



Criminal Justice and Public Order Act 1994

1994 CHAPTER 33

PART VII

OBSCENITY AND PORNOGRAPHY AND VIDEOS

Obscene publications and indecent photographs of children

84 Indecent pseudo-photographs of children

- (1) The Protection of Children Act 1978 shall be amended as provided in subsections (2) and (3) below.
- (2) In section 1 (which penalises the taking and distribution of indecent photographs of children and related acts)—
 - (a) in paragraph (a) of subsection (1)—
 - (i) after the word “taken” there shall be inserted the words “or to make”, and the words following “child” shall be omitted;
 - (ii) after the word “photograph” there shall be inserted the words “or pseudo-photograph”;
 - (b) in paragraphs (b), (c) and (d) of subsection (1), after the word “photographs” there shall be inserted the words “or pseudo-photographs”;
 - (c) in subsection (2), after the word “photograph” there shall be inserted the words “or pseudo-photograph”; and
 - (d) in paragraphs (a) and (b) of subsection (4), after the word “photographs” there shall be inserted the words “or pseudo-photographs”.
- (3) In section 7 (interpretation)—
 - (a) in subsection (3), at the end, there shall be inserted the words “and so as respects pseudo-photographs”; and
 - (b) for subsection (4) there shall be substituted the following subsection—

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- “(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.”
- (c) after subsection (5) there shall be inserted the following subsections—
- “(6) “Child”, subject to subsection (8), means a person under the age of 16.
- (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.”
- (4) Section 160 of the Criminal Justice Act 1988 (which penalises the possession of indecent photographs of children) shall be amended as follows—
- (a) in subsection (1), after the word “photograph” there shall be inserted the words “or pseudo-photograph” and the words from “(meaning” to “16)” shall be omitted; and
 - (b) in paragraphs (a), (b) and (c) of subsection (2), after the word “photograph” there shall be inserted the words “or pseudo-photograph”; and
 - (c) in subsection (5), the reference to the coming into force of that section shall be construed, for the purposes of the amendments made by this subsection, as a reference to the coming into force of this subsection.
- (5) The Civic Government (Scotland) Act 1982 shall be amended as provided in subsections (6) and (7) below.
- (6) In section 52 (which, for Scotland, penalises the taking and distribution of indecent photographs of children and related acts)—
- (a) in paragraph (a) of subsection (1)—
 - (i) after the word “taken” there shall be inserted the words “or makes”; and
 - (ii) for the words from “of a” to the end there shall be substituted the words “or pseudo-photograph of a child”;
 - (b) in paragraphs (b), (c) and (d) of subsection (1), after the word “photograph” there shall be inserted the words “or pseudo-photograph”; and
 - (c) in subsection (2), at the beginning there shall be inserted “In subsection (1) above “child” means, subject to subsection (2B) below, a person under the age of 16; and”;
 - (d) after subsection (2), there shall be added—

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- “(2A) In this section, “pseudo-photograph” means an image, whether produced by computer-graphics or otherwise howsoever, which appears to be a photograph.
- (2B) 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.
- (2C) In this section, references to an indecent pseudo-photograph include—
- (a) a copy of an indecent pseudo-photograph;
 - (b) data stored on a computer disc or by other electronic means which is capable of conversion into a pseudo-photograph.”.
- (e) in subsection (3)—
- (i) in paragraph (a), for the words “3 months” there shall be substituted the words “6 months”; and
 - (ii) in paragraph (b), for the words “two years” there shall be substituted the words “3 years”;
- (f) in subsection (4), and in paragraphs (a) and (b) of subsection (5), after the word “photograph” there shall be inserted the words “or pseudo-photograph”; and
- (g) for subsection (8)(c) there shall be substituted—
- “(c) references to a photograph include—
 - (i) the negative as well as the positive version; and
 - (ii) data stored on a computer disc or by other electronic means which is capable of conversion into a photograph.”.
- (7) In section 52A (which, for Scotland, penalises the possession of indecent photographs of children)—
- (a) in subsection (1), for the words from “of a” to “16)” there shall be substituted the words “or pseudo-photograph of a child”;
 - (b) in subsection (2), in each of paragraphs (a) to (c), after the word “photograph” there shall be inserted the words “or pseudo-photograph”;
 - (c) in subsection (3)—
 - (i) after the word “to” there shall be inserted the words “imprisonment for a period not exceeding 6 months or to”;
 - (ii) at the end there shall be added the words “or to both.”; - (d) in subsection (4), after the word “(2)” there shall be inserted the words “to (2C)”.
- (8) The Protection of Children (Northern Ireland) Order 1978 shall be amended as provided in subsections (9) and (10) below.
- (9) In Article 2 (interpretation)—
- (a) in paragraph (2)—
 - (i) in the definition of “child”, after “child” there shall be inserted the words “subject to paragraph (3)(c)”;

