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PART 5

CRIMINAL LAW

Pornography etc.

PROSPECTIVE

63 Possession of extreme pornographic images

- (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,
 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.
- (6) An “extreme image” is an image which—
 - (a) falls within subsection (7), 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.
- (8) In this section “image” means—

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- (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.

PROSPECTIVE

64 Exclusion of classified films etc.

- (1) Section 63 does not apply to excluded images.
- (2) An “excluded image” is an image which forms part of a series of images contained in a recording of the whole or part of a classified work.
- (3) But such an image is not an “excluded image” if—
- (a) it is contained in a recording of an extract from a classified work, and
 - (b) it is of such a nature that it must reasonably be assumed to have been extracted (whether with or without other images) solely or principally for the purpose of sexual arousal.
- (4) Where an extracted image is one of a series of images contained in the recording, the question whether the image is of such a nature as is mentioned in subsection (3)(b) 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;
- and section 63(5) applies in connection with determining that question as it applies in connection with determining whether an image is pornographic.
- (5) In determining for the purposes of this section whether a recording is a recording of the whole or part of a classified work, any alteration attributable to—
- (a) a defect caused for technical reasons or by inadvertence on the part of any person, or
 - (b) the inclusion in the recording of any extraneous material (such as advertisements),
- is to be disregarded.
- (6) Nothing in this section is to be taken as affecting any duty of a designated authority to have regard to section 63 (along with other enactments creating criminal offences) in determining whether a video work is suitable for a classification certificate to be issued in respect of it.
- (7) In this section—

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“classified work” means (subject to subsection (8)) a video work in respect of which a classification certificate has been issued by a designated authority (whether before or after the commencement of this section);

“classification certificate” and “video work” have the same meanings as in the Video Recordings Act 1984 (c. 39);

“designated authority” means an authority which has been designated by the Secretary of State under section 4 of that Act;

“extract” includes an extract consisting of a single image;

“image” and “pornographic” have the same meanings as in section 63;

“recording” means any disc, tape or other device capable of storing data electronically and from which images may be produced (by any means).

- (8) Section 22(3) of the Video Recordings Act 1984 (effect of alterations) applies for the purposes of this section as it applies for the purposes of that Act.

PROSPECTIVE

65 Defences: general

- (1) Where a person is charged with an offence under section 63, it is a defence for the person to prove any of the matters mentioned in subsection (2).

- (2) The matters are—

- (a) that the person had a legitimate reason for being in possession of the image concerned;
- (b) that the person had not seen the image concerned and did not know, nor had any cause to suspect, it to be an extreme pornographic image;
- (c) that the person—
 - (i) was sent the image concerned without any prior request having been made by or on behalf of the person, and
 - (ii) did not keep it for an unreasonable time.

- (3) In this section “extreme pornographic image” and “image” have the same meanings as in section 63.

PROSPECTIVE

66 Defence: participation in consensual acts

- (1) This section applies where—

- (a) a person (“D”) is charged with an offence under section 63, and
- (b) the offence relates to an image that portrays an act or acts within paragraphs (a) to (c) (but none within paragraph (d)) of subsection (7) of that section.

- (2) It is a defence for D to prove—

- (a) that D directly participated in the act or any of the acts portrayed, and
- (b) that the act or acts did not involve the infliction of any non-consensual harm on any person, and

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- (c) if the image portrays an act within section 63(7)(c), that what is portrayed as a human corpse was not in fact a corpse.
- (3) For the purposes of this section harm inflicted on a person is “non-consensual” harm if—
 - (a) the harm is of such a nature that the person cannot, in law, consent to it being inflicted on himself or herself; or
 - (b) where the person can, in law, consent to it being so inflicted, the person does not in fact consent to it being so inflicted.

PROSPECTIVE

67 Penalties etc. for possession of extreme pornographic images

- (1) This section has effect where a person is guilty of an offence under section 63.
- (2) Except where subsection (3) applies to the offence, the offender is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding the relevant period or a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 3 years or a fine or both.
- (3) If the offence relates to an image that does not portray any act within section 63(7)(a) or (b), the offender is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding the relevant period or a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine or both.
- (4) In subsection (2)(a) or (3)(a) “the relevant period” means—
 - (a) in relation to England and Wales, 12 months;
 - (b) in relation to Northern Ireland, 6 months.

PROSPECTIVE

68 Special rules relating to providers of information society services

Schedule 14 makes special provision in connection with the operation of section 63 in relation to persons providing information society services within the meaning of that Schedule.

