



Northern  
Ireland  
Office

**Reforming the Law on Sexual Offences  
in Northern Ireland**

**Summary of responses  
to a  
consultation paper**

Public Protection Unit  
Criminal Justice Reform and Delivery Division  
Northern Ireland Office  
Massey House  
Stoney Road  
Belfast  
BT4 3SX

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## INTRODUCTION

In July 2006 the Northern Ireland Office published a consultation document on reforming the law on sexual offences in Northern Ireland.

2. The consultation document, which was produced with assistance from other criminal justice agencies, was originally informed by a review of the law on sex offences carried out in England and Wales by the Home Office which preceded the Sexual Offences Act 2003.

3. As a result, the consultation document was not based on a root and branch policy review. Instead it was informed by the work already undertaken in England and Wales. Much of the original research and debate raised in deliberations in England and Wales was used, along with the outcomes of that work, to inform the policy proposals for change to the law in Northern Ireland which were contained in the document.

4. Some of the new or reformed offences in the Sexual Offences Act 2003 have already been extended to cover Northern Ireland. However, many have not. The consultation document considered all the offences in the Act, whether already law here or not, and invited views on whether they should be included in a proposed Northern Ireland statute.

5. The areas under consideration fell into the following broad categories:

- Rape and sexual assault
- Preparatory offences
- Children
- Vulnerable people
- Abuse within the family
- Sex with an adult relative
- Gender and discrimination
- Trafficking and sexual exploitation
- Other offences
- Penalties

6. The overall aim of the review and consultation process is to reform the law on sexual offences to provide a modern, effective and strengthened body of law for Northern Ireland commensurate with today's society and behaviour.

7. Notification that the consultation document was available on the NIO website was sent to over 370 interested organisations, key-stakeholders and individuals. Notice was also given through the press and media.

8. The consultation closed on 13 October 2006. However, a small number of responses were accepted until 10 November.

9. A total of 64 individual responses were received as a direct result of engaging with the consultation paper. Not all of these responses were substantive with some respondents choosing to comment only on particular aspects of the review relevant to their specialisms or simply to express overall support for reform of the law. A number of respondents also commented in response to particular questions without indicating agreement or disagreement with the proposals within the questions. A list of those who responded is given at Annex A. Comments detailed in this summary of responses have not been attributed to any organisation, stakeholder or individual.

10. Following a lobby campaign by the Christian Institute we also received over 4,000 emails and letters supporting the views of this one organisation on four issues arising from the consultation document. Details of this lobby campaign are given later.

11. We are grateful for all responses received. This paper tries to reflect the views offered, but it is not possible to describe all the responses in detail, particularly as some are open to interpretation.

12. This summary of responses does not seek at this stage to answer the various comments and points made by respondents. These will be

considered by the Government and decisions will be taken which will inform the shape of the draft legislation. It is hoped that this will be issued for public consultation later this year, along with explanatory comment on the main consultation points.

13. However, there are two specific issues about which we wish to make some brief comment at this stage. A number of respondents suggested that we should consult directly with children and young people on the proposals relating to consensual teenage sexual activity. As indicated in the consultation document this has always been our intention and we will do so prior to publication of draft legislation for consultation. The second issue was concern that a full Equality Impact Assessment was not carried out prior to public consultation. While we would reiterate what was stated in the consultation document that the proposed law on sex offences which emerges as a result of this review and subsequent consultation will not conflict with the Section 75 requirements we will nevertheless consider again the necessity of a full EQIA prior to publication of draft legislation.

14. You can obtain copies of this report and the consultation document from [www.nio.gov.uk](http://www.nio.gov.uk) or from:

Criminal Justice Reform and Delivery Division  
Northern Ireland Office  
Massey House  
Stormont Estate  
Belfast  
BT4 3SX

E-mail: [CJPB.public@nio.x.gsi.gov.uk](mailto:CJPB.public@nio.x.gsi.gov.uk)

## **SUMMARY OF VIEWS EXPRESSED ON SPECIFIC QUESTIONS AND RELATED ISSUES.**

The consultation paper sought views on eight areas of sexual offences law in Northern Ireland. The responses provided are summarized as follows:

### **1 RAPE AND SEXUAL ASSAULT**

#### **1.1 Should the offence of rape be defined as penile penetration without consent and extended to include oral penetration in addition to vaginal and anal penetration?**

1.1.1 This issue was addressed by 25 respondents. The majority (24) supported extending the definition of rape to include oral penetration. While two respondent organisations expressed the view that they would prefer to see a separate offence of oral penetration only one was not content to support the proposed change.

#### **1.2 Should a new offence of sexual assault by penetration be used for all other penetrative assaults?**

1.2.1 This issue was addressed by 22 respondents with 21 supporting the proposal. One respondent disagreed with the proposal but did not make any substantive comment.

#### **1.3 Should a new offence of sexual assault be included to cover all other forms of sexual touching (defined as behaviour that a reasonable person would consider to be sexual) that is done without the consent of the victim?**

1.3.1 This issue was addressed by 22 respondents with 19 supporting the proposal. Difficulties proving the offence in court and issues relating to sexual touching between teenagers were raised by two respondents who disagreed with the proposed offence. One respondent sought clarification as to whether the old offence of indecent assault would be retained to cover circumstances where the assault did not involve touching and whether the new proposed offences of 'causing another to engage in sexual activity without consent'

would be applicable to ‘indecent psychic assault’ – where the victim apprehends or fears immediate and unlawful touching.

**1.4 Should a new offence of causing a person to engage in sexual activity without consent be introduced to penalize those who compel others to engage in sexual activity against their will and demonstrate that the guilt lies with the person who compels the act rather than his or her immediate victim?**

1.4.1 This issue was addressed by 22 respondents. One respondent only disagreed stating the offence would be difficult to prove in court. Another respondent advised that the National Organisation for the Treatment of Abusers (NOTA) noted a high incidence of this serious form of abusive behaviour among some specific groups of sex offenders, which is difficult to prosecute under existing legislative arrangements.

