

The law on sex

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This factsheet summarises some of the key points of UK law relating to sexual behaviour. It does not constitute legal advice.

The age of consent for heterosexual sex

England and Wales

The age of consent to any form of sexual activity is 16 for both men and women.

The Sexual Offences Act 2003 introduced a new series of laws to protect children under 16 from sexual abuse. However, the law is not intended to prosecute mutually agreed teenage sexual activity between two young people of a similar age, unless it involves abuse or exploitation.

Specific laws protect children under 13, who cannot legally give their consent to any form of sexual activity. There is a maximum sentence of life imprisonment for rape, assault by penetration, and causing or inciting a child to engage in sexual activity. There is no defence of mistaken belief about the age of the child, as there is in cases involving 13–15 year olds.

Scotland

The age of sexual consent for women is 16. Under the Criminal Law (Consolidation) (Scotland) Act 1995, it is an absolute offence for a man to have unlawful sexual intercourse with a girl under 13. The maximum penalty is life imprisonment.

Unlawful intercourse with a girl aged 13–16 is also an offence, punishable by up to two years' imprisonment. One possible defence is that the man believed himself to be married to the young woman. Also, a man under 24 with no previous similar offences may claim that he believed the young woman to be 16 or over.

Consensual heterosexual anal intercourse is not an offence in Scotland.

Northern Ireland

The age of consent to any form of sexual activity is 16 for both men and women.

The Sexual Offences (Northern Ireland) Order 2008 introduced a new series of laws to protect children under 16 from abuse. However, the law is not intended to prosecute mutually agreed teenage sexual activity between two young people of a similar age, unless it involves abuse or exploitation.

Specific laws protect children under 13, who cannot legally give their consent to any form of sexual activity. There is a maximum sentence of life imprisonment for rape and assault by penetration. There is no defence of mistaken belief about the age of the child, as there is in cases involving 13–15 year olds.

Article 79 of the Sexual Offences (Northern Ireland) Order 2008 amends "relevant offence" for section 5(1) of the Criminal Law Act (Northern Ireland) 1967 to exclude the duty to report information about the commission of an offence under Article 20. This therefore means that there is no statutory duty under criminal law to report to the police cases of sexual activity involving children under the age of 16 under articles 16 to 19 of the Order, where the other party is aged 18 and over.

This exclusion does not apply to information about offences against children under 13, as set out in Articles 12 to 15 of the Order.

Separate guidance has been issued by the Department of Health, Social Services and Public Safety to inform practitioners and professionals about the implications of the law on child protection procedures¹. Attention is also drawn to the Regional Area Child Protection Policy and Procedures.

Contraception and under 16s

Health professionals in the UK may provide contraceptive advice and treatment to young people under 16 if, in their clinical judgement, they believe it is in the young person's best medical interests and they are able to give what is considered to be informed consent²⁻⁴. (See also **fpa** Factsheet *Under 16s: consent and confidentiality in sexual health services*.)

The Sexual Offences Act 2003 in England and Wales, and the Sexual Offences (Northern Ireland) Order 2008 do not affect the ability of professionals to provide confidential sexual health advice, information or treatment if it is in order to protect the young person from sexually transmitted infections or pregnancy, to protect their physical safety or to promote their emotional well-being.

Sex between men

The age of consent for sex between men is 16 throughout the UK. In England and Wales, the Sexual Offences Act 2003 and the Sexual Offences (Northern Ireland) Order 2008 introduced a series of child sex offences which equally protect young men from sexual abuse and exploitation.

Laws requiring "privacy" for sex between men in the UK have largely been repealed. Sex between men is no longer an offence when more than two people are present (Sexual Offences Act 2003, Convention Rights (Compliance) Act (Scotland) 2001).

Sexual activity between men in a public toilet is an offence throughout the UK. Apart from Scotland, the law has been equalised to also apply to sex between men and women, or between women.

Sex between women

In England, Wales and Northern Ireland, the legal age for young women to consent to any sexual activity is 16, whether they are straight, gay or bisexual.

