Criminal Law Update

DEVON CHAMBERS

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Pornography Depicting Choking, Incest and Adults Roleplaying as Children Now Criminalised: New offences come into force on 6 November 2026

Possessing or publishing certain pornographic images depicting strangulation, suffocation, incestuous sexual activity or adults portraying sexual activity involving children under 16 is now a criminal offence. The new legislation marks a significant expansion of the law governing extreme pornography, with maximum sentences of up to five years' imprisonment for its publication.

A significant change to the law

From 6 November 2026, new criminal offences came into force in England and Wales targeting three categories of pornographic images: depictions of strangulation or suffocation; certain depictions of sexual activity between relatives or people pretending to be related; and depictions of sexual activity involving someone who is, or is pretending to be, under 16. [1]. Each of the new offences require the consent of the Director of Public Prosecutions (DPP).

1 Crime and Policing Act 2026, ss 104, 106–107; Crime and Policing Act 2026 (Commencement No 4) Regulations 2026, SI 2026/1090, reg 2.

Introduced by the Crime and Policing Act 2026, the provisions amend the Criminal Justice and Immigration Act 2008 and criminalise both the possession and publication of qualifying material.[2]

The significance of the reforms is that liability is no longer confined to those who create or distribute such material. Individuals who retain prohibited images on their personal devices or accounts may also fall within the scope of the new offences.

The three categories of prohibited material

1. Pornography depicting strangulation or suffocation

The first offence concerns pornographic images which explicitly and realistically depict one person strangling or suffocating another. The image must be such that a reasonable person looking at it would consider the individuals depicted to be real.[3]

The legislation does not require proof that the conduct depicted caused actual injury.

Although the statutory provisions do not exhaustively define strangulation or suffocation, the ordinary meaning of these terms is relevant. Strangulation generally involves applying pressure to another person's neck, whereas suffocation involves depriving someone of air in a way that affects their ability to breathe.[4]

2. Pornography depicting sexual activity between relatives

The second offence criminalises pornographic images depicting explicit and realistic penetrative sexual activity between individuals whom a reasonable person would consider to be related, or pretending to be related, in specified familial relationships.

These include close familial relationships such as parent and child, siblings, grandparents and grandchildren, alongside certain other specified relatives.

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2 Crime and Policing Act 2026, ss 104, 106–107; Criminal Justice and Immigration Act 2008, ss 67A–67J (as inserted).

3 Criminal Justice and Immigration Act 2008, s 67A(1)–(2).

4 Ministry of Justice, 'Crime and Policing Act 2026: Offences relating to pornography' (16 October 2026) https://www.gov.uk/guidance/crime-and-policing-act-2026-offences-relating-to-pornography accessed 6 November 2026.

The legislation also extends to particular step-family and foster-family relationships, subject to the statutory age requirements.[5]

Importantly, the assessment is not confined to the image itself. The legislation requires consideration of any associated sound or information when determining whether the individuals depicted are, or are pretending to be, related.

3. Adults portraying sexual activity involving children under 16

The third category concerns pornographic images depicting sexual activity between real individuals where at least one person is, or is pretending to be, under the age of 16.

The assessment takes account of the image itself, together with any associated sound or information. The legislation also provides that an individual is not to be treated as pretending to be under 16 where the suggestion is fanciful.[6]

This provision is particularly significant because it addresses realistic adult roleplay portraying sexual conduct involving children, even where the individuals depicted are adults in reality.

It is important to distinguish this offence from the existing indecent images of children regime, which addresses images depicting actual children.

Possession and publication: how far does the law extend?

The offences extend beyond physical copies of prohibited material.

The Ministry of Justice explains that possession may include images stored on mobile phones, computers, personal accounts or cloud storage. Ultimately, whether an individual possesses an image will be a question of fact, assessed by reference to custody or control.[7]

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5 Criminal Justice and Immigration Act 2008, s 67E.

