

PCS GUIDE TO THE SEXUAL OFFENCES ACT

Foreword

The Sexual Offences Act 2003 in many ways is a welcome development towards equality for same sex partners. The law no longer distinguishes between sexual activity between same and opposite sex partners and no longer seeks to criminalise the activities of gay men.

The Act and this guidance should not however be seen as legislation that affects or is only relevant to the activities of lesbians and gay men, it applies to everyone.

The motion to the PCS Annual Delegate Conference in 2005 that called for the production of this guide highlighted two major concerns about the drafting of the Sexual Offences Act.

The first concern was that even though the law no longer criminalises sexual activity between men, the new Act gives a wide discretion to the Police in reporting offences that, if misused, could greatly increase the chances of gay men being prosecuted.

The second was that in an effort to draft legislation that provided stronger protection against child abuse, there is a danger that any sexual activity between young people under the age of consent, including heavy petting and public displays of affection, could lead to the prosecution and conviction of those young people and in some cases, their parents.

Again, this is an issue that affects all young people and their parents whether the activity involves same sex or opposite sex partners

PCS Equality Health & Safety Department
May, 2006

Motion 100 of the PCS ADC

A100

That this Annual Delegate Conference of PCS notes the introduction of the Sexual Offences Act 2003. Whilst welcoming most aspects of the Act including for the first time lesbian and gay sexual activity being treated the same as heterosexual couples - Conference has reservations and concerns in the following areas.

The following activities are criminal under the Act and liable to prosecution:

- a. Two consenting young people (gay and straight) who engage in sexual activity under the age of consent. Sexual activity will include heavy petting and most public displays of affection.
- b. Parents who allow young people the privacy of their own rooms and consenting sexual activity occurs - this includes heavy petting.

Conference further notes that a new offence of having sex in a public toilet has been created and whilst this is designed to be implemented for straight and gay couples alike, traditionally it is gay men that are prosecuted for this act.

This ADC instructs the NEC to produce guidance around the new legislation for issue to members highlighting the dangers inherent in the legislation.

This ADC further instructs the NEC to campaign for amendments of the Sexual Offences Act 2003 to take into account the above.

Q&A: Sex Offences Act

What will this act do?

The act reforms the law on sex offences and overhauls the Sex Offenders Act (1997). The government published a review of the law on sex offences in 2000, setting the Boundaries, and a white paper, protecting the Public, updating its recommendations was published last year.

This proposed tougher sentences for child sex offenders, reform of rape law and significantly relaxing laws on gay sex. The act complements the new Criminal Justice Act, under which serious sex attackers will receive mandatory life sentences - even if they are first-time offenders.

Why did the government want to reform the sex laws?

The home secretary, David Blunkett, said that the proposed reforms reflect changes in social attitudes. The government believed that much of the existing legislation, particularly the laws on gay sex and child sex abuse, was out of date. The Sexual Offences Act is 46 years old and mostly consolidated laws drawn up in the 19th century, an era when paedophilia was not recognised.

The public outcry over the case of Roy Whiting, a convicted paedophile found guilty of kidnapping and murdering eight-year-old Sarah Payne, put the government under pressure to increase sentences for child sex offenders and tighten up the management and supervision of those living in the community. Ministers also want to bring forward measures to tackle emerging threats, such as sex trafficking and paedophiles who ensnare children via the internet.

How do the measures tackle child sex abuse?

The act closes a loophole that has allowed those accused of child rape to escape punishment by arguing the act was consensual. At present, the law requires prosecutors to show there was a lack of consent between an adult and a child under 13. In future any sexual intercourse with a child aged 12 or younger will be treated as rape. A new offence of adult sexual activity with a child covers any sex act that takes place between an adult and a child under 16. This will cover a range of behaviour, including inducing children to take off their clothes for sexual pleasure. But where the child is under 13 and the behaviour involves physical contact or inducing the child to perform a sexual act, the adult will be charged with one of the non-consensual offences.

These offences are rape and the two new offences of sexual assault by penetration or sexual assault and causing a person to perform an indecent act without consent. Although the government has not introduced a new offence of persistent child abuse, as recommended by children's charities, it believes the range of new offences will allow the courts to impose harsher sentences on repeat offenders.

What about protecting children from abusive parents or carers?

The government has replaced the crime of incest with a new offence of familial sexual abuse to cover not just assaults by blood relatives but also by foster and adoptive parents and live-in partners. The offence of abuse of a position of trust has also been re-enacted, prohibiting sexual contact between adults and children under 18 in schools and colleges and residential care, in a bid to protect vulnerable 16 and 17 year olds.

