



Northern
Ireland
Office

Reforming the Law on Sexual Offences in Northern Ireland

A Consultative Document

Volume 1

A Summary of Proposals

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FOREWORD BY DAVID HANSON MP, MINISTER FOR CRIMINAL JUSTICE

This consultation has been arranged by the Northern Ireland Office to enable us to canvass opinion on what is needed to make the law on sexual offences fit for the 21st century. This is the first fundamental strategic review and reform of the criminal law on sexual offences ever to have taken place in this jurisdiction. With such a complex task, and with such a rare opportunity as this, I want to know the views of as many people as possible on the recommendations and suggestions presented in this summary consultation paper, the detailed policy consideration of which is contained in the volume 2 document, before moving to change the law.

Sexual crime is one of the worst violations of human dignity. It can deeply traumatise the victims, their families and, as we have seen in the most serious of cases, even whole communities. The Government's responsibility therefore is to do everything in its power to reduce the instances of such crime. One of the most important aspects in any strategy to tackle sexual crime is to have a strong, robust and fit for purpose body of law to ensure maximum protection is afforded to all, and in particular, to our children and other vulnerable groups, who make easy prey for those who seek to offend in this way. The Government also wishes to see an increase in the rate of prosecution and conviction for serious sexual offences.

Serious sexual crime exists in Northern Ireland in the same way as it does everywhere else. We have had salient reminders of this in recent court cases. This review is the first step in ensuring that changes are made to the current law, where necessary, to protect our society.

This review was set up in the wake of a more extensive exercise in England and Wales which reviewed the law in that jurisdiction. The terms of reference for both reviews are similar and the aim, 'to create clear and coherent offences that protect individuals, particularly children and the more vulnerable, from abuse and exploitation, and enable abusers to be punished', is identical. We have been able to learn much from the exercise in England and Wales. Where we see no need to differ from the offences which were put in place by the [Sexual Offences Act 2003](#), we have said so. Where there are specific considerations applying to Northern Ireland which demand a fresh look, then that is what has been done.

We are also justifiably concerned that consenting sexual behaviour in private should not be subject to the criminal law and that gender issues are removed from the body of offences. The review aims to ensure that we meet that objective in line with human rights considerations and equality requirements under the [Northern Ireland Act 1998](#). The recommendations are designed to form a fair and non-discriminatory body of law.

I am sure there will be varying opinions on a number of the issues addressed in this consultation. I am happy that all of these views should be aired and can guarantee that all will be considered. I want to know the views of the public, along with those from key stakeholders, interested organisations and individuals, on all the consultation points made in this paper. I ask that you now consider these – how well they would work in practice, how much protection they would offer, whether they are fair, just and equitable and whether they represent a body of law fit to deal with all manifestations of sexual crime.

I intend to complete this consultative process in order to allow for draft legislation to be introduced in the next Parliamentary session. Change is already overdue and, together, we need to grasp this opportunity to make it happen. I look forward to a healthy and timely response.

DAVID HANSON MP
Minister of State, Northern Ireland Office

EXECUTIVE SUMMARY

Introduction and Background

This consultation represents the first fundamental review and proposed reform of the law on sexual offences in Northern Ireland. The paper seeks to obtain views on how the law should distinguish, for the 21st century, between acceptable sexual behaviour and criminal activity, and suggests appropriate penalties for behaviour in the criminal category. No previous review of this body of law has ever been undertaken in the jurisdiction. Consequently, many of the statutes we use date from the 19th century and are disparate and often difficult to apply to current circumstances. Not only is this an opportunity to consolidate the law in this field, but it also offers the options of modernizing and strengthening the body of offences and penalties.

As a result of this wide ranging remit, the paper has taken some time to prepare, and has also incorporated developments since the introduction of the Sexual Offences Act in May 2004.