**1.5 Should consent be defined by statute and, if so, should it take the form of “agrees by choice, and has the freedom and capacity to make that choice”?**

1.5.1 This issue was addressed by 28 respondents. Two respondent organisations representing children’s interests disagreed with the proposal. They viewed the difficulty with the definition from a children’s rights perspective being that in Northern Ireland we do not yet have comprehensive legislation on capacity generally or specifically in relation to capacity of children and young people. They emphasised the need for absolute clarity in this regard.

1.5.2 A number of the 23 respondents supporting the proposal highlighted the requirement to interface with the new definitions of capacity being drafted within mental health. For young people reference should also be made to regional area child protection polices and procedures for guidance.

1.5.3 The suggestion was made that the definition should be extended to ‘agrees by choice, and has the freedom, knowledge and capacity to make that

choice.’ We were also advised of the need to provide guidance in relation to capacity.

**1.6 Should the law include a list of circumstances where it shall be presumed that consent was not present? If so, should those circumstances be:**

- the use or threat of violence against the victim;
- the use or threat of violence against a third party;
- the unlawful detention of the victim;
- the victim was asleep or unconscious;
- the victim had a physical disability which prevented the communication of consent;
- the use of drugs?

**Where the circumstances apply the issue of the absence of consent may be challenged by the defendant.**

1.6.1 This issue was addressed by 29 respondents all supporting the proposal. Two respondent organisations recommended that legislation should provide for the presumption that 13-16 year olds had not consented. A further respondent suggested that in keeping in line with existing child protection policies and procedures, particular to Northern Ireland, all cases of sexual activity with under-14s should be recognised by law as circumstances where it shall be presumed that consent was not present.

1.6.2 A number of health and social service respondents were concerned at the absence of specific reference to mental capacity i.e. learning disability, suggesting that the law includes robust definitions for consent and capacity, mirroring those used in medical practice.

1.6.3 One respondent organisation suggested a further circumstance to consider was that of the use of hypnosis as the definition of ‘sleep’ or ‘unconscious’ may not adequately cover this. The view was also expressed that the list should not be exhaustive and subject to amendment to reflect developments on case law which may arise.

**1.7 Should the law set out circumstances where it shall be conclusively presumed that consent was not present? If so, should these circumstances be confined to:**

- Deception
- Impersonation?

**Where the circumstances apply the issue of the absence of consent may not be challenged by the defendant.**

1.7.1 This issue was addressed by 15 respondents. One respondent organisation only was not supportive of conclusive presumptions considering the proposal would have profound implications for a defendant's right to the presumption of innocence and that a sufficient case to move beyond rebuttable presumptions had not been demonstrated.

1.7.2 The addition of 'blackmail' as a circumstance was suggested and the need to define 'deception' and 'impersonation' was also highlighted.

**1.8 Should a defence of reasonable belief in consent be allowed only on consideration of all the circumstances, including any steps the accused has taken to establish that consent was present?**

1.8.1 This issue was addressed by 19 respondents all supporting the proposal. The need for specialist advice in some cases as to whether it would be reasonable or otherwise where an alleged victim has a learning disability was highlighted.

**1.9 Does the law on capacity to consent need to be changed?**

1.9.1 This issue was addressed by 19 respondents. There was general support (15 respondents) for change to the law on capacity to provide greater clarity given the range of existing definitions of capacity and the need for consistency with emerging mental health legislation following the Bamford Review. One respondent organisation again expressed concern that the absence in Northern Ireland of comprehensive legislation on capacity generally or specifically in relation to capacity of children and young people presents difficulties from a children's rights perspective.

## **1.10 Should there be a statutory definition of capacity?**

1.10.1 This issue was addressed by 22 respondents who supported a statutory definition of capacity. The need for a degree of flexibility, with clear guidance and professional assessment was raised by health sector respondent organisations. One respondent organisation mentioned the need to recognise the evolving capacity of a child and role of society to 'protect immature children from decisions that they lack competence and experience to make for themselves' (Article 5 UNCRC). A further respondent commented that the issue of capacity to consent was an important one which should ultimately be determined by a jury stating that it was not clear that a statutory definition would prove particularly helpful.

## **2 PREPARATORY OFFENCES**

### **2.1 Should there be an offence of administering a substance (drugs etc.) with intent to stupefy a victim so as to enable any person to engage in a sexual activity that involves the victim?**

2.1.1 This issue was addressed by 22 respondents all supporting the proposal. Some respondents felt that the offence should apply whether or not the sexual activity intended actually occurred and the need to define intent was also highlighted.

### **2.2 Should there be a new offence of committing an offence with intent to commit a sexual offence whilst retaining the existing burglary with intent to rape offences in the Theft Act (Northern Ireland) 1969?**

2.2.1 This proposal was addressed by 19 respondents. The proposal was supported by 16 respondents. One respondent organisation was concerned that the degree of overlap by maintaining the offence of burglary with intent to rape would introduce a degree of confusion in the practical application of the law. Another respondent organisation considered burglary with intent to rape was a difficult offence to prove if the offence of rape was not completed. They considered an offence which covers the victim being, for

example, indecently assaulted during a burglary would more closely reflect the true nature of the offending.

2.2.2 One respondent organisation disagreed with the proposal adding that they were unclear as to the rationale for such a wide offence category, considering proposals within the review contained sufficient legislative provision to take account of preparatory offences and felt that an argument had not been adequately made for the creation of such a broad offence category.

### **2.3 Should there be a new offence of trespass with intent to commit a sexual offence?**

2.3.1 This issue was addressed by 17 respondents all supporting the proposal.

## **3 CHILDREN**

### **3.1 Is it accepted that all sexual activity with children under the age of 13 should be illegal and rape and assault offences should be formulated without the need for lack of consent to be proved?**

3.1.1 This issue was addressed by 36 respondents. Among the 24 respondents who supported the proposal in principle there was some concern that setting the age bar at 13 was too low. However, there was no universal agreement as to what the age should be with views varying from 14 through to 17. The principle concern was that the provision would not afford children and young people over the age of 13 equal protection under the criminal law from sexual offences.

