



Criminal Justice and Immigration Act 2008

2008 CHAPTER 4

PART 5

CRIMINAL LAW

Pornography etc.

66 Defence: participation in consensual acts

[^{F1}(A1) Subsection (A2) applies where in England and Wales—

- (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 subsection (7) (a) to (c) or (7A) of that section (but does not portray an act within subsection (7)(d) of that section).

(A2) 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, and
- (d) if the image portrays an act within section 63(7A), that what is portrayed as non-consensual penetration was in fact consensual.]

(1) [^{F2}Subsection (2)] applies where [^{F3}in Northern Ireland] —

- (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 [^{F4}within subsection (7)(a) to (c) or (7A) of that section (but does not portray an act within subsection (7)(d) of that section).]

(2) It is a defence for D to prove—

Changes to legislation: Criminal Justice and Immigration Act 2008, Section 66 is up to date with all changes known to be in force on or before 28 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

- (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^{F5}; and
 - (d) if the image portrays an act within section 63(7A), that what is portrayed as non-consensual penetration was in fact consensual.]
- (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.

Textual Amendments

- F1** S. 66(A1)(A2) inserted (13.4.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), **ss. 37(3)(a)**, 95(1); [S.I. 2015/778](#), **art. 3**, **Sch. 1 para. 31** (with **Sch. 2 para. 1**)
- F2** Words in s. 66(1) substituted (13.4.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), **ss. 37(3)(b)(i)**, 95(1); [S.I. 2015/778](#), **art. 3**, **Sch. 1 para. 31** (with **Sch. 2 para. 1**)
- F3** Words in s. 66(1) inserted (13.4.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), **ss. 37(3)(b)(ii)**, 95(1); [S.I. 2015/778](#), **art. 3**, **Sch. 1 para. 31** (with **Sch. 2 para. 1**)
- F4** Words in s. 66(1)(b) substituted (N.I.) (13.5.2016) by [Justice Act \(NorthernIreland\) 2016 \(c. 21\)](#), **ss. 50(3)(a)**, 61(1)
- F5** S. 66(2)(d) and preceding word inserted (N.I.) (13.5.2016) by [Justice Act \(NorthernIreland\) 2016 \(c. 21\)](#), **ss. 50(3)(b)**, 61(1)

Commencement Information

- I1** S. 66 in force at 26.1.2009 by [S.I. 2008/2993](#), **art. 2(2)(d)**

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 7 para. 5A and cross-heading inserted by [2008 c. 25 Sch. 1 para. 90\(3\)](#)