How will it combat internet paedophiles?

The Home Office acknowledges that sexual approaches to children online are increasing, with more than a dozen men who made contact with their child victims on the internet imprisoned in the past three years for sexual abuse and rape. The act includes a new offence of sexual grooming, which makes it a crime to befriend a child on the internet or by any other means with the intention of abusing them. A new civil order also prohibits adults from engaging in inappropriate behaviour such as sexual conversations with children online.

What about convicted sex offenders?

Convicted sex offenders will have to register with their local police every year instead of every five years. The police will also be able to photograph offenders every time they register and not just the first time as at present. This affects more than 18,500 convicted sex offenders, including child abusers.

They will have to report each year regardless of whether their circumstances have changed. Failure to report is already a criminal offence that can carry a prison term of up to five years. Currently, offenders have to report every five years and when they move home.

Those on the register will have to inform the police if they change their name or address within three days instead of 14 at present, and disclose if they spend seven days or more away from their home. The government is also considering making offenders provide their national insurance details to prevent them from evading registration.

The reforms will also extend the register to cover violent offenders. This will allow sex offender orders and sex offenders restraining orders to be imposed on anyone convicted of serious violent offence if there is evidence that they pose a risk of committing a serious sexual assault.

The Home Office says that 97% of convicted sex offenders are on the register, which has been in operation since 1997. Most are registered for 10 years but the more serious offenders are on it for life. The government believes that more regular registration will prevent even more offenders disappearing "underground".

What about those convicted overseas?

The act will force "sex tourists" convicted of sex crimes abroad to comply with the sex

offenders register, even if they have committed no crime in the UK. This will be difficult to enforce because it enters new legal territory and will require closer cooperation between the national criminal intelligence service and police forces abroad.

How do the reforms change rape laws?

Rape has been redefined to include penetration of the mouth or anus by the penis, and covers surgically reconstructed male and female genitalia. A new offence of sexual assault by penetration deals with assaults involving the insertion of objects, such as bottles, or body parts other than the penis into the vagina or anus. Another new crime covers non-penetrative sexual assaults.

On the issue of consent, people will be considered most unlikely to have willingly agreed to sex if they were unconscious, drugged, abducted, subject to threats or fear of serious harm, or incapable of giving consent because of learning disability or mental disorder.

There has also been a tightening of the approach to "date rape", although there is no specific law to deal with it. Defendants would have to prove they made "reasonable" efforts to ensure their sexual partner consented. The Home Office said what was considered reasonable will have to be judged "on a case by case basis".

Rape law will not be extended to cover a woman who forces a man to penetrate her with without his consent but this crime will be covered by a new offence of causing another person to perform an indecent act without consent.

What about underage sex?

The act criminalises all consenting sexual activity among under 16s. This means it will be a criminal offence for two 15-year-olds to kiss in public. But the Home Office says those below the age of consent are unlikely to be prosecuted if both are enjoying the embrace.

What sexual acts will be decriminalised?

The act sweeps away the offences of gross indecency, buggery and soliciting by men, which is sometimes, called "cottaging" or "cruising". While group gay sex in private will become legal, because it is a victimless crime, it will remain an offence to engage in gay sex in a public toilet - "cottaging".

Until now, the offence of gross indecency made it illegal for homosexual acts to take place where there were more than two people taking part or present, and in a public lavatory. Ministers initially proposed the decriminalisation of cottaging unless a person was "reckless" by having sex in circumstances in which they were likely to be seen. But the "sex in public toilets" law was replaced by a tough new anti-cottaging measure. The measure of "sexual activity in a public toilet" will outlaw not only sex but also sexual touching of other parts of the body.

How will gay men who have previously been convicted of crimes that are no longer offences be affected?

Although the Sexual Offences Act 2003 repeals the anti-gay sexual offences of buggery and gross indecency, there is concern regarding the new offence of 'sexual activity in a public lavatory'. Some gay men are worried that this offence will allow the police to continue stigmatising and victimising gay men in particular. During the adoption of the Sexual Offence Act 2003, there were some assurances from the Home Office that this will not be the case and the offence will be implemented in a balanced manner without targeting gay men. This remains to be seen.

There are some gay men who have been convicted under the 'gross indecency' offence for sexual acts with a man between the ages of 16 and 18 before the age of consent for gay men was lowered to 16. Now that the age of consent has been lowered and gross indecency has been removed from the statutes, those men registered as sex offenders will be contacted by the Home Office individually in order to remove their names from the sex offenders register. This is due to take place from May 2004. Click [here](#) to read the Home Office Circular regarding the removal from the sex offenders register.

