



Prifysgol Cymru
Y Drindod Dewi Sant
University of Wales
Trinity Saint David

Further Sexual Offences



Objectives:

1. **Identify** the offence of Outraging Public Decency under Common Law.
2. **Identify** the offences of Exposure and Voyeurism as contained in S66 of the SOA 2003.
3. **Identify** the offence of Trespass with Intent to commit a Sexual Offence under S63 of the SOA 2003.
4. **Identify** the offence of Sexual Activity in a Public Toilet under S71 of the SOA 2003.
5. **Identify** the offence of Disclosing Private sexual Photographs and Films with Intent to Cause Distress under S33 of the Criminal Justice and Courts Act 2015.
6. **Identify** the offence of Possession of Extreme Pornographic Images including potential defences under S63-67 of the Criminal Justice and Immigration Act 2008.

Outraging Public Decency

It is an offence to commit an act of a lewd, obscene & disgusting nature, which is capable of outraging public decency in a public place where at least two members of the public could have witnessed it.

Contrary to Common Law



Group activity 1

QTS – what types of behaviour do you think of if I say, “it’s an offence of outraging public decency”

Students to write contributions on the boards and Trainer to debrief using student contributions and PPT

Obscene means morally repugnant.

Disgusting means repugnant or loathsome.

The **act** can be committed by both men and women and must be committed where it might be seen by the public of two or more people.

Outrage the exposure of naked body parts must go beyond acceptable limits of decency and be likely to substantially offend a reasonable person.

However it does not need to be a sexual act, nor does it need to be a ‘live’ activity, it might be a public display of an object associated with sexual activity. However, in the context of exposure, the offence can be committed by exposing the penis, the whole

body, or engaging in real or simulated sexual acts

'Public' is given a wide meaning and held to be where members of the public go whether they have a right or not.

There is no need to prove the public who witnessed the act were disgusted or outraged by it, it only matters that a reasonable person would be disgusted by it. (this includes a constable)

'Public Place' – a place to which the public have access or a place which is visible to the public

Police officers are classed as members of the public for the purpose of this offence.

Arrest without warrant

Triable - Either Way

Summary: Six months imprisonment and / or a fine not exceeding the statutory maximum.

Indictment: Imprisonment and / or a fine
Arrest Without Warrant

The 4 Elements of the Offence

1. The act committed must be of a lewd, obscene & disgusting nature – the meaning of these terms overlap

2. The act must be capable of outraging public decency

3. More than one person must have been able to witness the act **even if they didn't**

4. Reasonable people must be able to venture out without the risk of outrage to minimum standards of decency, therefore the act must be in a place where there is a real possibility that members of the general public might witness it



Lewd means lustful or indecent.

Obscene means 'morally repugnant or depraved'

Disgusting means 'repugnant or loathsome'

Elements 3 and 4 above were confirmed in R v Walker [1996] 1 Cr AppR 111,

The defendant exposed himself and masturbated in front of two young girls in the living room of his home.

The conviction was quashed by the Court of Appeal, on the basis that the public had not been able to observe what took place in his living room.

His Lounge is NOT a public place. Other offences should be applied here.

Eg: Sexual offences act - An offence under section 66 of this Act (exposure)

A person who intentionally exposes their genitals so that another person will see them and be caused alarm or distress

Points to Prove - Exposure

Stated Case.....Smith v Hughes [1960] 1 WLR 830.

The balcony of a private house which was visible to the public has been held to be a sufficiently public place for this offence

A prostitute offered her services from the balcony of a house.

Held: She was guilty of the offence of soliciting 'in a street or public place' contrary to section 1(1) of the 1956 Act. Applying the mischief rule, it could be seen that her solicitations took place in a 'street or public place' for the purposes of the Act.

Lord Parker said: 'Observe that it does not say there specifically that the person who is doing the soliciting must be in the street. Equally it does not say that it is enough if the person who receives the solicitation or to whom it is addressed is in the street. For my part, I approach the matter by considering what is the mischief aimed at by this Act. Everybody knows that this was an Act intended to clean up the streets, to enable people to walk along the streets without being molested or solicited by common prostitutes. Viewed in that way, it can matter little whether the prostitute is soliciting while in the street or is standing in a doorway or on a balcony, or at a window, or whether the window is shut or open or half open; in each case her solicitation is projected to and addressed to somebody walking in the street. For my part, I am content to base my decision on that ground and that ground alone. I think that the magistrate came to a correct conclusion in each case, and that these appeals should be dismissed.

