



Making Northern Ireland Safer For Everyone Through Professional, Progressive Policing

FREEDOM OF INFORMATION REQUEST



Request Number: F-2008-05418
Keyword: Crime
Subject: SEXUAL OFFENCES (NI) ORDER 2007

Request:

Copy of your response to the consultation on the proposed draft Sexual Offences (Northern Ireland) Order 2007

Answer:

This is to inform you that the Police Service of Northern Ireland has now completed its search for the information you requested. The decision has been taken to disclose the located information to you in full.

Please find attached records numbered 1 to 4.

If you have any queries regarding your request or the decision please do not hesitate to contact me on 028 9070 0164. When contacting the Freedom of Information Team, please quote the reference number listed at the beginning of this letter.

If you are dissatisfied in any way with the handling of your request, you have the right to request a review. You should do this as soon as possible, or in any case within two months of the date of issue of this letter. In the event that you require a review to be undertaken, you can do so by writing to the Head of Freedom of Information, PSNI Headquarters, 65 Knock Road, Belfast, BT5 6LE or by emailing foi@psni.pnn.police.uk.

If following an internal review, carried out by an independent decision maker, you were to remain dissatisfied in any way with the handling of the request you may make a complaint, under Section 50 of the Freedom of Information Act, to the Information Commissioner's Office and ask that they investigate whether the PSNI has complied with the terms of the Freedom of Information Act. You can write to the Information Commissioner at Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. In most circumstances the Information Commissioner will not investigate a complaint unless an internal review procedure has been carried out, however the Commissioner has the option to investigate the matter at his discretion.

Please be advised that PSNI replies under Freedom of Information may be released into the public domain via our website @ www.psni.police.uk

Personal details in respect of your request have, where applicable, been removed to protect confidentiality.

J A HARRIS
Assistant Chief Constable

Mr Paul Goggins MP
Minister of State for Northern Ireland
Northern Ireland Office
Castle Buildings
BELFAST BT4 3SG

14 January 2008.

Dear

Having reviewed the proposed draft Sexual Offences (NI) Order 2007 and in light of our previous consultative input in October 2006, the contents of which are to a greater extent welcomed and reassuring.

I would however wish to raise the following point, which was highlighted in our previous response

- I recognise that the lowering of the 'Age of Consent' is in line with our counterparts within the UK, however it remains a matter of concern to have the lower limit reducing from 14 years to 13 years. It remains our very firm view that the lower age limit should remain at 14 years.

In conclusion I would thank you and your department for the very comprehensive and pragmatic approach taken into the modernisation of the sexual offences statutory legislation.

J A HARRIS
Assistant Chief Constable
Criminal Justice

Reforming the Law on Sexual Offences in N.Ireland.

A Consultative Document.

Detailed Discussion and Consideration.

The Response of the Police Service of Northern Ireland.

The points below relate directly to the points raised in Volume 2 of the Consultative Document.

1. In the initial PSNI response dated 15th June 2006 it was accepted in principle, with a cautionary note, that oral penetration by a penis be included in the definition of Rape. Having had more time for reflection and to consult wider with more investigating officers it is now considered that oral penetration is **not** included as this could diminish the impact of the offence of Rape. However, a separate offence should be created to cover 'oral penetration with the penis without consent' in order to reflect the trauma this could have on a victim and to distinguish it from other penetrative assaults i.e. by objects. Such an offence would have to have appropriate sentences and it is suggested that 14 years maximum might reflect this.
2. It is agreed that a new offence is created to cover all other penetrative assaults. It is considered that offences such as 'Indecent Assault' do not adequately reflect the impact of these types of offence on the victims.
3. Yes.
4. Yes.
5. Yes.
6. Yes. The list suggested is accepted although consideration might be given to defining what is meant by 'substance' in the sixth point. For example, substance needs to include alcohol and any form of drug, prescribed or otherwise. Research has shown that alcohol remains the most common 'date rape drug' with many victims having initially consented to taking alcohol but not in the quantity or concentration that has been administered to them by their perpetrators. It is also suggested that a further circumstance to consider is that of the use of hypnosis as the definition of 'sleep' or 'unconscious' may not adequately cover this.
7. Yes. It is further suggested that 'blackmail' is included with deception and impersonation.
8. Yes.
9. Yes, but this also needs to be linked to the Mental Health Legislation.
10. Yes
11. Yes – this would go further than S. O.A.P. Act 1861.
12. Yes – but retain the Burglary offence. Burglary with intent to commit Rape can be difficult to prove if the offence of Rape is not a completed act. An offence which covers a victim being, for example, indecently assaulted during a burglary, would more closely reflect the true nature of the offending. Likewise a person caught

drilling a hole in the wall of a public lavatory could be charged with 'Criminal Damage with intent to commit Voyeurism' as opposed to simple Criminal Damage.

