



Home Office

BUILDING A SAFE, JUST
AND TOLERANT SOCIETY

SETTING THE BOUNDARIES

Reforming the law on sex offences



Summary Report and Recommendations

July 2000



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This summary report is the executive summary of the full report of the sex offences review also called “Setting the Boundaries”. It is published together with the recommendations to Government and consultation points from the report, as an overview of the work of the review. Details of how to respond to the consultation or obtain copies of the full report and supporting evidence, are set out in paragraph 0.25, on page 14.

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Foreword

by the Home Secretary

This consultation paper represents the completion of the first stage of a review of sex offences. The review has been conducted independently of Ministers. The paper therefore sets out recommendations to Ministers. Before, however, the Government comes to any firm conclusions on how this most sensitive area of the law should be developed, we want to know the views of the public on all of the proposals in this report.

Rape and other sexual offences of all kinds are dreadful crimes which deeply affect the lives of victims and their families, and whole communities. Modernising and strengthening the law can make a direct contribution to our aim of creating a safe, just and tolerant society. We give particular priority to the protection of children, and welcome the emphasis the review has given to increasing this protection and also that of vulnerable people.

Last year I set up the review to consider the existing law on sex offences, and to make recommendations for clear and coherent offences that protect individuals, especially children and the more vulnerable, from abuse and exploitation, and enable abusers to be appropriately punished. Their recommendations also had to be fair and non-discriminatory in accordance with the European Convention on Human Rights and the Human Rights Act. This is their report.

The review was an open, consultative process which involved many people and drew in many strands of opinion. The review group approached their task in a careful way and started from first

principles. They have recommended proposals for change and set out the reasoning behind them.

We are continuing that open and consultative process by seeking the views of the public and of interested organisations on all of the recommendations as well as the individual consultation points set out in the text. The review has recommended changes to us. We now need to consider how well these will work, whether they would increase protection, whether they would apply fairly, equitably and with justice and whether there would be any effects or consequences not yet identified.

The report recommends what is in effect a new code of sex offences to take us into the new century, raising important questions of social and legal policy. The report is only the beginning of a debate on the way forward. I await the response with interest.

A handwritten signature in black ink, appearing to read 'Jack Straw', with a small dot at the end.

Jack Straw



Summary Report

0.1 The sex offences review was set a challenge – to examine the most personal and contentious area of the criminal law and recommend how it should be structured to deliver protection and help achieve a safe, just and tolerant society.

0.2 Why did the law need reviewing? It is a patchwork quilt of provisions ancient and modern that works because people make it do so, not because there is a coherence and structure. Some is quite new – the definition of rape for example was last changed in 1994. But much is old, dating from nineteenth century laws that codified the common law of the time, and reflected the social attitudes and roles of men and women of the time. With the advent of a new century and the incorporation of the European Convention of Human Rights into our law, the time was right to take a fresh look at the law to see that it meets the need of the country today.

0.3 The terms of reference of the review were:

“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.”

0.4 The process we used was open, inclusive and evidence based:

- a review structure that included key stakeholders on both the Steering Group and the advisory External Reference Group;
- a public consultation exercise with over 160 responses telling us what was wrong with the law and how it should be reformed;
- consultation conferences with criminal justice practitioners, academics, those who work with victims/survivors, children and vulnerable people, parliamentarians, faith groups and many other organisations and individuals including men's and women's groups;
- looking at evidence from research and from the experiences of other countries in reforming their law.

0.5 We also took full account of the European Convention on Human Rights and the implications of its incorporation into our law. The ECHR provided us with a dynamic policy making framework that enabled us to look at the role of the state in protecting its citizens, particularly the more vulnerable, from harm; the need to ensure a fair trial and that the interests of justice were upheld (Article 6), the right to a private life (Article 8) and the right to non-discrimination in the enjoyment of ECHR rights (Article 14).