The summary of the consultation paper provided here in volume 1 should offer sufficient information to allow for many people to respond to the various points. For more detailed policy consideration and discussion, [volume 2](#) discusses in some detail seven different areas of the criminal law on sexual offences. Each section looks at the current law in Northern Ireland, gives a brief description of the changes recommended for England and Wales in the review, 'Setting the Boundaries', charts the actual changes made to the law by the Sexual Offences Act 2003 – pointing out the instances when the changes extend to Northern Ireland, and makes proposals for further change, predominantly in line with the Sexual Offences Act.

Also included are issues from two further consultation papers in England and Wales. First is the relatively recent paper issued by the Office for Criminal Justice Reform, '[Convicting Rapists and Protecting Victims – Justice for Victims of Rape](#)', which, as the title suggests, looks at what might be done to improve conviction rates for rape. The paper considers, amongst other things, amending the law to give a statutory definition of 'capacity' in rape cases. The proposal has been included in this consultation as it bears on the law on consent and on the proposal to introduce for Northern Ireland a statutory definition of consent, as was done for England and Wales in the Sexual Offences Act.

Second is the Home Office paper '[A Coordinated Prostitution Strategy](#)', published in January 2006, which, again amongst other things, proposes a change to the law on the definition of a brothel. This possible change has been included in the chapter 'Other Offences', along with the proposal to introduce for Northern Ireland a specific offence of kerb crawling. The addition of this proposed offence has been included because of recently expressed concerns about prostitution activity in one area of Belfast. The police are anxious to have a specific offence to deal with the nuisance to

residents in the area caused by kerb crawling and, although it will not be a scheduled sexual offence under the Sexual Offences Act, the availability of this consultation offered the opportunity to consult promptly on a legislative proposal.

The main proposals arising from this review largely follow the offences in the Sexual Offences Act 2003. The criminal justice agencies who were party to the original review took the view that unless there were obvious reasons which made it necessary to have different provisions from England and Wales, our law should seek to take advantage not only of the indepth review which had been carried out in that jurisdiction, but the considerable debate and discussion that had moulded the Sexual Offences Act on its journey through Parliament.

Northern Ireland has already, of course, taken advantage of some of the Act's provisions. 32 of the Act's 79 sections on sexual offences were extended on introduction in May 2004, and are currently part of the law. However, these provisions are subject to review and consideration in this consultation just as much as the other, albeit more dated but still current, statutes. In short, all sexual offences law currently on the statute book is within the scope of this consultation.

Rape and Sexual Assault

In Northern Ireland rape is a common law offence which was codified in the [Criminal Justice \(NI\) Order 2003](#) and defined as having sexual intercourse with a person who at the time does not consent to it and knowing that the person is not consenting or being reckless as to whether they are or not. The offence includes vaginal or anal intercourse and is gender neutral in respect of the victim but not the perpetrator.

The consultation document (discussed more fully in chapter 2 of volume 2) proposes a new offence of rape to include oral intercourse and to apply in a fully gender neutral context. **(consultation point 1)**

It also proposes a new offence of sexual assault by penetration with the same maximum penalty as rape to deal with those extremely serious assaults which involve non penile penetration. **(consultation point 2)**

Other assaults involving non-consensual sexual touching will be dealt with under an offence of sexual assault. Additional will be an offence of causing a person to engage in sexual activity without consent.

(consultation points 3,4)

It is also proposed that consent is given the same statutory definition here as in England and Wales of 'agrees by choice and has the freedom and capacity to make that choice', with a list of rebuttable and conclusive presumptions about consent. The defence of believing that consent was present will need to be on the basis of reasonableness, having considered all the

circumstances and any steps the accused had taken to establish that consent was present. **(consultation points 5,6,7,8)**

As mentioned earlier there is also a proposal to consider whether the law needs a new statutory definition of 'capacity' to consent.
(consultation points 9,10)

Lastly, we are seeking views on new preparatory offences which are committed before any sexual activity takes place. First is an offence of administering a substance (mainly drugs) with the intent of allowing sexual activity to take place, second is committing an offence with intent to commit a sexual offence and third is trespass to commit a sexual offence. The existing offence of burglary with intent to rape would remain.
(consultation points 11, 12, 13)