13. Yes.
14. This point is accepted although it is considered that the age should be 'under the age of 14' and not '13' as stated.
15. It is accepted that all sexual activity with children under a specific age be illegal for those aged eighteen or over. (It is accepted this would drop to seventeen on over if the age of consent is reduced to 16 as suggested at point 16 below.)
16. The age of consent should be 16, as in the rest of the UK.
17. Yes.
18. Yes, all sexual activity should be 'criminalised'. However this does not mean every reported case will result in a prosecution. The circumstances of each individual case must always be carefully considered e.g. an important consideration would be if there was evidence or not of an 'abusive' relationship. Ultimately the decision would rest with the PPS if it was right to proceed 'in the Public Interest'.
19. It is considered that there should be a legal obligation to report.
20. Accepting the argument stated at point 18 above then it would be an offence for anyone over 16 to engage in sexual activity with anyone under 16. Sentencing could reflect an age differential but this is suggested at 2 years and not the suggested 3 years.
21. The time limit should be removed. Part of the difficulty with prosecuting the current offence of UCK 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.
22. No, there should be no defence and the age should be 14 and not 13 as stated.
23. This is accepted but this should be restricted to 'Statutory Agencies' – this would need to be carefully defined to rule out any 'self-appointed' advice centres which would not be subject to Statutory Guidelines.
24. Yes, there should be specific offences. Current offences under the Mental Health Legislation are notoriously difficult to prove.
25. Yes, such a definition would be welcomed although it is accepted that it might be difficult to arrive at. Consideration should be given to include conditions such as Autism where the victim may have difficulties communicating their choice.
26. Yes, this could also include factors such as IQ and individual circumstances such as the victim being on medication. Blackmail should also be considered alongside inducement, threat or deception.
27. Yes
28. a) Yes and b) Yes
29. This might be best left for DHSSPS to define but should be in line with current definitions under POCVA.
30. Yes, but this should be in addition to current law regarding Incest.
31. This should reflect the age of consent i.e. 16 or 17. Incestuous relationship with a 'blood' relative remains an offence regardless of age.
32. Yes, all those mentioned should be included.

33. Yes, adoptive relations should be treated the same as blood relations. This would always be the case for parents of an adopted child but it is accepted that a 'blood' child could have a relationship with an adoptive child if both were over the age of consent.
34. Yes, again this is agreed but there should be no offence if a relationship started after both were of the age of consent.
35. Yes.
36. Yes, the current law on Incest needs to be retained
37. Yes, this needs to be the case to comply with Article 8 E.C.H.R..
38. Yes, the present offences of buggery should be repealed. It should only be an offence if the act is non consensual – which it is already covered by the offence of Rape.
39. Yes, again this needs to be the case to comply with Article 8 E.C.H.R.
40. Yes, although the defence should not be available if the Child was Under 14 and not 13 as stated.
41. Yes, but again with the proviso of there being no defence where the child is aged under 14 and not 13 as stated.
42. Yes, as at 40 and 41 above re. the lower age being under 14 and not 13.
43. Yes.
44. Yes. Owing to the international dimension to this crime it is preferable we are dealing with a UK-wide statute as opposed to local legislation.
45. Yes. Consideration should be given to increasing the tariff to 5 years – a point made by the Senior Investigating Officer in the Trevor Hamilton case. Exposure can be the first step to more serious offending and a higher tariff would send out a clearer message that this behaviour is not tolerated. A higher tariff would also deal more adequately with repeat offenders.
46. Yes. Again the tariff should be raised to 5 years. This would cover cases such as a person secretly recording the sexual acts of others and later distributing the material on the internet.
47. Yes, as per Sexual Offences Act 2003.
48. Yes, it should be triable both summarily and on Indictment.
49. Yes
50. Yes
51. Yes, this has become a significant problem in South Belfast recently and there is some evidence to suggest it could become a problem in other areas in the future.
52. Yes, the current law here is antiquated and only applies to Belfast. As with point 51 above, there is evidence to suggest this is a growing problem across N.Ireland.
53. No, whilst the PSNI has concerns for the safety of those involved as 'sex workers' it is thought that decriminalizing their activities is not the answer. The law should remain that it is an offence for two or more to work together otherwise it is considered that operationally it would be very difficult to restrict this sort of 'business' at all.
54. Yes.