0.6 The law on sex offences is the part of the criminal law which deals with the most private and intimate part of life – sexual relationships – when they are non-consensual, inappropriate or wrong. As such it embodies society's view of what is right and wrong in sexual relations. Our guiding principle was that this judgement on what is right and wrong should be based on an assessment of the harm done to the individual (and through the individual to society as a whole). In considering what was harmful we took account of the views of victims/survivors and of academic research. The victims

of sexual violence and coercion are mainly women. They must be offered protection and redress and the law must ensure that male victims/survivors are protected too. The law must make special provision for those who are too young or otherwise not able to look after themselves, and offer greater protection to children and vulnerable people within the looser structures of modern families. In order to deliver effective protection to all, the law needs to be framed on the basis that offenders and victims can be of either sex. We have recommended offences that are gender neutral in their application, unless there was good reason to do otherwise.

0.7 Our other key guiding principle was that the criminal law should not intrude unnecessarily into the private life of adults. Applying the principle of harm means that most consensual activity between adults in private should be their own affair, and not that of the criminal law. But the criminal law has a vital role to play where sexual activity is not consensual, or where society decides that children and other very vulnerable people require protection and should not be able to consent. It is quite proper to argue in such situations that an adult's right to exercise sexual autonomy in their private life is not absolute, and society may properly apply standards through the criminal law which are intended to protect the family as an institution as well as individuals from abuse. In addition to this, the ECHR ensures that the state must uphold its responsibility to provide a remedy in law so that a complainant can seek justice.¹

0.8 We also thought it was vital that the law was clear and well understood, particularly in this field of sexual behaviour where there is much debate about the ground-rules. There is no Highway Code for sexual relations to give a clear indication of what society expects or will tolerate. The law should ensure respect for an individual's own decisions about withholding sexual activity and protect every person from sexual coercion and violence.

¹ X and Y v The Netherlands.

0.9 In looking at the law on rape and sexual assault we recommend that these offences should be redefined in the following way:

- that rape be redefined to include penetration of the mouth, anus or female genitalia by a penis;
- a new offence of sexual assault by penetration to deal with all other forms of sexual penetration of the anus and genitalia;
- rape and sexual assault by penetration should be seen as equally serious, and both should carry a maximum penalty of life imprisonment;
- a new offence of sexual assault to replace other non-penetrative sexual touching now contained in the offence of indecent assault.

0.10 The review did consider whether there should be a lesser degree of offence to deal with acquaintance rape (sometimes called ‘date rape’), but was unanimous in rejecting this proposal. The evidence placed before the review was that rape by an acquaintance could not only be as traumatic as stranger rape, but that the betrayal of trust involved could cause further long-term psychological damage to the victim/survivor.

0.11 Both rape and sexual assault by penetration are dependant on lack of consent, as rape is at present, but this concept is so important that we recommend:

- consent should be defined as ‘free agreement’; and
- the law should set out a non-exhaustive list of examples of when consent/free agreement is not present.

We recognise that both offences can be carried out intentionally by knowing that the complainant has not consented, or recklessly by not caring less whether consent has been given, and our recommendations are that:

- rape and sexual assault by penetration may be committed with intent or recklessly; and
- the definition of recklessness in sex offences should include the lack of any thought as to consent which can be described as ‘could not care less about consent’.

In response to the many submissions that the review received, and the evidence how legislation in other countries operated, the review has made recommendations to limit the use of the defence of ‘honest belief’ in consent. A defence of honest belief in free agreement should not be available:

- if the accused did not take all reasonable steps in the circumstances to ascertain free agreement at the time; or
- where the defendant was in a state of self-induced intoxication at the time of the offence; or
- if the defendant was reckless as to free agreement.

These proposals will not affect the burden of proof or the presumption of innocence for the defendant, which is the ‘golden thread’ of English justice: the prosecution will have to prove beyond reasonable doubt that there was no free agreement. The final proposal in this area is to make the law clearer:

- we also suggest standard judges’ directions to clarify the meaning of free agreement.

