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STATUTORY INSTRUMENTS

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**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”<sup>[F1]</sup> 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;

<sup>[F1]</sup>“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<sup>[F1]</sup> 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<sup>[F1]</sup> and so as respects pseudo#photographs; and].

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[<sup>F1</sup>(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[<sup>F2</sup> or [<sup>F3</sup> makes]], any indecent photograph[<sup>F2</sup> or pseudo# photograph] of a child; or
- (b) distributes or shows such indecent photographs[<sup>F2</sup> or pseudo#photographs]; or
- (c) has in his possession such indecent photographs[<sup>F2</sup> 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[<sup>F2</sup> 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[<sup>F2</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>F2</sup> or pseudo#photographs] and did not know, nor had any cause to suspect, that the photographs[<sup>F2</sup> 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[<sup>F4</sup> ten] years or to both;
- (b) on summary conviction to a fine not exceeding[<sup>F5</sup> 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

### [<sup>F6</sup>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

[<sup>F7</sup>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—<sup>F8</sup> that there is an indecent photograph<sup>F9</sup> 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<sup>F10</sup>. . . , and to seize and remove any articles which he believes with reasonable cause to be or include indecent photographs<sup>F9</sup> or pseudo#photographs] of children<sup>F8</sup>. . . .

<sup>F11</sup>(2) In this Article “premises” has the same meaning as in the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (see Article 25 of that Order).]

**F8** 1988 NI 17

**F9** 1994 c. 33

**F10** 1989 NI 12

**F11** Art. 4(2) substituted (1.4.2008) by Police and Justice Act 2006 (c. 48), **ss. 40(2)**, 53(1)(a) (with s. 40(5)); S.I. 2008/790, **art. 3(a)**

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

**C1** Art. 4 applied (6.4.2010) by Coroners and Justice Act 2009 (c. 25), **ss. 67(2)(a)**, 182(5) (with s. 180); S.I. 2010/816, **art. 2**, Sch. para. 1

### <sup>F12</sup>Forfeiture

5. The Schedule to this Order makes provision about the forfeiture of indecent photographs and pseudo-photographs.]

**F12** 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)**

### Evidence

7.—(1) In proceedings under this Order<sup>F16</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 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

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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.

### **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) [<sup>F17</sup>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*

<b>F17</b> 1998 NI 9
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## [F18] SCHEDULE

### Forfeiture of indecent photographs of children

**F18** Sch. inserted (1.4.2008) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 40(4), 53(1)(a), [Sch. 12](#) (with s. 40(6) (7)); S.I. 2008/790, [art. 3\(a\)](#)

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

**C2** Sch. applied (6.4.2010) by [Coroners and Justice Act 2009 \(c. 25\)](#), ss. 67(2)(b), 182(5) (with s. 180, Sch. 22 para. 12(2)); S.I. 2010/816, [art. 2](#), Sch. para. 1

#### *Application of Schedule*

- 1.—(1) This Schedule applies where—
- (a) property which has been lawfully seized in Northern Ireland is in the custody of a constable,
  - (b) ignoring this Schedule, there is no legitimate reason for the constable to retain custody of the property,
  - (c) the constable is satisfied that there are reasonable grounds for believing that the property is or is likely to be forfeitable property, and
  - (d) ignoring this Schedule, the constable is not aware of any person who has a legitimate reason for possessing the property or any readily separable part of it.
- (2) The following property is “forfeitable property”—
- (a) any indecent photograph or pseudo-photograph of a child;
  - (b) any property which it is not reasonably practicable to separate from any property within paragraph (a).
- (3) For the purposes of this paragraph—
- (a) a part of any property is a “readily separable part” of the property if, in all the circumstances, it is reasonably practicable for it to be separated from the remainder of that property, and
  - (b) it is reasonably practicable for a part of any property to be separated from the remainder if it is reasonably practicable to separate it without prejudicing the remainder of the property or another part of it.
- (4) The circumstances mentioned in sub-paragraph (3)(a) include the time and costs involved in separating the property.

#### *Possession pending forfeiture*

- 2.—(1) The property must be retained in the custody of a constable until it is returned or otherwise disposed of in accordance with this Schedule.
- (2) Nothing in section 31 of the Police (Northern Ireland) Act 1998 (property coming into the possession of the police) applies to property held under this Schedule.

#### *The relevant officer*

- 3 “The relevant officer”, in relation to any property, is the constable who for the time being has custody of the property.

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### *Notice of intended forfeiture*

4.—(1) The relevant officer must give notice of the intended forfeiture of the property (“notice of intended forfeiture”) to—

- (a) every person whom he believes to have been the owner of the property, or one of its owners, at the time of the seizure of the property,
- (b) where the property was seized from premises, every person whom the relevant officer believes to have been an occupier of the premises at that time, and
- (c) where the property was seized as a result of a search of any person, that person.