In Scotland, there is no age of consent for sex between women laid down in statute. However, a girl under 16 is not deemed capable of consenting to any sexual behaviour which could be classed as sexual assault. The courts have taken this to mean that an age of consent for lesbians is 16.

Rape

In England, Wales and Northern Ireland, a man would commit rape if he intentionally penetrates with his penis the vagina, mouth or anus of another person, male or female, without that person's consent or if they are under 13. This is the only sexual offence which can only be committed by a man. The legal definition of consent is if a person "agrees by choice and has the freedom and capacity to make that choice."

In Scotland, rape is covered by common law and is defined as vaginal penetration. Anything else, however violent, is the crime of indecent assault. Male rape is not a recognised offence and would be treated as the common law offence of aggravated assault.

Women cannot be charged with the offence of rape as this is defined as penile penetration, but in England, Wales and Northern Ireland she could be charged with another offence such as causing a person to engage in sexual activity without consent.

Sexual assault by penetration

This new offence was introduced in England and Wales by the Sexual Offences Act 2003 and by the Sexual Offences (Northern Ireland) Order 2008. It is an offence for someone, male or female, intentionally to penetrate the vagina or anus of another person with a part of their body or anything else, without their consent. The purpose also has to be sexual, which is defined as:

a) a reasonable person would always consider it to be so,

or

b) if a reasonable person may consider it to be sexual, depending on the circumstances and intention.

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Practitioners who legitimately conduct intimate searches or medical examinations are excluded from this offence.

Sexual/Indecent assault

In England, Wales and Northern Ireland it is an offence (sexual assault) for a person intentionally to touch sexually another person without reasonable belief that they consented. Touching covers all physical contact, whether with a part of the body or anything else, or through clothing. A definition of 'sexual' is given in the previous section.

In Scotland, indecent assault on a man or woman is a common law offence.

In Northern Ireland, indecent assault on a woman is also a common law offence, while indecent assault on a man is provided for in the Criminal Justice (Northern Ireland) Order 2003. The definition of indecent is:

'... conduct that right-thinking people will consider an affront to the sexual modesty of a woman'

'...[would] right-minded persons ...consider the conduct indecent or not'

'...[was] what occurred ... so offensive to contemporary standards of modesty and privacy as to be indecent'.

The person must also have intended to indecently assault.

Indecent exposure

In England, Wales and Northern Ireland, it is an offence for someone, male or female, to expose their genitals if they **intended** another person to see them and to be caused alarm or distress. There is also the common law offence of outraging public decency.

In Scotland, indecent exposure is covered by common law.

Legislation

All legislation can be accessed at www.opsi.gov.uk and www.statutelaw.gov.uk (pre 1987).

Convention Rights (Compliance) Act (Scotland) 2001

Criminal Justice (Northern Ireland) Order 2003

Criminal Law Act (Northern Ireland) 1967

Sexual Offences Act 2003

Sexual Offences (Northern Ireland) Order 2008

Sexual Offences (Scotland) Act 1976

References

- 1 Department of Health, Social Services and Public Safety, Child protection. <www.dhsspsni.gov.uk> accessed 19 February 2009.
- 2 Department of Health. *Best practice guidance for doctors and other health professionals on the provision of advice and treatment to young people under 16 on contraception, sexual and reproductive health*, (29 July 2004). <www.dh.gov.uk>
- 3 *Family planning services for young people*. Welsh Health Circular WHC (86)17, (March 1986).
- 4 *Age of legal capacity* (Scotland) Act 1991.

Further reading

Gane, Christopher. *Sexual offences*. Butterworths, 1992.

Stevenson, Kim et al. *Blackstone's guide to the Sexual Offences Act 2003*. Oxford University Press, 2004.

Further information

For further information on the material covered in this factsheet, and other subjects related to sexual health, contact **fpa**'s Library and Information Service.

Email: libraryandinformation@fpa.org.uk.

Tel: 020 7608 5282.

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