

PROTECTING THE PUBLIC

Strengthening protection against
sex offenders and reforming the
law on sexual offences



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Presented to Parliament by the Secretary of State for the Home Department
by Command of Her Majesty
November 2002

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Foreword

Public protection, particularly of children and the most vulnerable, is this Government's priority. Crime and the fear of crime has a damaging and debilitating effect on all who experience it. But sexual crime, particularly against children, can tear apart the very fabric of our society. It destroys lives and communities and challenges our most basic values.

This paper puts forward proposals to further strengthen the law on sex offenders and to modernise penalties and the law on sex offences in order to give the public greater confidence and better protection.

The law on sex offences as it stands is archaic and incoherent – it is also discriminatory. But while it unquestionably requires updating, it has been and continues to be a difficult process. I am acutely aware that we are dealing with highly complicated and sensitive issues which test the balance between the role of Government and of the individual, and of their rights to determine their own behaviour, responsibility and duty of care.

Nevertheless, the clarification and revision of laws on indecency, sexual assault and rape – among others – is long overdue.

I know we cannot hope to provide 100% safeguards and protection. Nor must we intervene in the personal, private relationships of consenting adults. We can, however, ensure that the law is clear, the signals unequivocal and the rights of individuals are upheld in preventing abuse and exploitation.

In this paper and in our proposals we have sought to achieve this balance. We are doing this in a world of mass communication where access to degrading material is easily available and where our common values can be undermined by the behaviour of a minority.

We are inviting comments from the public and other stakeholders as we finalise the legislative changes we intend to make in a programme which will endeavour to close still further the loopholes for those committing the most heinous crimes, and ensuring that society offers the maximum protection in an ever changing world.

I would like to thank all those who contributed to the reviews and the consultations that followed.

Our aim is to create laws fit for the 21st century that provide confidence and protection and remain true to the time honoured and accepted parameters of a free and civilised society.

DAVID BLUNKETT



Note

The proposals in this paper are based on two major reviews that both received extensive consultation. If you would like to comment on any of the proposals in this document, please send your comments to:

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This command paper is posted on the Internet at www.protectingthepublic.homeoffice.gov.uk

The Northern Ireland Office has published a document on how these proposals will apply to Northern Ireland. To request a copy, please contact:

Northern Ireland Office
Criminal Justice Policy Division
Massey House
Stoney Road
Stormont Estate
Belfast BT4 3SX

Fax: 028 90527507

e-mail: crime.nio@nics.gov.uk

A copy of the Northern Ireland document is also available on the Northern Ireland Office website at www.nio.gov.uk

Overview

1 Sexual crime, and the fear of sexual crime, has a profound and damaging effect on the social fabric of communities, and the fight against it is of the highest priority to the Government. Recent high-profile cases have caused widespread public concern about the dangers that some sex offenders pose to the community in general, and to children in particular. An obligation rests on Government to respond to this concern, to do what it can to make people feel secure, and to ensure they are better protected.

2 In the past five years much has already been done to build on and improve the arrangements to protect the public from sex offenders. Among other things, we have:

- Put multi-agency public protection arrangements (known as MAPPA) on a statutory basis. This has led to much better co-operation between the police and probation services and other agencies, in protecting the public. Individual offenders who present a risk are monitored on a case by case basis, and action is taken to reduce the likelihood of them reoffending. A scheme to involve lay members in the MAPPA process is currently being piloted and will be extended to include every MAPPA in England and Wales.

- Introduced sex offender orders and sex offender restraining orders to give the police additional powers for managing sex offenders living in the community. These orders can place a number of restrictions on a sex offender who presents a continuing risk; for example, he might be banned from going near schools or playgrounds or from visiting theme parks or swimming baths.

To date nearly 200 sex offender orders have been taken out against offenders and breaching an order can result in imprisonment.

- Strengthened the notification requirements of the Sex Offenders Act (commonly known as the sex offenders register) by reducing from 14 days to 3 the period in which a sex offender must register following release from prison; sex offenders are now required to tell the police if they plan to go abroad; and the maximum penalty for not complying with the notification requirements has been raised from 6 months imprisonment to five years.

- Established the National Crime Squad and the National Criminal Intelligence Service, with grants of £134 million in 2002/3 and £68.5 million in 2002/3 respectively, to help the fight against sexual crime. We have also made available an additional £25 million for the policing of high-tech crime. This money has made possible the creation of the National High-Tech Crime Unit, which, by working with local forces, has mounted a number of successful operations to catch those who distribute or access child pornography on the Internet.

3 While a great deal has been done to improve public protection, we need to do more. Early next year we will be introducing new legislation to further strengthen measures against sex offenders across the United Kingdom and to reform comprehensively the law on sex offences in England and Wales. This document explains our proposals.

In Northern Ireland a separate paper has been published which focuses on the proposals extending to that jurisdiction.

4 In tightening the notification requirements of sex offenders, we will build on legislation that has been central to the protection of the public. Increasing the effectiveness of the sex offenders register will improve public safety through the

better monitoring of sex offenders in the community and increased detection of sexual crime. Our proposals are detailed in Chapter 1.

5 Chapters 2 to 6 explain how we intend to change the law on sex offences to reflect the fact that the society in which we live is significantly different from that of 50 years ago, which was when most of the present law originated. The law on sex offences must give the public confidence that they are being adequately protected from distress, fear, risk or harm. This protection must apply equally in the law that defines crimes, in the process by which cases are investigated and tried, and in the sentences that are passed on sex offenders. The principle of adequate protection informs our approach both in determining what the law on sex offences should be, and in considering whether the existing laws on sex offences should be updated.