3.1.2 One child protection respondent organisation expressed the view that prosecution discretion should exist for situations where extenuating circumstances apply and prosecution would not be in the public interest. Careful consideration would be needed of each case, for example, where a child who has been abused themselves goes on to harm another child under 13 or 16. Another respondent organisation was concerned that the proposal

would introduce a threshold were cases involving those under 13 were more likely to receive thorough investigations and action than those under 16.

3.1.3 The suggestion was made by two respondent organisation that the presumption that a 13-16 year old had not consented should be added to the list of circumstances where it shall be presumed that consent was not present (point 1.6).

3.1.4 Two respondent organisations indicated their disagreement with the proposal on the basis of the age being under 13. One suggested raising the age to 14 while the other suggested 15. However, both did not expand their comments to express disagreement with the general principle of the proposal.

## **3.2 Should all sexual activity with children under a specific age be illegal for those over the age of 18? Or should there be an exception in the case of an 18 year old involved in mutually agreed consensual sex with a 15 year old, as set out in consultation point 20 below?**

3.2.1 This issue was addressed by 33 respondents. 10 respondents were of the view that all sexual activity with children under a specific age should be illegal for those over the age of 18. Two respondents opposed this position. One respondent organisation expressed support for an exception in the case of an 18 year old involved in mutually agreed consensual sex with a 15 year old. However, 8 respondents disagreed with the suggested exception. A number of respondents made substantive comment on this question without indicating specific agreement or disagreement with the propositions put forward.

3.2.2 A number of respondents acknowledged that in today's society more teenagers are engaging in sexual relations from an early age and supported the need for flexibility around criminalizing teenagers who engage in consensual activity. One respondent organisation cautioned against considering consent in terms of age alone as it involves the ability of young people to make informed choices about their sexual health and sexual relationships. While the age differential could act as an indicator it should not

be the sole factor in determining whether or not a prosecution goes forward. It was suggested that the differences in maturity ranges found in 15 and 18 year olds made the issue of an exception difficult. The need for prosecutors to take into account the nature of the consent and respective competencies of each party was emphasised.

3.2.3 One respondent organisation considered that this and subsequent points about consensual teenage sexual activity should be the subject of further review and specific engagement with children and young people themselves.

### **3.3 Should that age (the 'age of consent') remain at 17 or be changed to 16, as in the rest of the UK?**

3.3.1 This issue was addressed by 39 respondents. Reducing the age of consent to 16 was supported by 24 respondents with 12 respondents disagreeing.

3.3.2 Those supporting the reduction to 16 considered parity with the rest of the UK important. Two respondent organisations stated that the case of *Sutherland v UK* in the European Court ruled that an unequal age of consent was a violation of the European Human Rights Convention.

3.3.3 Those who disagreed with the reduction in the age of consent expressed concern that this would afford children under 17 but over 16 less protection in the law and that bringing it down would send out completely the wrong signal by saying that sex was normal at a younger age. Others considered that a sufficient case for the reduction had yet to be made.

3.3.4 Two respondent organisations also commented that legislation to reduce the age of consent to 16 should be coupled with an enhanced programme of sex education involving an updated curriculum. We were also advised that co-terminosity of legislative provision with the Republic of Ireland would facilitate the development of effective joint child protection protocols.

**3.4 Should we have additional specific offences designed to protect those under the age of 16 from particular types of sexual behaviour, e.g. causing or inciting a child to engage in sexual activity, engaging in sexual activity in the presence of a child and causing a child to watch a sexual act?**

3.4.1 This issue was addressed by 20 respondents all supporting the general principle of the proposal. One respondent organisation suggested the age should be under 17 and not 16. We were also advised of ‘anecdotal’ information received by one respondent organisation about an increase in the behaviours outlined by adults with children under 16. The addition of allowing children to access pornography on the broadcast media was also suggested.

**3.5 Should we seek to criminalize all sexual activity between children under the age of consent with those under the age of 18? Or should the criminal law be confined to targeting sexual intercourse only? Or should consensual sexual activity for this age group not be criminalized?**

3.5.1 This issue was addressed by 27 respondents. Four respondents considered that all sexual activity should be criminalized between children under the age of consent with those under the age of 18. Concern was expressed that not doing so could allow young people to be pressured into sexual activity without the explicit sense of adult disapproval and protection. However, one respondent organisation while supporting the criminalization of all sexual activity recognised that this should not mean that every reported case should result in prosecution.

3.5.2 While 18 respondents were of the view that all sexual activity should not be criminalized, a few respondents considered that sexual intercourse only should be targeted to ensure the relationship was not abusive.

3.5.3 Concern was expressed that unless the age differential was significant we could wrongly label young people as sex offenders. We were advised that having blanket criminalization may leave young people in a more

vulnerable position due to fear of prosecution and reluctance to avail of sexual health services, which would have significant repercussions for health professionals. It was also of concern that relatively minor acts such as 'kissing and touching' would be criminalized for those under 16.

3.5.4 Respondents consistently highlighted the need to deal with cases on an individual basis with due consideration being given to competency and maturity which is often not solely related to chronological age. The need to help young people deal responsibly with the pressures to have sex as well as providing them with the necessary information to make informed choices was highlighted.

**3.6 If sexual activity between children is criminalized, and a similar maximum penalty of 5 years imprisonment is imposed how do we deal with the consequences of the legal obligation in Northern Ireland to report an arrestable offence (i.e. one with a 5 year sentence)?**

3.6.1 This issue was addressed by 13 respondents. There was no clear consensus on how this issue should be addressed with some respondents emphasising the implications for professionals, families and children with a fear of prosecution preventing young people from accessing services. Currently professionals report any concerns of sexual abuse to the police based on a holistic assessment and full history. The need to place criminal penalties around the system was questioned.

