



# Criminal Justice and Immigration Act 2008

## 2008 CHAPTER 4

### PART 5

#### CRIMINAL LAW

#### *Pornography etc.*

VALID FROM 26/01/2009

#### **63 Possession of extreme pornographic images**

- (1) It is an offence for a person to be in possession of an extreme pornographic image.
- (2) An “extreme pornographic image” is an image which is both—
  - (a) pornographic, and
  - (b) an extreme image.
- (3) An image is “pornographic” if it is of such a nature that it must reasonably be assumed to have been produced 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 whether the image is of such a nature as is mentioned in subsection (3) is to be determined by reference to—
  - (a) the image itself, and
  - (b) (if the series of images is such as to be capable of providing a context for the image) the context in which it occurs in 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

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- (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 produced 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 though it might have been found to be pornographic if taken by itself.
- (6) An “extreme image” is an image which—
- (a) falls within subsection (7), and
  - (b) is grossly offensive, disgusting or otherwise of an obscene character.
- (7) An image falls within this subsection if it portrays, in an explicit and realistic way, any of the following—
- (a) an act which threatens a person's life,
  - (b) an act which results, or is likely to result, in serious injury to a person's anus, breasts or genitals,
  - (c) an act which involves sexual interference with a human corpse, or
  - (d) a person performing an act of intercourse or oral sex with an animal (whether dead or alive),
- and a reasonable person looking at the image would think that any such person or animal was real.
- (8) In this section “image” means—
- (a) a moving or still image (produced by any means); or
  - (b) data (stored by any means) which is capable of conversion into an image within paragraph (a).
- (9) In this section references to a part of the body include references to a part surgically constructed (in particular through gender reassignment surgery).
- (10) Proceedings for an offence under this section may not be instituted—
- (a) in England and Wales, except by or with the consent of the Director of Public Prosecutions; or
  - (b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland.

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#### **64 Exclusion of classified films etc.**

- (1) Section 63 does not apply to excluded images.
- (2) An “excluded image” is an image which forms part of a series of images contained in a recording of the whole or part of a classified work.
- (3) But such an image is not an “excluded image” if—
  - (a) it is contained in a recording of an extract from a classified work, and
  - (b) it is of such a nature that it must reasonably be assumed to have been extracted (whether with or without other images) solely or principally for the purpose of sexual arousal.

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- (4) Where an extracted image is one of a series of images contained in the recording, the question whether the image is of such a nature as is mentioned in subsection (3)(b) is to be determined by reference to—
- (a) the image itself, and
  - (b) (if the series of images is such as to be capable of providing a context for the image) the context in which it occurs in the series of images;
- and section 63(5) applies in connection with determining that question as it applies in connection with determining whether an image is pornographic.
- (5) In determining for the purposes of this section whether a recording is a recording of the whole or part of a classified work, any alteration attributable to—
- (a) a defect caused for technical reasons or by inadvertence on the part of any person, or
  - (b) the inclusion in the recording of any extraneous material (such as advertisements),
- is to be disregarded.
- (6) Nothing in this section is to be taken as affecting any duty of a designated authority to have regard to section 63 (along with other enactments creating criminal offences) in determining whether a video work is suitable for a classification certificate to be issued in respect of it.
- (7) In this section—
- “classified work” means (subject to subsection (8)) a video work in respect of which a classification certificate has been issued by a designated authority (whether before or after the commencement of this section);
  - “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 consisting of a single image;
  - “image” and “pornographic” have the same meanings as in section 63;
  - “recording” means any disc, tape or other device capable of storing data electronically and from which images may be produced (by any means).
- (8) Section 22(3) of the Video Recordings Act 1984 (effect of alterations) applies for the purposes of this section as it applies for the purposes of that Act.

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## **65 Defences: general**

- (1) Where a person is charged with an offence under section 63, it is a defence for the person to prove any of the matters mentioned in subsection (2).
- (2) The matters are—
- (a) that the person had a legitimate reason for being in possession of the image concerned;

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- (b) that the person 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 the person—
    - (i) was sent the image concerned without any prior request having been made by or on behalf of the person, and
    - (ii) did not keep it for an unreasonable time.
- (3) In this section “extreme pornographic image” and “image” have the same meanings as in section 63.