6 Criminal Justice and Immigration Act 2008, s 67H(1)–(3).

7 Ministry of Justice (n 4).

Publication is also broadly defined. It includes giving or making an image available to another person by any means. Consequently, uploading, posting, sending, sharing or distributing qualifying material may amount to publication.

The legislation also captures realistic AI-generated images where a reasonable person would consider the individuals depicted to be real.[8]

What about material downloaded before 6 November 2026?

One of the most significant practical consequences of the new legislation concerns material acquired before the offences came into force.

Possession is capable of being a continuing act. Accordingly, an individual who downloaded an image before 6 November 2026 may nevertheless commit an offence by continuing to possess it after commencement.

Similarly, publication may be continuing where prohibited material remains available to others.

The Government therefore advised individuals to permanently delete or otherwise dispose of prohibited material before commencement and to remove material they had made available to others.[9]

What are the penalties?

The new offences carry significant custodial penalties, with the maximum sentence depending on the nature of the material and whether the offence involves possession or publication.

- POSSESSION of images depicting strangulation, suffocation or qualifying incestuous activity: up to two years' imprisonment.

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8 Ministry of Justice, 'Crime and Policing Act 2026: Pornography factsheet' (updated 30 September 2026) https://www.gov.uk/government/publications/crime-and-policing-act-2026-factsheets/crime-and-policing-act-2026-pornography-factsheet accessed 6 November 2026.

9 Ministry of Justice (n 4).

- POSSESSION of images depicting sexual activity involving someone portrayed as under 16: up to three years' imprisonment.
- PUBLICATION of qualifying images falling within any of the three categories: up to five years' imprisonment.

These are maximum sentences on conviction on indictment.[10]

The distinction between possession and publication reflects the seriousness with which Parliament has approached the circulation of such material, particularly where it is made accessible to others on a wider scale.

Are there any statutory defences?

The legislation provides a number of statutory defences, although their availability depends on the particular offence and circumstances.

These include:

- Legitimate reason: where the individual had a legitimate reason for possessing or publishing the image.
- Lack of knowledge: where the individual had not seen the image and did not know, nor have cause to suspect, that it fell within the prohibited category.
- Unsolicited material: where an individual received an image without requesting it and did not retain it for an unreasonable period.
- Direct participation: in certain circumstances, where the individual directly participated in the activity depicted and the specific statutory conditions are satisfied.

The precise requirements differ between the offences. The availability of a defence must therefore be assessed against the relevant statutory provision and the evidence in each case.[11]

Implications for online platforms

The reforms extend beyond individual possession and publication.

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10 Criminal Justice and Immigration Act 2008, ss 67C, 67G and 67J.

11 Criminal Justice and Immigration Act 2008, ss 67B, 67F and 67I.

The Crime and Policing Act 2026 amends Schedule 7 to the Online Safety Act 2023, bringing the new offences within the framework of priority offences.

This is significant for online platforms, which are subject to duties to take proactive and proportionate steps to prevent users from encountering illegal content and to respond when such material is identified.

Ofcom's regulatory role will therefore be important in ensuring that platforms comply with their applicable online safety obligations.[12]

The effectiveness of the reforms will depend, in considerable part, on how platforms identify prohibited content, assess risks and respond to its circulation.

A new boundary for extreme pornography

The commencement of these offences represents a significant development in the criminal law governing pornographic material.

The reforms move beyond the existing extreme pornography framework by expressly criminalising the possession and publication of specified depictions of strangulation or suffocation, certain familial sexual activity and sexual activity involving individuals portrayed as under 16.

Their practical application will inevitably require careful consideration. Questions may arise as to whether an image is sufficiently explicit and realistic, whether the individuals depicted appear to be real, and what associated information establishes about their apparent age or relationship.

The statutory defences will also be important in determining the circumstances in which criminal liability may arise.

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12 Crime and Policing Act 2026, ss 104(5), 106(7) and 107(5); Online Safety Act 2023, sch 7.

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