3.6.2 One respondent organisation suggested that the obligation to report should remain while another suggested it should apply only to sexual intercourse. It was suggested that the offence could be made non arrestable by introducing a lower maximum penalty. However, it was recognised that this may lead to confusion, particularly for those working closely with children and young people.

**3.7 Comments are invited on a proposal based on age differentials which would criminalise all sexual activity between children under the age of consent and those under the age of 18 unless:**

**A and B are less than 3 years apart in age and B is at least 13;**  
**No third party is involved;**  
**A reasonably believes that B is less than 3 years apart in age;**  
**B consents and;**  
**A has not obtained the agreement of B to the sexual activity by means of inducement offered or given, a threat made, or a deception practised by A for that purpose.**

3.7.1 This issue was addressed by 32 respondents. Seven respondents agreed with the proposal in general terms while 12 respondents disagreed. A number of respondents commented on the proposal without specifically indicating a position on the proposal.

3.7.2 A number of respondents who indicated disagreement with the proposal as set out in the consultation did indicate in their comments that increasing the lower age to 14 and reducing the age differential to 2 years apart in age would make the proposal more acceptable. This suggestion was also endorsed by a number of respondents who supported the general principle of an age differential approach to consensual teenage sexual activity. One respondent organisation considered that 2 years apart would limit any age related confusion across the range of sexual offences relating to children. Another respondent organisation suggested using 36 months instead of 3 years apart to avoid the situation where one person had just turned 13 and the other person was about to turn 17 creating almost a 4 year age difference.

3.7.3 The views expressed by those who opposed the general principle of an age differential approach to consensual teenage sexual activity focused on concerns that:

- age differentials were not evidence of maturity levels and there must be individual assessments made on each case;
- age differentials would weaken the age of consent;
- equating consent between children with the way we understand consent between adult sexual partners was a mistake;

- the proposal did not see the protection of children’s sexual health as paramount;
- age differentials would send out the wrong message to 13 year olds that having sex at their age was perfectly normal;
- exceptions based on age would serve the interest of the older party, rather than the best interest of the young person under 16; and
- a child under 17 years of age could have to go into the witness box in court to prove they did not consent.

3.7.4 One respondent organisation in expressing concern about the proposed age differentials commented that the complex lives of many young people, particularly those who do not have stability in home circumstances combined with difficulties in differentiating between the exploratory nature of activities and offending behaviour, creates particular difficulties in implementing strict legislation on age. They went on to advocate that as far as possible children and young people should be kept out of the criminal justice system.

3.7.5 Four respondent organisations suggested that the issue of teenage sexual activity should not proceed any further until a separate consultation with children and young people, agencies and professionals was held to agree a way forward. The criminalization of young people engaged in consensual teenage sexual activity was not viewed as a suitable approach and a clear preference was expressed for an emphasis being placed on education, awareness, health advice and support. The need to find a mechanism between the criminal law and child protection arrangements which would enable the exercise of professional judgement on individual cases was highlighted.

### **3.8 Should we remove the time limit on prosecution for the new offence of adult sexual activity with a child?**

3.8.1 This issue was addressed by 23 respondents. Two respondents objected to removing the time limit without adding any substantive comment. One of the 21 respondents supporting the proposal highlighted research and

evidence based practice which demonstrates that disclosure can be a process which requires time for the victim to begin to tell their story. Another respondent organisation advised that part of the difficulty with prosecuting the current offence of unlawful carnal knowledge with a girl over 14 but under 17 is the fact that it has a time limit which can have expired before all the evidence has come to light.

### **3.9 Is it right to introduce as a full defence, rather than as a mitigating factor, a mistake of fact in age in relation to sexual activity with a child over 13 but with the restriction that it should be limited to reasonable belief?**

3.9.1 This issue was addressed by 25 respondents. 11 respondents favoured a full defence while 12 respondents favoured only as a mitigating factor. A number of respondents considered that the defence should only be permitted on one occasion and that 'reasonable belief' should be clearly defined. One respondent organisation suggested that mistake of fact in age should be one consideration alongside other factors including the maturity and understanding of the child. Two respondent organisations suggested that the age should be 14 and not 13 as per current area child protection committee policy and procedures.

3.9.2 A view put forward by a child protection respondent organisation and supported by others was that work with children who are commercially exploited has shown that this is an area where there are real problems. Many young women who have been forced or coerced into prostitution are told to lie about their age and it was considered that a blanket mistaken belief in age defence would not offer such young people any protection. It was suggested that the defence should only be available to defendants where there was less than a 5 year age difference.

### **3.10 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.**

3.10.1 This issue was addressed by 28 respondents. Two respondents disagreed with the proposal without making any substantive comment. One respondent organisation regarded this area as potentially problematic and urged a less contentious approach than that suggested.

3.10.2 In supporting the proposed exception for those giving help, advice, treatment and support to children and young people in matters of sexual health, one respondent organisation highlighted the need for clarification on whether this would apply to teachers, youth workers, youth leaders, voluntary workers, community workers etc. Another respondent organisation considered that it should be restricted to statutory agencies and carefully defined to rule out any self appointed advice centres which would not be subject to statutory guidelines. The need for guidance, with a child protection focus, for professionals most likely to come into contact with young people engaging in under age sexual activity was expressed by a child protection respondent organisation.

## **4 VULNERABLE PEOPLE**

### **4.1 Views are sought on whether there should be specific offences relating to sexual activity with a person with a mental disorder or learning disability who would not have the capacity to consent to sexual relations.**

4.1.1 This issue was addressed by 24 respondents with 21 respondents supporting specific offences relating to sexual activity with a person with a mental disorder or learning disability who would not have the capacity to consent to sexual relations.

4.1.2 One respondent questioned the need for specific offences in relation to issues of mental disorder or learning disabilities, considering that sufficient proposed offences would be available. They considered the issue to be addressed was how the law was applied equally and the ability/capacity of

individuals to access the law. They also considered the definition of vulnerable people as too narrow suggesting its extension to other groups such as the elderly with proposed sentences extended to include care workers of other relevant groups.