0.12 Other recommendations relating to rape and sexual assault by penetration include:

- a new offence of assault to commit a serious sex offence; and
- an offence of abduction with intent to commit a serious sex offence.

The review has also recommended an offence to replace burglary with intent to rape with:

- a new offence of trespass with intent to commit a serious sex offence.

Some of the existing offences which the review thought should be retained have been recast in more modern and effective terms and include:

- an offence of obtaining sexual penetration by threats or deception in any part of the world; and
- an offence of administering drugs etc., with intent to stupefy a victim in order that they may be sexually penetrated.

0.13 The age of consent is an important issue, and it was a matter of policy to endorse the age of consent at 16. We also believed that it was important, especially in the context of a national sexual health strategy and concerns about teenage pregnancy, not to deter those giving help, advice, treatment and support to children and young people in matters of sexual health or the young people from seeking such help. We considered whether there was an age below 16 which marked a level of development where children could not give recognised agreement in fact as well as in law to sexual activity and where such activity should be regarded as more serious. We decided:

- the age of consent should remain at 16;
- below the age of 13 (i.e. up to the 13th birthday of the child) children should not be able to consent in fact or in law.

0.14 In order to give further protection to children we recommend:

- a serious new offence of adult sexual abuse of a child to apply to all adult (over 18) sexual acts with a child under the age of consent (16);

- that unlike the offence of unlawful sexual intercourse, there should be no time limits to hinder prosecution of adult sexual abuse of a child;
- a limited defence of mistake of fact in age should be available.

We recognise the many international agreements in force respecting the right to honour the validity of a marriage in another jurisdiction, but recommend that:

- the defence of a belief in marriage should not be retained where a child is under the age of 13.

We were well aware of the evidence relating to adults who target children for their sexual gratification, and this is one of the reasons why we have proposed:

- an offence of persistent abuse of a child to reflect the course of conduct.

0.15 It is, however, a fact of life that some older children do agree to sexual activity and indulge in sexual experimentation, while others are actually abusive to other children. In order to maintain the age of consent and to deal with abusive behaviour by children we recommend:

- a more minor offence of sexual activity between children to apply to those under the age of 18 who have sex with children under the age of 16.

Where such activity was not coercive or abusive we thought that rather than becoming involved in the criminal justice system, children should be offered help and advice. The criminal law needs to be able to deal appropriately with children who coerce and abuse others. We recommend that:

- sentencing decisions should reflect specialist assessment of

risk and the potential for longer term offending, and include treatment options.

0.16 The evidence placed before us of the commercial sexual exploitation of children was compelling. We recommend new offences to bear down heavily on those who use and abuse children in this way. These include:

- buying the sexual services of a child; or
- recruiting, inducing or compelling a child into commercial sexual exploitation; or
- participating in, facilitating or allowing the commercial sexual exploitation of a child; or
- receiving money or other reward, favour or compensation for the commercial sexual exploitation of a child.

We also thought that the protection of the law from commercial sexual exploitation should apply to those under the age of 18, who are defined as children in law.

0.17 We were profoundly moved by the extent of sexual abuse against vulnerable people and felt that the law needed considerable strengthening to tackle this while respecting the ability of those who could consent to sexual activity to have a private life. We recommend that:

- those who cannot understand the nature or potential consequences of sexual activity should not be able to consent to sex, and that a definition of capacity to consent be set out in law;
- sexual activity with a person without capacity to consent should be an offence and the seriousness of this offence should be reflected in the sentence available.

Where vulnerable people have some capacity to consent, we sought to establish their right to a private life whilst protecting them from

exploitation by setting up a new offence of a breach of a relationship of care. We have invited views as to which forms of care and to whom such an offence should apply. We recommend:

- a revised offence to prohibit sexual relations between those receiving treatment at hospital (whether as an in-patient or out-patient), or in residential care, and members of the staff (whether paid or unpaid) of those establishments;
- a new offence to prohibit sexual relations between those in the community who are in receipt of certain care services and people providing that care;
- a new offence to prohibit sexual relations between medical practitioners or any other who provides medical or therapeutic services and a patient or client in their care.

