



Jersey

PROTECTION OF CHILDREN (JERSEY) LAW 1994

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PROTECTION OF CHILDREN (JERSEY) LAW 1994

A **LAW** to prohibit the taking or making of indecent images of children and to penalise the possession, distribution, showing and advertisement of such indecent images¹

Commencement [[see endnotes](#)]

1 Interpretation

(1) In this Law –

“child”, subject to paragraph (5), means a person under the age of 18 years;

“film” includes any form of video-recording, video-streaming or other moving image of a real subject;

“image” includes –

(a) a moving or still image (including a still image captured by any means from a moving image), whether produced by a means of recording, by computer graphics or otherwise; and

(b) data (stored by any means) that is capable of conversion into such an image;

“indecent image” means an indecent photograph, indecent pseudo-photograph or prohibited image;

“non-photographic image” means an image that is not a photograph or pseudo-photograph;

“prohibited image” has the meaning given by Article 2B;

“pseudo-photograph” means an image that is not, but appears to be, a photograph.²

(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 and so as respects pseudo-photographs.³

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

- (5) If the impression conveyed by a pseudo-photograph is that the person shown is a child, the pseudo-photograph shall be treated for all purposes of this Law as showing a child and so shall a pseudo-photograph where the predominant impression conveyed is that the person shown is a child notwithstanding that some of the physical characteristics shown are those of an adult.⁴
- (6) References to an indecent pseudo-photograph include a copy of an indecent pseudo-photograph, and references to a prohibited image include a copy of a prohibited image.⁵
- (7) For the purposes of this Law, a person is to be regarded as distributing an indecent image if he or she parts with possession of it to, or exposes or offers it for acquisition by, another person.⁶

2 Indecent photographs or pseudo-photographs of children⁷

- (1) A person who –
 - (a) takes, or permits to be taken, or makes, any indecent photograph or pseudo-photograph of a child;
 - (b) has in his or her possession such indecent photographs or pseudo-photographs;
 - (c) distributes, or shows such indecent photographs or pseudo-photographs;
 - (d) has in his or her possession such indecent photographs or pseudo-photographs, with a view to their being distributed or shown by himself, herself or others; or
 - (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 pseudo-photographs, or intends to do so,is guilty of an offence.⁸
- (2) A person guilty of an offence under paragraph (1)(a), (c), (d) or (e) shall be liable to imprisonment for a term of 10 years and to a fine.⁹
- (3) A person guilty of an offence under paragraph (1)(b) shall be liable to imprisonment for a term of 5 years and to a fine.¹⁰
- (4) Proceedings for an offence under this Article shall not be instituted except by or with the consent of the Attorney General.¹¹
- (4A) Where a person (“the defendant”) is charged with an offence under paragraph (1)(a) or (b), it shall be a defence for him or her to prove that all of the conditions in paragraph (4B) are met.¹²
- (4B) The conditions are –
 - (a) that the child was aged 16 or older at the time when the photograph or pseudo-photograph was taken or made;
 - (b) that the child was the spouse or civil partner of the defendant at the time when the photograph or pseudo-photograph was taken or made, and at all times at which it was in the possession of the defendant;
 - (c) that the photograph or pseudo-photograph did not show or appear to show any person who was neither the child nor the defendant; and

- (d) that the child consented to the taking or making of the photograph or pseudo-photograph, and to any possession of it by the defendant, or the defendant reasonably believed that the child so consented.¹³
- (5) Where a person is charged with an offence under paragraph (1)(b) –
 - (a) either of the defences referred to in paragraph (6) shall be available to him or her; and
 - (b) it shall be a defence for him or her to prove that the photograph or pseudo-photograph was sent to him or her without any prior request made by him or her or on his or her behalf and that he or she did not keep it for an unreasonable time.¹⁴
- (6) Where a person is charged with an offence under paragraph (1)(c) or (d), it shall be a defence for him or her to prove –
 - (aa) that –
 - (i) all of the conditions in paragraph (4B) are met,
 - (ii) he or she intended the showing or distribution to be to the child and to no other person, and
 - (iii) no showing or distribution occurred to any person other than to the child;
 - (a) that he or she had a legitimate reason for distributing or showing the photographs or pseudo-photographs or, as the case may be, having them in his or her possession; or
 - (b) that he or she had not seen the photographs or pseudo-photographs and did not know, nor had any cause to suspect, them to be indecent.¹⁵
- (7) ¹⁶

2A Evidence of age¹⁷

In proceedings under this Law relating to any indecent photograph of a child 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 or she was then under the age of 16 years.

2B Prohibited image of a child: interpretation¹⁸

- (1) This Article applies for the purposes of Articles 2C to 2E.
- (2) A prohibited image is an image that –
 - (a) is non-photographic;
 - (b) is pornographic;
 - (c) falls within paragraph (6); and
 - (d) is grossly offensive, disgusting or otherwise of an obscene character.
- (3) An image is “pornographic” if it is of such a nature that a reasonable person would assume it to have been produced solely or principally for the purpose of sexual arousal.

