

Crime and Policing Bill – Committee stage

LORD HANSON OF FLINT

[OPC796]

Clause 63, page 79, line 36, leave out “or” and insert “and”

Member's explanatory statement

This is a minor drafting change.

LORD HANSON OF FLINT

[OPC586]

After Clause 63, insert the following new Clause –

“Child sexual abuse image-generators: Northern Ireland

- (1) In the Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)), after Article 42 insert –

“Creation of CSA material

42A Child sexual abuse image-generators

- (1) It is an offence for a person to make, adapt, possess, supply or offer to supply a CSA image-generator.
- (2) It is a defence for a person charged with an offence under this Article of possessing a CSA image-generator to prove that the person –
 - (a) was sent the CSA image-generator without any request having been made for it (by or on behalf of the person), and
 - (b) did not keep it for an unreasonable time.
- (3) It is a defence for a person charged with an offence under this Article of possessing, supplying or offering to supply a CSA image-generator to prove that the person did not know, and did not have cause to suspect, that the thing possessed, supplied or offered to be supplied was a CSA image-generator.
- (4) For further defences, see Article 42B.
- (5) A person who commits an offence under this Article is liable –
 - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both);
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).
- (6) In this Article –
 - (a) “CSA image-generator” means anything (including any program and any information in electronic form) which is

made or adapted for use for creating, or facilitating the creation of, CSA images;

- (b) “CSA image” means –
 - (i) an indecent photograph or pseudo-photograph of a child, within the meaning of the Protection of Children (Northern Ireland) Order 1978 (S.I. 1978/1047 (N.I. 17));
 - (ii) a prohibited image of a child, within the meaning of section 62 of the Coroners and Justice Act 2009, that is not an excluded image within the meaning of section 63 of that Act;
- (c) a reference to making a CSA image-generator includes adapting anything that is not a CSA image-generator in such a way that it becomes a CSA image-generator.

42B Article 42A: supplementary

- (1) It is a defence for a person charged with an offence under Article 42A –
 - (a) to prove that the person made, adapted, possessed, supplied or offered to supply the CSA image-generator for the purposes of the prevention, detection or investigation of crime, or for the purposes of criminal proceedings, in any part of the world,
 - (b) to prove that the person was a member of the Security Service, the Secret Intelligence Service or GCHQ (a “security body”) and made, adapted, possessed, supplied or offered to supply the CSA image-generator for the purposes of the exercise of any function of the security body, or
 - (c) to prove that the person –
 - (i) was a member of OFCOM, was employed or engaged by OFCOM, or assisted OFCOM in the exercise of any of its online safety functions, and
 - (ii) made, adapted, possessed, supplied or offered to supply the CSA image-generator for the purposes of OFCOM’s exercise of any of its online safety functions.
- (2) An internet service provider does not commit an offence under Article 42A by –
 - (a) providing access to a communication network, or
 - (b) transmitting, in a communication network, information provided by a user, if the provider does not –
 - (i) initiate the transmission,
 - (ii) select the recipient of the transmission, or
 - (iii) select or modify the information contained in the transmission.
- (3) The references in paragraph (2) to providing access to, or transmitting information in, a communication network include storing the information transmitted so far as the storage –
 - (a) is automatic, intermediate and transient,

- (b) is solely for the purpose of carrying out the transmission in the network, and
 - (c) is for no longer than is reasonably necessary for the transmission.
- (4) An internet service provider does not commit an offence under Article 42A by storing information provided by a user for transmission in a communication network if –
 - (a) the storage of the information –
 - (i) is automatic, intermediate and temporary, and
 - (ii) is solely for the purpose of making more efficient the onward transmission of the information to other users at their request, and
 - (b) the internet service provider –
 - (i) does not modify the information,
 - (ii) complies with any conditions attached to having access to the information, and
 - (iii) on obtaining actual knowledge of a matter within paragraph (5), promptly removes the information or disables access to it.
- (5) The matters within this paragraph are that –
 - (a) the information at the initial source of the transmission has been removed from the network,
 - (b) access to it has been disabled, or
 - (c) a court or administrative authority has ordered the removal from the network of, or the disablement of access to, the information.
- (6) An internet service provider does not commit an offence under Article 42A by storing information provided by a user who is not acting under the authority or control of the provider if –
 - (a) the provider had no actual knowledge when the information was provided that it was, or contained, a CSA image-generator, and
 - (b) on obtaining actual knowledge that the information was, or contained, a CSA image-generator, the provider promptly removed the information or disabled access to it.
- (7) Article 76(1) applies in relation to an act which, if done in Northern Ireland, would constitute an offence under Article 42A as if references to a United Kingdom national included –
 - (a) a body incorporated under the law of any part of the United Kingdom, or
 - (b) an unincorporated association formed under the law of any part of the United Kingdom.
- (8) Article 42A(6) applies for the purposes of this Article.
- (9) In this Article –
 - (a) “GCHQ” has the meaning given by section 3 of the Intelligence Services Act 1994;