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(ii) for the definition of “photograph” there shall be substituted the following definitions—

““indecent pseudo-photograph” includes—

- (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;

“photograph” includes—

- (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;

“pseudo-photograph” means an image, whether made by computer-graphics or otherwise howsoever, which appears to be a photograph;”;

(b) in paragraph (3)—

- (i) in sub-paragraph (a), after the word “photograph” there shall be inserted the words “or pseudo-photograph”;
- (ii) in sub-paragraph (b), at the end, there shall be inserted the words “and so as respects pseudo-photographs; and”;
- (iii) after sub-paragraph (b) there shall be inserted the following sub-paragraph—

“(c) if the impression conveyed by a pseudo-photograph is that the person shown is a child, the pseudo-photograph shall be treated 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.”.

(10) In Article 3 (which, for Northern Ireland, penalises the taking and distribution of indecent photographs of children and related acts)—

- (a) in sub-paragraph (a) of paragraph (1)—
 - (i) after the word “taken” there shall be inserted the words “or to make”;
 - (ii) after the word “photograph” there shall be inserted the words “or pseudo-photograph”;
- (b) in sub-paragraphs (b), (c) and (d) of paragraph (1), after the word “photographs” there shall be inserted the words “or pseudo-photographs”;
- (c) in sub-paragraphs (a) and (b) of paragraph (3), after the word “photographs” there shall be inserted the words “or pseudo-photographs”.

(11) Article 15 of the Criminal Justice (Evidence, etc.) (Northern Ireland) Order 1988 (which, for Northern Ireland, penalises the possession of indecent photographs of children) shall be amended as follows—

- (a) in paragraph (1), after the word “photograph” there shall be inserted the words “or pseudo-photograph” and the words from “(meaning” to “16)” shall be omitted;
- (b) in sub-paragraphs (a), (b) and (c) of paragraph (2), after the word “photograph” there shall be inserted the words “or pseudo-photograph”; and

- (c) in paragraph (6), the reference to the coming into operation of that Article shall be construed, for the purposes of the amendments made by this subsection, as a reference to the coming into force of this subsection.

85 Arrestable offences to include certain offences relating to obscenity or indecency

- (1) The Police and Criminal Evidence Act 1984 shall be amended as follows.
- (2) In section 24(2) (arrestable offences), after paragraph (e), there shall be inserted the following paragraphs—
- “(f) an offence under section 2 of the Obscene Publications Act 1959 (publication of obscene matter);
- (g) an offence under section 1 of the Protection of Children Act 1978 (indecent photographs and pseudo-photographs of children);”.
- (3) At the end of Part II of Schedule 5 (serious arrestable offences mentioned in section 116(2)(b)) there shall be inserted the following paragraphs—

“Protection of Children Act 1978 (c. 37.)

- 16 Section 1 (indecent photographs and pseudo-photographs of children).

Obscene Publications Act 1959 (c. 66.)

- 17 Section 2 (publication of obscene matter).”.

- (4) The Police and Criminal Evidence (Northern Ireland) Order 1989 shall be amended as provided in subsections (5) and (6) below.
- (5) In Article 26(2) (arrestable offences), after sub-paragraph (e), there shall be inserted the following sub-paragraph—
- “(f) an offence under Article 3 of the Protection of Children (Northern Ireland) Order 1978 (indecent photographs and pseudo-photographs of children).”.
- (6) At the end of Part II of Schedule 5 (serious arrestable offences mentioned in Article 87(2)(b)) there shall be inserted the following paragraph—

“Protection of Children (Northern Ireland) Order 1978 (1978 N.I.17)

- 13 Article 3 (indecent photographs and pseudo-photographs of children).”.

86 Indecent photographs of children: sentence of imprisonment

- (1) In section 160(3) of the Criminal Justice Act 1988 (which makes a person convicted of certain offences relating to indecent photographs of children liable to a fine not exceeding level 5 on the standard scale) there shall be inserted after the word “to” the words “imprisonment for a term not exceeding six months or” and at the end the words “, or both”.
- (2) In Article 15(3) of the Criminal Justice (Evidence, etc.) (Northern Ireland) Order 1988 (which makes a person convicted in Northern Ireland of certain offences relating to indecent photographs of children liable to a fine not exceeding level 5 on the standard

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scale) there shall be inserted after the word “to” the words “imprisonment for a term not exceeding 6 months or” and at the end the words “, or both”.