6 These measures form part of a wider Government strategy to protect society from dangerous offenders. Others, set out in the White Paper “Justice for All”, include:

- Introducing an indeterminate “public protection” sentence for offenders who are assessed as dangerous and have committed a sexual or violent offence carrying a penalty of 10 years imprisonment or more. Courts will fix a minimum period the offender will have to spend in prison but thereafter the offender will only be released if he is judged to no longer present a risk.
- A “special” determinate sentence with extended supervision, which will be available where the offender is considered dangerous and the offence carries a maximum penalty of between 2 and 10 years imprisonment. Here, the court will set the sentence length (just as they would for any other determinate sentence) but instead of being released as at present after a set time has

elapsed, the offender will only be released during the second half of the sentence if he is considered no longer to present a risk to the public. In addition, the court will be required to impose an extended period of supervision of up to 9 years for sex offenders on top of the normal sentence length.

- Amending the rule against double jeopardy (which means you can’t be tried twice for the same offence) to enable the re-opening of proceedings against acquitted defendants where there is compelling new evidence. This will apply to a range of grave offences, including those involving serious sexual offending.
- Reforming the law on the admissibility of previous convictions and other misconduct to ensure that courts have the fullest relevant evidence before them when deciding cases.

7 The Government is also committed to action against domestic violence. We have already suggested a number of measures including:

- Extending the use of restraining orders over and above those already available and making breach of non-molestation orders a criminal offence.
- Providing anonymity for victims if this would improve the likelihood of them feeling able to report offences and disclose what has happened to them, with less intrusion into their and their children’s privacy (see “Protecting victims and witnesses” box on page x).
- Improving liaison between the criminal and civil law and putting domestic violence murder reviews on a statutory footing.

We are considering the responses we have received to these suggestions and are looking at whether there are other gaps in the law in this area that need to be dealt with.

The need to reform the law on sexual offences

8 The law on sex offences, as it stands, is archaic, incoherent and discriminatory. Much of it is contained in the Sexual Offences Act 1956, and most of that was simply a consolidation of nineteenth-century law. It does not reflect the changes in society and social attitudes that have taken place since the Act became law and it is widely considered to be inadequate and out of date.

9 While some piecemeal reform has taken place over the years, we have now undertaken a comprehensive review of the law so that it can meet the needs of today's society. The law on sex offences needs to set out what is unacceptable behaviour and must provide penalties that reflect the seriousness of the crimes committed. Some behaviour that should be covered by the criminal law is not at present. We know far more now about the insidious ways in which sexual abuse takes place and we have listened to the voices of victims about the profound and long-lasting effects of abuse. Our new framework of offences will plug existing gaps and seek to protect society from rape and sexual assault at one end of the spectrum and from voyeurism at the other. A special emphasis must be placed on the protection of children and the most vulnerable.

10 The conviction rate for rape is very low and has been falling in recent years. The number of persons found guilty of rape in comparison to the total number of offences reported has fallen from 25% in 1985 to 7% in 2000. Much of this is due to the change in the nature of the cases coming to trial, with many more instances of date or acquaintance rape being reported than before. These cases, which often rely on one person's word against that of another, make the decision

of juries much harder than in cases of stranger rape. The recent HMIC/CPSI report on rape set out the issues that need to be addressed at all stages of the criminal justice system to reverse this trend, from the thoroughness of police investigations, through the preparation of cases for trial, to the role of the prosecutor and the cross-examination of victims in court. In July 2002 we published an action plan of practical measures to implement the report's recommendations and make improvements across the whole of the criminal justice system. Through these improvements, we want to give victims of rape more confidence in the system and encourage them to report offences of rape. We also aim to send a strong message to perpetrators that this crime will not be tolerated and the law will be enforced.

11 We believe that there should be greater clarity in the law as it relates to consent. We intend to specify, in legislation, certain circumstances where, even if the victim had the capacity to consent, it is highly unlikely that consent would have been given; for example where the victim was abducted or subjected to force. Once the prosecution has proved beyond reasonable doubt that sexual activity has taken place in one of these limited circumstances, it will be for the defendant to establish on the balance of probabilities whether consent had in fact been given.

12 In addition, we plan to change the law on consent to help juries decide whether a defendant, who claims that he believed the other person consented, acted reasonably in the circumstances. These proposals are explained in Chapter 2.

13 It is important that penalties for sex offences enable abusers to be properly punished. Existing penalties in some cases are too low and do not take into account the better understanding there now is of the long-term harm caused by sexual

abuse, particularly in childhood. To address this, we will be raising the maximum penalties for a number of offences.

14 It is the role of the criminal law to establish what is and what is not acceptable behaviour; yet it must also treat everyone in society fairly. Certain existing offences criminalise consensual sexual activity in private between men, which would not be illegal between heterosexuals or between women. In order to provide common sense and make policing the law fair and practicable, these offences will be replaced with generic offences. This will ensure that the criminal law protects everyone equally from non-consensual sexual activity, but does not criminalise sexual activity that takes place between consenting adults in private.

15 Concerns have been raised, encouraged by some media misrepresentation, that the replacement of these offences will result in the legalisation of cottaging and gay sex in public. This is not the case. There is a clear difference between private and public sexual activity. No-one wishes to be an unwilling witness to the sexual behaviour of others and everyone is entitled to be protected from it by the law. Sexual activity in public that offends, irrespective of whether the people engaging in the activity are heterosexual or homosexual, will remain criminal and will be dealt with by a new public order offence dealing with sexual behaviour in a public place.