- (b) “OFCOM” means the Office of Communications;
- (c) a reference to OFCOM’s “online safety functions” has the meaning given by section 235 of the Online Safety Act 2023;
- (d) “internet service provider” means a provider of –
 - (i) a service that is made available by means of the internet, or
 - (ii) a service that provides access to the internet;
- (e) “user”, in relation to an internet service provider, means a user of a service provided by the internet service provider.

42C Liability for an offence under Article 42A committed by a body

- (1) This Article applies where an offence under Article 42A is committed by a body.
- (2) If the offence is committed with the consent or connivance of –
 - (a) a relevant person in relation to the body, or
 - (b) a person purporting to act in the capacity of a relevant person in relation to the body,
 the person (as well as the body) commits the offence and is liable to be proceeded against and punished accordingly.
- (3) In this Article –
 - “body” means a body corporate, a partnership or an unincorporated association other than a partnership;
 - “relevant person”, in relation to a body, means –
 - (a) in the case of a body corporate other than one whose affairs are managed by its members, a director, manager, secretary or other similar officer of the body;
 - (b) in the case of a limited liability partnership or other body corporate whose affairs are managed by its members, a member who exercises functions of management with respect to it;
 - (c) in the case of a limited partnership, a general partner (within the meaning given by section 3 of the Limited Partnerships Act 1907);
 - (d) in the case of any other partnership, a partner;
 - (e) in the case of an unincorporated association other than a partnership, a person who exercises functions of management with respect to it.”
- (2) In Schedule 3 to the Sexual Offences Act 2003 (offences for purposes of Part 2 of that Act) after paragraph 92O insert –
 - “92OA An offence under Article 42A of that Order (child sexual abuse image-generators) if the offender is sentenced in respect of the offence to imprisonment for a term of at least 6 months.””

Member's explanatory statement

This new Clause makes provision for Northern Ireland equivalent to that made by clause 63 for England and Wales.

[OPC607]

After Clause 63, insert the following new Clause –

“Child sexual abuse image-generators: Scotland

(1) In the Civic Government (Scotland) Act 1982, after section 52C insert –

“52D Child sexual abuse image generators

- (1) It is an offence for a person to make, adapt, possess, supply or offer to supply a CSA image-generator.
- (2) It is a defence for a person charged with an offence under this section of possessing a CSA image-generator to prove that the person –
 - (a) was sent the CSA image-generator without any request having been made for it (by or on behalf of the person), and
 - (b) did not keep it for an unreasonable time.
- (3) It is a defence for a person charged with an offence under this section of possessing, supplying or offering to supply a CSA image-generator to prove that the person did not know, and did not have cause to suspect, that the thing possessed, supplied or offered to be supplied was a CSA image-generator.
- (4) For further defences, see section 52E.
- (5) A person who commits an offence under this section is liable –
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both);
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).
- (6) In this section –
 - (a) “CSA image-generator” means anything (including any program and any information in electronic form) which is made or adapted for use for creating, or facilitating the creation of, CSA images;
 - (b) “CSA image” means an indecent photograph or pseudo-photograph of a child, within the meaning of section 52;
 - (c) a reference to making a CSA image-generator includes adapting anything that is not a CSA image-generator in such a way that it becomes a CSA image-generator.

