



Contents

	Pages
Introduction	i
Appendix A Policy and principles of the review	1
Appendix B List of contributors to the review	3
Appendix C The Law Commission policy paper 'Consent in Sex Offences'	9
Appendix D1 Literature review of research into rape and sexual assault: Professor Jennifer Temkin, University of Sussex	77
Appendix D2 Literature review of research into the law on sexual offences against children and vulnerable people: Dr Caroline Keenan and Lee Maitland, University of Bristol	125
Appendix D3 Literature review of research on offences of sexual exploitation: Dr Maggie O'Neill, Staffordshire University	177
Appendix D4 Literature review of research into homosexual offences: Mrs E Frances Russell, University of Reading	195
Appendix E Sex offences law in Australia and New Zealand – the impact of change	231
Appendix F Summary of South African Law Commission discussion paper on the substantive law of sex offences (April 1999)	239
Appendix G Information from other countries	257
Appendix H1 Report on a consultation seminar for legal practitioners	265
Appendix H2 Report of a consultation conference on the European Convention on Human Rights and its implications for sex offences	273
Appendix H3 Report of a consultation seminar for Parliamentarians	289
Appendix H4 Report of a consultation conference on sex offences against children	297
Appendix H5 Report of a consultation seminar on rape and sexual assault	307

Appendix H6	Report of a consultation conference on the capacity to consent	319
Appendix H7	Report of a consultation seminar on abuse within the family seminar	339
Appendix H8	Report of a consultation seminar about trafficking and sexual exploitation	347
Appendix H9	List of delegates attending the sex offences review conferences and seminars	359
Appendix I	Talking to children – a report of two visits to Rodborough School	365
Appendix J	Number of offenders cautioned, defendants prosecuted at magistrates' courts and convicted at all courts for specific sexual offences, England and Wales	369
Appendix K	Bibliography	373



Introduction

This volume is made up of annexes and appendices summarising the inputs to the sex offences review. We adopted an evidence based approach from the outset and this volume of the report sets out the external research commissioned on behalf of the review, some of the research undertaken by the review, summaries of the consultation conferences held by the review and a list of written contributions made to the review. What this volume cannot include are all the extra investigations and analyses undertaken by our Research Development and Statistics Directorate and members of the review using their own expertise and sources, all of which contributed to our work and which are reflected in the discussions in the main report.

The Sex Offences Review began with a public consultation exercise in January 1999, asking what people thought was wrong with the current laws on sex offences. We asked for views by March 19th 1999 but made it clear that responses would continue to be welcomed as our work progressed. Over the year we had 170 responses from a wide range of people and organisations which gave an insight into those posing most difficulty. The pattern of responses helped us decide which themes to pursue in a series of eight conferences and seminars held from April to October 1999. These events gave us the opportunity to discuss the key issues with experts working in particular fields, who, along with investigators, legal practitioners, academics and those working with victims and survivors, gave us invaluable help and information and a way forward. The reports of those conferences and seminars are set out in this part of the report, along with a list of all those who attended.

The review also made efforts to find out the views of young people, not only from the work of others such as the report 'Teenage Pregnancy' and other evidence placed before us by children's charities, but also by going out and talking to them in school. A report of these discussions appears in this volume.

Our work would not have been complete without looking at what had happened and was happening in other countries. Colleagues in the United States, Canada, Scotland, Australia and New Zealand were particularly helpful. We met with the Swedish working party on sex offences and were able to meet policy makers and legal practitioners in Australia and New Zealand. Through the use of the Internet we were able to access the report of the South African Law Commission, and others provided us with information on offences in other European states. Some of the information from other countries is presented as reports here, and other references given in the bibliography at the end of this volume.

Finally, the work of the Law Commission played an important part in our considerations. We are very grateful for their permission to publish as part of our report, their paper 'Consent in Sex Offences'.



During the course of the review we met and talked with many people who gave generously of their time and expertise. We would particularly like to thank:

Professor Floyd Feeny, University of California, Davis;
Julie Grohovsky, District Attorney, Washington DC;
Geoff MacDonald, Attorney-General's Department, Australian Capital Territory, Canberra;
Richard Button, Public Defender, New South Wales;
Peter Maloney, Department of Justice, Tasmania;
Greg Byrne, Department of Justice, Victoria;
His Honour Judge Peter Mullaly, Court of Appeal, Victoria;
Desmond Ryan, Ministry of Justice, Wellington, New Zealand;
Mary-Jane Thomas, Crown Counsel, Wellington, New Zealand;
Margaret Ayres, Research Development & Statistics Directorate, Home Office;
Bernard Starkman, Department of Justice, Ottawa;
Chief Rabbi Professor Jonathan Sacks;
Rabbi Dr Charles Middleburgh;
Archbishop's Council, Board for Social Responsibility;
Dr Michael Wilks, Chair, Medical Ethics Committee, British Medical Association;
Special Conferences Unit, Home Office;
The staff of Tactica Ltd, Queen Anne's Gate;
Anusheh Hussain, Director Sahil, Islamabad;
Dr Alison Thom, Auckland Safe Project;
DCC Tim Brain, Gloucestershire Police;
Judge Nils-Olof Berggren;
Katarina Pahlsson;
Baroness Uddin;
Paedophilia Unit, New Scotland Yard;
The Pupils and Staff of Rodborough School, Milford, Surrey.