What other reforms are set out?

New laws on sex slave trafficking will protect children and adults brought into and taken out of the UK for "sex work". New offences covering commercial sexual exploitation target pimps and others who force children and adults into prostitution. The act takes a much tougher line on "flashers" and "peeping toms". A new offence of voyeurism will criminalise those who install cameras in public changing areas, and protect anyone spied on inside a building that had an expectation of privacy. But a general public order offence of sexual behaviour in a public place will allow people to legally have sex in an isolated place, where they have an expectation of privacy.

The offence of indecent exposure has been reformed to one where a man or woman expose themselves knowing they might cause alarm or distress, and the penalties doubled to six months for a first offence. Necrophilia and bestiality also become crimes for the first time.

Definitions of Sexual Offences under the 2003 Act

The Sexual Offences Act 2003 received Royal Assent on 20th November 2003 it came into effect on the 1st May 2004 and is the most far-reaching and comprehensive legislative reform in the area for over 50 years.

This Act represents a major overhaul in the sexual offences framework. Sexual crime, and the fear of sexual crime, has a profound and damaging effect on the lives of individuals and communities.

The Act contains a number of important measures: it seeks to clarify issues surrounding consent in rape and sexual assault cases; it gives children the greatest possible protection against sexual abuse; for the first time, it provides a specific set of offences to protect persons with a mental disorder; and it tackles the commercial exploitation of people for sexual purposes through prostitution and trafficking.

It also strengthens the protection for society from convicted sex offenders living in the community and aims to improve monitoring of offenders and build in safeguards against evasion and retrials. Throughout the Act, the maximum penalties for offences have been reviewed and, where necessary, amended to reflect the seriousness of the behaviour involved.

Section 1: Rape

Section 1 makes it an offence for a person (A) intentionally to penetrate with his penis the vagina, anus or mouth of another person (B) without that person's consent if A does not reasonably believe that B consents.

The section redefines the physical act of rape by including penile penetration of the mouth. The offence also covers surgically reconstructed genitalia, for example as a result of gender reassignment surgery. Rape and rape of a child under 13 are the only offences in the Act which can only be committed by a man, because they relate to penile penetration.

This offence differs from the offence of rape in the Sexual Offences Act 1956 in that it requires that the defendant does not have a "reasonable belief" in consent, rather than that he does not have an "honest belief" in consent. The offence is tried on indictment only at a Crown Court and has a maximum penalty of life imprisonment.

Section 2: Assault by penetration

Section 2 makes it an offence for a person (A) intentionally to penetrate the vagina or anus of another person (B). The offence is committed where the penetration is by a part of A's body (for example, a finger) or anything else (for example, a bottle or

vibrator); the penetration is sexual; and B does not consent to the penetration and A does not reasonably believe that B consents.

The requirement that the penetration is sexual means that practitioners who conduct intimate searches and medical procedures without a sexual motive are excluded from the offence.

It is not necessary for the victim to know, or explain what they were penetrated with. This means that the offence can be used in cases where, for example, the victim is a child, or a person with a learning disability, or a person who was blindfolded at the time of the alleged incident, and where the evidence is not clear enough to justify a rape charge. The offence is tried on indictment only at a Crown Court and has a maximum penalty of life imprisonment.

Section 3: Sexual Assault

Section 3 makes it an offence for a person (A) intentionally to touch sexually another person (B) without that person's consent, if he does not reasonably believe that B consents.

"Touching" covers all physical contact, including touching with any part of the body, with anything else and through anything, for example, through clothing. This could include for example, where a person rubs up against someone's private parts through the person's clothes for sexual gratification. It also includes penetration. However, where there is sufficient evidence, forced penile penetration of the vagina, anus or mouth would normally be charged as "rape" and forced penetration of the vagina or anus with any other part of a person's body or another object would normally be charged as "assault by penetration".

The offence is tried summarily at a Magistrates' Court or on indictment at a Crown Court and has a maximum penalty of 10 years imprisonment.

Section 4: Causing a person to engage in sexual activity without consent

Section 4 makes it an offence for a person (A) intentionally to cause another person (B) to engage in sexual activity without that person's consent, if he does not reasonably believe that B consents.