*** Mischief rule

The mischief rule looks at the gap in the previous law and puts a meaning on the words 'to advance the remedy'

The Mischief Rule gives a judge more discretion than the Golden Rule or the Literal Rule. The definition of the rule comes from [Heydon's Case](#) (1584).

R v Gibson [1990] 2 QB 619

The 'act' does not have to be a 'live' activity, nor does it have to be of a sexual nature.

It may be the act of putting a disgusting object on public display such as displaying a sculpted head with a real human foetus dangling from it in a public art gallery



It has been held that, in order to outrage, exposure of the naked body (male or female) must grossly transgress accepted limits of decency & be likely to gravely offend a reasonable person, thus this offence will usually only be suitable if masturbation or sexual intercourse also occurs.

There is no requirement to prove that those persons who witnessed the act were actually disgusted or outraged by it - the test is an objective one based on whether a reasonable person would be disgusted.

However, the reasonable person must be from that section of the general public likely to be exposed to the offending material, therefore the prospect of outrage is linked to the time & place of the exhibition, thus nudist camps, although not generally open to the public, are lawful because all those present consent to their own observation of nakedness.

Where the circumstances are appropriate positive evidence of disgust can be given by a police officer

QTS – what would you base this evidence on? SHACKS

QTS -where would it be recorded? – EPNB, statement

In most cases, offences under the Public Order Act 1986, Sexual Offence Act 2003, OR Obscene Publications Act 1959 would be more appropriate than this common law offence

Triable - Either Way

Summary: Six months imprisonment and / or a fine not exceeding the statutory maximum.

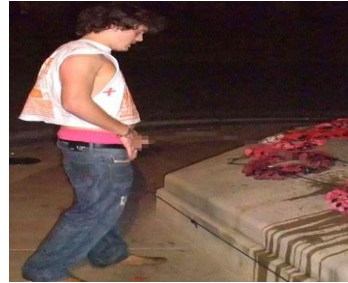
Indictment: Imprisonment and / or a fine
Arrest Without Warrant

Examples

Anthony Anderson



Philip Laing



A man who urinated on a woman as she lay dying and shouted "this is YouTube material" has been sentenced to three years in prison. Anthony Anderson also covered Christine Lakinski with shaving foam after she collapsed in a Hartlepool street.

Miss Lakinski, 50, who suffered from a number of medical conditions, was later pronounced dead at the scene. Anderson, 27, admitted outraging public decency.

The court heard how, on 27 July, Miss Lakinski was making her way home with a box of laminate flooring when she fell ill and stumbled into a doorway. Anderson, a former soldier, had smoked a cannabis joint and been drinking when he & two friends spotted her. He tried to rouse her by throwing a bucket of water over her, before urinating on her and covering her with shaving foam. A crowd had gathered around, watching and laughing, and the incident was filmed on a mobile phone. She was later declared dead at the scene, the cause of death being given as pancreatic failure.

Magistrates in Hartlepool had referred the case to Teesside Crown Court so a longer jail term could be handed out.

Judge Peter Fox, the recorder of Middlesbrough sitting at Teesside Crown Court, said: "You violated this woman in an incredible way, and the shocking

nature of your acts over a prolonged period of time must mean that a prison sentence of greater length is appropriate in this case."

Outside court, Miss Lakinski's family said in a statement: "We remain totally shocked that anyone could behave in such an appalling way.

"The fact that Christine was dying makes this man's actions even more sick and inhumane. However, those who stood by and did nothing to stop Anderson are also guilty in our eyes. It beggars belief that these people chose not only to condone his cruelty, but also to walk away from a neighbour who was clearly in distress and needed help."

Philip Laing

A student at Sheffield caught urinating on a war memorial was spared jail and given 250 hours community service for outraging public

He was caught on camera targeting a poppy wreath at the city's main memorial shortly before Remembrance Sunday, while hopelessly drunk after a pub crawl laid on by the firm Carnage.

The court heard that Laing had been mortified by the shame brought on himself and his family, especially as both his grandfathers had fought in the second world war and he had done work experience with the army. The CCTV images caused national outrage, and the judge said that he had been sent many letters about the case before sentencing.