87 Publishing, displaying, selling or distributing etc. obscene material in Scotland: sentence of imprisonment

In section 51(3) of the Civic Government (Scotland) Act 1982 (which makes persons convicted in summary proceedings in Scotland of certain offences relating to obscene material liable, among other penalties, to imprisonment for a period not exceeding 3 months and persons convicted there on indictment of such offences liable, among other penalties, to imprisonment for a period not exceeding 2 years), for the words “3 months” there shall be substituted the words “6 months” and for the words “two years” there shall be substituted the words “3 years”.

Video recordings

88 Video recordings: increase in penalties

(1) The following provisions of the Video Recordings Act 1984 (which create offences for which section 15(1) and (3) prescribe maximum fines of, in the case of sections 9 and 10, £20,000 and, in the case of other offences, level 5) shall be amended as follows.

(2) In section 9 (supplying videos of unclassified work), after subsection (2), there shall be inserted the following subsection—

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

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both,
- (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding £20,000 or both.”.

(3) In section 10 (possessing videos of unclassified work for supply), after subsection (2), there shall be inserted the following subsection—

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

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both,
- (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding £20,000 or both.”.

(4) In section 11 (supplying videos in breach of classification), after subsection (2), there shall be inserted the following subsection—

“(3) A person guilty of an offence under this section shall be liable, on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both.”.

(5) In section 12 (supplying videos in places other than licensed sex shops), after subsection (4), there shall be inserted the following subsection—

“(4A) A person guilty of an offence under subsection (1) or (3) above shall be liable, on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both.”.

(6) In section 14 (supplying videos with false indication as to classification), after subsection (4), there shall be inserted the following subsection—

“(5) A person guilty of an offence under subsection (1) or (3) above shall be liable, on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both.”.

(7) The amendments made by this section shall not apply to offences committed before this section comes into force.

89 Video recordings: restriction of exemptions

(1) Section 2 of the Video Recordings Act 1984 (exempted works) shall be amended as follows.

(2) In subsection (1), after the words “subsection (2)” there shall be inserted the words “or (3)”.

(3) In subsection (2)—

(a) after paragraph (c), there shall be inserted the following paragraph—

“(d) techniques likely to be useful in the commission of offences;”;

(b) for the word “designed” (in both places) there shall be substituted the word “likely”

(4) After subsection (2), there shall be inserted the following subsection—

“(3) A video work is not an exempted work for those purposes if, to any significant extent, it depicts criminal activity which is likely to any significant extent to stimulate or encourage the commission of offences.”.

90 Video recordings: suitability

(1) After section 4 of the Video Recordings Act 1984 there shall be inserted the following sections—

“4A Criteria for suitability to which special regard to be had

(1) The designated authority shall, in making any determination as to the suitability of a video work, have special regard (among the other relevant factors) to any harm that may be caused to potential viewers or, through their behaviour, to society by the manner in which the work deals with—

- (a) criminal behaviour;
- (b) illegal drugs;
- (c) violent behaviour or incidents;
- (d) horrific behaviour or incidents; or
- (e) human sexual activity.

(2) For the purposes of this section—

“potential viewer” means any person (including a child or young person) who is likely to view the video work in question if a

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classification certificate or a classification certificate of a particular description were issued;

“suitability” means suitability for the issue of a classification certificate or suitability for the issue of a certificate of a particular description;

“violent behaviour” includes any act inflicting or likely to result in the infliction of injury;

and any behaviour or activity referred to in subsection (1)(a) to (e) above shall be taken to include behaviour or activity likely to stimulate or encourage it.

4B Review of determinations as to suitability

- (1) The Secretary of State may by order make provision enabling the designated authority to review any determination made by them, before the coming into force of section 4A of this Act, as to the suitability of a video work.
- (2) The order may in particular provide—
 - (a) for the authority’s power of review to be exercisable in relation to such determinations as the authority think fit;
 - (b) for the authority to determine, on any review, whether, if they were then determining the suitability of the video work to which the determination under review relates, they—
 - (i) would issue a classification certificate, or
 - (ii) would issue a different classification certificate;
 - (c) for the cancellation of a classification certificate, where they determine that they would not issue a classification certificate;
 - (d) for the cancellation of a classification certificate and issue of a new classification certificate, where they determine that they would issue a different classification certificate;
 - (e) for any such cancellation or issue not to take effect until the end of such period as may be determined in accordance with the order;
 - (f) for such persons as may appear to the authority to fall within a specified category of person to be notified of any such cancellation or issue in such manner as may be specified;
 - (g) for treating a classification certificate, in relation to any act or omission occurring after its cancellation, as if it had not been issued;
 - (h) for specified provisions of this Act to apply to determinations made on a review subject to such modifications (if any) as may be specified;
 - (i) for specified regulations made under section 8 of this Act to apply to a video work in respect of which a new classification certificate has been issued subject to such modifications (if any) as may be specified.
- (3) In subsection (2) above “specified” means specified by an order made under this section.
- (4) The Secretary of State shall not make any order under this section unless he is satisfied that adequate arrangements will be made for an appeal against determinations made by the designated authority on a review.
- (5) The power to make an order under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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(6) In this section “suitability” has the same meaning as in section 4A of this Act.”.