- (4) If an image (as made, found in the person's possession, distributed or shown) forms part of a series of images, the question whether the image is of such a nature as is mentioned in paragraph (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, if –
- (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 image falls within this paragraph if it –
- (a) is an image that focuses solely or principally on a child's penis or vagina, or on the region of a child's anus; or
 - (b) portrays any of the acts mentioned in paragraph (7).
- (7) Those acts are –
- (a) an act of masturbation by, of, involving or in the presence of a child;
 - (b) an act of penetration by, of, involving or in the presence of a child, if the penetration is –
 - (i) of a person's vagina or anus by a part of another person's body or by anything else,
 - (ii) of a person's mouth by another person's penis,
 - (iii) of a person's vagina, anus or mouth by an animal's penis,
 - (iv) of an animal's vagina, anus or mouth by a person's penis.
- (8) For the purpose of this Article –
- (a) the references to body parts, generally or in particular, of a person or animal, and to penetration, are to be construed in accordance with the [Sexual Offences \(Jersey\) Law 2018](#); and
 - (b) it is irrelevant whether a person or animal is dead, alive or imaginary.

2C Making, possessing, distributing or showing a prohibited image of a child¹⁹

- (1) A person commits an offence if the person –
- (a) makes a prohibited image of a child;
 - (b) has such an image in his or her possession;
 - (c) distributes or shows such an image;

- (d) has in his or her possession such an image, with a view to it being distributed or shown by himself, herself or others; or
 - (e) publishes or causes to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such images, or intends to do so.
- (2) This Article is subject to Article 2E.
 - (3) Proceedings for an offence under this Article shall not be instituted except by or with the consent of the Attorney General.
 - (4) A person guilty of an offence under paragraph (1)(a) or (b) is liable to imprisonment for a term of 3 years and to a fine.
 - (5) A person guilty of an offence under paragraph (1)(c), (d) or (e) is liable to imprisonment for a term of 5 years and to a fine.
 - (6) Articles 4 and 5 apply in relation to a prohibited image, and to an offence under this Article or an exclusion or defence under Article 2D, as they apply in relation to an indecent photograph or pseudo-photograph of a child, and to an offence, exclusion or defence under Article 2.

2D Defence: possession of prohibited image of child²⁰

It is a defence to a charge of an offence under Article 2C(1)(b) for the defendant to prove any of the following –

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

2E Exclusion: prohibited image of child in classified work²¹

- (1) Article 2C does not apply to an excluded image.
- (2) An “excluded image” is an image that 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) If 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 paragraph (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 Article 2B(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 Article 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 Article is to be taken as affecting any duty of a designated authority to have regard to Article 2C (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 Article –
- “classified work” means (subject to paragraph (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 Article);
- “classification certificate”, “designated authority” and “video work” have the same meaning as in the [Video Recordings \(Jersey\) Law 1990](#);
- “extract” includes an extract consisting of a single image;
- “recording” means any disc, tape or other device capable of storing data electronically and from which images may be produced (by any means).
- (8) Article 1(9) of the [Video Recordings \(Jersey\) Law 1990](#) applies for the purpose of this Article in relation to alterations as it applies for the purpose of that Law.

2F Defence: indecent image necessary for function of prevention or prosecution of crime²²

- (1) For the purpose of paragraph (2) –
- (a) a relevant act is an act of copying, possessing, distributing or showing an indecent image;
 - (b) a relevant charge is a charge for an offence under this Law that is constituted by a relevant act;
 - (c) a relevant function is –
 - (i) a power or duty of a police officer, or
 - (ii) a power or duty of any other person, by virtue of that person’s office or employment, that relates to the prevention, detection or investigation of crime, or the conduct of criminal proceedings, in any part of the world.

- (2) It is a defence to a relevant charge for the defendant to prove that, at the time of the relevant act it was necessary for the defendant to carry out that relevant act for the purpose of exercising a relevant function of the defendant.

3 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 or she, 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 connection with his or her functions of management as if he or she were a director of the body corporate.

4 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 or pseudo-photographs of children and that such photographs or pseudo-photographs –
- (a) are or have been taken or made there; or
 - (b) are or have been shown there, or are kept there with a view to their being distributed or shown,

the Bailiff may issue a warrant under his or her hand authorizing any police officer to enter and search the premises using such reasonable force as is necessary within 14 days from the date of the warrant, and to seize and remove any articles which he or she believes with reasonable cause to be or include indecent photographs or pseudo-photographs of children taken, made or shown on the premises, or kept there with a view to their being distributed or shown.²³

- (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 5 –
- “premises” includes land, buildings, movable structures, vessels, vehicles, aircraft and hovercraft.²⁴

5 Forfeiture

- (1) The Magistrate may issue a summons to the occupier of the premises in which were found any articles brought before him or her in pursuance of Article 4 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 or pseudo-photographs of children, taken or made 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.²⁵