"I said to you when you last appeared that the image of your urinating over the wreath of poppies at the city war memorial was a truly shocking one. That was no understatement," he said. "There you are, a young man of 19, urinating on the war memorial erected to honour the memory of so many other young men."

***** Trainer to gather initial thoughts from the group. How do they feel about these incidents? Does it fit the definition? How do you think that the victim felt? Was she vulnerable? How can they as the police, aid her family through the process sensitively? ******

Exposure



Section 66, Sexual Offences Act 2003



QTS – what is exposure and voyeurism better known as?

Commonly known as FLASHING

Why do flashers FLASH?

Group Activity 2 – In pairs students to discuss and record ways in which people commit 'exposure' and 'peeping tom' offences

Trainer to debrief using student contributions and PPT

Either way Offence.....

Summary - 6months and/or fine

On Indictment - 2 years imprisonment

Exposure

A person **intentionally** exposes their genitals
AND
they **intend** that someone will see them & be caused alarm or distress

Section 66, Sexual Offences Act 2003



A person – Male or Female can commit this offence

Intentionally - court to decide from all the circumstances whether there was a guilty intention or not in the mind of the defendant. Were they aware their “flies” were undone

Exposes genitals – easy enough for a man to do – but for a woman“legs akimbo”
It’s not necessary for genitals to be seen by anybody or for anyone to be alarmed or distressed – what did the defendant INTEND

Alarmed/Distressed should be given their ordinary meaning – the court will decide on the evidence provided.

Example -

Man sat in front seat of car outside a school at home time with “flies” open and erect penis on display.....no one sees it, but what does he intend

What if a female pupil saw it, not shocked, but retorted with a put down “Oh look.....It’s like a willy, only smaller!!” she wasn’t alarmed or distressed, but what did he intend?

Provided the intent can be proved it is not necessary for someone to actually see the

exposed genitalia or for someone to be alarmed or distressed.

How will we prove it?

What witness actually saw, What defendant did, effects the offence caused

Alarm or Distress



There is no definition of alarm or distress, but these words should be given their ordinary meaning.

It will be a question for the court to decide.



Intentionally

The offender has to **intend to cause alarm or distress** to a person who will see their genitalia.

Therefore, naturists' normal leisure activities would not be an offence provided they are not in a 'public place' & on a 'designated' naturist site.



There are very different opinions around the subject of naturism and nudity and Student Officers should consider their own values and beliefs in relation to this matter, so that they can make a justifiable and balanced decision about how to deal with these instances.

Nudity and naturism is not a criminal offence per se but, as the above information demonstrates, a police officer would initially have to investigate the exact circumstances of each incident. This investigation would need to include information about the location of the nudity, time of day, exact behaviour of the naturist, what was seen (if anything) by whom and how it impacted on other people. Officers would then need to consider all of the above legislation to be able to make a decision on whether there was any evidence that a criminal offence may have been committed in the specific circumstances of the incident.

Other offences to consider....

The Sexual Offences Act 2003, the Public Order Act 1986 and the Common law offences of Outraging Public Decency or Breach of the Peace

Note

It is not necessary for a person's genitals to be seen by anyone or for anyone to be alarmed or distressed. It is the intent of the offender that is important

When taking statements from victims it is important that you accurately record exactly how they felt at the time of the exposure and what the alleged suspect actually did

Voyeurism



Section 67(1) Sexual Offences Act 2003



Trainer to explain that the legislation can be quite lengthy. It is important that they are able to communicate to the public what this means using every day terminology. It is also important to remember that those who have been victims may be feeling quite vulnerable and our communication skills will play a vital part here.

Voyeurism

A person observes another doing a **private act** for the purpose of obtaining sexual gratification & they **know** that the other person does not consent to being observed for their sexual gratification



This is the basic “peeping tom” offence – there are other subsections which cover using equipment/installing equipment with intention/using equipment for 3rd party to view.....

Observing another.....peeping through a keyhole or window at someone engaging in a sexual act

Watching someone getting changed in a changing room

Private act – something which the person would not do in public

Using a toilet, get changed

Doing a sexual act – more than just kissing and cuddling

Exposing any of the genitals, buttocks or breasts – **OR when covered only with underwear**

The private act must be done in a place where there is an expectation of privacy
.....consider the activity of “dogging” where couples engage in sexual activities in cars on car parks, knowing that others will watch them for the sexual gratification from exhibitionism....is there an expectation of privacy? Do they consent to being observed?

