
STATUTORY INSTRUMENTS

1978 No. 1047

Protection of Children (Northern Ireland) Order 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 [^{F2}eighteen];

“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 [^{F3}an indecent 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;]

[^{F4}(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.]

(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].
- ^[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
F2	Art. 2(2): word in the definition of "child" substituted (2.2.2009) by Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)) , arts. 1(3), 42(2) ; S.R. 2008/510, art. 2
F3	Art. 2(2): words in the definition of "indecent pseudo-photograph" substituted (8.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4) , ss. 70(2) , 153(2)(c)
F4	Art. 2(2A) inserted (8.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4) , ss. 70(3) , 153(2)(c) (with Sch. 27 para. 24(2))

Indecent photographs of children

- 3.—(1) ^[F5]Subject to Articles 3A and 3B] any person who—
- (a) takes, or permits to be taken^[F6] or^[F7] makes]], any indecent photograph^[F6] or pseudo#photograph] of a child; or
 - (b) distributes or shows such indecent photographs^[F6] or pseudo#photographs]; or
 - (c) has in his possession such indecent photographs^[F6] 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^[F6] 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^[F6] or pseudo#photographs] or (as the case may be) having them in his possession; or
 - (b) that he had not himself seen the photographs^[F6] or pseudo#photographs] and did not know, nor had any cause to suspect, that the photographs^[F6] 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^[F8] ten] years or to both;
 - (b) on summary conviction to a fine not exceeding^[F9] level 5 on the standard scale] or to imprisonment for a term not exceeding six months or to both.

- F5** Words in art. 3(1) inserted (2.2.2009) by Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)), arts. 1(3), **42(4)**; S.R. 2008/510, **art. 2**
- F6** 1994 c. 33
- F7** 2003 NI 13
- F8** 2000 c. 43
- F9** 1984 NI 3

[^{F10}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 [^{F11}the defendant] proves that—

- (a) it was necessary for [^{F12}the defendant] 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 [^{F11}the defendant] was a member of the Security Service [^{F13}or the Secret Intelligence Service], and it was necessary for [^{F12}the defendant] to make the photograph or pseudo-photograph for the exercise of any of the functions of [^{F14}that Service], ^{F15}...
- (c) at the time of the offence charged [^{F11}the defendant] was a member of GCHQ, and it was necessary for [^{F12}the defendant] to make the photograph or pseudo-photograph for the exercise of any of the functions of GCHQ [^{F16}, or
- (d) the defendant—
 - (i) was at the time of the offence charged a member of OFCOM, employed or engaged by OFCOM, or assisting OFCOM in the exercise of any of their online safety functions (within the meaning of section 235 of the Online Safety Act 2023), and
 - (ii) made the photograph or pseudo-photograph for the purposes of OFCOM’s exercise of any of those functions.]

(2) In this Article "GCHQ" has the same meaning as in the Intelligence Services Act 1994.

[
^{F17}(3) In this Article “OFCOM” means the Office of Communications.]]

- F10** 2003 c. 42
- F11** Words in art. 3A(1) substituted (26.10.2023) by Online Safety Act 2023 (c. 50), **ss. 214(8)(a)**, 240(4)
- F12** Words in art. 3A(1) substituted (26.10.2023) by Online Safety Act 2023 (c. 50), **ss. 214(8)(b)**, 240(4)
- F13** Words in art. 3A(1)(b) inserted (8.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), **ss. 70(4)(a)**, 153(2)(c)
- F14** Words in art. 3A(1)(b) substituted (8.7.2008) by Criminal Justice and Immigration Act 2008 (c. 4), **ss. 70(4)(b)**, 153(2)(c)
- F15** Word in art. 3A(1)(b) omitted (26.10.2023) by virtue of Online Safety Act 2023 (c. 50), **ss. 214(8)(c)**, 240(4)
- F16** Art. 3A(1)(d) and word inserted (26.10.2023) by Online Safety Act 2023 (c. 50), **ss. 214(8)(d)**, 240(4)
- F17** Art. 3A(3) inserted (26.10.2023) by Online Safety Act 2023 (c. 50), **ss. 214(9)**, 240(4)

^{F18}Marriage and other relationships

3B.—(1) This Article applies where, in proceedings for an offence under Article 3(1)(a) of taking or making an indecent photograph [^{F19}or pseudo-photograph] of a child, or for an offence under Article 3(1)(b) or (c) relating to an indecent photograph [^{F19}or pseudo-photograph] of a child, the defendant proves that the photograph [^{F19}or pseudo-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 [^{F19}or pseudo-photograph] of a child, the defendant proves that the photograph [^{F19}or pseudo-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 [^{F19}or pseudo-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 [^{F19}or pseudo-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 [^{F19}or pseudo-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 [^{F19}or pseudo-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 [^{F19}or pseudo-photograph] in his possession with a view to its being distributed or shown to a person other than the child.]

F18 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**

F19 Words in art. 3B inserted (6.4.2010) by *Coroners and Justice Act 2009* (c. 25), **ss. 69(4)**, 182(5) (with s. 180); S.I. 2010/816, **art. 2**, Sch. para. 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—^{F20} that there is an indecent photograph^{F21} or pseudo-photograph] of a child in any premises ^{F22}...] 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^{F23} . . . , and to seize and remove any articles which he believes with reasonable cause to be or include indecent photographs^{F21} or pseudo#photographs] of children^{F20}

[^{F24}(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).]

F20	1988 NI 17
F21	1994 c. 33
F22	Words in art. 4(1) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 77(1), Sch. 9 Pt. 1 (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)
F23	1989 NI 12
F24	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
C2	Art. 4 applied (3.5.2015) by Serious Crime Act 2015 (c. 9), ss. 69(6)(a) , 88(1); S.I. 2015/820, reg. 2(m)

[^{F25}Forfeiture

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

F25	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)
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Evidence

7.—(1) In proceedings under this Order^{F29} 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 [^{F30}eighteen].

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

F29	1994 c. 33
F30	Word in art. 7(1) substituted (2.2.2009) by Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)), arts. 1(3), 42(3) ; S.R. 2008/510, art. 2

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.

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) [^{F31}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

F31 1998 NI 9

Changes to legislation:

There are currently no known outstanding effects for the Protection of Children (Northern Ireland) Order 1978.