- (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.
- (8) Where a person is convicted under Article 2(1) of an offence, the court by which he or she is convicted shall order that any indecent photographs or pseudo-photographs of children in the possession of the prosecution for or in connection with the prosecution of the offence shall be forfeited.²⁶
- (9) Where a person –
 - (a) charged with an offence under Article 2(1)(b), proves in accordance with Article 2(5)(b) that the photographs or pseudo-photographs were sent to him or her without prior request made by him or her or on his or her behalf and that he or she had not kept them for an unreasonable time; or
 - (b) charged with an offence under Article 2(1)(b), (c) or (d), proves in accordance with Article 2(6)(b) that he or she had not seen the photographs or pseudo-photographs and did not know, nor had any cause to suspect, them to be indecent,and the person is accordingly acquitted of the charge, the court by which he or she is acquitted may nevertheless order that any indecent photographs or pseudo-photographs of children in the possession of the prosecution for, or in connection with, the prosecution shall be forfeited.²⁷
- (10) 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.
- (11) For the purposes of paragraph (10) –
 - (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.
- (12) In this Article, except in paragraphs (8) and (9), “court” means the Magistrate’s Court.²⁸

6 Citation

This Law may be cited as the Protection of Children (Jersey) Law 1994.

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement	◦Projet No (where applicable)
Protection of Children (Jersey) Law 1994	L.10/1994	8 June 1994 (R&O.8680)	
Protection of Children (Amendment) (Jersey) Law 1997	L.52/1997	19 December 1997	
Loi (1998) (Amendement) au sujet des témoins et informateurs	L.44/1998	18 December 1998	P.115/1998
Protection of Children (Amendment No. 2) (Jersey) Law 1999	L.31/1999	5 November 1999	P.50/1998
Protection of Children (Amendment No. 3) (Jersey) Law 2004	L.6/2004	12 March 2004	P.133/2003
Children (Jersey) Law 2002	L.50/2002	1 August 2005 (R&O.74/2005)	P.200/2001
Criminal Justice (Miscellaneous Provisions) (No. 3) (Jersey) Law 2012	L.7/2012	30 March 2012	P.173/2011
Sexual Offences (Jersey) Law 2018	L.20/2018	23 November 2018 (R&O.112/2018)	P.18/2018
Criminal Procedure (Consequential and Supplementary Amendments) (Jersey) Regulations 2021	R&O.94/2021	1 October 2021	P.59/2021

◦Projets available at www.statesassembly.gov.je

Table of Renumbered Provisions

Original	Current
1(4A)	1(5)
(4B)	(6)
(5)	(7)
(6)	spent, omitted from this revised edition
(7)	spent, omitted from this revised edition
(8)	spent, omitted from this revised edition
2(1A)	(2)
(1B)	(3)
(2)	(4)
(3)	(5)
(4)	(6)
(5)	(7)

Original	Current
3	repealed by L.44/1998 ; former Article amended by L.52/1997
4	3
5	4
6	5
(8A)	(9)
(9)	(10)
(10)	(11)
(11)	(12)
7	6

Table of Endnote References

-
- ¹ Long title amended by L.52/1997, L.20/2018
- ² Article 1(1) substituted by L.20/2018
- ³ Article 1(3) amended by L.52/1997
- ⁴ Article 1(5) inserted by L.52/1997
- ⁵ Article 1(6) substituted by L.20/2018
- ⁶ Article 1(7) amended by L.52/1997, L.20/2018
- ⁷ Article 2 heading amended by L.52/1997
- ⁸ Article 2(1) amended by L.52/1997, L.6/2004
- ⁹ Article 2(2) inserted by L.6/2004
- ¹⁰ Article 2(3) inserted by L.6/2004
- ¹¹ Article 2(4) amended by L.20/2018
- ¹² Article 2(4A) inserted by L.20/2018
- ¹³ Article 2(4B) inserted by L.20/2018
- ¹⁴ Article 2(5) amended by L.52/1997
- ¹⁵ Article 2(6) amended by L.52/1997, L.20/2018
- ¹⁶ Article 2(7) repealed by L.50/2002
- ¹⁷ Article 2A inserted by L.7/2012
- ¹⁸ Article 2B inserted by L.20/2018
- ¹⁹ Article 2C inserted by L.20/2018
- ²⁰ Article 2D inserted by L.20/2018
- ²¹ Article 2E inserted by L.20/2018
- ²² Article 2F inserted by L.20/2018
- ²³ Article 4(1) amended by L.52/1997
- ²⁴ Article 4(3) amended by L.31/1999, R&O.94/2021
- ²⁵ Article 5(2) amended by L.52/1997
- ²⁶ Article 5(8) substituted by L.31/1999; former paragraph amended by L.52/1997
- ²⁷ Article 5(9) inserted by L.31/1999
- ²⁸ Article 5(12) substituted by L.31/1999