Children

A major proposal in this section (discussed in more detail in chapter 3 of volume 2) is to classify what is basically the current offence of unlawful carnal knowledge of a child under the age of 13 as an offence of rape by removing the consent issue from all offences against children under 13. This will mean that any sexual activity with a child under the age of 13 can be charged as a non consensual offence without the need to raise consent as an issue. The offence is complete if the act can be proved. **(consultation point 14)**

The paper also puts forward for consideration the offence of sexual activity with a child to replace the offence of unlawful carnal knowledge with a girl under the age of 17. This offence would apply to all sexual activity, not just sexual intercourse, and would be gender neutral, applying to both boys and girls. We are proposing to make the offence apply to sexual activity by those over 18 with girls and boys under the age of 16, which is a change to the current law which protects those under 17. Such a change would bring the law into alignment with England and Wales. **(consultation points 15,16)**

There are also proposals for additional specific offences designed to protect those under the age of 16 from particular types of sexual behaviour, eg 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.
(consultation point 17)

This section also looks for views on how the criminal law should react to incidences of sexual activity between those under 18 and those under 16 (assuming that this lower age is accepted as the new 'age of consent'), or 17 as it is now. The new offence in England and Wales applies to all sexual activity (touching, kissing) with those under 16, is gender neutral (so both parties are criminalized) and carries a 5 year maximum sentence. Although there will be cases where exploitation and influence will be brought to bear on a younger or more vulnerable teenager, it may not be necessary to use such wide powers to deal with these minority cases. Also, in Northern Ireland (not in England and Wales), it is a criminal offence not to report to the police the

commission of an arrestable offence (ie one which carries a sentence of 5 years or more). Hence, teachers, parents, youth leaders and others could find themselves in very awkward situations if the offence in the Sexual Offences Act was simply brought across to Northern Ireland law unamended. The paper seeks views on an alternative.

(consultation points 18, 19, 20, 21, 22, 23)

Vulnerable People

Current law already includes the offences in the Sexual Offences Act relating to individuals abusing positions of trust in relation to young people under the age of 18. However, chapter 4 of volume 2 of the consultation paper proposes the addition of more offences from the Act which seek to protect those who are vulnerable as a result of a mental disorder. These offences fall into three categories. The first relates to sexual activity with a person who, because of a mental disorder lacks the capacity to choose whether to agree to such activity or is unable to communicate such a choice. The second group of offences relates to sexual activity with a person with a mental disorder, (not specifically a person who lacks the capacity to choose), whose agreement is obtained to the sexual activity by inducement, threat or deception. The third group relates to sexual activity between a care worker and a person with a mental disorder, in yet another abuse of trust context.

(consultation points 24, 25, 26, 27, 28)

Abuse within the Family

Changes are proposed essentially to allow the criminal law to recognize the extent of sexual abuse which takes place within the wider family structures found in today's society, and to move away from the current incest related offence and the focus on the eugenics debate. Chapter 5 of volume 2 provides more detail. The paper sees the law in this regard as about protecting children from sexual abuse and defining the need for adults to protect children in their care. The offences that are being proposed – all from the Sexual Offences Act – cover sexual activity with a child family member under the age of 18 and extend the family relationships to include, for example, adoptive relations, foster parents, step-parents and siblings, and other persons who live in the same household and regularly care for the child.

(consultation points 29, 30, 31, 32, 33, 34)

The Sexual Offences Act also made provision for offences of sex with an adult relative. These offences update the existing incest offences in Northern Ireland by making them gender neutral and widening the definition of a relative. The consultation paper proposes that these offences are adopted unchanged. **(consultation point 35)**

Gender and Discrimination

The criminal law should not treat people differently on the basis of their gender or sexual orientation. This is in keeping with human rights obligations and statutory equality considerations. Much has already been done to equalize the existing law but there are still areas where offences are gender specific and have their roots in a society which we no longer recognize. Chapter 6 of volume 2 contains more detailed argument. Thus the offence of buggery now applies equally to heterosexual and homosexual activity, and is only illegal when one of the parties is under age or it takes place in public. However, the continuing existence of a specific offence of buggery is in itself discriminatory and the review proposes that it is repealed and replaced by rape (when non consensual), by sexual activity with a child (when the person is underage) and by sexual activity in a public lavatory (discussed in chapter 8 of volume 2). All other gender specific offences will be gender neutralized and any remaining provisions which discriminate between gender or sexual orientation will be repealed. The new modernized body of law will be designed to capture all sexual offences in a non-discriminatory way.