What the Government has already done to protect the public

The Government has already strengthened the arrangements for managing sex offenders, in particular to improve the protection of children. In the past 5 years we have:

- Established multi-agency public protection arrangements (MAPPAs) requiring by law the police and probation services to manage the risks posed by offenders in the community.
- Introduced sex offender orders to restrict the activities of sex offenders living in the community.
- Introduced sex offender restraining orders which set restrictions on a sex offender's future behaviour at the time of sentencing.
- Strengthened the registration requirements in the Sex Offenders Act 1997 including: reducing the time for initial registration and requiring this to be made in person; requiring notification of overseas travel; and increasing the maximum penalty for failure to comply with these requirements to 5 years imprisonment.
- Introduced arrangements to consult and inform victims about the release of offenders.
- Brought in disqualification orders prohibiting unsuitable people from working with children.
- Set up the Criminal Records Bureau – a one stop shop providing checks on people who wish to work with children and vulnerable adults.
- Introduced extended post-release supervision of up to 10 years for sex offenders.
- Expanded places on sex offender treatment programmes in prisons.
- Established accredited sex offender treatment programmes in the probation service.
- Increased the maximum penalties for taking, making and distributing indecent photographs of children from 3 years to 10 years imprisonment and for possession from 6 months to 5 years imprisonment.
- Established a task force on child protection on the internet and supported the setting up of the Internet Watch Foundation.
- Provided powers of arrest for customs officers and police when dealing with the importation of child pornography.
- Run a £1.5 million public awareness campaign to help young people to surf the web safely.

Chapter 1

Strengthening the sex offenders register

16 Part 1 of the Sex Offenders Act 1997 requires those convicted or cautioned for relevant sex offences to notify the police of their name and address and any subsequent changes to them. This information is then kept by police on what has become commonly known as the sex offenders register.

17 Having this information is invaluable to the police in two ways. First, it helps the police monitor sex offenders living in the community. Second, it helps in the detection of sexual crime, as the police will immediately know the whereabouts of any number of potential suspects.

18 There is no central register as such; individual sex offenders currently notify their details to the local police and are identified on the Police National Computer. This enables police across the country to know who is a 'registered' sex offender and to check their details with the local police force if required. We are currently funding the development of a new database, which will give the police and probation services better access to the full range of information held on dangerous offenders nationally, including all sex offenders on the register. The database will include a wide range of information on the offender in addition to the details required for registration and this will enable targeted searches (by, for instance, age or occupation) to be made on offenders. We intend to pilot the new database, which will be known as VISOR (violent and sex offender register), early next year with full implementation by the end of 2003.

19 Failing to comply with the notification requirements is a criminal offence with a maximum penalty of five years imprisonment. This tough sanction means that the compliance rate is very high – around 97%. This high compliance rate is one of the reasons why we do not feel the public should have access to the names of people on the register. However the main reason is that evidence from across the world demonstrates that public access to this type of register drives sex offenders underground and stops them informing the police of their whereabouts. This is the very opposite of what we are trying to achieve, as it would not help us to protect children.

20 The system could, however, be improved. We want to make a number of changes to increase the effectiveness of the register. At present, if a registered sex offender changes his name or address he has 14 days to inform the police. We feel this is an unacceptably long period during which the police might not know the whereabouts of the offender. We will therefore be reducing this period from 14 days to 3 days, the same period as for initial notification for example following release from jail.

21 Likewise, if a sex offender spends time at an address other than his main home at present he only needs to notify the police of that address once he has spent 14 days there. Again, this is too long. We intend to change the requirement so that the offender must tell the police if he spends 7 days or more in a calendar year at any other address. Where possible, we will expect offenders to tell the police where they will be staying in advance. This is a significant tightening of the present regime.

22 While it is common practice for police forces to visit all registered offenders on a regular basis, this may take place less frequently in the case of people assessed to be low risk. To strengthen the scheme and offer more protection to the public, without putting more strain on police resources, we will place a requirement on registered offenders to confirm annually and in person at their local police station that the information held about them is still up to date.

23 When a sex offender makes his first notification, the police are entitled to check his fingerprints and take a photograph of him. This is to verify that the person is who they say they are. We will be extending this power to apply to all notifications, not just the first one. We are also exploring new biometric technologies such as iris scanning to eliminate further the possibility of people cheating the system.

24 Only a small number of offenders fail to comply with the registration requirements but we are determined to catch and punish such breaches quickly. We are working with other government departments and agencies to develop arrangements that will help catch offenders who abscond or change their names without telling the police. As a step towards this, we are considering whether offenders should be required to provide their National Insurance details when registering. This would make it easier to identify and find those offenders who try to evade the registration requirements.

25 We will also make it possible for both sex offender orders and sex offender restraining orders to be made against anyone who has been convicted of a serious violent offence if there is evidence that they present a risk of causing serious sexual harm. This will enable registration requirements to be imposed on these offenders,

as well as other restrictions on their behaviour such as not associating with children or contacting previous victims.

26 The current notification requirements only apply to those convicted of offences in the United Kingdom. However, it is important that we can keep track of all known sex offenders who are in this country, whether they have been convicted of a sex offence here or abroad. We will therefore introduce a new order to make those convicted of sex offences abroad, whether they are British citizens or foreign nationals, subject to the same registration requirements if they come to the United Kingdom. Once an order is in place, the police and other agencies will know where such offenders are staying and arrangements can be put in place to help ensure they do not commit further offences.

27 We are also working with our European partners on the need to share information on offenders who travel within the European Union, with the eventual goal of having a single European-wide system for monitoring sex offenders.

Multi-Agency Public Protection arrangements

The commitment of the Government to public protection was demonstrated by the introduction in April 2001 of multi-agency public protection arrangements (MAPPA). Section 67 of the Criminal Justice and Courts Service Act 2000 imposed on the police and probation services in each of the 42 areas of England and Wales a duty to:

“...establish arrangements for the purposes of assessing and managing the risks posed in that area by...relevant sexual and violent offenders, and other persons who are considered by (them) to be persons who may cause serious harm to the public.”

These new arrangements have led to more effective inter-agency working, and have built on good practice developed as a result of the Sex Offenders Act 1997. They involve the rigorous assessment of the risk an offender presents and the robust management of that risk in order to protect the public. In addition to the central role played by the police and probation services in each area, important contributions are also made by others including local housing authorities, social services, mental health providers, youth offending teams, the education service and the prison service.

