



# Civic Government (Scotland) Act 1982

## 1982 CHAPTER 45

### PART IV

#### OFFENCES, POWERS OF CONSTABLES, ETC.

##### *Offences of annoying, offensive, obstructive or dangerous behaviour*

#### **52 Indecent photographs etc. of children.**

(1) Any person who—

- (a) takes, or permits to be taken [<sup>F1</sup>or makes], any indecent photograph [<sup>F2</sup>or pseudo-photograph of a child]
- (b) distributes or shows such an indecent photograph [<sup>F3</sup>or pseudo-photograph];
- (c) has in his possession such an indecent photograph [<sup>F3</sup>or pseudo-photograph] with a view to its 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 an indecent photograph [<sup>F3</sup>or pseudo-photograph], or intends to do so

shall be guilty of an offence under this section.

(2) [<sup>F4</sup>In subsection (1) above “child” means, subject to subsection (2B) below, a person under the age of [<sup>F5</sup>18]; and] in proceedings under this section 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 [<sup>F5</sup>18].

[<sup>F6</sup>(2A) In this section, “pseudo-photograph” means an image, whether produced by computer-graphics or otherwise howsoever, which appears to be a photograph.

(2B) If the impression conveyed by a pseudo-photograph is that the person shown is a child, the pseudo-photograph shall be treated for all purposes of this Act 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.

*Status: Point in time view as at 13/12/2010. This version of this provision has been superseded.*

*Changes to legislation: Civic Government (Scotland) Act 1982, Section 52 is up to date with all changes known to be in force on or before 10 June 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)*

- (2C) In this section, references to an indecent pseudo-photograph include—
  - (a) a copy of an indecent pseudo-photograph;
  - (b) data stored on a computer disc or by other electronic means which is capable of conversion into [<sup>F7</sup>an indecent pseudo-photograph] .]
- (3) A person guilty of an offence under this section shall be liable—
  - (a) on summary conviction, to imprisonment for a period not exceeding [<sup>F8</sup>6 months] or to a fine not exceeding the prescribed sum within the meaning of [<sup>F9</sup>section 225(8) of the Criminal Procedure (Scotland) Act 1995] (at the passing of this Act £1,000) or to both;
  - (b) on conviction on indictment, to imprisonment for a period not exceeding [<sup>F10</sup>[<sup>F11</sup>10 years]] or to a fine or to both.
- (4) For the purposes of this section, a person is to be regarded as distributing an indecent photograph [<sup>F12</sup> or pseudo-photograph] if he parts with possession of it to, or exposes or offers it for acquisition by, another person.
- (5) Where a person is charged with an offence under subsection (1)(b) or (c) above, it shall be a defence for him to prove—
  - (a) that he had a legitimate reason for distributing or showing the photograph [<sup>F12</sup> or pseudo-photograph] or (as the case may be) having it in his possession; or
  - (b) that he had not himself seen the photograph [<sup>F12</sup> or pseudo-photograph] and did not know, nor had any cause to suspect, it to be indecent.
- (6) In paragraph 2 of the Schedule to the <sup>M1</sup> Visiting Forces Act 1952 (offences against the person in the case of which a member of a visiting force is in certain circumstances not liable to be tried by a United Kingdom court) the word “ and” immediately preceding sub-paragraph (b)(iii) shall be omitted and after the said sub-paragraph (b)(iii) there shall be added—
 

“(iv) section 52(1)(a) of the Civic Government (Scotland) Act 1982.”
- <sup>F13</sup>(7) .....
- (8) In this section—
  - (a) references to an indecent photograph include an indecent film, a copy of an indecent photograph or film and an indecent photograph comprised in a film;
  - (b) a photograph (including one comprised in a film) shall, if it shows a child and is indecent, be treated for all purposes of this section as an indecent photograph of a child;
  - [<sup>F14</sup>(c) references to a photograph include—
    - (i) the negative as well as the positive version; and
    - (ii) data stored on a computer disc or by other electronic means which is capable of conversion into a photograph.]
    - (d) “film” includes any form of video-recording.
- [<sup>F15</sup>(9) In this section, references to a photograph also include a tracing or other image, whether made by electronic or other means (of whatever nature), which is not itself a photograph or pseudo-photograph but which is derived from the whole or part of a photograph or pseudo-photograph (or a combination of either or both).
- (10) And subsection (2B) applies in relation to such an image as it applies in relation to a pseudo-photograph.]

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### Textual Amendments

- F1** Words in s. 52(1)(a) inserted (3.2.1995) by 1994 c. 33, s. 84(6)(a)(i) (with Sch. 9 para. 17)
- F2** Words in s. 52(1)(a) substituted (3.2.1995) by 1994 c. 33, s. 84(6)(a)(ii) (with Sch. 9 para. 17)
- F3** Words in s. 52(1)(b)(c)(d) inserted (3.2.1995) by 1994 c. 33, s. 84(6)(b); S.I. 1995/127, art. 2(1), **Sch. 1**
- F4** Words in s. 52(2) inserted (3.2.1995) by 1994 c. 33, s. 84(6)(c); S.I. 1995/127, art. 2(1), **Sch. 1**
- F5** Word in s. 52(2) substituted (7.10.2005) by Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9), ss. 16(2), 20(2); S.S.I. 2005/480, art. 2
- F6** S. 52(2A)-(2C) added (3.2.1995) by 1994 c. 33, s. 84(6)(d); S.I. 1995/127, art. 2(1), **Sch. 1**
- F7** Words in s. 52(2C)(b) substituted (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 41(1)(a)(i), 206(1); S.S.I. 2010/413, art. 2, sch.
- F8** Words in s. 52(3)(a) substituted (3.2.1995) by 1994 c. 33, s. 84(6)(e)(i); S.I. 1995/127, art. 2(1), **Sch. 1**
- F9** Words in s. 52(3) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 44(3)**
- F10** Words in s. 52(3)(b) substituted (3.2.1995) by 1994 c. 33, s. 84(6)(e)(ii); S.I. 1995/127, art. 2(1), **Sch. 1**
- F11** Words in s. 52(3)(b) substituted (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), ss. 19(1)(a), 89(2); S.S.I. 2003/288, art. 2, sch.
- F12** Words in s. 52(4)(5)(a)(b) substituted (3.2.1995) by 1994 c. 33, s. 84(6)(f); S.I. 1995/127, art. 2(1), **Sch. 1**
- F13** S. 52(7) repealed (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), s. 206(1), sch. 7 para. 13; S.S.I. 2010/413, art. 2, sch.
- F14** S. 52(8)(c) substituted (3.2.1995) by 1994 c. 33, s. 84(6)(g); S.I. 1995/127, art. 2(1), **Sch. 1**
- F15** S. 52(9)(10) added (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 41(1)(a)(ii), 206(1); S.S.I. 2010/413, art. 2, sch.

### Modifications etc. (not altering text)

- C1** S. 52(2)-(2C) applied (1.5.2004) by Sexual Offences Act 2003 (c. 42), s. 141, **Sch. 3 para. 97(b)**; S.S.I. 2004/138, art. 2; S.I. 2004/874, art. 2
- C2** The text of ss. 16, 18(11), 51(7) and 52(6) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.
- C3** S. 52(8) applied (1.5.2004) by Sexual Offences Act 2003 (c. 42), s. 141, **Sch. 3 para. 97(b)**; S.S.I. 2004/138, art. 2; S.I. 2004/874, art. 2

### Marginal Citations

- M1** 1952 c. 67.

**Status:**

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**Changes to legislation:**

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