

SERIOUS CRIME ACT 2015

EXPLANATORY NOTES

TERRITORIAL EXTENT

Part 5: Protection of Children and Others

Commentary on Sections

Section 69 and Schedule 3: Possession of paedophile manual

270. This section creates a new offence of possession of a paedophile manual, that is any item containing advice or guidance about abusing children sexually (*subsection (1)*). There are already a number of criminal offences that seek to prevent the possession, creation and distribution of indecent images of children, and the dissemination of obscene material. In particular:

- section 2 of the Obscene Publications Act 1959 makes it an offence to publish (for gain or otherwise) or to possess for publication for gain an obscene article;
- section 1 of the Protection of Children Act 1978 makes it an offence for a person to take, permit to be taken, make, distribute or show, or have in his or her possession with a view to showing or distributing any indecent photograph or pseudo-photograph of a child;
- section 160 of the Criminal Justice Act 1988 makes it an offence to possess an indecent photograph or pseudo-photograph of a child;
- section 63 of the Criminal Justice and Immigration Act 2008 makes it an offence to possess extreme pornographic images; and
- section 62 of the Coroners and Justice Act 2009 makes it an offence to possess a prohibited image of a child.

These existing offences do not criminalise mere possession of material containing advice and guidance about grooming and abusing a child sexually. The new offence plugs this gap in the law.

271. *Subsection (8)* defines the terms “item”, “prohibited item” and “abusing children sexually”. The term “item” has a wide meaning and includes both physical and electronic documents (for example, emails or information downloaded to a computer).

272. *Subsection (2)* sets out a series of defences to the offence of possession of a paedophile manual. They are the same as for other comparable offences, for example, the possession of indecent images of children under section 160(2) of the Criminal Justice Act 1988 and for the possession of extreme pornographic images under section 63 of the Criminal Justice and Immigration Act 2008 (see section 65 of that Act). They are:

- that the person had a legitimate reason for being in possession of the item; this would be a question of fact for the jury to decide on the individual circumstances

*These notes refer to the Serious Crime Act 2015 (c.9)
which received Royal Assent on 3rd March 2015*

of a case. It could cover, for example, those who can demonstrate that they have a legitimate work reason for possessing the item;

- that the person had not seen (or listened to) the item in his or her possession and therefore neither knew, nor had cause to suspect, that it contained advice or guidance about abusing children sexually; and
- that the person had not asked for the item - it having been sent without request - and that he or she had not kept it for an unreasonable period of time; this will cover those who are sent unsolicited material and who act quickly to delete it or otherwise get rid of it.

The standard of proof in making out the defence is the balance of probabilities.

273. As a result of *subsection (3)* and the transitional provision in section 86(14)(b), the maximum penalty on summary conviction of the offence in England and Wales and Northern Ireland will be six months' imprisonment. On the commencement of section 154(1) of the Criminal Justice Act 2003, the maximum sentence on summary conviction in England and Wales will rise to 12 months. On conviction on indictment, the maximum sentence is three years' imprisonment.
274. *Subsection (4)* requires proceedings to be instituted by or with the consent of the Director of Public Prosecutions.
275. *Subsection (5)* applies, in relation to England and Wales, the entry, search, seizure and forfeiture powers in section 4 of and the Schedule to the Protection of Children Act 1978 to paedophile manuals. *Subsection (6)* makes equivalent provision for Northern Ireland.
276. *Subsection (7)* introduces *Schedule 3* to the Act which is designed to ensure that the provisions outlined above which make it an offence to possess a paedophile manual are consistent with the UK's obligations under the E-Commerce Directive¹.
277. Under Schedule 3 providers of information society services who are established in England and Wales or Northern Ireland are covered by the new offence even when they are operating in other European Economic Area states. Paragraphs 3 to 5 of the Schedule provide exemptions for internet service providers from the offence of possession of a paedophile manual in limited circumstances, such as where they are acting as mere conduits for such material or are storing it as caches or hosts.

¹ http://ec.europa.eu/internal_market/e-commerce/directive/index_en.htm