

Jersey Law 10/1994

PROTECTION OF CHILDREN (JERSEY) LAW 1994

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A LAW to prohibit the taking of indecent photographs of children and to penalise the possession, distribution, showing and advertisement of such indecent photographs; sanctioned by Order of Her Majesty in Council of the

15th day of MARCH 1994

(Registered on the 22nd day of April 1994)

STATES OF JERSEY

The 12th day of October 1993

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

ARTICLE 1

Interpretation

(1) In this Law –

“child” means a person under the age of sixteen years;

“film” includes any form of video-recording.

(2) References in this Law to an indecent photograph include an indecent film, a copy of an indecent photograph or film, and an indecent photograph comprised in a film.

(3) Photographs, including those comprised in a film, shall, if they show children and are indecent, be treated for all purposes of this Law as indecent photographs of children.

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(4) References in this Law to a photograph include the negative as well as the positive version.

(5) For the purposes of this Law, a person is to be regarded as distributing an indecent photograph if he parts with possession of it to, or exposes or offers it for acquisition by, another person.

(6) Where in this Law there is a reference to an Article by number only, without further identification, such reference shall be construed as a reference to the Article of that number contained in this Law.

(7) Where in any Article of this Law there is a reference to a paragraph, sub-paragraph or clause by number or letter only, and without further identification, such reference shall be construed as a reference to the paragraph, sub-paragraph or clause of that number or letter contained in the Article of this Law in which such reference occurs.

(8) Where this Law refers to an enactment, the reference is to that enactment as amended from time to time, and includes a reference to that enactment as extended or applied by or under another enactment, including any other provision of that enactment.

ARTICLE 2

Indecent photographs of children

- (1) A person who –
- (a) takes, or permits to be taken, any indecent photograph of a child; or
 - (b) has in his possession such indecent photographs; or
 - (c) distributes, or shows such indecent photographs; or
 - (d) has in his possession such indecent photographs, with a view to their being distributed or shown by himself or others; or

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- (e) publishes or causes to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such indecent photographs, or intends to do so,

is guilty of an offence and shall be liable to imprisonment for a term not exceeding three years or to a fine, or to both.

(2) Proceedings for an offence under this Law shall not be instituted except by or with the consent of the Attorney General.

(3) Where a person is charged with an offence under sub-paragraph (b) of paragraph (1) –

- (a) either of the defences referred to in paragraph (4) shall be available to him; and
- (b) it shall be a defence for him to prove 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.

(4) Where a person is charged with an offence under sub-paragraph (c) or (d) of paragraph (1), it shall be a defence for him to prove –

- (a) that he had a legitimate reason for distributing or showing the photographs or, as the case may be, having them in his possession; or
- (b) that he had not himself seen the photographs and did not know, nor had any cause to suspect, them to be indecent.

(5) References in the Children (Jersey) Law 1969¹ to the offences mentioned in the First Schedule to that Law shall include an offence under sub-paragraph (a) of paragraph (1).

¹ Volume 1968–1969, page 247, Volume 1970–1972, pages 511, 512 and 513, Volume 1973–1974, pages 371 and 374, Volume 1979–1981, page 27, and Volume 1986–1987, page 173.

ARTICLE 3

Evidence

(1) Subject to paragraph (2), on a charge of an offence under sub-paragraph (a) of paragraph (1) of Article 2, the wife or husband of the accused shall be competent to give evidence at every stage of the proceedings, whether for the defence or for the prosecution, and whether the accused is charged solely or jointly with any other person.

(2) Notwithstanding paragraph (1) –

(a) the wife or husband shall not be compellable either to give evidence or, in giving evidence, to disclose any communications made to her or him during the marriage by the accused; and

(b) the failure of a wife or husband of the accused to give evidence shall not be made the subject of any comment by the prosecution.

(3) In proceedings under this Law 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 sixteen years.

ARTICLE 4

Offences by corporations

(1) Where a body corporate is guilty of an offence under this Law and it is proved that the offence occurred with the consent or connivance of, or was attributable to any neglect on the part of, any director, manager, secretary or other officer of the body, or any person who was purporting to act in any such capacity he, as well as the body corporate, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) shall apply in relation to the acts and defaults of a member in connexion with his functions of management as if he were a director of the body corporate.

ARTICLE 5

Entry, search and seizure

(1) If the Bailiff is satisfied by information on oath, given by a police officer, that there is reasonable ground for suspecting that, in any premises there are indecent photographs of children and that such photographs –

- (a) are or have been taken there; or
- (b) are or have been shown there, or are kept there with a view to their being distributed or shown,

he may issue a warrant under his hand authorizing any police officer to enter and search the premises using such reasonable force as is necessary within fourteen days from the date of the warrant, and to seize and remove any articles which he believes with reasonable cause to be or include indecent photographs of children taken or shown on the premises, or kept there with a view to their being distributed or shown.

(2) Articles seized under the authority of the warrant, and not returned to the occupier of the premises, shall be brought before the Magistrate.

(3) In this Article and in Article 6 –

“the Magistrate” has the meaning assigned to it by Article 1 of the Police Court (Miscellaneous Provisions) (Jersey) Law 1949²;

“premises” includes land, buildings, movable structures, vessels, vehicles, aircraft and hovercraft.

² Tome VII, page 545.

ARTICLE 6

Forfeiture

(1) The Magistrate may issue a summons to the occupier of the premises in which were found any articles brought before him in pursuance of Article 5 to appear on a day specified in the summons before the court to show cause why they should not be forfeited.

(2) Subject to paragraph (3), if the court is satisfied that the articles are indecent photographs of children, taken on the premises or shown there or kept there with a view to their being distributed or shown, the court shall order them to be forfeited.

(3) If the person summoned under paragraph (1) does not appear, the court shall not make an order unless service of the summons is proved.

(4) In addition to the person summoned, any other person being the owner of the articles brought before the court, or the persons who made them, or any other person through whose hands they had passed before being seized, shall be entitled to appear before the court on the day specified in the summons to show cause why they should not be forfeited.

(5) Where any of the articles are ordered to be forfeited under paragraph (2), any person who appears, or was entitled to appear, to show cause against the making of the order may appeal to the Inferior Number of the Royal Court.

(6) If as respects any articles brought before it the court does not order forfeiture, the court may if it thinks fit order the person on whose information the warrant for their seizure was issued to pay such costs as the court thinks reasonable to any person who has appeared before it to show cause why the photographs should not be forfeited.

(7) Costs ordered to be paid under paragraph (6) shall be recoverable as a civil debt.

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(8) Where indecent photographs of children are seized under Article 5, and a person is convicted under paragraph (1) of Article 2 of offences in respect of those photographs, the court shall order them to be forfeited.

(9) An order made under paragraph (2) or (8), including an order made on appeal, shall not take effect until the expiration of the ordinary time within which an appeal may be instituted or, where such an appeal is duly instituted, until the appeal is finally decided or abandoned.

(10) For the purposes of paragraph (9) –

- (a) an application for a case to be stated or for leave to appeal shall be treated as the institution of an appeal; and
- (b) where a decision on appeal is subject to a further appeal, the appeal is not finally decided until the expiration of the ordinary time within which a further appeal may be instituted or, where a further appeal is duly instituted, until the further appeal is finally decided or abandoned.

(11) In this Article “the court” means the Police Court.

ARTICLE 7

Short title and commencement

This Law may be cited as the Protection of Children (Jersey) Law 1994 and shall come into force on such day as the States may by Act appoint.

G.H.C. COPPOCK

Greffier of the States.