69 Indecent photographs of children: England and Wales

- (1) The Protection of Children Act 1978 (c. 37) is amended as follows.
- (2) In section 1B(1)(b) (exception for members of the Security Service)—
 - (a) after “Security Service” insert “ or the Secret Intelligence Service ”;
 - (b) for “the Service” substitute “ that Service ”.

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(3) After section 7(4) (meaning of photograph), insert—

“(4A) References to a photograph also include—

- (a) a tracing or other image, whether made by electronic or other means (of whatever nature)—
 - (i) which is not itself a photograph or pseudo-photograph, but
 - (ii) which is derived from the whole or part of a photograph or pseudo-photograph (or a combination of either or both); and
- (b) data stored on a computer disc or by other electronic means which is capable of conversion into an image within paragraph (a);

and subsection (8) applies in relation to such an image as it applies in relation to a pseudo-photograph.”

(4) In section 7(9)(b) (meaning of indecent pseudo-photograph), for “a pseudo-photograph” substitute “an indecent pseudo-photograph”.

70 Indecent photographs of children: Northern Ireland

(1) The Protection of Children (Northern Ireland) Order 1978 (S.I. 1978/1047 (N.I. 17)) is amended as follows.

(2) In Article 2(2) (interpretation) in paragraph (b) of the definition of “indecent pseudo-photograph”, for “a pseudo-photograph” substitute “an indecent pseudo-photograph”.

(3) After Article 2(2) insert—

“(2A) In this Order, references to a photograph also include—

- (a) a tracing or other image, whether made by electronic or other means (of whatever nature)—
 - (i) which is not itself a photograph or pseudo-photograph, but
 - (ii) which is derived from the whole or part of a photograph or pseudo-photograph (or a combination of either or both); and
- (b) data stored on a computer disc or by other electronic means which is capable of conversion into an image within paragraph (a);

and paragraph (3)(c) applies in relation to such an image as it applies in relation to a pseudo-photograph.”

(4) In article 3A(1)(b) (exception for members of the Security Service)—

- (a) after “Security Service” insert “or the Secret Intelligence Service”;
- (b) for “the Service” substitute “that Service”.

PROSPECTIVE

71 Maximum penalty for publication etc. of obscene articles

In section 2(1)(b) of the Obscene Publications Act 1959 (c. 66) (maximum penalty on indictment for publication etc. of obscene articles) for “three years” substitute “five years”.

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Sexual offences

PROSPECTIVE

72 Offences committed outside the United Kingdom

(1) For section 72 of the Sexual Offences Act 2003 (c. 42) substitute—

“72 Offences outside the United Kingdom

(1) If—

- (a) a United Kingdom national does an act in a country outside the United Kingdom, and
- (b) the act, if done in England and Wales or Northern Ireland, would constitute a sexual offence to which this section applies,

the United Kingdom national is guilty in that part of the United Kingdom of that sexual offence.

(2) If—

- (a) a United Kingdom resident does an act in a country outside the United Kingdom,
- (b) the act constitutes an offence under the law in force in that country, and
- (c) the act, if done in England and Wales or Northern Ireland, would constitute a sexual offence to which this section applies,

the United Kingdom resident is guilty in that part of the United Kingdom of that sexual offence.

(3) If—

- (a) a person does an act in a country outside the United Kingdom at a time when the person was not a United Kingdom national or a United Kingdom resident,
- (b) the act constituted an offence under the law in force in that country,
- (c) the act, if done in England and Wales or Northern Ireland, would have constituted a sexual offence to which this section applies, and
- (d) the person meets the residence or nationality condition at the relevant time,

proceedings may be brought against the person in that part of the United Kingdom for that sexual offence as if the person had done the act there.

(4) The person meets the residence or nationality condition at the relevant time if the person is a United Kingdom national or a United Kingdom resident at the time when the proceedings are brought.

(5) An act punishable under the law in force in any country constitutes an offence under that law for the purposes of subsections (2) and (3) however it is described in that law.