52E Section 52D: supplementary

- (1) It is a defence for a person charged with an offence under section 52D –
 - (a) to prove that the person made, adapted, possessed, supplied or offered to supply the CSA image-generator for the purposes of the prevention, detection or investigation of crime, or for the purposes of criminal proceedings, in any part of the world,

- (b) to prove that the person was a member of the Security Service, the Secret Intelligence Service or GCHQ (a “security body”) and made, adapted, possessed, supplied or offered to supply the CSA image-generator for the purposes of the exercise of any function of the security body, or
 - (c) to prove that the person –
 - (i) was a member of OFCOM, was employed or engaged by OFCOM, or assisted OFCOM in the exercise of any of its online safety functions, and
 - (ii) made, adapted, possessed, supplied or offered to supply the CSA image-generator for the purposes of OFCOM’s exercise of any of its online safety functions.
- (2) An internet service provider does not commit an offence under section 52D by –
 - (a) providing access to a communication network, or
 - (b) transmitting, in a communication network, information provided by a user, if the provider does not –
 - (i) initiate the transmission,
 - (ii) select the recipient of the transmission, or
 - (iii) select or modify the information contained in the transmission.
- (3) The references in subsection (2) to providing access to, or transmitting information in, a communication network include storing the information transmitted so far as the storage –
 - (a) is automatic, intermediate and transient,
 - (b) is solely for the purpose of carrying out the transmission in the network, and
 - (c) is for no longer than is reasonably necessary for the transmission.
- (4) An internet service provider does not commit an offence under section 52D by storing information provided by a user for transmission in a communication network if –
 - (a) the storage of the information –
 - (i) is automatic, intermediate and temporary, and
 - (ii) is solely for the purpose of making more efficient the onward transmission of the information to other users at their request, and
 - (b) the internet service provider –
 - (i) does not modify the information,
 - (ii) complies with any conditions attached to having access to the information, and
 - (iii) on obtaining actual knowledge of a matter within subsection (5), promptly removes the information or disables access to it.
- (5) The matters within this subsection are that –
 - (a) the information at the initial source of the transmission has been removed from the network,

- (b) access to it has been disabled, or
 - (c) a court or administrative authority has ordered the removal from the network of, or the disablement of access to, the information.
- (6) An internet service provider does not commit an offence under section 52D by storing information provided by a user who is not acting under the authority or control of the provider if –
 - (a) the provider had no actual knowledge when the information was provided that it was, or contained, a CSA image-generator, and
 - (b) on obtaining actual knowledge that the information was, or contained, a CSA image-generator, the provider promptly removed the information or disabled access to it.
- (7) Section 52D(6) applies for the purposes of this section.
- (8) In this section –
 - (a) “GCHQ” has the meaning given by section 3 of the Intelligence Services Act 1994;
 - (b) “OFCOM” means the Office of Communications;
 - (c) a reference to OFCOM’s “online safety functions” has the meaning given by section 235 of the Online Safety Act 2023;
 - (d) “internet service provider” means a provider of –
 - (i) a service that is made available by means of the internet, or
 - (ii) a service that provides access to the internet;
 - (e) “user”, in relation to an internet service provider, means a user of a service provided by the internet service provider.”
- (2) In Schedule 3 to the Sexual Offences Act 2003 (sexual offences for purposes of Part 2 of that Act) after paragraph 46 insert –

“46A An offence under section 52D of that Act (child sexual abuse image-generators), if the offender is sentenced in respect of the offence to imprisonment for a term of at least 12 months.”
- (3) In the Sexual Offences (Scotland) Act 2009 –
 - (a) in section 55 (offences committed outside the UK) after subsection (7) insert –

“(7A) Subsection (1) applies to an act which, if done in Scotland, would constitute an offence under section 52D of the Civic Government (Scotland) Act 1982, as if references to a United Kingdom national included –

 - (a) a body incorporated under the law of any part of the United Kingdom, or
 - (b) an unincorporated association formed under the law of any part of the United Kingdom.”;

- (b) in Schedule 4 (sexual offences for purposes of section 55 of that Act), after paragraph 12 insert –

“12A An offence under section 52D of that Act (child sexual abuse image-generators).”

Member's explanatory statement

This new Clause makes provision for Scotland equivalent to that made by clause 63 for England and Wales.

LORD HANSON OF FLINT

[OPC587]

After Clause 64, insert the following new Clause –

“Possession of advice or guidance about child sexual abuse or CSA images: Scotland

- (1) In Part 4 of the Sexual Offences (Scotland) Act 2009 after section 41 insert –

“41A Possession of advice or guidance about abusing children sexually or creating CSA images

- (1) It is an offence to be in possession of any item that contains advice or guidance about abusing children sexually or creating CSA images.