4.1.3 A respondent organisation with children's interest stressed the need for consideration to be given to children with disabilities. They were concerned that by making separate provision for children and for vulnerable people and not effectively joining up both areas, individuals in need of protection, particularly young people with disabilities would fall through the gaps in provision. They also suggested that offences relating to individuals abusing positions of trust in relation to young people should be extended to a minimum of 21 years, where young people have a disability, either mental, physical or learning disability, recognising and acknowledging the extreme vulnerability of these young people and their need for the highest level of protection.

4.1.4 In supporting the proposal for specific offences one respondent organisation commented that current offences under the mental health legislation were notoriously difficult to prove. Another commented that the term 'mental disorder' required clarification as many people with functional mental illnesses are clearly capable of choosing to consent to engage in sexual relationships. We were also advised that issues relating to capacity were complex and frameworks and mechanisms for assessing and deciding upon issues relating to capacity would be necessary. It was suggested that strengthening of 'special measures' in court which are available would also be welcome.

## **4.2 Should a definition be included that a person lacks the capacity to choose because he lacks sufficient understanding of the nature or consequences of what is being done, or is unable to communicate such a choice?**

4.2.1 This issue was addressed by 22 respondents all supporting in general terms the definition suggested.

4.2.2 One respondent organisation highlighted the need for appropriate contextual assessment in the case of those people who may be considered to generally have capacity to consent in their lives, but where the approach taken to seek consent has not been appropriate for that individual in the 'offence context'.

4.2.3 Another respondent organisation commented that it was important that the new law included robust definitions for consent and capacity, mirroring those used in medical practice. Including conditions such as Autism where the victim may have difficulties communicating their choice was also suggested.

### **4.3 Should specific offences be introduced relating to sexual activity with a person with a mental disorder or learning disability where agreement is obtained as a result of inducement, threat or deception?**

4.3.1 This issue was addressed by 21 respondents all supporting the proposal. One respondent organisation suggested that blackmail should be considered alongside inducement, threat or deception.

### **4.4 Are offences needed relating to sexual activity with a person with a mental disorder or learning disability in a relationship of care?**

4.4.1 This issue was addressed by 22 respondents. Only one respondent organisation did not consider specific offences relating to sexual activity with a person with a mental disorder or learning disability in a relationship of care as necessary. They considered that the previous offences relating to sexual activity with a person with a mental disorder or learning disability would adequately cover this offending behaviour.

4.4.2 One respondent organisation in supporting the proposal considered it vital that relationships of care were not seen as arenas of potential abuse. Another respondent organisation considered that specific offences would allow appropriate sentence tariffs for carers engaging in sexual activity with vulnerable people under their care.

#### **4.5 Should there be a defence of a) marriage and b) a pre-existing sexual relationship for the offence of breach of a relationship of care where there is some degree of capacity to consent?**

4.5.1 This issue was addressed by 18 respondents. 12 respondents supported the proposed defence without making any substantive comment. Three respondents disagreed with the proposed defence. One respondent organisation supported a defence for marriage but not a pre-existing relationship as they considered the context would have changed. However, this would only be the case, they added, if the 'caring role' was defined as a paid professional role. Another respondent organisation commented that the term 'some degree of capacity to consent' would need to be explicitly clarified in legal terms.

#### **4.6 How should care workers be defined?**

4.6.1 This issue was addressed by 14 respondents. There was no clear consensus view as to how care workers should be defined. Some respondents suggested broadening the term to care givers and including paid and unpaid positions providing care in any way. Others suggested a paid caring role in a professional capacity making a distinction between paid informal carers and carers paid in the statutory, private or voluntary sector.

### **5 SEXUAL ABUSE OF CHILDREN WITHIN THE FAMILY**

#### **5.1 Should an offence of sexual activity with a child family member be introduced to reflect the looser structure of modern families and to replace and extend the existing offences of incest?**

5.1.1 This issue was addressed by 23 respondents all broadly supporting the proposal. One respondent organisation wished to see the proposed changes introduced in addition to rather than a replacement of the current law on incest. Another respondent organisation urged caution when dealing with cases involving non-blood related siblings. The crucial factor they considered was that of 'care' where the needs and circumstances of the young person should be taken into consideration.

**5.2 For the purposes of the offence of sexual activity with a child family member, should the prohibition on sexual relations with a child apply until the child is 18?**

5.2.1 This issue was addressed by 20 respondents with 19 respondents indicating their support for the proposal. Two respondents suggested there may be a need to allow for exceptions, for example, in the cases where both parties are under 18 as discussed at points 18 and 20 for consensual teenage activity. Another respondent organisation suggested that the offence should be framed to reflect the age of consent.

5.2.2 One respondent organisation was unclear why between the ages of 13 and 18 the alleged perpetrator must believe the young person is 18 or over. They considered the behaviour wrong irrespective of age, if the victim was a relative.

**5.3 Should the offence of sexual activity with a child family member apply to sexual activity with a child by all of those relations included in the existing offence of incest with the addition of blood aunts and uncles and foster parents (i.e. parent, grandparent, brother, sister, half-sibling, aunt or uncle, foster-parent)?**

5.3.1 This issue was addressed by 20 respondents all supporting the proposal. One respondent organisation suggested that 'blood relative' might be a clearer definition instead of 'blood aunts and uncles'.

5.3.2 Another respondent organisation objected to renaming incest as 'sexual activity with a child family member' and 'sex with an adult relative'. They considered the label 'incest' was one which should be retained considering that people understood it and it also communicated the seriousness of the offending behaviour.

**5.4 Should adoptive relations be treated on the same basis as blood relations for the purposes of the offence?**

5.4.1 This issue was addressed by 21 respondents. Of the 20 respondents who indicated their support for the proposal, one respondent organisation commented that the adoptive child would view the family as his/hers and view them in a position of trust and that this should be accounted for in legislation. Another respondent organisation in also supporting the proposal accepted that a 'blood' child could have a relationship with an adoptive child if both were over the age of consent.