The latter offences should have a statutory defence for a pre-existing relationship, but only where there was some degree of capacity to consent. We also considered whether there should be a further offence for those in a position of authority over people who are confined in particular closed residential settings, such as prisons, secure units and detention centres. We felt that we did not have sufficient evidence to draw any conclusions and have invited comment.

0.18 The review was very concerned that the law did not deal adequately with sexual abuse that occurs in the family, particularly where there are changing partners and informal relationships, which can pose a greater risk for children. We recommend:

- replacing the old offence of incest with a more modern offence that would prohibit sexual relations between children under 18 and their blood relations, adoptive parents and siblings, step-parents, foster carers and those in a position of responsibility in the family;
- sexual relations between blood relatives and adoptive parents and their children should never be lawful.

0.19 We looked at the way the law treats gender issues and those of differing sexual orientation. We thought that the law should offer protection to men and women, boys and girls and recommend:

- the criminal law should offer protection from all non-consensual sexual activity. It should not treat people differently on the basis of their sexual orientation. Consensual sexual activity between adults in private that causes no harm to themselves or others should not be criminal.

We therefore felt that the law did not need to make particular provision for any same sex behaviour and recommend that:

- the offences of gross indecency and buggery should be repealed; those aspects of the offences providing protection for children, vulnerable people and animals would be replaced by our other proposals.
- other specific offences such as section 16 of the Sexual Offences Act 1956 and s4 of the Sexual Offences Act 1967 will no longer be necessary and should be repealed.

On that same basis we thought that the law on soliciting should apply equally to men and women, and be similar to the way in which street prostitution is regulated and recommend:

- section 32 of the Sexual Offences Act 1956 should be repealed.

0.20 We were not looking at the legal basis for the regulation of prostitution, or in what circumstances it could or should be legal, but we did look at the offences of sexual exploitation of individuals in prostitution. We recommend:

- new offences for the sexual exploitation of adults which includes an offence for anybody in England and Wales to

recruit people for sex work anywhere in the world; and

- a new offence of trafficking for the purposes of sexual exploitation.

0.21 We thought it important that the law should be able to deal with problems caused by inappropriate sexual behaviour in public places, including public toilets. We recommend:

- a new public order offence to enable the law to deal with sexual behaviour that a person knew or should have known was likely to cause distress, alarm or offence to others in a public place.

0.22 We considered a number of types of sexual behaviour that are at present, or could in future be, against the law. We recommend:

- a new, replacement, offence of bestiality;
- a new, replacement, offence of indecent exposure;
- a new offence of voyeurism to deal with the observation of people without their knowledge or consent when they have a reasonable expectation of privacy;
- a new offence of compelling others to do sexual acts; and
- a new offence of sexual interference with human remains.

0.23 Finally, we have thought about some of the implications of our proposals and we recommend a penalty framework for the offences we put forward. We discuss the parameters which could govern the requirement to register under the Sex Offenders Act 1997. We also consider the use of sex offender treatment and alternative verdicts.

0.24 We have thought long and hard about how a law fit for the next century should be framed. We have sought to balance many conflicting views to ensure that our proposals are fair, increase the protection of the law and meet the needs of a changing society. In

some cases we have also set out some particular issues on which we specifically invite views, and these consultation points are set out in the main report. But all the recommendations we make are new and it is vital that they are considered in detail by the public. We would like views on any or all of our proposals, by **1 March 2001**.

0.25 This short summary is the executive summary of the full “Setting the Boundaries” report by the sex offences review. The full report and a volume of supporting evidence is available on the Home Office website. Copies of the report and, on request, the substantial volume of supporting evidence, are available from:

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Sex Offences Review
Sentencing & Offences Unit
50 Queen Anne’s Gate
London SW1H 9AT
020 7273 3443

0.26 Please write to us with your comments at the same address, or e-mail us at:

sex_offences_review.ho@gtnet.gov.uk

Your comments should be received by **1 March 2001**.