And all the other people who helped us and are literally too numerous to mention – the many members of the police forces in the UK, New Zealand and Australia; academics, lawyers and judges in all three countries; and those who support victims and survivors whether in the state or voluntary sector. In addition we thank all those friends and colleagues in and around Government whose knowledge we plundered quite shamelessly to help our work.



Appendix A

Policy and Basic Principles

1. The review of sex offences is being conducted within the framework of Government policy and the terms of reference given to the group. The key themes reflect the Home Office aim of achieving a safe, just and tolerant society. The review will be seeking to achieve:

- Protection
- Fairness
- Justice

2. The terms of reference for the review are:

“To review the sex offences in the common and statute law of England and Wales, and make recommendations that will:

- provide coherent and clear sex offences which protect individuals, especially children and the more vulnerable, from abuse and exploitation;
- enable abusers to be appropriately punished; and
- be fair and non-discriminatory in accordance with the ECHR and Human Rights Act.”

3. The review will consider the rights and responsibilities of individuals to make their own decisions about consensual sexual behaviour and the controls that society needs to impose in order to protect its more vulnerable members. Within these broad headings there are some important principles that will form the conceptual framework within which the review will operate, and it is important that these are established at an early stage. These include a basic set of assumptions that:

- any application of the criminal law must be fair, necessary and proportionate;
- the criminal law should not discriminate unnecessarily between men and women nor between those of different sexual orientation;
- the law should not intrude on consensual sexual behaviour between those over the age of consent without good cause;
- those who coerce, force or deceive anyone into sexual activity are criminally culpable; any coercion, force or deception towards a child or vulnerable person is particularly serious;
- those who induce or encourage children or other vulnerable people to participate in, or be exposed to, sexual behaviour are criminally culpable;
- the age of consent should not be lower than 16;



- there should be a number of factors which could aggravate a sexual offence against a child, such as the age of the child and the relationship between the child and the offender;
- the law should recognise the extent to which people have the mental capacity to give informed consent to sexual activity;
- the law must ensure that people who do not have the mental capacity to give informed consent are protected.

4. In conducting the review, the first major task is to consider what offences are needed, including whether there should be any specific defences and if so what these should be. Once this structure is clear a matching structure of penalties will need to be put in place.

Legal Policy Issues

5. The assumption in undertaking any law reform such as this is that it will result in law that is:

- clear and comprehensible to the ordinary citizen;
- certain: there needs to be no doubt about the nature of the offence;
- effective: the law should be capable of being used by police, prosecutors and sentencers;
- fair: provides appropriate defences and seeks to avoid injustice;
- proportionate: offences and penalties meet a recognised need and sit appropriately within the wider criminal justice system;
- as short and straightforward as possible.

6. In making any new criminal offences it is important that they are clear as to whether they:

- should be of strict liability; or
- should require a criminal state of mind (*mens rea*) to be proved.

7. In applying these principles the review will need to take full account of the law reform work of the Law Commission.



Appendix B

List of contributors to the Review

This Appendix lists those who gave written submissions to the review and those with whom we had meetings to discuss issues relating to sexual offences. We also received a small number of submissions from those who wished to remain anonymous.

Action Concern Empathy

L Adamson

Dr A Adelnoor – St George’s Hospital Medical School

O Allen

Amhurst Park Action Group

Amnesty International

Professor A Ashworth QC – Vinerian Professor of English Law, Oxford University

Association of Chief Police Officers

Association of Directors of Social Services

Attorney-General’s Department, Australian Capital Territory

Dr B Bailey

Bar Lesbian & Gay Group

Barnardo’s

G Benson

Dr R Bertram

Blackliners

B Blizzard MP

Board of Deputies of British Jews

Boys and Girls Welfare Society

C Brennan

Brighton & Hove Lesbian & Gay Community Centre

British Juvenile & Family Courts Society

The Rt Hon Lord Justice Brooke

M Calder – Salford Social Services

Campaign Against Censorship

Campaign for Homosexual Equality

Emeritus Professor P Campbell

J Cannon

I Catt



Children, Young Persons & Their Families Agency, New Zealand
The Children's Society
ChildLine
Christians for Human Rights
Church of England Archbishop's Council Board for Social Responsibility
Coalition for the Removal of Pimping (CROP)
T Connell
P Coulter
Court of Appeal, New Zealand
Court of Appeal, Victoria, Australia
P Cox
R Coxon
Criminal Bar Association
B Crowe
Crown Law Office, New Zealand