These arrangements sit alongside a range of existing practice and legislation that provides for the effective management of offenders from the point of sentence, through custody, and following their release into the community. The new arrangements introduce additional measures to ensure that those who are assessed,

as posing a risk of serious harm to the public, and who cannot continue to be held in custody, are managed effectively through agencies sharing information and implementing co-ordinated risk management plans. For the highest levels of risk these risk management plans are agreed by a multi-agency public protection panel (MAPPP) who have powers to disclose information about offenders to schools, voluntary groups and others.

A good example of how this works in practice involves Duncan, aged 24, who was convicted of sexual assaults on young children in his care. He was originally sentenced to 28 months imprisonment and as a result was placed on the sex offender register. Following release from prison on licence, his case was referred to the MAPPP. As part of the regular monitoring of the case it came to light that Duncan had begun to referee football matches for boys' teams in the local area. Using its powers to disclose information to others, the MAPPP informed the local Football Association. When there was a suggestion that he might be refereeing at a national tournament, the FA nationally was also informed. Based on this pattern of behaviour, the MAPPP applied to court for a sex offender order to help manage the risk he posed. Among other things, the order banned Duncan from refereeing. Although he abided by the condition of the order, he committed an unrelated offence that was immediately detected and he went back to prison. When Duncan is released he will remain subject to the sex offender order, the requirement to register with police and management by the MAPPP.

The new arrangements also provide a strategic management framework to ensure that, in addition to the work of managing specific cases,

the agencies involved in public protection work in each area meet and agree what provisions can best be made. The success of the MAPPAs is reflected in the annual reports that the responsible authorities in each Area published for the first time during the summer of 2002. Informing the public of this important work will continue and will be significantly enhanced by the recruitment of members of the public to contribute to the strategic management of the MAPPAs.

Chapter 2

Clarifying the law on consent

28 The issue of whether the complainant consented or not is central to establishing whether a sex offence actually took place. It is vital that the law is as clear as possible about what consent means in order to prevent miscarriages of justice that result in an innocent party being convicted or the guilty walking free. Juries must decide that they are sure, beyond reasonable doubt, whether the complainant was consenting or not. This is an important and often difficult role.

29 Human beings have devised a complex set of messages to convey agreement or lack of it. Agreement or lack of agreement is not necessarily verbal, but both parties should understand it. Each must respect the right of the other to demonstrate or say “no” and mean it. We do not of course wish to formalise such understanding into an unnecessary or semi-contractual agreement; it is not the role of Government or the law to prescribe how consent should be sought and given. It is, however, the role of the law to make it unambiguously clear that intimate sexual acts should only take place with the agreement of both parties.

30 The current law on the issue of consent is set out in case law, and is complex. There is little general guidance in case law as to the meaning of consent, except that it has been held that consent is different from submission. We intend to make statutory provision on this issue that is clear and unambiguous. In line with current law, where a person is deceived as to the nature of

sexual activity or where his or her consent is induced by impersonation of someone else, that person will be deemed not to consent to it.

31 In order to protect victims of all ages we will be including in statute the following list of circumstances in which it should be presumed that consent was most unlikely to have been present, i.e. where the victim:

- was subject to force or the fear of force;
- was subject to threats or fear of serious harm or serious detriment to themselves or another person;
- was abducted or unlawfully detained;
- was unconscious;
- was unable to communicate his or her decision by reason of physical disability; or
- had agreement given for them by a third party.

32 It would be for the prosecution to prove, beyond a reasonable doubt, that sexual activity took place in one of the circumstances on the list. If so, it would then be for a defendant to show, on the balance of probabilities, that in the particular circumstances in question the victim did indeed give their consent. The intention is to strike the right balance between protecting victims and ensuring fairness under the law for defendants by helping juries with the fundamental questions of whether the victim was able to, and did in fact, give his or her consent on the occasion in question. Including such a list in statute will also send a clear signal to the public about the circumstances in which sexual activity is likely to be wrong and will help encourage genuine victims to bring cases to court.

32 We will also be modifying the test of mistaken belief in relation to non-consensual offences. The current defence of an “honest” belief in consent means that no crime is committed when a person is forced against their will to have sexual intercourse with a person who can convince the court that they “honestly” interpreted their protestations or actions as consent to sex, however unreasonable such a belief might be. We believe the difficulty in proving that some defendants did not truly have an “honest” belief in consent contributes in some part to the low rate of convictions for rape. This in turn leads many victims, who feel that the system will not give them justice, not to report incidents or press for them to be brought to trial.

34 We will therefore alter the test to include one of reasonableness under the law. This will make it clear that, where the prosecution can prove that there is reasonable room for uncertainty about whether someone was consenting and that the defendant did not take reasonable action in the circumstances to ensure that the other person was willing to take part in the sexual acts, he will commit an offence. “Reasonable” will be judged by reference to what an objective third party would think in the circumstances. The jury would however have to take into account the actions of both parties, the circumstances in which they have placed themselves and the level of responsibility exercised by both. The jury would also expect, where relevant, to take account of the circumstances in which the accusation or revelation is delivered (including any media involvement) and the time that has elapsed.

35 The age of consent is 16 and we have no intention of changing it. Any sexual activity with someone under that age is therefore unlawful. If that sexual activity takes place without the child’s consent then a non-consensual offence such as assault or rape will have been committed. Existing

law, however, recognises that some children under that age may voluntarily engage in sexual activity. If it is established that consent was given, but the child was still below the age of consent, then the defendant will be found guilty of one of the less serious offences relating to unlawful sexual activity.

36 We believe that there is an age below which the consent or not of a child should not be legally significant. Below this age, there should be no question of whether or not the child agreed to the sexual activity. We are therefore proposing that children under the age of thirteen should be deemed incapable of giving legally significant consent to any form of sexual activity. The effect of this will be that anyone found guilty of sexual activity involving direct physical contact with a child aged 12 or under will be guilty of one of the non-consensual sex offences described in Chapter 3. Any sexual intercourse with a child under 13 will be charged as rape. Issues of consent will not be relevant, and no alternative verdict will be possible.