List of Recommendations and Consultation Points

This list of recommendations are set out here to invite your views. The full report sets out the detailed argument for these recommendations; this summary contains the recommendations of the review and the points on which the review felt that the views of the wider community were specifically needed to develop the policy. Detailed consultation points from the full report are set out below the relevant recommendation in italics.

Recommendations:

1 The offence of **rape** should be retained as penile penetration without consent, and extended to include oral penetration.

This should be defined as penetration of the anus, mouth or genitalia to the slightest extent, and, for the avoidance of doubt, surgically reconstructed male or female genitalia should be included in the definition in law. (Para 2.8.5)

2 **Rape** should not be subdivided into lesser or more serious offences. (Para 2.8.8)

3 There should be a new offence of **sexual assault by penetration** to be used for all other penetration without consent.

This should be defined as penetration of the anus or genitalia to the slightest extent, and, for the avoidance of doubt, surgically reconstructed genitalia should be included in the definition. In circumstances where the means of penetration is not clear, the offence of sexual assault by penetration would apply.
(Para 2.9.2)

4 **Consent** should be defined in law as “**free agreement**”.
(Para 2.10.5)

5 The law should set out a **non-exhaustive list of circumstances** where consent was not present. (Para 2.10.6)

6 The law should include a non-exhaustive list of **examples of where consent is not present** such as where a person:

- submits or is unable to resist because of force or fear of force;
- submits because of threats or fear of serious harm or serious detriment of any type to themselves or another person;
- was asleep, unconscious, or too affected by alcohol or drugs to give free agreement;
- did not understand the purpose of the act, whether because they lacked the capacity to understand, or were deceived as to the purpose of the act;
- was mistaken or deceived as to the identity of the person or the nature of the act;
- submits or is unable to resist because they are abducted or unlawfully detained;

- has agreement given for them by a third party. (Para 2.10.9)

7 There should be a **standard direction** on the meaning of consent and consideration should be given as to whether this should be placed in statute. (Para 2.11.6)

8 **Rape/sexual assault by penetration** may be committed intentionally or recklessly and the definition of recklessness in sex offences should include the lack of any thought as to consent; this can be described as “could not care less about consent”. (Para 2.12.6)

9 A defence of **honest belief in free agreement** should not be available where there was self induced intoxication, recklessness as to consent, or if the accused did not take all reasonable steps in the circumstances to ascertain free agreement at the time. (Para 2.13.14)

Rape and sexual assault – honest belief in free agreement. (Para 2.13.14)

- *We invite your views on this proposal, and more generally on the requirement that any belief in consent should be reasonable.*

10 There should be a new offence of **sexual assault** to cover sexual touching (defined as behaviour that a reasonable bystander would consider to be sexual) that is done without the consent of the victim. (Para 2.14.4)

11 There should be a new offence of **assault to commit rape or sexual assault by penetration**. (Para 2.15.3)

12 A new sex offence of **trespass with intent to commit a serious sex offence** should replace burglary with intent to rape. (Para 2.16.3)

13 There should be a new offence of **abduction with the intent to commit a serious sex offence**. (Para 2.17.2)

14 There should be an offence of **obtaining sexual penetration by threats or deception** in any part of the world. (Para 2.18.7)

15 An offence of **administering drugs** (etc.) with intent to stupefy a victim in order that they are sexually penetrated should be retained. (Para 2.19.3)

16 There should be new offences of **compelling another to perform sexual acts**, with several levels of seriousness depending on the nature of the compelled acts. (Para 2.20.4)

17 As a matter of public policy, the **age of legal consent** should remain at sixteen. (Para 3.5.7)

18 The law setting out specific offences against children should state that **below the age of 13 a child cannot effectively consent** to sexual activity. (Para 3.5.11)

