



# Criminal Justice and Immigration Act 2008

## 2008 CHAPTER 4

### PART 5 **E+W+N.I.**

#### CRIMINAL LAW

#### *Pornography etc.*

### 63 Possession of extreme pornographic images **E+W+N.I.**

- (1) It is an offence for a person to be in possession of an extreme pornographic image.
- (2) An “extreme pornographic image” is an image which is both—
  - (a) pornographic, and
  - (b) an extreme image.
- (3) An image is “pornographic” if it is of such a nature that it must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal.
- (4) Where (as found in the person's possession) an image forms part of a series of images, the question whether the image is of such a nature as is mentioned in subsection (3) is to be determined by reference to—
  - (a) the image itself, and
  - (b) (if the series of images is such as to be capable of providing a context for the image) the context in which it occurs in the series of images.
- (5) So, for example, where—
  - (a) an image forms an integral part of a narrative constituted by a series of images, and
  - (b) having regard to those images as a whole, they are not of such a nature that they must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal,

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the image may, by virtue of being part of that narrative, be found not to be pornographic, even though it might have been found to be pornographic if taken by itself.

[<sup>F1</sup>(5A) In relation to possession of an image in England and Wales, an “extreme image” is an image which—

- (a) falls within subsection (7) or (7A), and
- (b) is grossly offensive, disgusting or otherwise of an obscene character.]

(6) [<sup>F2</sup>In relation to possession of an image in Northern Ireland, an] “extreme image” is an image which—

- (a) falls within subsection (7) [<sup>F3</sup>or (7A)] , and
- (b) is grossly offensive, disgusting or otherwise of an obscene character.

(7) An image falls within this subsection if it portrays, in an explicit and realistic way, any of the following—

- (a) an act which threatens a person's life,
- (b) an act which results, or is likely to result, in serious injury to a person's anus, breasts or genitals,
- (c) an act which involves sexual interference with a human corpse, or
- (d) a person performing an act of intercourse or oral sex with an animal (whether dead or alive),

and a reasonable person looking at the image would think that any such person or animal was real.

[<sup>F4</sup>(7A) An image falls within this subsection if it portrays, in an explicit and realistic way, either of the following—

- (a) an act which involves the non-consensual penetration of a person's vagina, anus or mouth by another with the other person's penis, or
- (b) an act which involves the non-consensual sexual penetration of a person's vagina or anus by another with a part of the other person's body or anything else,

and a reasonable person looking at the image would think that the persons were real.

(7B) For the purposes of subsection (7A)—

- (a) penetration is a continuing act from entry to withdrawal;
- (b) “vagina” includes vulva.]

(8) In this section “image” means—

- (a) a moving or still image (produced by any means); or
- (b) data (stored by any means) which is capable of conversion into an image within paragraph (a).

(9) In this section references to a part of the body include references to a part surgically constructed (in particular through gender reassignment surgery).

(10) Proceedings for an offence under this section may not be instituted—

- (a) in England and Wales, except by or with the consent of the Director of Public Prosecutions; or
- (b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland.

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#### Textual Amendments

- F1** S. 63(5A) inserted (13.4.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), [ss. 37\(2\)\(a\)](#), 95(1); [S.I. 2015/778](#), [art. 3](#), [Sch. 1 para. 31](#) (with [Sch. 2 para. 1](#))
- F2** Words in s. 63(6) substituted (13.4.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), [ss. 37\(2\)\(b\)](#), 95(1); [S.I. 2015/778](#), [art. 3](#), [Sch. 1 para. 31](#) (with [Sch. 2 para. 1](#))
- F3** Words in s. 63(6) inserted (N.I.) (13.5.2016) by [Justice Act \(Northern Ireland\) 2016 \(c. 21\)](#), [ss. 50\(2\)](#), 61(1)
- F4** S. 63(7A)(7B) inserted (13.4.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), [ss. 37\(2\)\(c\)](#), 95(1); [S.I. 2015/778](#), [art. 3](#), [Sch. 1 para. 31](#) (with [Sch. 2 para. 1](#))
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#### Commencement Information

- I1** S. 63 in force at 26.1.2009 by [S.I. 2008/2993](#), [art. 2\(2\)\(a\)](#)

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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\(3\)](#)