(consultation points 36, 37, 38)

Trafficking and Sexual Exploitation

All of the offences in this section which were enacted in May 2004 by virtue of the Sexual Offences Act were extended to Northern Ireland and are therefore already in force. Chapter 7 of volume 2 of this consultation document, nevertheless, asks for views on the current provisions and seeks to ensure that what is in place is sufficient to control such activities in Northern Ireland.

(consultation points 39, 40, 41, 42, 43)

Other Offences

This section (chapter 8 of volume 2) sets out the remaining sexual offences currently in force in Northern Ireland which do not fall neatly into any of the other categories. Most were enacted by the Sexual Offences Act 2003. Some were originally included in earlier statutes or in the common law, others are new. The consultation asks if we should reenact them as they stand or whether amendment is considered necessary. They are:

- Exposure
- Voyeurism
- Intercourse with an animal
- Sexual penetration of a corpse
- Sexual activity in a public lavatory

Exposure had its origins in the common law and in the statutory offence of indecent behaviour. Intercourse with an animal replaces the old offence of buggery with an animal (bestiality) in the Offences Against the Person Act 1861, which carried a life sentence. Sexual activity in a public lavatory allows the offence of buggery when it occurs in public to be repealed. The other

offences arrived on the statute book in 2004 with the implementation of the Sexual Offences Act 2003.

The consultation proposes that these offences remain unchanged in the new legislation and seeks views on that proposal.

(consultation points 44, 45, 46, 47, 48, 49)

Also in this section is a proposal to put Northern Ireland laws on prostitution and related offences on a par with England and Wales. Views are sought on the introduction of an offence of kerb crawling. This would make it an offence to solicit another person for the purpose of prostitution--

(a) from a motor vehicle while it is in a street or public place; or

(b) in a street or public place while in the immediate vicinity of a motor vehicle that he has just got out of or off, persistently or in such manner or in such circumstances as to be likely to cause annoyance to the person solicited, or nuisance to other persons in the neighbourhood.

Views are also sought on updating the offence of soliciting and on whether the law should be amended to allow two or three women to work together in off street premises. At present only one person may work as a prostitute; more than that and the premises are classed as a brothel and are therefore illegal.

(consultation points 50, 51, 52)

Penalties

This final section proposes penalties for the offences. More detail is at chapter 9 of volume 2. The most serious penalty of life imprisonment is proposed for:

- Rape
- Sexual assault by penetration
- Rape of a child under 13
- Assault of a child under 13 by penetration
- Paying for the sexual services of a child under 13

A maximum of 14 years imprisonment is proposed for:

- Sexual assault of a child under 13
- Causing or inciting a child under 13 to engage in sexual activity
- Sexual activity with a child
- Arranging or facilitating commission of a child sex offence
- Familial child sex offences
- Sexual activity with a person with a mental disorder impeding choice
- Procuring sexual activity with a person with a mental disorder by inducement, threat or deception
- Causing such a person to engage in sexual activity by inducement, threat or deception

- Care workers: penetrative sexual activity with a person with a mental disorder
- Causing or inciting such activity
- Paying for the sexual services of a child under 16 but over 13
- Causing, controlling or arranging child prostitution or pornography
- Trafficking offences

A maximum of 10 years imprisonment is proposed for:

- Sexual assault
- Causing a person to engage in sexual activity without consent
- Engaging in sexual activity in the presence of a child
- Causing a child to watch a sexual act
- Meeting a child following sexual grooming
- Engaging in sexual activity in the presence of a person with a mental disorder impeding choice
- Causing such a person to watch a sexual act
- Engaging in sexual activity in the presence, procured by inducement, threat or deception of a person with a mental disorder
- Causing such a person to watch a sexual act
- Care workers: sexual activity with a person with a mental disorder and causing or inciting sexual activity
- Administering a substance with intent
- Committing an offence with intent to commit a sexual offence
- Trespass with intent to commit a sexual offence

A maximum of 7 years imprisonment is proposed for:

- Care workers: sexual activity in the presence of a person with a mental disorder, and causing such a person to watch a sexual act
- Paying for the sexual services of a child under 18 but over 16
- Causing or inciting or controlling prostitution for gain

A maximum of 5 years imprisonment is proposed for:

- Child sex offences committed by children
- Abuse of a position of trust offences (which apply in respect of children aged under 18)
- Familial child sex offences where the perpetrator is under 18

A maximum sentence of 2 years is proposed for:

- Sex with an adult relative
- Exposure
- Voyeurism
- Intercourse with an animal
- Sexual penetration of a corpse

A maximum sentence of 6 months is proposed for:

- Sexual activity in a public lavatory

Views are sought on the appropriateness of these penalties, which are the same as in England and Wales.

(consultation point 53)

LIST OF CONSULTATION POINTS

Rape and Sexual Assault

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?
2. Should a new offence of sexual assault by penetration be used for all other penetrative assaults?
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?
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?
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”?
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.

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.

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.
9. Does the law on capacity to consent need to be changed?
10. Should there be a statutory definition of capacity?

Preparatory Offences

11. 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?
12. 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?
13. Should there be a new offence of trespass with intent to commit a sexual offence?

Children

14. 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?
15. 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?
16. Should that age (the 'age of consent') remain at 17 or be changed to 16, as in the rest of the UK?
17. Should we have additional specific offences designed to protect those under the age of 16 from particular types of sexual behaviour, eg 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?
18. 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?
19. 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 (ie one with a 5 year sentence)?

20. 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.
21. Should we remove the time limit on prosecution for the new offence of adult sexual activity with a child?
22. 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.
23. 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.

Vulnerable People

24. 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.
25. 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.
26. 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.
27. Are offences needed relating to sexual activity with a person with a mental disorder or learning disability in a relationship of care.

28. 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.
29. How should care workers be defined?

Sexual Abuse of Children Within the Family

30. 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.
31. 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.
32. 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 (ie parent, grandparent, brother, sister, half-sibling, aunt or uncle, foster-parent)?
33. Should adoptive relations be treated on the same basis as blood relations for the purposes of the offence?
34. 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?
35. 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.

Sex with an Adult Relative

36. Should sexual penetration between close adult family members continue to be forbidden by law.

Gender and Discrimination

37. 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.

38. The present offences relating to buggery, which makes anal intercourse unlawful in certain circumstances should be repealed and replaced by gender neutral offences.
39. The remaining provisions of the Homosexual Offences (Northern Ireland) Order 1982 should be repealed.

Trafficking and Sexual Exploitation

40. 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).
41. 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?
42. 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?
43. Should we continue the current offences, as set out in the Sexual Offences Act 2003, of causing or inciting or controlling prostitution for gain?
44. 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?

Other Offences

45. 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.
46. 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.
47. 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.

48. 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.
49. 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.
50. 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.
51. 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?
52. Should we take this opportunity to update the law on soliciting in line with section 2 of the Sexual Offences Act 1985?
53. 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?

Penalties

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

SECTION 75 EQUALITY STATEMENT

The Statutory Equality requirements of Section 75 of the Northern Ireland Act 1998¹ require public authorities to have due regard to the need to promote equality of opportunity and regard to the desirability of promoting good relations between the nine categories listed below:

- Religious belief
- Political opinion
- Race or ethnic group
- Age
- Marital status
- Sexual orientation
- Gender
- Disability
- Dependency

The Northern Ireland Office is fully committed to promoting equality of opportunity and good community relations in all its policies.