19 There should be an offence of **adult (over 18) sexual abuse of a child (under 16)**. The offence would cover all sexual behaviour that was wrong because it involved a child; it would complement other serious non-consensual offences such as rape, sexual assault by penetration and sexual assault. (Para 3.6.5)

20 There should **no time limit** on prosecution for the new offence of adult sexual activity with a child. (Para 3.6.6)

21 A **mistake of fact in age** should be available as a defence, but with the following restrictions: that it should be limited to honest and reasonable belief and that the defendant has taken all reasonable steps to ascertain age. (Para 3.6.13)

22 The **use of the defence** of mistake of fact in age should be limited to raising the defence in court on one occasion only. (Para 3.6.14)

23 In principle, the defence of mistake of fact in age should remain **limited by age of defendant**. (Para 3.6.16)

Children – a defence of mistake of fact in age. (Para 3.6.16)

- *Do you agree that there should be a limitation on the age of the defendant who can use a mistake of fact defence?*
- *If so should it be absolute (i.e. set at a particular age) or should there be an age differential (e.g. a maximum gap in age between the defendant and the child)?*
- *What should the age differential, if any, be?*

24 **Belief in marriage** should remain a defence to offences involving sex with a child, but this should not apply where the child is below the age of 13. (Para 3.6.21)

25 An offence of the **persistent sexual abuse of a child** reflecting a course of conduct should be introduced. (Para 3.7.3)

Children – a course of conduct offence to reflect a pattern of abusive behaviour. (Para 3.7.6)

- *We would welcome views whether there should be any course of conduct offences relating to the abuse or sexual exploitation of a number of different children (in contrast to recommendation 25 which relates to the abuse of one child over time).*

26 Those recognised as giving help, advice, treatment and support to children and young people in **matters of sexual health** should not be regarded as aiding and abetting a criminal offence, nor should the children and young people who seek help and advice about sexual health matters, including contraception. (Para 3.8.1)

Children – seeking or giving advice on sexual health matters should not be criminal. (Para 3.8.2)

- *Is it sufficient for this intention to be made clear in policy terms, or does it need to be set out in any new statute?*

27 There should be an offence of **sexual activity between minors** to replace the existing offences of unlawful sexual intercourse, buggery, indecency with children and sexual activity prohibited for children. It should apply to children under the age of 18 with those under the age of consent. (Para 3.9.13)

28 We recommend that further consideration should be given to **appropriate, non-criminal, interventions** for young people under 16 engaging in mutually agreed under-age sex who are not now, and should not in future, normally be subject to prosecution. (Para 3.9.19)

29 The criminal law needs to have measures in place which can be used to deal with **children who sexually abuse** other children. Sentencing decisions should reflect specialist assessment of risk and potential for longer term offending and include treatment options. (Para 3.10.7)

30 There should be a statutory definition of **capacity to consent** which reflects both knowledge and understanding of sex and its broad implications. We recommend adoption of the definition proposed by the Law Commission. (Para 4.5.13)²

Vulnerable people – capacity to consent. (Para 4.5.13)

This is an area that is fraught with difficulty. We would very much welcome the views of the legal, academic and caring communities about these proposals. In particular:

- *Is the proposed test the right one?*
- *Will it deliver the necessary balance between protection and the right to a private life?*

31 There should be a specific offence relating to **sexual activity with a person with severe mental disability** who would not have the capacity to consent to sexual relations. (Para 4.6.5)

32 There should be offences of a **breach of a relationship of care** to prohibit:

- sexual relationships between a patient with a mental disorder, whether inpatient or outpatient, and any member of staff, whether paid or unpaid;

² The definition proposed by the Law Commission is set out in an Annex to the recommendations (on page 29).