F Dalzell
C Dehn QC
Department of Corrections, New Zealand
Department of Justice, Canada
Department of Justice, Tasmania
Department of Justice Victoria, Australia
Diocese of Southwark
District Court, New Zealand

R Enderby
English Collective of Prostitutes
European Disability Forum
European Network for HIV/STD Prevention in Prostitution
D Eyles

The Lucy Faithfull Foundation
Feminist Advocates for Counselling Ethics (FACE), Toronto
S Forbes
A Fogerty
Foundation for People with Learning Disabilities
Friends & Families of Lesbians & Gays (FFLAG)

GALOP
Gay & Lesbian Humanist Association
Gay Men's Health Matter HIV Prevention Project, Sussex
P George
R Gosling
A Grey
Grimsby & Scunthorpe Rape Crisis

Professor J Hamna
R Hampton
Harlequin
Harrogate & District Women's Aid
G Hayward
Professor T Henning – University of Hobart
High Court, New Zealand
P Hill
S Hollingworth
C Holt
A Horsfall
Hull Women's Centre

Inner London Probation Service

Jewish Care
Joint Council of HM Stipendiary Magistrates Legal Committee
K Jones
A Joseph
Josephine Butler Society
E Jungmann
Justice for Children

G Keys
KidScape

Labour Campaign for Lesbian & Gay Rights
M Lal
The Law Commission
Leeds Joint Planning
Lesbian and Gay Christians
Lesbian and Gay Employment Rights (LAGER)
A Levy QC
Liberty
The Lodge
London Borough of Hackney
London Lesbian & Gay Policing Initiative
London Monday Group for Homosexual Equality

M McCarthy – The Tizard Centre, University of Kent
Dr S MacKinnon
MACSAS (Minister & Clergy Sexual Abuse Survivors)
The Magistrates' Association
Magistrates' Courts, Victoria, Australia
Dr M Malet



Manchester City Council
Mapperley Road Neighbourhood Watch Scheme
D Martin
S Martin
C Melia
Mencap
H Mendick
Mental After Care Association (MACA)
Metropolitan Police
Rabbi Dr C Middleburgh – Union of Liberal and Progressive Synagogues
Mind
Ministry of Health, (Manatu Hauora), New Zealand
Ministry of Justice, New Zealand
Model Criminal Code Officers' Committee, Australia
Dr L Moran – Law Department, Birkbeck College, University of London
J Mullen
Professor Dr G Murphy – University of Kent
Muslim Council of Britain

National AIDS Trust
National Association of Child Contact Centres
National Foster Care Association
National Organisation for the Treatment of Abusers (NOTA)
National Union of Students Lesbian, Gay & Bisexual Campaign
Naturists in Business
NCH Action for Children
Netherlands Ministry of Justice
New Zealand Police (Nga Pirihimana O Aotearoa)
A Nichol
D Nichol
Northern Ireland Gay Rights Association
Nottingham Rape Crisis Centre
NSPCC

Office of Public Prosecutions, Victoria, Australia
S Oke
Open Door
Dr S O'Rourke
G Otton
OutRage!

T Papard
Police Federation of England and Wales
Prevention of Professional Abuse Network (POPAN)
S Purkiss

Dr J Radford – School of Social Sciences, University of Teesside
Rape Crisis New Zealand (Whānau Ahuru Mōwai)
Rape Crisis (North Staffs & South Cheshire)
The Raphael Centre
A Reekie
Research Centre on Violence, Abuse & Gender Relations, Leeds Metropolitan Univ
Dr D Rogers – Forensic Medicine Unit, St George’s Hospital Medical School
P Rook QC
Royal College of Psychiatrists
P Rumney – School of Financial Studies & Law, Sheffield Hallam University

Chief Rabbi Professor J Sacks
Dr S Scott
Sexual Assault Support Service, Tasmania
Sexual Freedom Coalition
Soroptomist International
South Essex Rape & Incest Crisis Centre
Stonewall
T Summers
D Sumner
Suzy Lamplugh Trust
Swedish Committee on Sexual Crimes

Tasmanian Police Service
Terrence Higgins Trust
Thames Valley Crime Intervention Service
L Trethowan
TUC Equal Rights Department

UK Men’s Movement
J Underwood
Union of Liberal & Progressive Synagogues
UNISON

A Van Deelen
VEX: Campaign for the Registration and Regulation of Counsellors and Therapists
Victims Referral & Assistance Service, Victoria, Australia
Victim Support, New Zealand
Victoria Legal Aid, Australia
Victoria Police, Australia
M Voice



A Ward

D Ward

Professor D West – Institute of Criminology, University of Cambridge

West Yorkshire Lesbian, Gay, Bisexual and Transgendered Policing Initiative

L Williams

M Windibank

K Wint

Dr R Wintemute – School of Law, King's College, London

The Wolvercote Clinic

Women Against Rape

Women's Education Partnership

P Woods

Wyre Forest Women's Aid

D Yarwood

Yorkshire Mesmac

YWCA of GB

Dr C Zimmerli