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STATUTORY INSTRUMENTS

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**2008 No. 1769**

**The Sexual Offences (Northern Ireland) Order 2008**

**PART 3**

**SEXUAL OFFENCES AGAINST CHILDREN**

*Indecent photographs of children under 18*

**Indecent photographs of persons aged 16 or 17**

**42.**—(1) The Protection of Children (Northern Ireland) Order 1978 (NI 17) (which makes provision about indecent photographs of persons under 16) is amended as follows.

(2) In Article 2(2) (interpretation), in the definition of “child”, for “sixteen” substitute “eighteen”.

(3) In Article 7(1) (evidence of person being a child at a material time) for “sixteen” substitute “eighteen”.

(4) In Article 3(1) (offences relating to indecent photographs of children) at the beginning insert “Subject to Articles 3A and 3B”.

(5) After Article 3A insert—

**“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 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.”

(6) The Criminal Justice (Evidence, Etc.) (Northern Ireland) Order 1988 (NI 17) (possession of indecent photograph of child) is amended as follows.

(7) In Article 15(1), at the beginning insert “ Subject to Article 15A ”.

(8) After Article 15 insert—

**“Marriage and other relationships**

**15A.**—(1) This Article applies where, in proceedings for an offence under Article 15(1) 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) This Article also applies where, in proceedings for an offence under Article 15(1) 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) If sufficient evidence is adduced to raise an issue 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, 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.”

**Changes to legislation:**

There are currently no known outstanding effects for the The Sexual Offences (Northern Ireland) Order 2008, Section 42.