(2) In section 7(2) of the Video Recordings Act 1984 (contents of classification certificates), in paragraph (a), after the words “viewing by children”, there shall be inserted the words “or young children”.

91 Enforcement by enforcing authorities outside their areas

(1) The Video Recordings Act 1984 shall have effect with the following amendments.

(2) In section 16A (enforcement)—

(a) after subsection (1) there shall be inserted the following subsections—

“(1A) Subject to subsection (1B) below, the functions of a local weights and measures authority shall also include the investigation and prosecution outside their area of offences under this Act suspected to be linked to their area as well as the investigation outside their area of offences suspected to have been committed within it.

(1B) The functions available to an authority under subsection (1A) above shall not be exercisable in relation to any circumstances suspected to have arisen within the area of another local weights and measures authority without the consent of that authority.”;

(b) in subsection (4), for the words “Subsection (1)” there shall be substituted the words “Subsections (1) and (1A)”;

(c) after subsection (4), there shall be inserted the following subsection—

“(4A) For the purposes of subsections (1A), (1B) and (2) above—

(a) offences in another area are “linked” to the area of a local weights and measures authority if—

(i) the supply or possession of video recordings in contravention of this Act within their area is likely to be or to have been the result of the supply or possession of those recordings in the other area; or

(ii) the supply or possession of video recordings in contravention of this Act in the other area is likely to be or to have been the result of the supply or possession of those recordings in their area; and

(b) “investigation” includes the exercise of the powers conferred by sections 27 and 28 of the Trade Descriptions Act 1968 as applied by subsection (2) above;

and sections 29 and 33 of that Act shall apply accordingly.”.

(3) After section 16A there shall be inserted the following sections—

“16B Extension of jurisdiction of magistrates' courts in linked cases

(1) A justice of the peace for an area to which section 1 of the Magistrates' Courts Act 1980 applies may issue a summons or warrant under and in accordance with that section as respects an offence under this Act committed or suspected of having been committed outside the area for which he acts if it appears

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to the justice that the offence is linked to the supply or possession of video recordings within the area for which he acts.

- (2) Where a person charged with an offence under this Act appears or is brought before a magistrates' court in answer to a summons issued by virtue of subsection (1) above, or under a warrant issued under subsection (1) above, the court shall have jurisdiction to try the offence.
- (3) For the purposes of this section an offence is “linked” to the supply or possession of video recordings within the area for which a justice acts if—
 - (a) the supply or possession of video recordings within his area is likely to be or to have been the result of the offence; or
 - (b) the offence is likely to be or to have been the result of the supply or possession of video recordings in his area.

16C Extension of jurisdiction of sheriff in linked cases

- (1) Subsection (4) of section 287 of the Criminal Procedure (Scotland) Act 1975 (jurisdiction of sheriff as respects offences committed in more than one district) shall apply in respect of linked offences, whether or not alleged to have been committed by one and the same person, as that subsection applies in respect of offences alleged to have been committed by one person in more than one sheriff court district which, if committed in one of those districts, could be tried under one complaint.
- (2) For the purposes of subsection (1) above, offences are linked if, being offences under this Act, they comprise the supply or possession of video recordings each within a different sheriff court district but such supply or possession within the one district is likely to be, or to have been, the result of such supply or possession within the other.

16D Extension of jurisdiction of magistrates' courts in Northern Ireland in linked cases

- (1) Paragraph (2) of Article 16 of the Magistrates' Courts (Northern Ireland) Order 1981 (jurisdiction of magistrates' court as respects offences committed in another division) shall apply in respect of linked offences as that paragraph applies in respect of summary offences committed in other county court divisions.
- (2) For the purposes of subsection (1) above, an offence is a linked offence if the supply or possession of video recordings within one county court division is likely to be or to have been the result of the supply or possession of those recordings in another such division.”.

Obscene, offensive or annoying telephone calls

92 Obscene, offensive or annoying telephone calls: increase in penalty

- (1) In section 43(1) of the Telecommunications Act 1984 (which makes a person convicted of certain offences relating to improper use of public telecommunication systems liable to a fine not exceeding level 3 on the standard scale), for the words “a fine not exceeding level 3 on the standard scale” there shall be substituted the words

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“imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both”.

- (2) Subsection (1) above does not apply to an offence committed before this section comes into force.