



# Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005

2005 asp 9

## *Indecent images of children*

### **16 Indecent photographs of 16 and 17 year olds**

- (1) The Civic Government (Scotland) Act 1982 (c. 45) is amended as follows.
- (2) In section 52 (which makes certain conduct in relation to indecent photographs of persons under 16 an offence), in subsection (2), for “16” in both places where it occurs there is substituted “18”.
- (3) After section 52A (which makes possession of indecent photographs of persons under 16 an offence) there is inserted—

#### **“52B Sections 52 and 52A: exceptions for photographs of 16 and 17 year olds**

- (1) If subsection (2) below applies, the accused is not guilty of an offence under section 52(1)(a) of this Act of taking or making an indecent photograph of a child.
- (2) This subsection applies if—
  - (a) either—
    - (i) the photograph was of the child aged 16 or over; or
    - (ii) the accused reasonably believed that to be so;
  - (b) at the time of the offence charged or at the time when the accused obtained the photograph, the accused and the child were—
    - (i) married to or civil partners of each other; or
    - (ii) partners in an established relationship; and
  - (c) either—
    - (i) the child consented to the photograph being taken or made; or
    - (ii) the accused reasonably believed that to be so.

- (3) If subsection (4) below applies, the accused is not guilty of an offence under section 52(1)(b) of this Act relating to an indecent photograph of a child.
- (4) This subsection applies if—
- (a) either—
    - (i) the photograph was of the child aged 16 or over; or
    - (ii) the accused reasonably believed that to be so;
  - (b) at the time of the offence charged or at the time when the accused obtained the photograph, the accused and the child were—
    - (i) married to or civil partners of each other; or
    - (ii) partners in an established relationship;
  - (c) either—
    - (i) the child consented to the photograph's being taken or made; or
    - (ii) the accused reasonably believed that to be so; and
  - (d) the showing or distributing of the photograph was only to the child.
- (5) If subsection (6) below applies, the accused is not guilty of an offence under section 52(1)(c) of this Act relating to an indecent photograph of a child.
- (6) This subsection applies if—
- (a) either—
    - (i) the photograph was of the child aged 16 or over; or
    - (ii) the accused reasonably believed that to be so;
  - (b) at the time of the offence charged or at the time when the accused obtained the photograph, the accused and the child were—
    - (i) married to or civil partners of each other; or
    - (ii) partners in an established relationship;
  - (c) either—
    - (i) the child consented to the photograph's being in the accused's possession; or
    - (ii) the accused reasonably believed that to be so; and
  - (d) the accused had the photograph in his possession with a view to its being distributed or shown only to the child.
- (7) If subsection (8) below applies, the accused is not guilty of an offence under section 52A of this Act relating to an indecent photograph of a child.
- (8) This subsection applies if—
- (a) either—
    - (i) the photograph was of the child aged 16 or over; or
    - (ii) the accused reasonably believed that to be so;
  - (b) at the time of the offence charged or at the time when the accused obtained the photograph, the accused and the child were—
    - (i) married to or civil partners of each other; or
    - (ii) partners in an established relationship; and
  - (c) either—
    - (i) the child consented to the photograph's being in the accused's possession; or

(ii) the accused reasonably believed that to be so.

(9) Subsections (2), (4), (6) and (8) above apply whether the photograph showed the child alone or with the accused, but not if it showed any other person.

**52C Section 52B: proof of exceptions**

(1) This section applies for the purpose of determining whether a matter within a paragraph of section 52B(2), (4), (6) or (8) of this Act is the case.

(2) If sufficient evidence is adduced to raise an issue as to whether the matter is the case, it shall be held to be the case, except where subsection (3) below applies.

(3) This subsection applies where the prosecution proves beyond reasonable doubt that the matter is not the case.

(4) Otherwise, the matter shall be held not to be the case.”.