(2) The notice of intended forfeiture must set out—

- (a) a description of the property, and
- (b) how a person may give a notice of claim under this Schedule and the period within which such a notice must be given.

(3) The notice of intended forfeiture may be given to a person only by—

- (a) delivering it to him personally,
- (b) addressing it to him and leaving it for him at the appropriate address, or
- (c) addressing it to him and sending it to him at that address by post.

(4) But a notice given in accordance with sub-paragraph (1)(b) may, where it is not practicable to give the notice in accordance with sub-paragraph (3), be given by—

- (a) addressing it to “the occupier” of those premises, without naming him, and
- (b) leaving it for him at those premises or sending it to him at those premises by post.

(5) Property may be treated or condemned as forfeited under this Schedule only if—

- (a) the requirements of this paragraph have been complied with in the case of the property, or
- (b) it was not reasonably practicable for them to be complied with.

(6) In this paragraph “the appropriate address”, in relation to a person, means—

- (a) in the case of a body corporate, its registered or principal office in the United Kingdom;
- (b) in the case of a firm, the principal office of the partnership;
- (c) in the case of an unincorporated body or association, the principal office of the body or association;
- (d) in any other case, his usual or last known place of residence in the United Kingdom or his last known place of business in the United Kingdom.

(7) In the case of—

- (a) a company registered outside the United Kingdom,
- (b) a firm carrying on business outside the United Kingdom, or
- (c) an unincorporated body or association with offices outside the United Kingdom,

the references in this paragraph to its principal office include references to its principal office within the United Kingdom (if any).

### *Notice of claim*

5.—(1) A person claiming that he has a legitimate reason for possessing the property or a part of it may give notice of his claim to a constable at any police station in Northern Ireland.

(2) Oral notice is not sufficient for these purposes.

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- 6.—(1) A notice of claim may not be given more than one month after—
- (a) the date of the giving of the notice of intended forfeiture, or
  - (b) if no such notice has been given, the date on which the property began to be retained under this Schedule (see paragraph 2).
- (2) A notice of claim must specify—
- (a) the name and address of the claimant;
  - (b) a description of the property, or part of it, in respect of which the claim is made;
  - (c) in the case of a claimant who is outside the United Kingdom, the name and address of a solicitor in the United Kingdom who is authorised to accept service, and to act, on behalf of the claimant.
- (3) Service upon a solicitor so specified is to be taken to be service on the claimant for the purposes of any proceedings by virtue of this Schedule.
- (4) In a case in which notice of intended forfeiture was given to different persons on different days, the reference in this paragraph to the day on which that notice was given is a reference—
- (a) in relation to a person to whom notice of intended forfeiture was given, to the day on which that notice was given to that person, and
  - (b) in relation to any other person, to the day on which notice of intended forfeiture was given to the last person to be given such a notice.

*Automatic forfeiture in a case where no claim is made*

- 7.—(1) If the property is unclaimed it is treated as forfeited.
- (2) The property is “unclaimed” if, by the end of the period for the giving of a notice of claim—
- (a) no such notice has been given in relation to it or any part of it, or
  - (b) the requirements of paragraphs 5 and 6 have not been complied with in relation to the only notice or notices of claim that have been given.
- (3) Sub-paragraph (1) applies in relation to a readily separable part of the property as it applies in relation to the property, and for this purpose sub-paragraph (2) applies as if references to the property were to the part.
- (4) In this paragraph “readily separable part” has the meaning given by paragraph 1.

*Decision whether to take court proceedings to condemn property as forfeited*

- 8.—(1) Where a notice of claim in respect of the property, or a part of it, is duly given in accordance with paragraphs 5 and 6, the relevant officer must decide whether to take proceedings to ask the court to condemn the property or a part of it as forfeited.
- (2) The decision whether to take such proceedings must be made as soon as reasonably practicable after the giving of the notice of claim.

*Return of property if no forfeiture proceedings*

- 9.—(1) This paragraph applies if, in a case in which a notice of claim has been given, the relevant officer decides—
- (a) not to take proceedings for condemnation of the property, or
  - (b) not to take proceedings for condemnation of a part of the property.

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(2) The relevant officer must return the property or part to the person who appears to him to have a legitimate reason for possessing the property or, if there is more than one such person, to one of those persons.

(3) Any property required to be returned in accordance with sub-paragraph (2) must be returned as soon as reasonably practicable after the decision not to take proceedings for condemnation.

#### *Forfeiture proceedings*

**10.**—(1) This paragraph applies if, in a case in which a notice of claim has been given, the relevant officer decides to take proceedings for condemnation of the property or a part of it (“the relevant property”).

(2) The court must condemn the relevant property if it is satisfied—

- (a) that the relevant property is forfeitable property, and
- (b) that no-one who has given a notice of claim has a legitimate reason for possessing the relevant property.

This is subject to sub-paragraphs (5) and (7).

