(6)-(9) inserted (3.2.1995) by 1994 c. 33, s. 84(3)(c); S.I. 1995/127, art. 2(1), Sch 1  
**F30** Word in s. 7(6) substituted (1.5.2004) by Sexual Offences Act 2003 (c. 42), ss. 45(2), 141; S.I. 2004/874, art. 2

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#### **Modifications etc. (not altering text)**

- C11** Ss. 1(3), 2(3), 3, 7 amended by **Criminal Justice Act 1988** (c. 33, SIF 39:1), s. 160(4), **Sch. 8 para. 16**
- C12** S. 7 applied (1.5.2004 for E.W.N.I., 1.5.2004 for S.) by **Sexual Offences Act 2003** (c. 42), s. 141, **Sch. 3 para. 97(b)**; S.S.I. 2004/138, art. 2; S.I. 2004/874, art. 2; S.S.I. 2004/138, art. 2; S.I. 2004/874, art. 2
- C13** S. 7(4)(7) applied (*prosp.*) by 1997 c. 39, **ss. 2(1), 11(2)** (with ss. 1(4), 11(3))

## **8 Similar provision for Northern Ireland.**

An Order in Council under paragraph 1(1)(b) of Schedule 1 to the <sup>M2</sup>Northern Ireland Act 1974 (legislation for Northern Ireland in the interim period) which contains a statement that it operates only so as to make for Northern Ireland provision corresponding to this Act—

- (a) shall not be subject to paragraph 1(4) and (5) of that Schedule (affirmative resolution of both Houses of Parliament); but
- (b) shall be subject to annulment by a resolution of either House.

#### **Marginal Citations**

**M2** 1974 c. 28.

## **9 Short title, extent and commencement.**

- (1) This Act may be cited as the Protection of Children Act 1978.
- (2) This Act except section 1(6) shall not extend to Scotland and except for that subsection, and subject also to section 8 shall not extend to Northern Ireland.
- (3) Section 8 of this Act shall come into force forthwith, but otherwise this Act shall come into force at the expiration of one month beginning with the date it is passed.



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