37 This means that where it is another child or someone in their mid teens who has sexual activity involving physical contact with someone under 13, the only charge available will be a non-consensual offence, as it would be for an adult. However, in some circumstances, particularly where the partners are close in age and apparently agree to take part in sexual activity, it may be more appropriate to pursue the matter through child protection rather than criminal justice processes, out of concern for the welfare of both the children involved. In other cases, even where both parties are children, one may already have a history of abusive sexual behaviour towards other children, which justifies the involvement of the criminal law or his or her behaviour may have been sufficiently exploitative or abusive to merit prosecution. The Crown Prosecution Service already has discretion

about whether prosecution is in the public interest and it is right that it should continue to make that judgement on the basis of the circumstances of any particular case. The protection of children is discussed further in Chapter 4.

38 We recognise that individuals with a severe learning disability or mental disorder may not fully understand the nature and implications of sexual activity and therefore do not have the capacity to consent. In cases such as these, complainants should not be required to undergo cross-examination as to whether or not they consented to sexual activity. We intend to provide that any sexual activity with a person who does not have the capacity to consent because of a learning disability or mental disorder is an offence. The protection of those with learning disabilities and mental disabilities is also discussed in Chapter 4.

Protecting victims and witnesses in sex offence trials

In June 1998 the Government published "Speaking up for justice", a report of an interdepartmental working group on the treatment of vulnerable or intimidated witnesses in the criminal justice system. It proposed a coherent and integrated scheme to provide appropriate support and assistance for vulnerable or intimidated witnesses.

This has resulted in:

- The ban to prevent defendants conducting in person the cross-examination of complainants in rape and serious sexual assault trials
- Further measures to restrict the admissibility of evidence relating to the victim's previous sexual history. A further independent evaluation on how well these provisions are working is in its preliminary stages.
- Improvements in the identification of vulnerable or intimidated witnesses
- Additional equipment being installed in courts, including the magistrates' courts, to enable vulnerable or intimidated witnesses to give their evidence via TV links or behind a screen
- The power for the judge to clear the public gallery in cases involving sex offences so the witness can give evidence in private.

We are funding the Rape Crisis Federation (RCF) and are considering whether there are ways in which further support might be provided to the victims of sexual crime.

Anonymity

One specific way in which victims of sex offences can be helped and encouraged to go through the trauma of reporting and testifying about their experience in court is to provide anonymity. The identification of victims by the media is prohibited in sex offence cases. This is because many victims of these crimes would simply not come forward if they thought their identity might be revealed.

Anonymity for defendants in sexual cases was repealed under the Criminal Justice Act 1988, following a recommendation by the Criminal Law Revision Committee (CLRC). The restrictions had caused practical difficulties; for example, if a man escaped custody before conviction, the police could not warn the public he was a suspected rapist unless the judge exercised his power to lift the restrictions. The CLRC took the view that those accused of sex offences should not be singled out for special protection

while other defendants, including those accused of the more heinous crime of murder, could be identified.

The issue was discussed again in 1999 during the passage of the Youth Justice and Criminal Evidence Bill. On that occasion, the then Home Office Minister Paul Boateng made it clear that the Government fully appreciated the very great distress and discomfort that is often experienced by those wrongly accused or charged with a sex offence after having been publicly identified. However, the criminal justice system operates on the principle of openness, which is a vital ingredient in maintaining public confidence, and in encouraging witnesses to come forward.

Restrictions on the freedom of the press to report court proceedings have to be fully justified and can only be justified in exceptional circumstances.

The courts have powers to withhold a name or other matter from the public in the proceedings before the court and to prohibit publication of that name or matter in connection with the proceedings if it is necessary to do so in the interests of the administration of justice. The name of the defendant, for example, might be withheld in circumstances where doing so would be necessary to ensure his protection or that of his family.

The Association of Chief Police Officers (ACPO) has also issued guidance to all police forces, applying to all offences, which makes it clear that anyone under investigation, but not charged, should not be named, or details provided which might lead to their identification before they are charged.

We are minded to retain the existing format in regard to anonymity for defendants as no other category of offence is dealt with in this way. However we are still prepared to listen to the arguments of those who feel strongly on the matter.

Chapter 3

Non-consensual offences

- Rape.
- Administering drugs or other substances with intent to stupefy a victim in order that they can be subjected to an indecent act without their consent.
- Sexual assault by penetration.
- Sexual assault.
- Causing another person to perform an indecent act without consent.
- Trespass with intent to commit a sex offence.
- Committing a criminal offence with intent to commit a sex offence.

39 Sexual activity without the consent of one of the parties involved is a non-consensual offence. This is the case whether the offender intends to engage in sexual activity with another person in the full knowledge that he or she does not consent, or when he could not care less whether consent was given or not. These non-consensual offences are acts of sexual violation and often involve force. Such crimes can cause long lasting physical and psychological damage to the victim(s). Our new set of non-consensual offences creates a more coherent structure for criminalising such acts and addresses

a number of problems in existing law. It increases the protection offered by the law and sets penalties for these offences that reflect the seriousness of the abuse involved. It will still be for the prosecution to prove that the victim did not consent.

40 Rape is one of the most serious and abhorrent crimes a person can commit. It is a crime that generates fear and alarm in the community and from which everyone needs to be protected. To maximise the protection offered by the criminal law, the definition of **Rape** will be widened to include penile penetration of the vagina, anus or mouth and will cover surgically reconstructed male and female genitalia (for example when a person has undergone an operation to change sex). Rape will continue to attract a maximum penalty of life imprisonment.

