



# Criminal Justice Act 1988

## 1988 CHAPTER 33

### PART XI

#### MISCELLANEOUS

##### *Possession of indecent photograph of child*

#### 160 [F<sup>1</sup>Possession of indecent photograph of child]

- (1) [F<sup>2</sup>Subject to subsection (1A),] it is an offence for a person to have any indecent photograph [F<sup>3</sup>or pseudo-photograph] of a child <sup>F4</sup> . . . in his possession.
- (2) Where a person is charged with an offence under subsection (1) above, it shall be a defence for him to prove—
  - (a) that he had a legitimate reason for having the photograph [F<sup>5</sup>or pseudo-photograph] in his possession; or
  - (b) that he had not himself seen the photograph [F<sup>5</sup>or pseudo-photograph] and did not know, nor had any cause to suspect, it to be indecent; or
  - (c) that the photograph [F<sup>5</sup>or pseudo-photograph] was sent to him without any prior request made by him or on his behalf and that he did not keep it for an unreasonable time.

[F<sup>6</sup>(2A) A person shall be liable on conviction on indictment of an offence under this section to imprisonment for a term not exceeding five years or a fine, or both.]

- (3) A person shall be liable on summary conviction of an offence under this section to [F<sup>7</sup>imprisonment for a term not exceeding six months or] a fine not exceeding level 5 on the standard scale [F<sup>7</sup>, or both].
- (4) Sections 1(3), 2(3), 3 and 7 of the <sup>M1</sup>Protection of Children Act 1978 shall have effect as if any reference in them to that Act included a reference to this section.

<sup>F8</sup>(5) . . . . .

*Status: Point in time view as at 01/09/2006.*

*Changes to legislation: Criminal Justice Act 1988, Cross Heading: Possession of indecent photograph of child is up to date with all changes known to be in force on or before 15 July 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)*

#### Textual Amendments

- F1** Sidenote to s. 160 substituted (11.1.2001) by 2000 c. 43, s. 41(3)(b); S.I. 2000/3302, art. 2
- F2** Words in s. 160(1) inserted (1.5.2004) by Sexual Offences Act 2003 (c. 42), ss. 139, 141, Sch. 6 para. 29(3); S.I. 2004/874, art. 2
- F3** Words in s. 160(1) inserted (3.2.1995) by 1994 c. 33, s. 84(4)(a); S.I. 1995/127, art. 2(1), Sch. 1
- F4** Words in s. 160(1) omitted (3.2.1995) by virtue of 1994 c. 33, s. 84(4)(a); S.I. 1995/127, art. 2(1), Sch. 1 (and expressed to be repealed (4.9.1995) by 1994 c. 33, s. 168(3), Sch. 11; S.I. 1995/1957, art. 6)
- F5** Words in s. 160(2)(a)-(c) inserted (3.2.1995) by 1994 c. 33, s. 84(4)(b); S.I. 1995/127, art. 2(1), Sch. 1
- F6** S. 160(2A) inserted (11.1.2001) by 2000 c. 43, s. 41(3)(a); S.I. 2000/3302, art. 2
- F7** Words in s. 160(3) inserted (3.2.1995) by 1994 c. 33, s. 86(1); S.I. 1995/127, art. 2(1), Sch. 1
- F8** S. 160(5) repealed (4.9.1995) by 1994 c. 33, s. 168(3), Sch. 11; S.I. 1995/1957, art. 6

#### Marginal Citations

- M1** 1978 c. 37.

### [<sup>F9</sup>160A Marriage and other relationships

- (1) This section applies where, in proceedings for an offence under section 160 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 [<sup>F10</sup>or civil partners of each other] , or
  - (b) lived together as partners in an enduring family relationship.
- (2) This section also applies where, in proceedings for an offence under section 160 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 [<sup>F10</sup>or civil partners of each other] , or
  - (b) lived together as partners in an enduring family relationship.
- (3) This section 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.]

#### Textual Amendments

- F9** S. 160A inserted (1.5.2004) by Sexual Offences Act 2003 (c. 42), ss. 45(4), 141; S.I. 2004/874, art. 2
- F10** Words in s. 160A(1)(a)(2)(a) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(1), 263, Sch. 27 para. 127; S.I. 2005/3175, art. 2(1)(2), Sch. 1 (subject to art. 2(3)-(5))

### 161 Possession of indecent photographs of children: Scotland.

- (1) The following section shall be inserted after section 52 of the <sup>M2</sup>Civic Government (Scotland) Act 1982—

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**“52A Possession of indecent photographs of children.**

- (1) It is an offence for a person to have any indecent photograph of a child (meaning in this section a person under the age of 16) in his possession.
  - (2) Where a person is charged with an offence under subsection (1), it shall be a defence for him to prove—
    - (a) that he had a legitimate reason for having the photograph in his possession; or
    - (b) that he had not himself seen the photograph and did not know, nor had any cause to suspect, it to be indecent; or
    - (c) that the photograph was sent to him without any prior request made by him or on his behalf and that he did not keep it for an unreasonable time.
  - (3) A person shall be liable on summary conviction of an offence under this section to a fine not exceeding level 5 on the standard scale.
  - (4) Subsections (2) and (8) of section 52 of this Act shall have effect for the purposes of this section as they have for the purposes of that section.”.
- (2) Section 52A of that Act shall not have effect in relation to anything done before it comes into force.

**Marginal Citations**

M2 1982 c. 45.

**Status:**

Point in time view as at 01/09/2006.

**Changes to legislation:**

Criminal Justice Act 1988, Cross Heading: Possession of indecent photograph of child is up to date with all changes known to be in force on or before 15 July 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.