The place can be in public or private, but if the private act took place on a public beach, there can be no expectation of privacy.

Likewise if a person is in a private garden which can be seen from a footpath then the expectation of privacy is much less compared with a garden that is totally secluded.

Journalist going about their legitimate activities would not commit this offence as it would not be for any sexual gratification

Private Act

A person is doing a **private act** if they are in a place which, in the circumstances would reasonably be expected to provide privacy
AND....

A person's **genitals, buttocks or breasts** are exposed or only covered with underwear

The person is using a lavatory

The person is doing a **sexual act** that is not of a kind ordinarily done in public



Either Way Offence

Summary – 6months and/or fine

On Indictment – 2 years

In order to tackle this issue effectively a full detailed history of all incidents must be recorded, so that this is accurately recorded with CPS. It may be that there have been a number of incidents previously, but this is the first one being reported. Reasons behind this could be:

- The victim has only just found out that they have been watched a number of times.
- There may be multiple victims at the same location

Voyeurism		
Section 67(2)	Section 67(3)	Section 67(4)
Operates equipment with the intention of enabling another person to observe, for sexual gratification, a 3rd person doing a private act and he knows that the other person does not consent to his operating equipment with that intention	Records another person doing a private act & does so with the intention that he or a 3rd person will look at an image of B doing that act for sexual gratification. He knows that B does not consent to his recording the act with that intention	Install equipment or adapts a structure or part of a structure with the intention of enabling himself or another to commit an offence under subsection (1)

Section 67 (2)

Covers a person operating equipment with the intention of enabling another person, for his/her sexual gratification, to observe a third person, doing a private act, where he/she knows that the other person does not consent to being so viewed. This would cover, for example, a landlord operating a webcam to allow people on the internet for their sexual gratification to view live images of his

Section 67 (3)

Covers a person recording another person doing a private act with the intention of looking at the recording for his own sexual gratification, or intending other people to look, for their sexual gratification, at the recording, and where he knows that the other does not consent to the recording of that act with that intention. This would therefore cover the person who secretly films someone masturbating in his bedroom to show to others for their sexual gratification. Proof that the intention was the sexual gratification of others could be derived from, for example, the fact that the image was posted on a pornographic website, or in a pornographic magazine. The defendant will be caught by the offence whether or not those looking at the image know that the person filmed did not consent to being filmed with that intention.

Section 67 (4)

Covers someone who, for example drilled a spy-hole or installed a two-way mirror in a house with the intention of spying on someone for sexual gratification or allowing others to do so. The defendant would be caught even if the peephole or mirror was discovered before it was used.

Voyeurism Offences Act 2019 – S67(A) SOA 2003

- A person (A) commits an offence if
- (a) A operates equipment beneath the clothing of another person (B),
 - (b) A does so with the intention of enabling A or another person (C), for a purpose mentioned in subsection 3 to observe
 - (i) B's genital's or buttocks (whether exposed or covered in underwear) or
 - (ii) The underwear covering B's genitals or buttocks, in circumstances where the genitals, buttocks or underwear would not otherwise be visible, &
 - (c) A does so
 - (i) without B's consent, &
 - (ii) Without reasonably believing that B consents



3) The purposes referred to in subsections (1) and (2) are – (a) Obtaining sexual gratification (whether for A or C)

(b) Humiliating, alarming or distressing B

It is also an offence under this legislation to record an image

A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years.

Upskirting is a highly intrusive practice, which typically involves someone taking a picture under another person's clothing without their knowledge, with the intention of viewing their genitals or buttocks (with or without underwear).

It can take place in a range of places, e.g. British Transport Police have seen a rise of reports on public transport.

The new law will capture instances where the purpose of the behaviour is to obtain sexual gratification, or to cause humiliation, distress or alarm.

Anyone, and any gender, can be a victim and this behaviour is completely unacceptable.

What effect can upskirting have on victims?

Upskirting is distressing and a humiliating violation of privacy for victims.

We want victims to know and be confident that reports to the police will be taken seriously.