5.4.2 One respondent organisation advocated further consultation with children and young people, parents and professionals given that particular issues may arise for consideration under the Human Rights Act.

**5.5 Should the offence of sexual activity with a child family member apply to step parents, cousins, step siblings, foster siblings, if they live, or have lived, in the same household or are, or have been, regularly involved with the care of the child?**

5.5.1 This issue was addressed by 22 respondents. Two respondent organisations disagreed with the proposal with one suggesting that the list of relatives should be shortened to just blood relatives. The other respondent organisation which disagreed commented that under the proposals, a 21 year old foster sibling could be guilty of an offence, punishable by up to 5 years imprisonment in respect of consensual sexual touching with a 17 year old non blood relation. Whilst they considered such activity is undesirable and potentially damaging and hurtful for a family, if full and informed consent exists between both parties; they did not accept that it should be viewed as criminal behaviour and believed that any legislation to that effect would be incompatible with the Human Rights Act.

5.5.2 The proposal was supported by 19 respondents. One supporting respondent organisation considered the offender to be in a position of trust and care for the young person. They added that the majority of the clients they counselled had suffered the trauma of sexual abuse within the family. Another respondent organisation in supporting the proposal suggested that no offence should be deemed to have occurred if the relationship started after

both parties had reached the age of consent. The need to consider exceptions in relation to consensual teenage activity as discussed earlier and further consultation with children and young people, parents and professionals was also reiterated.

## **5.6 Should the offence of sexual activity with a child family member apply to sexual activity with a child by any other person who is living in the household and involved in caring for the child?**

5.6.1 This issue was addressed by 20 respondents all indicating support for the proposal. The example of a live in childminder/nanny was suggested by one respondent organisation. We were also advised that beyond those who hold a position of trust or authority in relation to the child at the time of the alleged offence, consideration should also be given to whether this category should also include those who were in regular contact with the child at the time of the alleged offence, not necessarily just those providing regular care.

## **6 SEX WITH AN ADULT RELATIVE**

### **6.1 Should sexual penetration between close adult families members continue to be forbidden by law?**

6.1.1 This issue was addressed by 15 respondents all supporting the proposal. One respondent organisation commented on the proposal stating that the current law on incest should be retained.

## **7 GENDER AND DISCRIMINATION**

### **7.1 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. The review proposes that consensual sexual activity between adults in private, that causes no harm, should not be criminal.**

7.1.1 This issue was addressed by 18 respondents. Only one respondent disagreed with the proposed gender neutralising of sexual offences law but made no substantive comment.

7.1.2 One child protection respondent organisation welcomed the approach expressing the view that female involvement in sexual offences against children was an abuse issue which needs to be more widely recognised by professionals both in the child protection and criminal justice systems. They added that an adult female who engages in sexual intercourse with a 12 year old boy, under the proposed reforms, would be charged with causing or inciting a child under 13 to engage in sexual activity which carries a maximum penalty of 14 years. Noting that this offence would be equivalent to the rape of a 12 year old girl by a male they suggested that the offence should carry the maximum sentence rather than a lower tariff.

7.1.3 Another respondent organisation expressed concern that services and support available to victims of sexual crime might also be gender neutralised. While they acknowledged that all victims need and deserve proper support and services they felt very strongly that resourcing such services should be based on evidence of need and that service should not be gender neutralised.

7.1.4 The need to subject this and other proposals to a full equality impact assessment given what they perceived to be the disproportionate affect on Section 75 groups was raised by another respondent organisation.

## **7.2 The present offences relating to buggery, which makes anal intercourse unlawful in certain circumstances should be repealed and replaced by gender neutral offences?**

7.2.1 This issue was addressed by 16 respondents. Only one respondent disagreed with the proposal without making any substantive comment.

### **7.3 The remaining provisions of the Homosexual Offences (Northern Ireland) Order 1982 should be repealed?**

7.3.1 This issue was addressed by 15 respondents. Two respondents disagreed with the proposal and 13 supported the proposal. No substantive comments were received.

## **8 TRAFFICKING AND SEXUAL EXPLOITATION**

**8.1 Should the current offence of paying for the sexual services of a child, as set out in the Sexual Offences Act 2003, and already part of the law here, be replicated in the new law on sex offences in Northern Ireland? This offence includes a defence of reasonable belief that the child was over 18 (which would not be available if the child was under 13).**

8.1.1 This issue was addressed by 24 respondents. While 22 respondents supported the proposal in broad terms some respondents expressed concern about the defence of reasonable belief that the child was over 18. One respondent organisation considered the defence effectively compromised the protection of 13 to 18 year olds under the criminal law. They considered the sliding scale of tariff, which is commensurate with age, implies that the older the child, whilst still under 16, the more consensual the nature of the offence. This was, in their view, incompatible with offences of sexual exploitation of a child for commercial gain, the setting of an age of consent in law and further did not take into account the caveats of freedom and capacity as expressed in the statutory definition of consent. They suggested the inclusion of a specific presumption that this age group have not consented, in accordance with the other presumptions regarding consent outlined earlier in the consultation. Three respondent organisations while welcoming inclusion of the offence considered the proposed defence, in this and subsequent proposed offences in this section, did not afford sufficient protection to children and young people who were commercially sexually exploited. Other respondents considered the age differential of between 13 and 18 for the defence too wide. It was suggested increasing the age for

which the defence would not be available to 14 for this and subsequent proposed offences in this section.

8.1.2 Another respondent organisation advocated that consideration should also be given to extending the offence to cover young people up to age 21 where they are particularly vulnerable due to disability – physical, mental or learning disability.