This offence covers a range of circumstances. A may cause B to engage in sexual activity with A. An example of this would be where a woman compels a man to penetrate her. A could also force B to carry out a sexual act on B, for example, where an abuser makes his victim engage in masturbation involving only the victim. The offence also applies where A forces B to engage in sexual activity with another person, whether that third party is a willing participant or another victim. An example of the former would be where a man forces a woman to give oral sex to a fellow abuser, and of the latter, where a man forces two non-consenting women to touch one another in a sexual way.

The maximum penalty for the offence is staggered to allow for sentences to reflect the gravity of the crime. Where the offence does not include sexual penetration (of or by the victim) the offence is tried summarily or on indictment and has a maximum penalty of 10 years imprisonment (the same as the maximum penalty for a non-penetrative sexual assault). Where sexual penetration (by the penis or anything else) is involved, the offence is tried on indictment only and a maximum penalty of life imprisonment applies.

Definitions

What does 'consent' mean?

The definition of a sexual offence often revolves around consent. In simple terms, it's all about permission (or agreement). This is something that must be clearly established between two people before any kind of sexual act or behaviour. If an individual is accused of a sex offence, they must show that they reasonably believed consent had been given by the other person.

Mens rea (Intention or literally "guilty mind")

The mens rea of rape, the intention that must be proved, has been changed significantly by the Sexual Offences Act 2003. Under the old law, section 1(2) (b) of the Sexual Offences Act 1956 stated that the mens rea required was that: 'at the time he knows that the person does not consent to the intercourse or is reckless as to whether that person consents to it'. Recklessness no longer forms part of the mens rea of rape. The Sexual Offences Act 2003 requires an intentional penetration and that the defendant did not reasonably believe that the victim was consenting. Section 1(2) of the 2003 Act states:

"Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps [the defendant] has taken to ascertain whether [the victim] consents."

Only reasonable mistakes negate mens rea

Prior to the Sexual Offences Act 2003, the controversial case of DPP v Morgan (1976), ruled an honest mistake that the victim was consenting could negate mens rea, even though the mistake was not reasonable. The law has now been changed by the Sexual Offences Act 2003. The defendant, who makes a mistake and thinks that the victim was consenting, will only lack mens rea if that mistake was reasonable. This is because the mens rea of rape is now defined in terms of reasonableness: the defendant will have mens rea if he 'does not reasonably believe' that the victim was consenting. So a defendant has mens rea where he honestly believes that a victim is consenting, but has not taken due care to discover that s/he was not actually consenting.

Burden of proof

The burden of proof is normally on the prosecution to prove the existence of the elements of an offence beyond reasonable doubt. However, because of the problems that there have been in the past with the prosecution of the offence of rape, the Sexual Offences Act 2003 has reversed the burden of proof in relation to the issue of

consent and mens rea in certain circumstances. It does this by creating a rebuttable presumption, and where particular lies were used, an irrebutable presumption. A rebuttable presumption means that the law assumes that there was no consent unless the defendant can produce evidence to the contrary. An irrebutable presumption means that the circumstances of the case indicate that there was no consent and there is no evidence that the defendant can produce to change this (see below).

The rebuttable presumption

Section 75 of the Sexual Offences Act 2003 creates a rebuttable presumption that the complainant did not consent and the defendant had mens rea where:

- * Violence or the threat of violence was used against the complainant or a third person,
- * The complainant was unlawfully detained,
- * The complainant was asleep or otherwise unconscious when the offence was committed,
- * Due to a physical disability, the complainant was unable to communicate a consent, or
- * The complainant had been given a substance, which was capable of causing them to be stupefied, or overpowered at the time of the attack.

In these circumstances an evidential burden of proof is on the defendant. He has to adduce sufficient evidence to raise an issue of consent and the absence of mens rea, in order for the burden of proof to pass back to the prosecution.

The irrebutable presumption

The Sexual Offences Act 2003 s. 76 creates an irrebutable presumption that the victim did not consent and the defendant had mens rea. This irrebutable presumption applies where specific types of lies have been used to dupe the victim into having sexual intercourse. These lies are where:

"(2) (a) the defendant intentionally deceived the complainant as to the nature or purpose of the relevant act;

(b) the defendant intentionally induced the complainant to consent to the relevant act by impersonating a person known personally to the complainant."