What punishment can upskirting perpetrators face under the new law?

Perpetrators will face two years in prison. By criminalising this distressing practice, it is hoped that it deters people from committing the crime.

Upskirting, where committed to obtain sexual gratification, can result in the most serious offenders being placed on the sex offenders register.

The new law will send a clear message that such behaviour is criminal and will not be tolerated.

Upskirting has not gone unpunished in England and Wales - depending on the circumstances it has already prosecuted under the common law offence of outraging public decency.

However, following concerns expressed by victims, a review of the law found that the existing criminal law may not have been able to capture all instances.

The **Voyeurism Offences Act**, which was commonly known as the Upskirting Bill, was introduced on 21 June 2018. It came into force on 12 April 2019.

Trespass with Intent to Commit a Sexual Offence

Section 63 of the Sexual Offences Act 2003

A person commits an offence of trespass with intent to commit a sexual offence if:

They are a trespasser on any premises

They intend to commit a relevant sexual offence on the premises, &

They know that, or are reckless as to whether they are a trespasser



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QTS – where can people commit sexual offences?

QTS – what types of items do you think people may carry if they are going to commit a sexual offence?

An offence applies under Section 63 of the Act regardless of whether or not the sexual offence is actually committed.

The intent is likely to be inferred from what the defendant says or does to the intended victim (if there is one), or from items in their possession at the time they commit the trespass.

A separate offence is needed to cover trespass because trespass is a civil dispute and not a criminal offence.

Example of Trespass with Intent to Commit a Sexual Offence

Michael goes into Sarah's garden without her consent. He has in his possession condoms, lubricating jelly and pornographic materials. Michael intends to commit a sexual offence against Sarah on her premises.

This is an offence under Section 63 of the Sexual Offence Act because Michael has trespassed with the intention to commit a sexual offence whilst he is on Sarah's premises. Michael knows he is trespassing. A person is a trespasser if he is on any premises without the owner or occupier's consent, or other lawful excuse.

Sexual Activity in a Public Toilet



S71 Sexual Offences Act 2003

It is an offence for a person to engage in sexual activity in a public lavatory



Prior to showing the slide, Trainer to give handout 1 - the 'George Michael' handout

QTS – if this happened in Britain, what offence would be committed?

QTS – what elements do you think you need for this offence to be complete?

Section 71 of the Sexual Offences Act 2003 makes it an offence for a person to engage in sexual activity in a public lavatory.

Facilitate a discussion based on the following areas

Why would persons choose to do this in a toilet

Rape/sexual assaults

Affairs

Underage sex (Consider Safeguarding)

Sexual Gratification

Alcohol lowers inhibitions and fuels sexual desires

Who can commit the offence

Male or female

Any age over 10

What is a “Public Toilet”

Any toilet which the public have access to on payment or otherwise. Where access is readily gained/implied access, no signage stating private for example.

What defines sexual activity?

A different definition of ‘sexual’ is used in this section, as opposed to the one applied elsewhere in the Act (Section 78);

Sexual activity is limited to that which a reasonable observer would see as unambiguously sexual. This is because it is unlikely that the third party who witnesses the activity will have information about the purpose of the defendant.

Examples?

Oral sex

Sexual intercourse

Digital penetration

Any anal/vaginal penetration

Poking penis’s through cubicle walls inviting contact.

Masturbation/self/other

Exposure?

Does it matter if the person discovering is affected/alarmed/distressed or even bothered?

No, the offence is committed.

Disclosing Private Sexual Photographs & Films with Intent to Cause Distress

A person commits an offence if :-

The person discloses, or threatens to disclose a private sexual photograph or film in which another appears

By doing so, the person intends to cause distress to that individual, &

The disclosure is, or would be made without the consent of the individual

Section 33 Criminal Justice & Courts Act 2015



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Prior to showing the slide – Group Activity 4 – Trainer to split students into pairs to read examples and discuss whether they would constitute ‘revenge porn’

Trainer to debrief student responses using Trainer copy of Handout 2 and PPT notes

This has recently been amended by the Domestic Abuse Act 2021

This is more commonly known ‘Revenge Porn’. It occurs when someone discloses or publishes private sexual photographs or film of another without their consent and with the intent to cause them distress. The use of social media is the most common medium for this, but it would also include photographs in hard copy publications. It usually has a devastating effect on the victim and especially with access to and use of social media being so prolific, the damage is done before it can be removed.