**8.2 Should the current offence of causing or inciting child prostitution or pornography, as set out in the Sexual Offences Act 2003, and already part of the law here, be replicated in the new law on sex offences in Northern Ireland with the same defence as above?**

8.2.1 This issue was addressed by 20 respondents all broadly supporting the proposal. One respondent suggested removal of the ‘for gain’ element to the offence as this was often very hard to prove. Another respondent organisation questioned the need for the defence of reasonable belief in age for the offences. A child protection organisation commented that the penalty for the proposed offences should be the same as paying for the sexual services of a child.

**8.3 Should the current offences of controlling a child prostitute and arranging or facilitating child prostitution or pornography, as set out in the Sexual Offences Act 2003, and already part of the law here, be replicated in the new law on sex offences in Northern Ireland with similar defences as above?**

8.3.1 This issue was addressed by 19 respondents all broadly supporting the proposal.

**8.4 Should we continue the current offences, as set out in the Sexual Offences Act 2003, of causing or inciting or controlling prostitution for gain?**

8.4.1 This issue was addressed by 18 respondents all supporting the proposal. One respondent organisation commented about the need for clear definitions of ‘causing or inciting or controlling’.

**8.5 Should the offences of trafficking into, within, and out of the UK, as set out in the Sexual Offences Act 2003, continue to apply to Northern Ireland?**

8.5.1 This issue was addressed by 19 respondents all supporting the proposal. One respondent organisation commented that it would be preferable to continue to deal with these offences on a UK wide statute.

**9 OTHER OFFENCES**

**9.1 Should the offence of exposure, as set out in the Sexual Offences Act 2003, and already part of the law here, be replicated in the new law on sex offences in Northern Ireland, without any change?**

9.1.1 This issue was addressed by 16 respondents. One respondent disagreed with the proposal commenting that the offence should not be replicated in its current format in advance of an amendment towards gender neutrality. The remaining respondents agreed with replicating the offence with one respondent organisation suggesting a higher tariff of 5 years, which they considered would deal more adequately with repeat offenders.

**9.2 Should the offence of voyeurism, as set out in the Sexual Offences Act 2003, and already part of the law here, be replicated in the new law on sex offences in Northern Ireland, without any change?**

9.2.1 This issue was addressed by 16 respondents all supporting the proposal. Again a higher tariff of 5 years was suggested by one respondent organisation.

**9.3 Should the offence of sexual activity in a public lavatory in the Sexual Offences Act 2003, and already part of the law here, be replicated in the new law on sex offences or should it be enacted in a public nuisance context in an appropriate legislative vehicle such as the next Criminal Justice (Northern Ireland) Order?**

9.3.1 This issue was addressed by 22 respondents. 18 respondents considered that the offence should be replicated in the new law on sex

offences. Some respondents were concerned that moving the offence to a public nuisance context was down grading the offence.

9.3.2 Two respondent organisations were supportive of moving the offence to a public nuisance context. One of them commented that as the offence related to consensual sexual activity between adults it was the public nature of the act which was objectionable as opposed to the sexual act itself.

#### **9.4 Should the common law offence of outraging public decency be tailored to be used in both minor and serious cases by making it triable summarily in the magistrates' court or, in serious cases, on indictment in the crown court?**

9.4.1 This issue was addressed by 14 respondents. One respondent organisation disagreed with the proposal suggesting that either there should be the common law offence of outraging public decency, amended to be triable summarily and by indictment, or the offence of indecent behaviour, but not both. They added that their preferred alternative was the enactment of Section 5 of the English Public Order Act 1986 replacing Section 9 of the Criminal Justice (Miscellaneous Provisions) Act (NI) 1968, alongside the outraging public decency change suggested.

9.4.2 Another respondent organisation considered that the proposal added further weight to the argument for a full EQIA, commenting that this offence had traditionally been used in respect of minority groups and in particular the gay and lesbian community.

#### **9.5 Should a specific offence of intercourse with an animal (bestiality), as set out in the Sexual Offences Act 2003, and already part of the law here, be replicated in the new law on sex offences in Northern Ireland, without any change?**

9.5.1 This issue was addressed by 16 respondents. The proposal was supported by 15 respondents who did not make any substantive comment on the issue. One respondent organisation expressed agreement with concerns expressed by Liberty who have queried why existing animal cruelty legislation

cannot deal with the issue of cruelty to animals, and that that cruelty to the animal in question is of greater concern than the morality of the sexual act.

**9.6 Should an offence of sexual interference with human remains, as set out in the Sexual Offences Act 2003, and already part of the law here, be replicated unchanged in the new law on sex offences in Northern Ireland?**

9.6.1 This was addressed by 16 respondents all supporting the proposal without making any substantive comment on the issue.

**9.7 Should there be an offence of kerb crawling in Northern Ireland in line with England and Wales, always bearing in mind the different scale of the problem in the two jurisdictions? Should we include such an offence in the next appropriate legislative vehicle?**

9.7.1 This issue was addressed by 27 respondents. The proposed offence of kerb crawling was supported by 24 respondents. One respondent organisation commented that kerb crawling had become a significant problem in South Belfast and there was some evidence to suggest it could become a problem in other areas. Another respondent organisation in supporting the proposal also emphasised the need not to penalise 'working women' who need safety mechanisms.

9.7.2 Two respondent organisations disagreed with the proposal. One considered it a knee jerk reaction commenting that kerb crawling would ease if brothels were legalised. The other respondent organisation felt that the proposed offences on prostitution did not fall within the remit of sexual offences legislation and that it was both expedient and premature to propose change to the existing arrangements in this way. They opposed the introduction of the proposals in advance of a full, comprehensive and dedicated consultation in respect of prostitution.

**9.8 Should we take this opportunity to update the law on soliciting in line with section 2 of the Sexual Offences Act 1985?**

9.8.1 This issue was addressed by 19 respondents. 17 respondents supported the proposal and 2 disagreed. No additional comments to those reflected for the previous point were made.

