Changes to legislation: *Protection of Children (Northern Ireland) Order 1978 is up to date with all changes known to be in force on or before 24 July 2019. 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*

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 **[**[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) **[**F5Subject 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 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 **[**F11or the Secret Intelligence Service**]**, and it was necessary for him to make the photograph or pseudo-photograph for the exercise of any of the functions of **[**F12that 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.**]**

F10 2003 c. 42
F11 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)
F12 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)

[F13**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 **[**F14or pseudo-photograph**]** of a child, or for an offence under Article 3(1)(b) or (c) relating to an indecent photograph **[**F14or pseudo-photograph**]** of a child, the defendant proves that the photograph **[**F14or 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 **[**F14or pseudo-photograph**]** of a child, the defendant proves that the photograph **[**F14or 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 **[**F14or 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 **[**F14or 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 **[**F14or 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 **[**F14or 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 **[**F14or pseudo-photograph**]** in his possession with a view to its being distributed or shown to a person other than the child.**]**

F13 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**

F14 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—**[**F15 that there is an indecent photograph**[**F16 or pseudo#photograph**]** of a child in any premises F17...**]** 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 premisesF18. . . , and to seize and remove any articles which he believes with reasonable cause to be or include indecent photographs**[**F16 or pseudo#photographs**]** of childrenF15. . . .

[F19(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).**]**

F15 1988 NI 17

F16 1994 c. 33

F17 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)

F18 1989 NI 12

F19 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)

[F20Forfeiture

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

F20 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[F24 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 [F25eighteen].
Paras. (2)#(5) rep. by 1989 NI 12

F24 1994 c. 33

F25 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) [F26References 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

F26 1998 NI 9