- (2) “Abusing children sexually or creating CSA images” means doing anything that constitutes –

- (a) an offence under section 52 or 52D of the Civic Government (Scotland) Act 1982;
- (b) an offence under section 1, 2 or 7 of the Criminal Law Consolidation (Scotland) Act 1995 against a person under the age of 18;
- (c) an offence under section 10 of that Act;
- (d) an offence under section 1, or any of sections 9 to 12, of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005;
- (e) an offence under Part 1 or section 46 of the Sexual Offences (Scotland) Act 2009 against a person under the age of 18;
- (f) an offence under Part 4 or section 42 of that Act;
- (g) an offence under section 1 of the Human Trafficking and Exploitation (Scotland) Act 2015 against a person under the age of 18 that is committed with a view to exploitation that consists of or includes behaviour within section 3(3), (4) or (5) of that Act (prostitution and sexual exploitation),

or doing anything outside Scotland that would constitute such an offence if done in Scotland.

- (3) It is a defence for a person (D) charged with an offence under this section –

- (a) to prove that D had a legitimate reason for being in possession of the item;
- (b) to prove that –

- (i) D had not read, viewed or (as appropriate) listened to the item, and
 - (ii) D did not know, and had no reason to suspect, that it contained advice or guidance about abusing children sexually or creating CSA images; or
- (c) to prove that –
 - (i) the item was sent to D without any request made by D or on D's behalf, and
 - (ii) D did not keep it for an unreasonable time.
- (4) 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 not exceeding the statutory maximum, or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 3 years or to a fine, or to both.
- (5) In this section “item” includes anything in which information of any description is recorded.

41B Section 41A: supplementary provision

- (1) A service provider does not commit an offence under section 41A by –
 - (a) providing access to a communication network, or
 - (b) transmitting, in a communication network, information provided by a user, if the provider does not –
 - (i) initiate the transmission,
 - (ii) select the recipient of the transmission, or
 - (iii) select or modify the information contained in the transmission.
- (2) The references in subsection (1) to providing access to, or transmitting information in, a communication network include storing the information transmitted so far as the storage –
 - (a) is automatic, intermediate and transient,
 - (b) is solely for the purpose of carrying out the transmission in the network, and
 - (c) is for no longer than is reasonably necessary for the transmission.
- (3) A service provider does not commit an offence under section 41A by storing information provided by a user for transmission in a communication network if –
 - (a) the storage of the information –
 - (i) is automatic, intermediate and temporary, and
 - (ii) is solely for the purpose of making more efficient the onward transmission of the information to other users at their request, and
 - (b) the service provider –
 - (i) does not modify the information,

- (ii) complies with any conditions attached to having access to the information, and
 - (iii) on obtaining actual knowledge of a matter within subsection (4), promptly removes the information or disables access to it.
- (4) The matters within this subsection are that —
 - (a) the information at the initial source of the transmission has been removed from the network,
 - (b) access to it has been disabled, or
 - (c) a court or administrative authority has ordered the removal from the network of, or the disablement of access to, the information.
- (5) A service provider does not commit an offence under section 41A by storing information provided by a user who is not acting under the authority or control of the provider if —
 - (a) the provider had no actual knowledge when the information was provided that it was, or contained, advice or guidance about abusing children sexually or creating CSA images, and
 - (b) on obtaining actual knowledge that the information was, or contained, advice or guidance about abusing children sexually or creating CSA images, the provider promptly removed the information or disabled access to it.
- (6) In this section —
 - (a) “service provider” means a person providing an information society service;
 - (b) “information society service” means a service normally provided —
 - (i) for remuneration,
 - (ii) at a distance,
 - (iii) by electronic means, and
 - (iv) at the individual request of a user of the services;
 - (c) “user”, in relation to a service provider, means a user of a service provided by the service provider.
- (7) In subsection (6)(b) —
 - (a) “at a distance” means that the service is provided without the parties being simultaneously present;
 - (b) “by electronic means” means that the service is —
 - (i) sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and
 - (ii) entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;
 - (c) “at the individual request of a user of the services” means that the service is provided through the transmission of data on individual request.”