**9.9 Should the law in Northern Ireland be amended to follow proposals in England and Wales to redefine the meaning of a brothel so that two or three women may work together in the interest of safety?**

9.9.1 This issue was addressed by 27 respondents. 13 respondents supported the proposal. One respondent organisation commented that decriminalisation of the sex industry should be the subject of a separate consultation. While endorsing the proposal another respondent organisation expressed concern that the proposed change could lead to significant growth in the sex industry including the trafficking of prostitutes from other parts of the EU, against their will, to service a legalised demand in Northern Ireland.

9.9.2 The majority of comments received on this issue were from respondents opposed to the proposal. Concerns were expressed about the impact on property values and those living in the same area. A number of respondents were concerned about more women, and in particular trafficked women, becoming involved in the sex trade as the potential for supply was increased. While acknowledging that the safety of women involved in prostitution was paramount, one respondent organisation considered that there were other more significant steps that could be taken to address issues surrounding prostitution. Another respondent organisation expressed grave doubts about the workability of maintaining brothels at small numbers. They advised that currently one in ten of emergency department attendances at a Belfast Hospital at weekends were foreign nationals. Their experience indicated increasing numbers of EU sex workers present in NI in a non-voluntary capacity who were being exploited.

**10 PENALTIES**

**10.1 Are the penalties proposed, which are the same as in England and Wales, appropriate for the offences?**

10.1.1 This issue was addressed by 19 respondents. Three respondents considered the penalties proposed were generally too low with one respondent organisation suggesting minimum terms should be stipulated.

10.1.2 13 respondents agreed that the proposed penalties were appropriate. One such respondent organisation considered that sentences of 5 years or more should include a requirement to attend and participate in treatment programmes.

10.1.3 One respondent organisation expressed concern that penalties for offences committed by persons aged 16 to 18 have a maximum of only 5 years. They considered that many offenders aged 17 would be physically and mentally mature and need to be amenable to the appropriate penalties. Another respondent organisation considered the proposed penalty for the sexual penetration of a corpse of 2 years was too low.

10.1.4 A further respondent organisation noted that the offence of arranging or facilitating the commission of a sex offence had a proposed maximum penalty of 14 years yet the offence of rape of a child under 13 carried a maximum life penalty. Similarly the maximum penalty for paying for sexual services of a child under 13 was life but causing or inciting or controlling a child through prostitution was 14 years. They considered this created a disparity that suggested those who organise or control child prostitution should receive a lesser sentence. Given that the harm caused by the individual to the child was no different the use of the same penalties for both types of offences would, they considered, present a more coherent deterrent for causing or controlling the abuse of a child.

10.1.5 Finally, a child protection respondent organisation recommended that the abuse of trust definition contained in section 21 of the Sexual Offences Act 2003 should be extended to cover sporting situations in Northern Ireland. They also added that it would be wrong for the person who controls a 10 year old in child exploitation to attract a lower sentence than a person who paid for sex with the same child.

## **11 THE CHRISTIAN INSTITUTE LOBBY CAMPAIGN**

11.1 At the beginning of October 2006 we began to receive numerous emails in relation to the same four issues in the consultation document these were:

- changes to the age of consent
- the criminal law and underage sexual activity
- the offence of sex in public toilets
- the definition of a brothel.

11.1.2 All the responses reflected the same approach and it soon became obvious that they were connected. On 10 October a press release was issued by the Christian Institute which indicated that it was the source of the lobby campaign. The briefing paper which was the basis for the many letters and emails is available on their website at [http://www.christian.org.uk/issues/2006/northern\\_ireland/sex\\_offences/briefing\\_sept06.pdf](http://www.christian.org.uk/issues/2006/northern_ireland/sex_offences/briefing_sept06.pdf) .

11.1.3 Over 4,000 people wrote in support of the views of the Christian Institute. These views have been included in the main body of this summary of responses to the consultation document (see reference in Annex A).

**LIST OF RESPONDENTS**

Ards Borough Council  
Armagh and Dungannon HSS Trust  
Ballymena Borough Council  
Ballysillan Presbyterian Church, Rev Norman Hamilton  
Barnardo's  
Belfast City Council  
Belfast City Hospital Trust A&E  
Belfast City Hospital HSS Trust  
Esmond Birnie  
British Naturism  
Brook Northern Ireland  
Dr Olive Buckley  
Care in Northern Ireland  
Children in Northern Ireland (Cini)  
Children's Law Centre  
Christian Institute  
Coalition on Sexual Orientation  
Courtesan Counselling, Keira McCormack  
Craigavon Area Hospital Group Trust  
Craigavon Borough Council  
Disability Action  
Down District Council  
Down Lisburn HPSS Trust, Nursing Services  
Democratic Unionist Party  
East Belfast Community Health Information Programme  
Eastern Health and Social Services Board  
Equality Commission  
Evangelical Alliance  
Family Planning Service  
Help the Aged

Human Rights Commission  
Paul Johnston  
Karen Keers  
Lesbian Line  
Lisburn City Council  
Lord Chief Justice  
Love for Life  
Mater Hospital Trust  
Sue McBean  
Ronnie McClure  
Muckamore Abbey Hospital, Dr Colin Milliken  
Northern Ireland Association for the Care and Resettlement of Offenders  
Northern Ireland Commissioner for Children and Young People  
Newry and Mourne HSS Trust  
Newtownabbey Borough Council  
Nexus Institute  
North and West Belfast Health Action Zone  
North and West Belfast HSS Trust - Headquarters  
North and West Belfast HSS Trust – Child Protection  
Northern Health and Social Services Board  
Northern Ireland Court Service  
National Society for the Prevention of Cruelty to Children  
Patrick and Sheila Oakey  
Probation Board for Northern Ireland  
Police Service of Northern Ireland  
Public Prosecution Service  
Sinn Fein  
Southern Health and Social Services Board  
Sperrin Lakeland HSS Trust  
Social Services Inspectorate, DHSSPS  
Superintendents' Association of Northern Ireland  
Ulster Unionist Party  
Ulster Community and Hospitals Trust  
Women's Support Network