The proposed changes to the framework of law on sexual offences is aimed at providing a greater degree of protection to the public, and particularly to children and other vulnerable groups, from those who would seek to inflict harm of a sexual nature. The desired outcome is a fair and non-discriminatory body of law which offers maximum protection, applies equally to anyone who offends in this way, no matter what gender or sexual orientation, but which excludes from the criminal code any fully consensual sexual activity between mature individuals in private.

As part of this consultation process, the Northern Ireland Office has conducted an Equality Screening Assessment, which indicates that the proposed amendments to this legislation should not have an adverse impact on any of the categories listed above.

This should, of course, be seen in the context of the policy area under scrutiny. The criminal law applies equally to all those above the age of criminal responsibility. The fact that there may be imbalances in the gender or age of those who fall foul of that law is not an indication that the law is itself at odds with the concept of equality of opportunity. There are factually many more sexual offenders who are male than female. This is not a result of unbalanced policy decisions or ignorance of equality considerations. The law applies equally to all, and the overwhelming consideration must be the protection of the public from the harm posed by sexual offenders.

¹ <http://www.opsi.gov.uk/acts/acts1998/19980047.htm>

Further, in terms of sentencing, the law takes into account in coming to a decision, all the facts and circumstances surrounding a particular case. There is no statutory provision that would enable such flexibility to be applied to the operation of justice. This process allows for appropriate sentences to be given, say, where a young person has offended for the first time in circumstances which warrant intervention and treatment. Balanced against the aims of the legislation, it is the Government's opinion that the proposed amendments will not have an adverse impact on anyone within the scope of Section 75.

As part of this consultation exercise we would welcome your views in this area, particularly in relation to the following two questions:

- Do you believe that the proposals to reform the law on sexual offences will have an adverse impact on individuals within the scope of section 75?
- If you disagree with our assessment, are there measures that should be implemented to mitigate against adverse impact on people in the Section 75 equality groups.

HOW TO RESPOND

Please send your response to any of the consultation points numbered 1 to 54 via e-mail to CJPB.Public@nio.x.gsi.gov.uk .

Alternatively, you can write to:

Sexual Crime Unit
Criminal Justice Policy Division
Northern Ireland Office
Stoney Road
Belfast
BT4 3 SX

Tel: 028 9052 3659

Responses should be submitted to arrive before **13 October 2006**.

We are committed to publishing a list of those organisations that comment on these proposals and to making available, to anyone who asks for it, a copy of the comments and of our response to them. If you are responding on behalf of a number of people or organisations please provide a summary of the people or organisations you represent.

This volume 1 summary document and the full volume 2 detailed policy proposals are available on the [Northern Ireland Office website](#)

If you have any concerns about the consultation process in Northern Ireland, you should contact the Northern Ireland Office's consultation co-ordinator; Dr. Jim Alford, on 02890 527015 or email him at jim.alford@nio.x.gsi.gov.uk.

Alternatively, you may wish to write to the address below:

Dr. Jim Alford
Central Management Unit
Northern Ireland Office
Stormont House
Stormont Estate
Belfast
BT4 3SH

WHAT HAPPENS NEXT?

Responses to this consultation will be considered and a summary made available in October on the Northern Ireland Office website.

Proposals for draft legislation will then be prepared and published for consultation before the end of 2006.

It is planned that a draft Sexual Offences (Northern Ireland) Order will be laid before Parliament next year and debated and made into law before the Parliamentary summer break in 2007.