41 Date rape has recently received much attention in the media and there have been calls for the creation of a separate offence of date rape. Our view is that rape is rape, and cannot be divided in this way into more and less serious offences. It can be just as traumatic to be raped by someone you know and trust who has chosen you as his victim, as by a stranger who sexually assaults the first man or woman who passes by. It is up to the courts to take all the particular circumstances of a case into account before determining the appropriate penalty.

42 One of the principles underlying our new offences is that they should not be gender specific. However, the offence of rape is clearly understood to be non-consensual penile penetration perpetrated by a man, on a woman or a man. The anatomical differences between men and women must sensibly direct that the offence of Rape should remain an offence that can only be physically performed by a man (although women can be guilty as accessories to the crime). It will therefore not apply to

circumstances where a woman compels a man to penetrate her without his consent. However, this form of sexual offending will be caught within the scope of a new offence of **Causing another person to perform an indecent act without consent**, which will, in relation to sexual penetration, carry a maximum penalty of life.

43 Drug-assisted rape has received plenty of press coverage in recent years and is a real cause for concern. Existing law includes an offence of administering drugs in order for a man to have unlawful sexual intercourse with a woman and carries a maximum penalty of 2 years. We intend to retain this offence, amended so that it covers the **Administering of drugs or other substances with intent to stupefy a victim in order that they can be subjected to an indecent act without their consent**, and to increase the maximum penalty to 10 years imprisonment. This offence can apply both where the substance has been administered to sexually exploit a person even though the sexual activity does not for whatever reason take place and where the purpose is for the victim to be subjected to sexual activity with someone other than the person who administers the drugs.

44 The existing offence of indecent assault covers a very wide range of sexual offending, from relatively minor assaults through to serious violent attacks. All this behaviour will remain criminal; however, it will be covered by two new offences rather than one. An offence of **Sexual assault by penetration** will cover assaults that involve penetration of the vagina or anus with objects or body parts other than the penis or where the victim is not sure what was used to penetrate them. This offence will carry a maximum penalty of life imprisonment.

45 Some non-penetrative sexual assaults amount to extremely serious offending behaviour and can involve high levels of fear, degradation and trauma, especially where the victim is a child. A new offence of **Sexual assault** will capture non-penetrative behaviour and will carry a maximum penalty of 10 years imprisonment, (the same as for the existing offence of indecent assault) except where the victim is a child aged under 13 where the maximum penalty will be 14 years. As now, lesser offences will of course attract lower sentences than the maximum.

46 We intend to close a gap in existing legislation which does not expressly provide for the prosecution of someone who forces another person to perform sexual or indecent acts, either on themselves or the offender, or to engage in sexual activity with another person, against their will. Where compulsion is used, this is itself very frightening in addition to the highly distressing nature of the sexual behaviour itself. Forcing someone else to carry out a sexual act on themselves or with another person can leave those who are compelled feeling guilty and ashamed, although they had no choice but to engage in the activity. The offence of **Causing another person to perform an indecent act without consent** makes it clear that the guilt lies with the person who causes the act to happen rather than the immediate victims. This offence will also provide an equivalent to the charge of rape where, for example, a woman compels a man to have sexual intercourse with her. It will have a maximum penalty of life imprisonment where sexual penetration is involved; non-penetrative acts will carry a maximum penalty of 10 years imprisonment.

47 Another gap in the law on sex offences relates to circumstances where a criminal or illegal act is perpetrated with the clear intention to commit a sex offence. An offender deflected from carrying out the sex offence will, under existing law, normally only be charged with the offence that has been committed. However, it is important that the criminal law should fully recognise any sexual motivation of an offender and that he or she should be charged with a substantive offence and, if found guilty, managed as a sex offender. We are therefore proposing two new offences: **Trespass with intent to commit a sex offence**, which will carry a maximum penalty of 14 years imprisonment; and **Committing a criminal offence with intent to commit a sex offence**, which will cover offences such as assault and abduction with intent to commit a sex offence and will carry a maximum penalty of life imprisonment.

Chapter 4

Special protection for children and the most vulnerable

- Adult sexual activity with a child.
- Sexual activity between minors.
- Sexual grooming.
- Familial sexual abuse of a child.
- Prohibited adult sexual relationships.
- Abuse of a position of trust.
- Sexual activity with a person who did not, by reason of a learning disability or mental disorder at that time, have the capacity to consent.
- Obtaining sexual activity by inducement, threat or deception with a person who has a learning disability or mental disorder.
- Breach of a relationship of care.

48 There may be circumstances where sexual activity takes place with the ostensible consent of both parties but where one of the parties is in such a great position of power over the other that the sexual activity is wrong and should come within the realms of the criminal law. The most obvious

cases involve children and vulnerable people with learning disabilities or mental disorders. The offences in this chapter deal with such cases.

49 The age of consent is 16. This means that any sexual activity with a child below this age is unlawful. If the sexual activity is non-consensual, then one of the non-consensual offences set out in Chapter 3 will be charged. However where a person engages in sexual activity with the ostensible consent of the child then one of two new offences – **Adult sexual activity with a child** or **Sexual activity between minors** – can be charged.

50 The offence of **Adult sexual activity with a child** will cover any sexual activity that takes place between an adult aged 18 or over and a child under 16 with the ostensible consent of the child. It will plug gaps in the existing law and will criminalise any activity with a child that a reasonable person would deem to be sexual or indecent in all the given circumstances. This will cover a range of behaviour including, for example, inducing a child to take off their clothes in circumstances which would reasonably be considered as sexual and outside the bounds of normal family life. The offence will criminalise both direct physical sexual activity and non-contact activity. Where no contact takes place, the maximum penalty will be 10 years. The most serious behaviour involving direct physical contact will carry a maximum penalty of 14 years imprisonment.

51 However, as explained in Chapter 2, where the child is under 13 and the behaviour involves physical contact between the offender and the child or inducing the child to carry out a sexual act, one of the non-consensual offences will be charged. These are rape, sexual assault by penetration, sexual assault and causing a person to perform an indecent act without consent.