To see full text of the 2003 Act go to:

<http://www.cps.gov.uk/legal/section7/sexoffencesact2003.htm>

The Sexual Offences Act 2003 (Prescribed Police Stations) Regulations 2004

Can be found at

<http://www.hmso.gov.uk/si/si2004/20040875.htm>

The Sexual Offences Act 2003 (Travel Notification Requirements) Regulations 2004

Can be found at

http://www.crimeline.info/si2004_soa.pdf

Guide to Disparities of the Sexual Offences Act 2003

Sex - legal over the age of 16 so long as it's mutually consensual

Prostitution - legal (although many laws criminalise the activities involved with it)

Porno - legal so long as it's sold in licensed premises

Swinging - kind of legal

S/M - legal so long as no lasting wounds and no piercing for pleasure

Introduction

Britain has dozens of laws restricting our sexual activities, some dating back hundreds of years! Many of these laws contradict each other. Quite a number are no longer regularly enforced but, while they remain on the statute books, one never knows when someone will get caught out. This is arbitrary and unfair. You may wonder why these antiquated laws don't get repealed.

The Sexual Offences Act 2003 makes the law more, rather than less restrictive. It includes a clause that makes the male in heterosexual consensual intercourse with a female under thirteen automatically guilty of rape (Clause 6) carrying a maximum penalty of life imprisonment. The age limit for indecent photos was raised from 16 to 18 despite the fact that the age of consent for both hetero and gay sex is 16! Sixteen-year-olds kissing in public would also be criminalised.

Sexual Behaviour

SEX IN PRIVATE is legal except:

- where force or threat of force is used
- when one of the parties has not consented (see date-rape drugs and issues on consent, below)
- when the sex involves S/M - see below
- when one or both partners is under the age of 16 for hetero or lesbian sex and now also for gay sex (Sexual Offences Amendment Act 2000)
- when sex involves animals

SEX IN PUBLIC PLACES is legal between heterosexual couples and lesbians (but not gay men) if it does not cause alarm or distress - so "dogging" is legal if it is in a secluded place. However, if you have sex in a place where you are likely to be seen by the general public, for example in the street, you would be contravening the Sexual Offences Act because alarm would have been caused. There is always

the risk, however, of prosecution for "outraging public decency" (Common Law Offence).

NUDE/TOPLESS SUNBATHING on the beach and in parks is legal. Nudity is even legal in Selfridges if it's art. Nudity in what is generally considered to be inappropriate places, however, could be prosecuted under the Indecent Displays Act and Sexual Offences Act.

EXPOSING MALE GENITALS in public in order to shock is illegal, and can be prosecuted under the Sexual Offences Act 2003 Section 66. However, playful mooning would probably not be prosecuted unless someone took offence. There is, however, the risk of prosecution for "outraging public decency" (Common Law Offence).

SEX AT NIGHT CLUBS became legal since the Whiplash Club was acquitted in 1996, after being prosecuted under the Disorderly Houses Act of 1751. However, councils are now requiring sex clubs, public houses, lap dancing clubs and other venues showing nudity to purchase an entertainment licence which can cost £30,000 per annum. Occasional licences cost less, depending on the size. The code of conduct of the strippers or performers has to be submitted to the local authority which imposes conditions. The City of Westminster insists that lap dancers wear g-string but the Borough of Camden does not. Licences are granted if there are no objections upheld from the local residents, but the council also takes into account proximity to areas of highest levels of recorded crime and cumulative adverse impact of sex-related licensed activities within the vicinity.

Conferences and workshop events do not require special licences to include nudity or sexual activity. Lesbian and gay clubs have been allowed freedom but may need an entertainment licence if shows are staged.

MALE GAY SEX is legal in private, between consenting men who are 16 or over (Sexual Offences Amendment Act 2000). It is no longer limited to two people. Men may hold hands and kiss in public (Sexual Offences Act 2003). Cottaging (sex in toilets) and sex in public is illegal.

LESBIAN SEX has no special legislation, other than the normal criminal law of coercion, and age limits under the Indecency with Children Act (now 18+ years under the Sexual Offences Act 2003).

DATE RAPE DRUGS are illegal under the Sexual Offences Act 2003

SEX WITH ANIMALS is illegal in Britain. The courts view in recent times has been that the individual needs help rather than punishment, and a fine or community service is imposed.

BDSM - short for Bondage Domination Sado Masochism. In other words, using power-play, role-play, domination, submission and corporal punishment in sex. It is legal so long as it is consensual, any marks or wounds last no longer than 10 minutes, and there is no piercing for pleasure. These limitations were decided after the notorious Spanner Case.

Three gay men were sentenced under the Offences against the Person Act 1861. The ruling was not overturned on appeal and they served three years in prison. Later the case was taken to the European Court and still not over turned. Since the Spanner convictions, however, three other cases of marking have been acquitted, one involving "bottom branding" between a married couple.