(3) If the court is not satisfied that the relevant property is forfeitable property, the court must order its return to the person who appears to the court to have a legitimate reason for possessing it or, if there is more than one such person, to one of those persons.

(4) If the court is satisfied—

- (a) that the relevant property is forfeitable property, and
- (b) that a person who has given a notice of claim has a legitimate reason for possessing the relevant property, or that more than one such person has such a reason,

the court must order the return of the relevant property to that person or, as the case may be, to one of those persons.

(5) Where the court is satisfied that any part of the relevant property is a separable part, sub-paragraphs (2) to (4) apply separately in relation to each separable part of the relevant property as if references to the relevant property were references to the separable part.

(6) For this purpose a part of any property is a “separable part” of the property if—

- (a) it can be separated from the remainder of that property, and
- (b) where a person has a legitimate reason for possessing the remainder of that property or any part of it, the separation will not prejudice the remainder or part.

(7) Where the court is satisfied—

- (a) that a person who has given a notice of claim has a legitimate reason for possessing part of the relevant property, and
- (b) that, although the part is not a separable part within the meaning given by sub-paragraph (6), it can be separated from the remainder of the relevant property,

the court may order the return of that part to that person.

(8) Sub-paragraph (7) does not apply to any property required to be returned to a person under sub-paragraph (4).

#### *Supplementary orders*

**11.**—(1) Where the court condemns property under paragraph 10(2)—

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- (a) it may order the relevant officer to take such steps in relation to the property or any part of it as it thinks appropriate, and
  - (b) where it orders a step to be taken, it may make that order conditional on specified costs relating to the taking of that step being paid by a specified person within a specified period.
- (2) A court order under paragraph 10(3), (4), (5) or (7) requiring the return of a part of the relevant property to a person may be made conditional on specified costs relating to the separation of the part from the remainder of the relevant property being paid by that person within a specified period.
- (3) Where the court makes an order under paragraph 10(7) for the return of a part of the relevant property—
- (a) it may order the relevant officer to take such steps as it thinks appropriate in relation to any property which will be prejudiced by the separation of that part, and
  - (b) where it orders a step to be taken, it may make that order conditional on specified costs relating to the taking of that step being paid by a specified person within a specified period.
- (4) For the purposes of this paragraph “specified” means specified in, or determined in accordance with, the court order.

#### *Supplementary provision about forfeiture proceedings*

**12** Proceedings by virtue of this Schedule are civil proceedings and may be instituted in a court of summary jurisdiction for the petty sessions district in which the property to which the proceedings relate was seized.

**13.**—(1) Either party may appeal against the decision of that court to a county court.

(2) This paragraph does not affect any right to require the statement of a case for the opinion of the Court of Appeal.

**14** Where an appeal has been made (whether by case stated or otherwise) against the decision of the court of summary jurisdiction in proceedings by virtue of this Schedule in relation to property, the property is to be left in the custody of a constable pending the final determination of the matter.

#### *Effect of forfeiture*

**15** Where property is treated or condemned as forfeited under this Schedule the forfeiture is to be treated as having taken effect as from the time of the seizure.

#### *Disposal of property which is not returned*

**16.**—(1) This paragraph applies where any property is required to be returned to a person under this Schedule.

(2) If—

- (a) the property is (without having been returned) still in the custody of the relevant officer after the end of the period of 12 months beginning with the day on which the requirement to return it arose, and
- (b) it is not practicable to dispose of it by returning it immediately to the person to whom it is required to be returned,

the relevant officer may dispose of it in any manner he thinks fit.

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**17.—**(1) This paragraph applies where any property would be required to be returned to a person under this Schedule but for a failure to satisfy a condition imposed by virtue of paragraph 11(2) (return of property conditional on payment of costs within specified period).

(2) The relevant officer may dispose of the property in any manner he thinks fit.

*Provisions as to proof*

**18** In proceedings under this Schedule, the fact, form and manner of the seizure are to be taken, without further evidence and unless the contrary is shown, to have been as set forth in the process.

**19** In proceedings, the condemnation by a court of property as forfeited under this Schedule may be proved by the production of either—

- (a) the order of condemnation, or
- (b) a certified copy of the order purporting to be signed by an officer of the court by which the order was made or granted.

*Saving for owner's rights*

**20** Neither the imposition of a requirement by virtue of this Schedule to return property to a person nor the return of it to a person in accordance with such a requirement affects—

- (a) the rights in relation to that property, or any part of it, of any other person, or
- (b) the right of any other person to enforce his rights against the person to whom it is returned.

*Interpretation*

**21** In this Schedule—

“the court” is to be construed in accordance with paragraph 12;

“forfeitable property” is to be construed in accordance with paragraph 1(2);

“premises” has the same meaning as in the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (see Article 25 of that Order); and

“the relevant officer” is to be construed in accordance with paragraph 3.]

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