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## **66 Defence: participation in consensual acts**

- (1) This section applies where—
  - (a) a person (“D”) is charged with an offence under section 63, and
  - (b) the offence relates to an image that portrays an act or acts within paragraphs (a) to (c) (but none within paragraph (d)) of subsection (7) of that section.
- (2) It is a defence for D to prove—
  - (a) that D directly participated in the act or any of the acts portrayed, and
  - (b) that the act or acts did not involve the infliction of any non-consensual harm on any person, and
  - (c) if the image portrays an act within section 63(7)(c), that what is portrayed as a human corpse was not in fact a corpse.
- (3) For the purposes of this section harm inflicted on a person is “non-consensual” harm if—
  - (a) the harm is of such a nature that the person cannot, in law, consent to it being inflicted on himself or herself; or
  - (b) where the person can, in law, consent to it being so inflicted, the person does not in fact consent to it being so inflicted.

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## **67 Penalties etc. for possession of extreme pornographic images**

- (1) This section has effect where a person is guilty of an offence under section 63.
- (2) Except where subsection (3) applies to the offence, the offender is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding the relevant period or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 3 years or a fine or both.
- (3) If the offence relates to an image that does not portray any act within section 63(7) (a) or (b), the offender is liable—

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- (a) on summary conviction, to imprisonment for a term not exceeding the relevant period or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine or both.
- (4) In subsection (2)(a) or (3)(a) “the relevant period” means—
- (a) in relation to England and Wales, 12 months;
  - (b) in relation to Northern Ireland, 6 months.

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## **68 Special rules relating to providers of information society services**

Schedule 14 makes special provision in connection with the operation of section 63 in relation to persons providing information society services within the meaning of that Schedule.

## **69 Indecent photographs of children: England and Wales**

- (1) The Protection of Children Act 1978 (c. 37) is amended as follows.
- (2) In section 1B(1)(b) (exception for members of the Security Service)—
  - (a) after “Security Service” insert “ or the Secret Intelligence Service ”;
  - (b) for “the Service” substitute “ that Service ”.
- (3) After section 7(4) (meaning of photograph), insert—

“(4A) References to a photograph also include—

  - (a) a tracing or other image, whether made by electronic or other means (of whatever nature)—
    - (i) which is not itself a photograph or pseudo-photograph, but
    - (ii) which is derived from the whole or part of a photograph or pseudo-photograph (or a combination of either or both); and
  - (b) data stored on a computer disc or by other electronic means which is capable of conversion into an image within paragraph (a);

and subsection (8) applies in relation to such an image as it applies in relation to a pseudo-photograph.”
- (4) In section 7(9)(b) (meaning of indecent pseudo-photograph), for “a pseudo-photograph” substitute “ an indecent pseudo-photograph ”.

## **70 Indecent photographs of children: Northern Ireland**

- (1) The Protection of Children (Northern Ireland) Order 1978 (S.I. 1978/1047 (N.I. 17)) is amended as follows.
- (2) In Article 2(2) (interpretation) in paragraph (b) of the definition of “indecent pseudo-photograph”, for “a pseudo-photograph” substitute “ an indecent pseudo-photograph ”.

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(3) After Article 2(2) insert—

“(2A) In this Order, references to a photograph also include—

- (a) a tracing or other image, whether made by electronic or other means (of whatever nature)—
  - (i) which is not itself a photograph or pseudo-photograph, but
  - (ii) which is derived from the whole or part of a photograph or pseudo-photograph (or a combination of either or both); and
- (b) data stored on a computer disc or by other electronic means which is capable of conversion into an image within paragraph (a);

and paragraph (3)(c) applies in relation to such an image as it applies in relation to a pseudo-photograph.”

(4) In article 3A(1)(b) (exception for members of the Security Service)—

- (a) after “Security Service” insert “ or the Secret Intelligence Service ”;
- (b) for “the Service” substitute “ that Service ”.

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**71 Maximum penalty for publication etc. of obscene articles**

In section 2(1)(b) of the Obscene Publications Act 1959 (c. 66) (maximum penalty on indictment for publication etc. of obscene articles) for “three years” substitute “ five years ”.

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