- sexual relationships between a person in residential care and a member of staff, whether paid or unpaid;
 - sexual relationships between a person receiving certain care services in the community and designated care providers whether paid or unpaid;
 - sexual relationships between doctors and their patients, and therapists and clients.
- (Para 4.8.15)

Vulnerable people – when the offence of a breach of a relationship of care might apply. (Para 4.8.15)

We would welcome comments and views on these proposals and in particular on the following points:

- *Should any residential care provision be limited to those where people receive nursing or therapeutic services and/or intimate care?*
- *Which services in the community should be included and how can the providers and recipients be defined with the certainty needed in the criminal law?*
- *How far should physical frailty or disability be included within these definitions?*
- *How can we define therapist and should it extend beyond mental health therapy to include those offering physical therapy?*
- *Should any prohibition in law apply to sexual penetration or to a wider definition of sexual activity?*

Vulnerable people – individuals in secure institutions (e.g. prisons and detention centres). (Para 4.8.16)

- *Should the criminal law apply to sexual relationships between staff and those detained in secure institutions?*

33 There should be a **defence** of a pre-existing sexual relationship for the offence of breach of a relationship of care where there is some degree of capacity to consent. (Para 4.8.17)

34 There should be a specific offence of **obtaining sex with a mentally impaired person by threat or deception**. (Para 4.10.2)

35 There should be an offence of **familial sexual abuse** to reflect the looser structure of modern families which will replace and extend the existing offences of incest. (Para 5.5.6)

36 For the purposes of the offence of familial sexual abuse, the prohibition on sexual relations with a child should apply until the **child is 18**. (Para 5.5.7)

37 The offence of familial sexual abuse should apply to the sexual penetration of a child by all of those relations included in the existing offence of incest with the **addition of uncles and aunts who are related by blood**. (Para 5.5.13)

Abuse within the family – redefining the existing offence of incest. (Para 5.5.14)

- *Should uncles and aunts by marriage or partnership be included in the offence of familial sexual abuse in relation to children under 18 only?*

38 **Adoptive parents** should be treated on the same basis as natural parents for the purposes of the offence of familial sexual abuse. (Para 5.6.2)

39 Sexual relations between **adoptive siblings** should be prohibited until the age of 18. (Para 5.6.3)

40 There should be a **defence of marriage** for adoptive siblings over the age of 16. (Para 5.6.4)

41 The offence of familial sexual abuse should apply to **step-parents and foster-parents**. If that relationship has ended, a prohibition should still apply until a child is 18. (Para 5.6.6)

42 The offence of familial sexual abuse should apply to sexual penetration with or of a child by any **other person who is living in the household** and in a position of trust or authority over that child. (Para 5.6.12)

43 Sexual penetration between **adult close family members** (defined as certain blood and adoptive relationships) should continue to be forbidden by law.

In the light of evidence about the early onset and abusive nature of incestuous relationships started in childhood, the responsibility for any offence should sit with the person who was adult at onset. (Para 5.8.8)

Abuse within the family – which relationships should remain unlawful in adulthood. (Para 5.8.4)

- *The arguments as regards step-parents were more finely balanced and we would welcome views on whether the law should prohibit adult relationships with step-children and if so whether that should be limited to those who had lived as a child of the family of the step-parent for a given length of time.*

44 The criminal law should not treat people differently on the basis of their sexual orientation. It should offer **protection from all non-consensual sexual activity**. Consensual sexual activity between adults in private that causes no harm should not be criminal. (Para 6.5.3)

45 The present offences of **buggery and gross indecency** should be repealed, with separate provision made for the protection of children and animals and for regulating sexual behaviour in public. (Para 6.6.10)

46 **S16 of the Sexual Offences Act 1956** and **S4 of the Sexual Offences Act 1967** will no longer be necessary and should be repealed. (Para 6.6.11)

47 **Section 32** of the Sexual Offences Act 1956 should be repealed. (Para 6.6.17)

48 Consideration should be given to the **regulation of soliciting by men** for the purposes of prostitution under section 1 of the Street Offences Act 1959 on the same basis as soliciting by women. (Para 6.6.17)

49 There should be a **specific trafficking offence**. This offence could involve bringing or enabling a person to move from one place to another for the purposes of commercial sexual exploitation or to work as a prostitute (e.g. knowingly facilitating transportation), for reward. (Para 7.5.14)

Any such new offence should have attached powers to trace assets overseas.

