

Protection of Children (Encrypted Material) Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by Sir Paul Beresford, the Member in charge of the Bill, are published separately as Bill 18 – EN.

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TO

Amend the Regulation of Investigatory Powers Act 2000 to increase the penalty where a person fails to comply with a notice requiring disclosure of protected material where it is likely that the material contains an indecent photograph of a child or where the offender has been previously convicted of a sexual offence involving images of children; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Amendment of penalty

- (1) Section 53 of the Regulation of Investigatory Powers Act 2000 (c. 23) (failure to comply with a notice) is amended as follows.
- (2) In subsection 5A, after paragraph (a) insert—
“*(aa)* where subsection 5C applies, five years;” 5
- (3) After subsection 5B insert—
“(5C) This section applies where—
(a) the offender has been previously convicted of a relevant sexual offence,
(b) an indecent photograph of a child as been found in his possession, or 10
(c) the court is satisfied that it is more likely than not that the protected information may contain an indecent photograph of a child.
- (5D) For the purposes of subsection (5C)— 15
“relevant sexual offence” means an offence under—
(a) section 1 of the Protection of Children Act 1978 (c. 37) (indecent photographs of children);
(b) section 160 of the Criminal Justice Act 1988 (c. 33) (possession of indecent photographs of a child); 20

- (c) section 170 of the Customs and Excise Management Act 1979 (c. 2) (penalty for fraudulent evasion of duty etc) in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876 (c. 36) (indecent or obscene articles), if the prohibited goods included indecent photographs of persons under 16; 5
- (d) sections 48 to 50 of the Sexual Offences Act 2003 (c. 42) (abuse of children through prostitution or pornography) where the victim was under 18 and involved in pornography; 10
- “indecent photograph of a child” has the same definition as in sections 1 and 7 of the Protection of Children Act 1978 (c. 37) and for the avoidance of doubt includes a reference to a pseudo-photograph of a child or a tracing of an indecent photograph within the meaning of section 7(4A) of that Act.” 15
- 2 Notification requirements**
- In Schedule 3 of the Sexual Offences Act 2003, after paragraph 35 insert –
- “(36) An offence under s. 53 of the Regulation of Investigatory Powers Act 2000 (c. 23) where subsection (5C) applies.”
- 3 Commencement** 20
- This Act shall come into force at the end of a period of 3 months beginning with the day on which it is passed.
- 4 Short title**
- This Act may be cited as the Protection of Children (Encrypted Material) Act 2009. 25

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*Presented by Sir Paul Beresford
supported by
Mr Dominic Grieve
and Mr John Randall.*

*Ordered, by The House of Commons,
to be Printed, 21 January 2009.*

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