****** This has been introduced by the Domestic Abuse Act**

2021*****Where a person is charged with an offence under this section **of threatening to disclose** a private sexual photograph or film, it is not necessary for the prosecution to prove—

- (a) that the photograph or film referred to in the threat exists, or
- (b) if it does exist, that it is in fact a private sexual photograph or film.”

A person ‘discloses’ something to a person if, by any means, he or she gives or shows it to the person or makes it available to the person. This can be done by uploading images to the internet, sending by text, email or through messaging platforms, as well as simply showing someone a physical or electronic image.

- A ‘photograph or filmed image’ means a still or moving image that was originally captured by photography or filming, or is part of an image originally captured by photography or filming.
- A photograph or film is ‘private’ if it shows something that is not of a kind ordinarily seen in public.
- A photograph or film is ‘sexual’ if it shows all or part of an individual’s exposed genitals or pubic area, if it shows something that a reasonable person would consider to be sexual because of its nature, or its content, taken as a whole, is such that a reasonable person would consider it to be sexual.

It is a defence for a person charged with an offence under this section to prove that he or she reasonably believed:

- a. that the disclosure was necessary for the purposes of preventing, detecting or investigating crime.
- b. that the disclosure was made in the course of, or with a view to, the publication of journalistic material, and
- c. he or she reasonably believed that, in the particular circumstances, the publication of the journalistic material was, or would be, in the public interest.

In this case, ‘publication of journalistic material’ means disclosure to the public at large or to a section of the public.

It is also a defence for a person charged with an offence under this section to show that he or she reasonably believed:

- a. that the photograph or film had previously been disclosed for reward, whether by the victim or another person, and
- b. he or she had no reason to believe that the previous disclosure for reward was made without the consent of the victim

Possession of Extreme Pornographic Images

Section 63-67 Criminal Justice & Immigration Act 2008



It is an offence to be in possession of an 'extreme pornographic image'



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QTS – what is pornography?

QTS – what is the difference between pornography and extreme pornography?

Under Section 63-67 of the Criminal Justice and Immigration Act 2008 there are three elements to the offence of possession of extreme pornographic images. An image must come within the terms of all three elements before an offence is committed. Those elements are:

1. the image is extreme pornographic
2. the image is grossly offensive, disgusting, or otherwise of an obscene character, and
3. the image portrays in an explicit and realistic way, one of the following extreme acts:
 - an act which threatens a person's life
 - an act which results in or is likely to result in serious injury to a person's anus, breast or genitals
 - an act involving sexual interference with a human corpse
 - 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 the people and animals portrayed were real.

Section 63 of the Act defines an image as 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.’

Even if an image is pornographic, it will not come within the terms of the offence unless it also satisfies all other aspects of the offence.

The words ‘grossly offensive’ and ‘disgusting’ are not alternatives to ‘obscene character’, but are examples of it. This element of the offence must be read in conjunction with the other two elements.

Only those specific ‘extreme acts’ mentioned above can be considered, and then only in conjunction with the other two elements of the offence. ‘Life threatening’ is not defined in the Act, but could include depictions of hanging, suffocation, or sexual assault involving a threat with a weapon. Serious injury is also not defined, but could include the insertion of sharp objects or the mutilation of breasts or genitals. As well as being a specified act, an extreme act must be explicit and realistic.

Criminal Justice and Immigration Act 2008

Defences to possession of extreme pornography

Section 65
General Defences

Section 66
Participation in consensual
acts



Section 65 of the Criminal Justice and Immigration Act 2008 sets out a series of defences to the offence of possession of extreme pornographic images.

65(1) Where a person is charged with an offence under section 63 it is a defence for the person to prove 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.

Section 66 of the Criminal Justice and Immigration Act 2008 creates an additional defence for those who participate in the creation of extreme pornographic images.

It is a defence for the defendant to prove -

- (a) that he 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

(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, and

(d) if the image portrays an act within section 63(7A), that what is portrayed as non-consensual penetration was in fact consensual.

Either way

67(2) - image that portrays any relevant act

Summary: maximum 12 months and/or fine

Indictment: maximum imprisonment 3 years and/or fine