CONSENT OF PEOPLE WITH LEARNING DISABILITIES

The law is currently unclear and insensitive to the sexual needs of people with learning disabilities. The question of valid consent needs clarifying. Currently, the legal definition is that the individual must be able to understand the nature of the sex act and its consequences, there is no pressure used, and they are able to communicate their decision to have sex. There are a few guidance notes on what to look for when seeing if a relationship is consenting or not. These include:

- Is there a power imbalance in the relationship (authority, intellect, physical ability, wealth, strength)?
- Are any inducements being used to gain sexual activity?
- Do both partners have the same expectations for the relationship (i.e. just sex vs. loving relationship)?
- Are there any actual or perceived threats to the person?
- Are both parties able to effectively give consent (verbally and none verbally) and can they appreciate the other partner's right to refuse consent.
- Do both partners understand the possible consequences of sexual contact (pregnancy, STI's)
- Is the person engaging in the act voluntarily, free from coercion?
- Is the person able to protect themselves from harm, or avoid situations where harm must occur?
- Does the person have the assertiveness skills to stop sexual contact/leave the relationship if they wanted to?

- Is the person aware of appropriate times and places where sexual activity can take place and what behaviours would be illegal?

Care Workers including all paid and voluntary staff, may not legally have sex with people with learning disabilities, even if they have a learning disability themselves. (Sexual Offences Act 2003)

The Mental Incapacity Act which will become into effect in September 2005 has been subject to pre-legislative scrutiny by a Joint Parliamentary Committee. The Committee published its report in November 2003 and the Government published its response in February 2004.

Basic Issues:

- In practice, there is no clear accepted definition of capacity to sexual consent
- There is no consensus of what people need to understand about sex in order to consent to it
- Duty of care may go beyond the legal capacity to consent
- Capacity to consent can improve with experience. People with learning disabilities should not automatically be given a test and test results should not be laid down irreversibly in clinical notes
- Ongoing education / training and support is essential
- Boundaries in school settings and residential homes need to be formulated
- All local authorities should have an expert on consent to go to for help and advice.

Pornography

POSSESSION

You are allowed to possess any pornography so long as it doesn't contain illegal acts. Possession of Indecent images of children under 18 is criminalised by the Criminal Justice Act 1988 and Public Order Act 1994 and also the Sexual Offences Act 2003. The latter raised the age limit from 16 to 18. This includes computer imagery and simulated imagery, but not drawings and paintings.

IMPORTING

HMRC has no published guidelines, although they are supposed to follow the rules of the British Board of Film Classification. If you are stopped on entry into the country (or have a parcel seized that is addressed to you), your home could be searched and your porn collection seized. The importation of porn is illegal under the Customs Consolidation Act 1876.

RESEARCH

Academics can claim justification for possession of prohibited material for research purposes, i.e. indecent images of children.

MAKING PORNOGRAPHY

It has always been legal to shoot hardcore, and edit pornographic films in the UK. The restrictions are on selling and distributing it. Illegal acts, such as actual rape, strong S/M, or sex with children or animals would, however, make filming or photography of them illegal.

WATCHING PORNOGRAPHY ON TV

The new Broadcasting Act still prohibits sexually explicit TV shows and forbids the advertising of proscribed foreign sex satellite services. Even pay-to-view channels broadcast within the UK are not allowed to show explicit sex. The Independent Television Commission (ITC) was replaced by Ofcom in December 2003. Ofcom consulted the public on "ALL aspects of broadcasting regulation" and in 2005 maintained the ban on R18/hardcore material.

PORNOGRAPHY ON YOUR COMPUTER

The Police and Criminal Evidence Act 1994 criminalises computer porn. You are unlikely to be prosecuted unless visiting child pornography sites. Since 1999 people who have been found downloading indecent photographs of children on their computers are being charged under the Protection of Children Act 1978, following the Bowden precedent. Downloading an image and possession of an image were defined in the Fellows and Arnold case.

All sexually explicit sites open with a warning and a statement to ensure that the viewer is 18 or over, to prevent unsuspecting adults and children from entering. However, you can enter a site via a link and never see the home page with its warning.