52 Adult sexual activity with a child will only apply to adults aged 18 and over. Where the offender is under 18 and engages in unlawful sexual activity with a child under 16, a separate offence of **Sexual activity between minors** will be available. This offence will cover the same behaviour as the adult offence but will carry a lower maximum penalty of five years imprisonment. While it is recognised that much sexual activity involving children under the age of consent might be consensual and experimental and that, in such cases, the intervention of the criminal law may not be appropriate, the criminal law must make provision for an unlawful sexual activity charge to be brought where the sexual activity was consensual but was also clearly manipulative. However all necessary steps should then be taken to make sure that the court proceedings do not intimidate and are understandable to young witnesses and defendants. The Department for Education and Skills' current guidance to schools indicates that head teachers may exclude pupils for "sexual abuse". It does not link this to current specified offences. We are working with the DfES to ensure the changes we are making in respect of children who engage in sexual activity and commit sex offences are reflected in guidance to schools.

53 We will also ensure that procuring a child under the age of 16 for sexual activity will be covered by the criminal law even if no commercial motive is involved.

54 The Internet has opened up new possibilities for children both for learning and leisure and to chat electronically with others. It has revolutionised how we communicate. We need though to ensure that we tackle those who want to use it to take advantage of the innocence of children. Grooming children for sexual abuse is not new. Sex offenders have always found ways of gaining the trust and confidence of children and some have seen the possibilities of misusing the Internet to befriend

children for their own purposes. There have been a number of cases in which sex offenders have deceived children in chatrooms into believing that they are also children or teenagers and share similar interests and have then arranged meetings with them. To tackle grooming both on and off-line, we will be introducing a new offence of **Sexual grooming** with a maximum penalty of five years imprisonment. It will be designed to catch those aged 18 or over who undertake a course of conduct with a child under 16 leading to a meeting where the adult intends to engage in sexual activity with a child. It will enable action to be taken before any sexual activity takes place where it is clear that this is what the offender intends. It will implement the recommendations of the Task Force on Child Protection on the Internet and meet the commitment made by the Government to take steps to address this particular form of predatory sexual behaviour.

55 To strengthen protection for children in this area further, we will introduce a new civil order intended to protect children under 16 from inappropriate sexual behaviour by adults aged 18 or over. It will be possible for such an order to be made by the courts, on application of the police, in respect of an adult who is deemed to be acting in such a way as to present a risk of sexual harm to children, irrespective of whether such a person has previously been convicted of a sex offence or not. The order will contain such prohibitions as are necessary to protect a particular child or children in general from him. It is intended to complement the new criminal offence of grooming but will cover a much wider spectrum of behaviour, for example explicit communication with children via email or in chatrooms or hanging around schools or playgrounds. The penalty for breach of the order will be a maximum of five years imprisonment.

56 We will also amend the law with respect to the defence of mistaken belief in the age of the child. There are currently two statutory defences of mistaken belief in age. One is the so called “young man’s defence” which can be raised in relation to a charge of sexual intercourse with a girl aged 13-15 where the accused was under 24 at the time of the alleged offence, had reasonable cause to believe the girl was over the age of consent, and had not previously been charged with a like offence. The second exception is in the abuse of a position of trust offence in the Sexual Offences (Amendment) Act 2000, which allows for the defence to state that the accused did not know and could not have been expected to know that the child was under 18.

57 However, two recent House of Lords cases have altered the law by reading into statutory provisions a requirement for the prosecution to prove the absence of an honest (although not necessarily reasonable) belief that the child was 16 or over. It is our intention to change this. For the offences of abuse of a position of trust and familial sexual abuse of a child, the defendant will have to prove that he held an honest and reasonable belief in age if he is to be acquitted. We think it is right to put the onus on the defendant in these circumstances because the defendant will normally know the child well and therefore the child’s age. For all other offences relating to children, it will be for the prosecution to prove that the defendant did not have a mistaken belief in the child’s age, or if he did, that it was not a reasonable belief. This will not apply where the victim is under 13. In these cases a non-consensual offence will be charged and the defendant’s belief in the age of the complainant will not be relevant.

58 We will be creating two new offences relating to familial sexual activity to replace the existing gender-specific offences of incest by a man and

incest by a woman. The first of these, **Familial sexual abuse of a child**, will capture the sexual abuse and exploitation of children within the family unit. It is recognised that the balance of power within the family and the close and trusting relationships that exist make children particularly vulnerable to abuse within its environment. The offence will therefore be designed to protect children up to the age of 18 from any form of activity that a person would consider sexual or indecent. The offence will be drawn widely to capture all those individuals of any age who have a “familial” relationship with a child by virtue not only of blood-ties, adoption, fostering, marriage or quasi-marital relationship but also by virtue of living within the same household as the child and assuming a position of trust or authority in relation to the child. The offender may be either an adult or another child who falls entirely within the clearly defined scope of the offence. The maximum penalty for this offence will be 14 years imprisonment.

59 The second offence, **Prohibited adult sexual relationships** will cover sexual activity between certain adult blood relatives, as defined. Despite involving consensual adults it is generally believed that all such behaviour is wrong and should be covered by the criminal law. Furthermore, there is evidence to suggest that some adult familial relationships are the result of long-term grooming by an older family member and the criminal law needs to protect adults from abuse in such circumstances. The maximum penalty for this offence will be 2 years imprisonment.

60 We will also be re-enacting the offence of **Abuse of a position of trust**, which prohibits sexual activity between those aged 18 or over who are looking after children under 18 in educational establishments and in various residential settings, such as prisons. We will be expanding the scope of this offence to include personal advisers and

those who care for, advise, supervise or train young people in the community on a one to one basis in pursuance of a court order made in the criminal justice system. The maximum penalty for this offence will remain at 5 years imprisonment. The offence is intended to protect those aged 16 and 17 in particular, as younger children will be protected by offences relating to unlawful sexual activity and intercourse, which carry higher penalties.

