
STATUTORY INSTRUMENTS

1978 No. 1047 (N.I. 17)

Protection of Children (Northern Ireland) Order 1978

- - - - - [25th July 1978]

Title and commencement

1. This Order may be cited as the Protection of Children (Northern Ireland) Order 1978 ...
Commencement

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 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”^[F1] subject to paragraph (3)(c)] 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;

^[F1]“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;]

(3) For the purposes of this Order—

(a) a person is to be regarded as distributing an indecent photograph^[F1] or pseudo#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^[F1] and so as respects pseudo#photographs; and].

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[^{F1}(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.]

F1 1994 c. 33

Indecent photographs of children

3.—(1) Any person who—

- (a) takes, or permits to be taken[^{F2} or [^{F3} makes]], any indecent photograph[^{F2} or pseudo# photograph] of a child; or
- (b) distributes or shows such indecent photographs[^{F2} or pseudo#photographs]; or
- (c) has in his possession such indecent photographs[^{F2} or pseudo#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[^{F2} or pseudo# 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[^{F2} or pseudo# photographs] or (as the case may be) having them in his possession; or
- (b) that he had not himself seen the photographs[^{F2} or pseudo#photographs] and did not know, nor had any cause to suspect, that the photographs[^{F2} or pseudo#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[^{F4} ten] years or to both;
- (b) on summary conviction to a fine not exceeding[^{F5} level 5 on the standard scale] or to imprisonment for a term not exceeding six months or to both.

F2 1994 c. 33

F3 2003 NI 13

F4 2000 c. 43

F5 1984 NI 3

[^{F6}Exception for criminal proceedings, investigations etc.

3A.—(1) In proceedings for an offence under Article 3(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 Article "GCHQ" has the same meaning as in the Intelligence Services Act 1994.]

F6 2003 c. 42

VALID FROM 02/02/2009

Marriage and other relationships

[^{F7}3B.—(1) This Article applies where, in proceedings for an offence under Article 3(1)(a) of taking or making an indecent photograph of a child, or for an offence under Article 3(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—

- (a) were married or civil partners of each other, or
- (b) lived together as partners in an enduring family relationship.

(2) Paragraphs (5) and (6) also apply where, in proceedings for an offence under Article 3(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—

- (a) were married or civil partners of each other, or
- (b) lived together as partners in an enduring family relationship.

(3) This Article applies whether the photograph showed the child alone or with the defendant, but not if it showed any other person.

(4) In the case of an offence under Article 3(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 Article 3(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 Article 3(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.]

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F7 Art. 3B inserted (2.2.2009) by Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)), arts. 1(3), 42(5); S.R. 2008/510, art. 2

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 member of the Royal Ulster Constabulary if the justice is satisfied that there is reasonable ground to suspect—^{F8} that there is an indecent photograph^{F9} or pseudo#photograph] of a child in any premises in the petty sessions district for which he acts] 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^{F10}. . . , and to seize and remove any articles which he believes with reasonable cause to be or include indecent photographs^{F9} or pseudo#photographs] of children^{F8}. . . .

(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.

F8 1988 NI 17
F9 1994 c. 33
F10 1989 NI 12

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 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^{F11} or pseudo#photographs] of children,^{F12}. . . , 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^{F11} or pseudo#photographs] of children are seized under Article 4(1) and a person is convicted under Article 3(1)^{F12} or Article 15 of the Criminal Justice (Evidence, Etc.) (Northern Ireland) Order 1988] of offences in respect of those photographs^{F11} or pseudo#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.

F11 1994 c. 33

F12 1988 NI 17

^{F13}**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^{F14} or pseudo#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^{F15} Part XII of the Magistrates' Courts (Northern Ireland) Order 1981].

(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.

F13 Art. 5 substituted (1.4.2008) for arts. 5, 6 by [Police and Justice Act 2006 \(c. 48\)](#), **ss. 40(3)**, 53(1)(a) (with s. 40(6)(7)); S.I. 2008/790, **art. 3(a)**

F14 1994 c. 33

F15 1981 NI 26

Evidence

7.—(1) In proceedings under this Order^{F16} 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 sixteen.

Paras. (2)#(5) rep. by 1989 NI 12

F16 1994 c. 33

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.

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

Para.(1) amends sch. to 1952 c. 67

(2) [^{F17}References in the Children and Young Persons Act (Northern Ireland) 1968 (except in section 174) and the Criminal Justice (Children) (Northern Ireland) Order 1998] to the offences mentioned in Schedule 1 to that Act shall include an offence under Article 3(1)(a); and
Sub#para. (b) rep. by 1998 NI 9

F17 1998 NI 9

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