PORNOGRAPHY - ACTING is legal unless:

- The actor is under 18
- the actor has not consented
- illegal acts are performed e.g. with animals and/or children

PORNOGRAPHY - SELLING

Trading is legal so long as videos and DVDs have been certificated by the British Board of Film Classification. They are not certified if they contain:

- Images that involve people under the age of 18
- sex with animals
- acts involving excrement and/or urine
- female ejaculation if it looks like urination
- S/M
- Rape or simulated rape (to prevent a hateful and/or violent impulse being aroused in the viewer)

Magazines and books sold in licensed sex shops are legal unless they contain the acts prohibited in videos. This is because the Crown Prosecution Service and Customs follow the standards set by the British Board of Film Classification. Unlicensed premises e.g. bookshops and newsagents self-censor as they wish to avoid the risk having all their stock seized.

The written word is now not prosecuted, but also may be self-censored by publishers and distributors. There are no definitions of what may and may not be described or shown lawfully in Britain. Swapping amateur porn is classed as trading, under the Video Recordings Act and therefore theoretically the material requires a licence from the British Board of Film Classification, which costs around £1,000 per film and the films should strictly speaking be traded through a licensed sex shop. If you are selling to the public in a sex shop, you need a sex shop licence.

For an erotic show at an exhibition centre, you need an Entertainment licence from the Council, to which conditions will be attached, e.g. no complete nudity. Either may cost as much as £20,000 a year. Occasional licences for a one-off event costs less.

Galleries and art centres displaying erotic High Art and Low Art are normally not prosecuted, even for hard-core material, unless they contain indecent images of children under 18, or even innocently naked children. Erotic art does get to be seized by customs, which sometimes means it cannot appear in the show it was being sent over for.

It also remains an offence to send indecent items through the mail (Post Office Act). Hard-core pornography cannot be sold to the public by mail order. It can only be purchased in a licensed sex shop over the counter (Video Recordings Act).

PORNOGRAPHY IN CINEMAS

Films can only be shown if they have been certificated by the British Board of Film Classification under the guidelines mentioned above. R18 films and videos, i.e. hard core porn can only be shown in cinema clubs, not public cinemas. The audience must all be 18 or over. (The Cinemas Act 1985 censors films to be shown in cinema clubs). The first fully-licensed R18 cinema club opened in April 2003: the Sunset Cinema Club in Brewer Street, Soho.

18-rated films as opposed to R18 films, can be shown in cinemas but they do not usually contain hard core imagery unless it can be 'artistically justified' (Cinema Act 1985). Art Film Theatres with private membership can show any film they wish. These theatres include the National Film Theatre which organises the Lesbian and Gay Film Festival and the London Film Festival and the Institute of Contemporary Arts in London. Even in these venues, however, local Councils can still try to stop screenings that they consider unsuitable (e.g. Crash at the LFT). Small cinema clubs such as The Willow in Old Street have recently disappeared due to Hackney Council demanding large licence fees. An erotic film festival planned at The Lux Cinema was banned in 2000 by Hackney Council hours before opening, following a "shock-horror" exposé in the Hackney Gazette. Once the newspapers have shamed a sex event, or there has been one single complaint, the Council is likely to revoke the necessary entertainment licences.

EROTIC DISPLAY

There are old Common Laws against the exhibition of indecent activities, pictures or things. They prevent sex shops displaying goods in their windows, and advertising hoardings from being too explicit.

SEX EDUCATION BOOKS

Books for adults can show images of what they are teaching. But sex education books for children and teenagers, however tame, are vulnerable to prosecution for obscenity, because the young readers might be "corrupted". The Learning and Skills Act 2000 removed any local authority responsibility to provide sex education.

GOVERNMENT GRANTS are not given to people for projects which involved the creation of pornography or other material for the sex trade (although the National Lottery is not so restricted and gave £359,291 to the UK Network of Sex Workers in February 2005). Job Centres thus refuse to carry advertisements for vacancies in the sex industry, e.g. lap dancers.

Performance

STRIPTease AND EROTIC PERFORMANCE

Most local councils now require an entertainment licence for striptease, lap dancing and nude performance art, unless the show is part of a conference or workshop event. When applying for a licence, the venue (which may be a public house) is required to publish an advertisement put up a notice inviting local residents to object. In addition, the application may be rejected on Health and Safety grounds. Licences can cost £30,000 per annum, although an occasional licence costs less, depending on the size of the audience.

THEATRE PRODUCTIONS

The Theatres Act 1968 abolished theatre censorship but retained the law against obscene performances. That can lead to revocation of the necessary entertainment licence.