ANNEX A

TABLE OF DIFFERENCES BETWEEN THE LAW ON SEXUAL OFFENCES IN NORTHERN IRELAND AND ENGLAND AND WALES

NORTHERN IRELAND		ENGLAND AND WALES		DIFFERENCE
Offences reliant on absence of consent being proved	Penalty	Offences reliant on absence of consent being proved	Penalty	
Rape Vaginal or anal penetration	Life	Rape Oral, vaginal or anal penetration	Life	Oral penetration in NI does not constitute rape but is charged as indecent assault with a max penalty of 10 years. Gender specific.
Indecent assault on a female/male	10 years	Sexual assault by penetration Sexual assault	Life 10 years	More severe maximum penalty in E&W for the most serious behaviour
Indecent assault	10 years	Causing a person to engage in sexual activity without consent	10 years	Indecent assault may not cover a situation where someone is compelled to do a sexual act on a third party

NORTHERN IRELAND		ENGLAND AND WALES		DIFFERENCE
Consent provisions		Consent provisions		
<i>No statutory definition of consent</i> <i>Defence of honest belief available, whether reasonable or not</i>		<i>Consent is defined as agreeing by choice and having the freedom and capacity to make that choice</i> <i>Defence of reasonable belief available</i> <i>Presumptions can be drawn from certain circumstances as to the absence of consent</i>		A number of discrepancies surrounding the issue of consent which may lead to fewer convictions in NI
		The following are offences which do not require the absence of consent as an element		
<i>Rape (and see next offence)</i>	Life	<i>Rape of a child under 13</i>	Life	Although the penalties are the same, rape of a child under 13 in E&W does not include the need to prove that consent was absent. It is virtually the same offence as UCK in NI but without the possible inference that the child was in some way culpable.
The following are offences which do not require the absence of consent as an element				
<i>Unlawful carnal knowledge of a girl under 14</i>	Life	<i>Rape of a child under 13</i>	Life	See above and gender specific

NORTHERN IRELAND		ENGLAND AND WALES		DIFFERENCE
Offence	Penalty	Offence	Penalty	
<i>Indecent assault/indecent conduct towards a child</i>	10 years	<i>Assault of a child under 13 by penetration</i>	Life	More severe maximum penalty in E&W for offences against under 13s
<i>Indecent assault /indecent conduct towards a child</i>	10 years	<i>Sexual assault of a child under 13</i>	14 years	More severe maximum penalty in E&W for offences against under 13s
<i>Indecent conduct towards a child</i>	10 years	<i>Causing or inciting a child under 13 to engage in sexual activity</i>	Life (for penetrative offences) 14 years	More severe max penalty in E&W for offences against under 13s. May be more difficult here to charge the person who did the compelling but not the sexual act
<i>UCK of a girl under 14, UCK of a girl under 17, indecent assault or indecent conduct towards a child</i>	Life for sexual intercourse with a child under 14, 10 years for indecent assault/ conduct towards a child, 2 years for UCK of a girl under 17	<i>Sexual activity with a child (i.e. under 16)</i>	14 years	Except in the case of sexual intercourse with a child aged 13, greater penalties available in E&W for offences against those aged 14 and 15. Gender specific.

NORTHERN IRELAND		ENGLAND AND WALES		DIFFERENCE
Offence	Penalty	Offence	Penalty	
<i>Indecent conduct towards a child</i>	10 years	<i>Causing or inciting a child to engage in sexual activity</i>	14 years	More severe max penalty in E&W. May be difficult here to charge the person who did the compelling but not the sexual act
<i>UCK/indecent assault</i>	Life for sexual intercourse with a girl under 13 10 years for indecent assault 2 years for intercourse with a girl under 17	<i>Child sex offences committed by children or young persons</i>	5 years	Although we have stiffer penalties, in reality the only area of contention is sexual activity of a consensual nature between teenagers which has a 2 year sentence in NI. Gender specific.
<i>Incest</i>	7 years (life if victim is under 14 and perpetrator is male)	<i>Familial child sex offences</i>	14 years	Discrepancy in penalty and only applicable in NI to blood relations. The SOA includes many other relationships and applies to children under the age of 18, not just those under the age of consent
<i>Offences against women</i>	2 years	<i>Sexual activity with a person with a mental disorder</i>	14 years	Discrepancy in sentence and gender specific
<i>Offences against patients</i>	2 years			
<i>As above</i>	2 years	<i>Care workers who engage in sexual activity with persons with a mental disorder</i>	14 years penetrative 10 years non penetrative 7 years for sexual activity in presence of person	Discrepancy in sentence and gender specific