(6) The condition in subsection (2)(b) or (3)(b) is to be taken to be met unless, not later than rules of court may provide, the defendant serves on the prosecution a notice—

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- (a) stating that, on the facts as alleged with respect to the act in question, the condition is not in the defendant's opinion met,
 - (b) showing the grounds for that opinion, and
 - (c) requiring the prosecution to prove that it is met.
- (7) But the court, if it thinks fit, may permit the defendant to require the prosecution to prove that the condition is met without service of a notice under subsection (6).
- (8) In the Crown Court the question whether the condition is met is to be decided by the judge alone.
- (9) In this section—
- “country” includes territory;
 - “United Kingdom national” means an individual who is—
 - (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen;
 - (b) a person who under the British Nationality Act 1981 is a British subject; or
 - (c) a British protected person within the meaning of that Act;
 - “United Kingdom resident” means an individual who is resident in the United Kingdom.
- (10) Schedule 2 lists the sexual offences to which this section applies.”
- (2) Schedule 2 to that Act (list of sexual offences to which section 72 applies) is amended as follows.
- (3) In paragraph 1 (offences under the law of England and Wales)—
- (a) for paragraphs (a) and (b) substitute—
 - “(a) an offence under any of sections 5 to 19, 25 and 26 and 47 to 50;
 - (b) an offence under any of sections 1 to 4, 30 to 41 and 61 where the victim of the offence was under 18 at the time of the offence;”;
 - (b) in paragraph (c), for “16” substitute “18”; and
 - (c) in paragraph (d), omit “in relation to a photograph or pseudo-photograph showing a child under 16”.
- (4) In paragraph 2 (offences under the law of Northern Ireland)—
- (a) in sub-paragraph (1)(c)(iv), for “17” substitute “18”; and
 - (b) in sub-paragraph (2), for “17” substitute “18”.

73 Grooming and adoption

Schedule 15—

- (a) amends section 15 of the Sexual Offences Act 2003 (c. 42) (meeting a child following sexual grooming etc.),
- (b) amends that Act in relation to adoption, and
- (c) amends the Adoption Act 1976 (c. 36) in relation to offences under sections 64 and 65 of the Sexual Offences Act 2003.

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Annotations:

Commencement Information

- II** S. 73 partly in force; s. 73 not in force at Royal Assent; s. 73 in force for certain purposes at 8.7.2008, see s. 153(2)(e)(3)

Hatred on the grounds of sexual orientation

74 Hatred on the grounds of sexual orientation

Schedule 16—

- (a) amends Part 3A of the Public Order Act 1986 (c. 64) (hatred against persons on religious grounds) to make provision about hatred against a group of persons defined by reference to sexual orientation, and
- (b) makes minor amendments of that Part.

Annotations:

Commencement Information

- I2** S. 74 partly in force; s. 74 partly in force at Royal Assent, see s. 153(1)(j)(3)

PROSPECTIVE

Offences relating to nuclear material and nuclear facilities

75 Offences relating to the physical protection of nuclear material and nuclear facilities

- (1) Part 1 of Schedule 17 amends the Nuclear Material (Offences) Act 1983 (c. 18) to create—
- (a) further offences relating to the physical protection of nuclear material, and
- (b) offences relating to the physical protection of nuclear facilities,
- and makes other amendments to that Act.
- (2) Part 2 of that Schedule makes related amendments to the Customs and Excise Management Act 1979 (c. 2).

PROSPECTIVE

Self-defence etc.

76 Reasonable force for purposes of self-defence etc.

- (1) This section applies where in proceedings for an offence—
- (a) an issue arises as to whether a person charged with the offence (“D”) is entitled to rely on a defence within subsection (2), and

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- (b) the question arises whether the degree of force used by D against a person (“V”) was reasonable in the circumstances.
- (2) The defences are—
- (a) the common law defence of self-defence; and
 - (b) the defences provided by section 3(1) of the Criminal Law Act 1967 (c. 58) or section 3(1) of the Criminal Law Act (Northern Ireland) 1967 (c. 18 (N.I.)) (use of force in prevention of crime or making arrest).
- (3) The question whether the degree of force used by D was reasonable in the circumstances is to be decided by reference to the circumstances as D believed them to be, and subsections (4) to (8) also apply in connection with deciding that question.
- (4) If D claims to have held a particular belief as regards the existence of any circumstances—
- (a) the reasonableness or otherwise of that belief is relevant to the question whether D genuinely held it; but
 - (b) if it is determined that D did genuinely hold it, D is entitled to rely on it for the purposes of subsection (3), whether or not—
 - (i) it was mistaken, or
 - (ii) (if it was mistaken) the mistake was a reasonable one to have made.
- (5) But subsection (4)(b) does not enable D to rely on any mistaken belief attributable to intoxication that was voluntarily induced.
- (6) The degree of force used by D is not to be regarded as having been reasonable in the circumstances as D believed them to be if it was disproportionate in those circumstances.
- (7) In deciding the question mentioned in subsection (3) the following considerations are to be taken into account (so far as relevant in the circumstances of the case)—
- (a) that a person acting for a legitimate purpose may not be able to weigh to a nicety the exact measure of any necessary action; and
 - (b) that evidence of a person’s having only done what the person honestly and instinctively thought was necessary for a legitimate purpose constitutes strong evidence that only reasonable action was taken by that person for that purpose.
- (8) Subsection (7) is not to be read as preventing other matters from being taken into account where they are relevant to deciding the question mentioned in subsection (3).
- (9) This section is intended to clarify the operation of the existing defences mentioned in subsection (2).
- (10) In this section—
- (a) “legitimate purpose” means—
 - (i) the purpose of self-defence under the common law, or
 - (ii) the prevention of crime or effecting or assisting in the lawful arrest of persons mentioned in the provisions referred to in subsection (2)(b);
 - (b) references to self-defence include acting in defence of another person; and
 - (c) references to the degree of force used are to the type and amount of force used.