- (2) In Schedule 3 to the Sexual Offences Act 2003 (sexual offences for purposes of Part 2 of that Act) after paragraph 59ZJ insert –

“59ZJA An offence under section 41A of that Act (possession of paedophile manual) if the offender –

- (a) was 18 or over, and
- (b) is sentenced in respect of the offence to imprisonment for a term of at least 12 months.”

Member's explanatory statement

This amendment makes provision for Scotland equivalent to that made for England and Wales and Northern Ireland by section 69 of the Serious Crime Act 2015, as amended by clause 64.

LORD HANSON OF FLINT

[OPC767]

Clause 89, page 104, line 17, after “46,” insert “46A,”

Member's explanatory statement

This amendment is consequential on my new clause (Child sexual abuse image-generators: Scotland) inserted after clause 63.

LORD HANSON OF FLINT

[OPC768]

Clause 89, page 104, line 21, leave out “92O” and insert “92OA”

Member's explanatory statement

This amendment is consequential on my new clause (Child sexual abuse image generators: Northern Ireland) inserted after clause 63.

LORD HANSON OF FLINT

[OPC764]

Schedule 7, page 267, line 4, leave out “and 52A” and insert “, 52A and 52D”

Member's explanatory statement

This amendment is consequential on my new clause (Child sexual abuse image-generators: Scotland) inserted after clause 63.

LORD HANSON OF FLINT

[OPC765]

Schedule 7, page 268, line 16, at end insert –

“(vi) Article 42A (child sexual abuse image-generators);”

Member's explanatory statement

This amendment is consequential on my new clause (Child sexual abuse image generators: Northern Ireland) inserted after clause 63.

LORD HANSON OF FLINT

[OPC614]

Clause 197, page 228, line 16, at end insert –

“(aa) section (*Child sexual abuse image-generators: Northern Ireland*);”

Member's explanatory statement

This amendment gives the Department of Justice in Northern Ireland power to make regulations containing provision consequential on the specified new clause (inserted after clause 63).

LORD HANSON OF FLINT

[OPC582]

Clause 197, page 228, line 7, at end insert –

“(aa) sections (*Child sexual abuse image-generators: Scotland*) and (*Possession of advice or guidance about child sexual abuse or CSA images: Scotland*);”

Member's explanatory statement

This amendment gives the Scottish Ministers power to make regulations containing provision consequential on the specified new clauses (inserted after clauses 63 and 64).

LORD HANSON OF FLINT

[OPC766]

Clause 200, page 230, line 10, at end insert “and Schedule 7”

Member's explanatory statement

This amendment provides for Schedule 7 (which lists the offences to which clause 65 applies) to have UK extent.

LORD HANSON OF FLINT

[OPC615]

Clause 200, page 231, line 1, at end insert –

“(ca) section (*Child sexual abuse image-generators: Northern Ireland*);”

Member's explanatory statement

This amendment provides for the specified new clause (inserted after clause 63) to have the same extent as the provisions it amends.

LORD HANSON OF FLINT

[OPC608]

Clause 200, page 231, line 1, at end insert –

“(ca) section (*Child sexual abuse image-generators: Scotland*);”

Member's explanatory statement

This amendment provides for the specified new clause (inserted after clause 63) to have the same extent as the provisions it amends.

LORD HANSON OF FLINT

[OPC609]

Clause 200, page 231, line 2, at end insert –

“(da) section (*Possession of advice or guidance about child sexual abuse or CSA images: Scotland*)”

Member's explanatory statement

This amendment provides for the specified new clause (inserted after clause 64) to have the same extent as the provisions it amends.

LORD HANSON OF FLINT

[OPC617]

Clause 201, page 232, line 29, at end insert –

“(za) section (*Child sexual abuse image-generators: Northern Ireland*) so far as extending to Northern Ireland;”

Member's explanatory statement

This amendment gives the Department of Justice in Northern Ireland power to commence the specified new clause (inserted after clause 63) for Northern Ireland.

LORD HANSON OF FLINT

[OPC585]

Clause 201, page 232, line 34, at beginning insert “Sections (*Child sexual abuse image-generators: Scotland*) and (*Possession of advice or guidance about child sexual abuse or CSA images: Scotland*) so far as extending to Scotland,”

Member's explanatory statement

This amendment gives the Scottish Ministers power to commence the specified new clauses (inserted after clauses 63 and 64) for Scotland.