Prostitution

BEING A PROSTITUTE is legal - both straight and gay, so long as he/she is 18 or over. The problem for prostitutes is that most things they need to do to earn a living are illegal:

- Explicitly advertising their services - although newspapers now happily take "massage" adverts and many prostitutes now advertise on the Internet.
- soliciting in the street - which can mean as little as walking along with a condom in your handbag - is outlawed by the Street Offences Act 1959. Street walkers can also be prosecuted under the Vagrancy Act 1824. Men can be prosecuted for "importuning", whereas women cannot (Sexual Offences Act 2003).
- hanging out in the street - some street workers are being prosecuted for public order offences and receive ASBOs - Anti Social Behaviour Orders. Local authorities use ASBOs out of context to ban prostitutes from working in their area. There is also the possibility of prosecution for "outraging public decency" (Common Law).
- cause alarm, distress or harassment - which could be from just "being a prostitute" - under the Public Order Act 1986.
- The Licensing Act 1964 prohibits landlords serving a prostitute and the Town Police Clause Act of 1847 criminalises selling refreshments to sex workers sitting together. The worry about the latter supposedly defunct Act is that it could criminalise health workers and volunteers who run drop-in centres.
- Prostitutes paying men to help them (although you may be allowed to employ a female "maid"). The Sexual Offences Acts 1956 and 2003 criminalise men for living off immoral earnings, and men and women for "controlling prostitutes".
- working together in a flat, in a brothel, massage parlour or for an agency is

illegal under the Disorderly Houses Act 1751 and the Sexual Offences Acts. It is normally tolerated in practice, so long as there are no drugs or underage people involved, and the neighbours have not complained.

- As they are providing a service, prostitutes should strictly speaking charge VAT if their earnings are over and above the relevant limit. But clients don't want to be identified, let alone be handed a VAT invoice. Prostitutes fear the Inland Revenue making extortionate income tax assessments (e.g. the Lindi St Clair case). As prostitution itself is lawful, the income is taxable. Most sex workers thus make the choice to either (a) work undercover, stating another profession on their tax form or (b) work outside the tax system, in the black economy. To avoid suspicion and keep their National Insurance up-to-date, many sign on at the Job Centre for six months after which Jobseekers Allowance ends.

- Sex workers have few legal rights and little protection from the law. They find it very difficult to get police protection or to take a case to court against a violent client for assault and there are many violent clients. Technically, if a client refuses to pay, that is rape because consent was a condition of payment. Juries, however, rarely convict a man of raping a prostitute.

LIVING WITH A PROSTITUTE

For men, this can be interpreted as living off immoral earnings, and illegal under the Sexual Offences Acts 1965 and 2003, even if you are her son or boyfriend. Two female prostitutes in the same building constitutes a brothel and each (and the landlord) are liable to prosecution.

PHONE SEX is legal, but restricted by guidelines drawn up by the ICSTS under the Telecommunications Act 1984 which criminalises indecent phone conversations. Chat lines operating in Britain are therefore expensively routed through foreign providers to avoid prosecution under British regulation, which requires every phone call to be recorded and the caller to be warned that this will happen.

DOMINATION AND FANTASY PARLOURS - grey area. If intercourse, oral or manual sex takes place, they would come under the prohibitions regarding prostitution. Dominatrices also need to stick to the regulations for S/M enforced by the Offences against the Person Act.

RUNNING AN ESCORT AGENCY OR BROTHEL is illegal under the Sexual Offences Acts because it is controlling prostitutes. The police tend to turn a blind eye so long as there are no drugs or underage people involved, and nobody has complained. There are also prosecutions if the business is large-scale and /

involves illegal immigrants. Yet the nicest Madams (and Monsieurs) have been sent to jail in recent years. In 2003 Westminster Council even obtained Compulsory Purchase Orders for houses being used for prostitution, at 3 and 4 Peter Street, and 2 Berwick Street, Soho. The Council want the houses to be used for residential purposes only and the orders made eight prostitutes homeless.

CONTROLLING A PROSTITUTE

The Sexual Offences Acts 1956 and 2003 are also used against agencies and parlours and even drop-in staff and employed health workers.

BEING A CLIENT is legal, unless you are kerb crawling. The government has indicated, however, that it is considering the creation of a criminal offence of paying a woman for sex (as is now the case in Sweden).

KERB CRAWLING

Offenders can be prosecuted under the Sexual Offences Act 1985. The resultant publicity has caused some defendants to suffer loss of employment and/or divorce.

Miscellaneous

CORRUPTING MORALS

Society is "protected" by the Common Law against Conspiracy to corrupt public morals but this offence has not led to a conviction since the Oz trial in the 1960's.

WHAT TO DO IF THE POLICE RAID YOUR HOME

see advice on <http://www.spannertrust.org.uk>