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Unlawfully obtaining etc. personal data

77 Power to alter penalty for unlawfully obtaining etc. personal data

- (1) The Secretary of State may by order provide for a person who is guilty of an offence under section 55 of the Data Protection Act 1998 (c. 29) (unlawful obtaining etc. of personal data) to be liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding the specified period or to a fine not exceeding the statutory maximum or to both,
 - (b) on conviction on indictment, to imprisonment for a term not exceeding the specified period or to a fine or to both.
- (2) In subsection (1)(a) and (b) “specified period” means a period provided for by the order but the period must not exceed—
 - (a) in the case of summary conviction, 12 months (or, in Northern Ireland, 6 months), and
 - (b) in the case of conviction on indictment, two years.
- (3) The Secretary of State must ensure that any specified period for England and Wales which, in the case of summary conviction, exceeds 6 months is to be read as a reference to 6 months so far as it relates to an offence committed before the commencement of section 282(1) of the Criminal Justice Act 2003 (c. 44) (increase in sentencing powers of magistrates' courts from 6 to 12 months for certain offences triable either way).
- (4) Before making an order under this section, the Secretary of State must consult—
 - (a) the Information Commissioner,
 - (b) such media organisations as the Secretary of State considers appropriate, and
 - (c) such other persons as the Secretary of State considers appropriate.
- (5) An order under this section may, in particular, amend the Data Protection Act 1998.

PROSPECTIVE

78 New defence for purposes of journalism and other special purposes

In section 55(2) of the Data Protection Act 1998 (c. 29) (defences against offence of unlawfully obtaining etc. personal data) after “it,” at the end of paragraph (c) insert—

“(ca) that he acted—

- (i) for the special purposes,
- (ii) with a view to the publication by any person of any journalistic, literary or artistic material, and
- (iii) in the reasonable belief that in the particular circumstances the obtaining, disclosing or procuring was justified as being in the public interest.”.

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Blasphemy

79 Abolition of common law offences of blasphemy and blasphemous libel

- (1) The offences of blasphemy and blasphemous libel under the common law of England and Wales are abolished.
- (2) In section 1 of the Criminal Libel Act 1819 (60 Geo. 3 & 1 Geo. 4 c. 8) (orders for seizure of copies of blasphemous or seditious libel) the words “any blasphemous libel, or” are omitted.
- (3) In sections 3 and 4 of the Law of Libel Amendment Act 1888 (c. 64) (privileged matters) the words “blasphemous or” are omitted.
- (4) Subsections (2) and (3) (and the related repeals in Schedule 28) extend to England and Wales only.

PROSPECTIVE

PART 6

INTERNATIONAL CO-OPERATION IN RELATION TO CRIMINAL JUSTICE MATTERS

Recognition of financial penalties: requests to other member States

80 Requests to other member States: England and Wales

- (1) In Schedule 5 to the Courts Act 2003 (c. 39) (collection of fines and other sums imposed on conviction) in paragraph 38 (the range of further steps available against defaulters)—
 - (a) after sub-paragraph (1)(e) insert—
 - “(f) subject to sub-paragraph (4), issuing a certificate requesting enforcement under the Framework Decision on financial penalties;”, and
 - (b) after sub-paragraph (3) insert—
 - “(4) A certificate requesting enforcement under the Framework Decision on financial penalties may only be issued where—
 - (a) the sum due is a financial penalty within the meaning of section 80 of the Criminal Justice and Immigration Act 2008, and
 - (b) it appears to the fines officer or the court that P is normally resident, or has property or income, in a member State other than the United Kingdom.
- (5) In this paragraph, references to a certificate requesting enforcement under the Framework Decision on financial penalties are to be construed in accordance with section 92(3) of the Criminal Justice and Immigration Act 2008.”