50 The review considers that the **commercial sexual exploitation of children** should be dealt with by specific offences in which ‘child’ should refer to any person up to the age of 18, and where sexual exploitation includes the use of a child in prostitution or in the making of pornography. (Para 7.6.4)

51 It should be an offence to:

- **buy the sexual services** of a child;
 - **recruit, induce or compel** a child into commercial sexual exploitation;
 - **participate in, facilitate or allow** the commercial sexual exploitation of a child; or
 - **receive money or other reward, favour or compensation** for the sexual exploitation of a child.
- (Para 7.6.8)

52 There should be offences of:

- **exploiting others** by receiving money or reward from men and women who are prostitutes;

- **managing or controlling** the activities of men and women who are prostitutes, for money or reward; and
- **recruiting men or women into prostitution** whether or not for reward or gain.
(Para 7.7.3)

53 There should be a further review of the law on **prostitution**. (Para 7.8.3)

54 There should be a new offence of **indecent exposure** relating to exposing the penis when he knew or should have known that he might cause fear, alarm or distress to another person. (Para 8.2.9)

Other offences – exposure by women should not form part of an offence of indecent exposure. (Para 8.2.8)

- *We would welcome information and evidence to refute or support this conclusion.*

55 There should be an offence of **voyeurism** where a person in the interior of a building or other structure has a reasonable expectation of privacy and is observed without their knowledge or consent, whether by remote or mechanical means or not. There should be an exception for authorised surveillance.
(Para 8.3.10)

Other offences – voyeurism. (Para 8.3.10)

- *We would welcome views on the framing of an offence of voyeurism to ensure protection for victims without curtailing the freedom of the press to investigate issues of public concern.*

56 A new **public order offence** should be created to deal with sexual behaviour that a person knew or should have known was likely to cause distress, alarm or offence to others in a public place. (Para 8.4.11)

57 A specific offence of **bestiality** should be retained. (Para 8.5.3)

58 **Sexual interference** with human remains should be an offence. (Para 8.6.6)

59 **Sex offender treatment** should continue to develop and be made available to those convicted of relevant offences and early professional assessment of the need and suitability for treatment should be part of any sentence for such offenders. (Para 9.4.7)

60 All of the offences we recommend, except for those which we recommend as public order/public nuisance offences carry some degree of risk that would justify their consideration as part of a review of Schedule 1 of the **Sex Offenders Act 1997**. (Para 9.5.4)

61 The issue of the **requirement for children to register** under the Sex Offenders Act should be separately considered in a review of the Act. (Para 9.5.6)

62 The provision of **alternative verdicts** should be considered in the preparation of new legislation, and for the avoidance of doubt they should be set out in statute. (Para 9.6.3)



Annex

Proposed definition of capacity to consent

4.5.8 The Law Commission recommends that, for the purpose of any non-consensual sexual offence:

- (1) *a person should be regarded as lacking capacity to consent if at the material time:*
 - (a) *the person is by reason of mental disability unable to make a decision for themselves on the matter in question: or*
 - (b) *the person is unable to communicate their decision on that matter because they are unconscious or for any other reason;*
- (2) *a person should be regarded as being unable to make a decision on whether to consent to an act if:*
 - (a) *he or she is unable to understand*
 - (i) *the nature and reasonably foreseeable consequences of the act; and*
 - (ii) *the implications of the act and its reasonably foreseeable consequences; or*
 - (b) *being able so to understand, he or she is nonetheless unable to make a decision; and*
- (3) *mental disability should mean a disability or disorder of the mind or brain, whether permanent or temporary, which results in an impairment or disturbance of mental functioning.*