61 The risks to children from sexual abuse are now better understood than ever before and in recent years a number of measures have been put in place to protect children from abuse. Less well understood are the risks faced by those of any age who have a learning disability or mental disorder that makes them particularly vulnerable to sexual abuse and exploitation. Furthermore, convictions are extremely hard to achieve in such cases because of the difficulties associated with gathering evidence from someone who may not understand or be able to articulate what has happened to them. We will therefore be creating three new offences specifically aimed at protecting vulnerable people: **Sexual activity with a person who did not, by reason of a learning disability or mental disorder at that time, have the capacity to consent; Obtaining sexual activity by inducement, threat or deception with a person who has a learning disability or mental disorder; and Breach of a relationship of care.** These offences aim to balance the need to protect these people from sexual exploitation, yet give maximum recognition to their right to a private and sexual life.

62 The new offence of **Sexual activity with a person who did not, by reason of a learning disability or mental disorder at that time, have the capacity to consent** will protect those who are so severely disabled, either temporarily or permanently, that they did not have the capacity to consent at the time of the alleged offence. A person should be

regarded as lacking capacity to consent if the person is unable to make a decision for themselves on whether to consent to sexual activity or is unable to communicate their decision on the matter. In both cases, the inability must be as a result of a learning disability or mental disorder. The offence will have a maximum penalty of life imprisonment, with the expectation that sentences will reflect the gravity of the offending behaviour in individual cases.

63 We are also introducing a new offence of **Obtaining sexual activity by inducement, threat or deception with a person who has a learning disability or mental disorder.** This offence recognises the fact that many people with a learning disability or mental disorder are quite capable of understanding the nature and consequences of sexual activity – of giving their consent to mutually consensual sex – and we have no intention of interfering with the right of any individual to engage in consensual sexual relationships. However, their capacity to consent may be more compromised than that of persons who are not suffering from any form of mental impairment and they may be vulnerable to relatively low levels of inducement, threat and deception. For example, case studies show that it is possible for a person with a learning disability to be induced into sexual activity by offers of gifts. They can be seriously distressed by threats of withholding treats and favours or telling tales to their friends and family, and they can also be deceived by claims that sexual activity is all part of routine health care or a game that everyone plays. Seemingly implausible threats may be effective against a person who has a mental disorder, especially if they are targeted at known fears. Victims who are mentally impaired can thus be manipulated into unwanted or inappropriate sexual activity. The criminal law must protect vulnerable people from those who would seek to exploit their mental impairment for sexual gain

and the penalties must be sufficiently high to punish adequately such behaviour. The maximum penalty for this offence will be life imprisonment.

64 The new offence of **Breach of a relationship of care** will criminalise those providing certain kinds of care who engage in consensual sexual activity with those receiving it. This is necessary to protect those with a learning disability or mental disorder who have the capacity to consent but who are particularly vulnerable to exploitative behaviour and thus may agree to sexual activity solely because they are influenced by their familiarity with and dependency on the carer. The proposed offence will place on a statutory footing matters currently covered by codes of conduct with regard to sexual activity within relationships of care and will create a criminal offence where the current penalty is purely disciplinary. A defence will be available to the effect that the sexual relationship existed prior to the onset of the relationship of care and a defendant will also be able to seek to prove that he or she was ignorant as to the existence of the relationship of care or the mental impairment of the other party. The maximum penalty for this offence will be 7 years imprisonment.

The challenge of the Internet and child pornography

The Government has:

- Continued to support the Internet Watch Foundation and the development of its hotline for reporting child pornography and other illegal material.
- Increased, with effect from January, 2001, the maximum penalties for taking, making and distributing indecent photographs and pseudo-photographs of children from 3 years to 10 years imprisonment, and for possession from 6 months to 5 years imprisonment (Criminal Justice and Court Services Act, 2000).
- Increased the powers of customs officers and the police to investigate the importation of child pornography (Criminal Justice and Police Act, 2001).
- Made available £25 million over 3 years from April 2001 for policing High Tech Crime. This money is over and above normal police funding and provided for the creation of a National High Tech Crime Unit as well as supporting staffing, skills and equipment in local police forces. The Unit and local forces have since mounted a number of successful operations that demonstrate their enhanced capacity to deal with High Tech Crime in general, including use of the Internet by paedophiles.

In addition, the Government established in March 2001 a Task Force on Child Protection on the Internet, which brings together experts from the Internet industry, child welfare organizations, the police and others to tackle online child abuse and paedophilia. The Task Force will oversee UK implementation of the G8 Strategy on protection of children from sexual exploitation on the Internet.

The Task Force suggested the new criminal offence relating to meeting a child with intent to commit a sex offence and the new civil order set out elsewhere in this paper. These will improve the police's ability to tackle the "grooming" of children by paedophiles both online and offline.

The Task Force subgroups have developed models of good practice for the internet industry on chat services, instant messaging and web based services, as well as looking at advice which can be given about unsolicited emails (SPAM). A successful £1.5 million awareness campaign for children and their parents and carers ran between December 2001 and Spring 2002. Independent evaluation showed the campaign effectively highlighted the benefits of the Internet while raising awareness of its potential abuses. We are looking to repeat it by Spring 2003.

The Government is determined to ensure that Britain is a safe place for children to use the Internet.

Chapter 5

Offences involving commercial sexual exploitation

- Commercial sexual exploitation of a child.
- Commercial sexual exploitation of adults.
- Trafficking people for commercial sexual exploitation.

65 Adults and children can be sexually exploited for the gain (financial or otherwise) of others. Indeed, there is increasing concern about the role of transnational and organised crime in trafficking people for sexual exploitation. Both children and adults should be protected not only from those who seek to abuse them directly but also from those whose intention is to exploit them. Many adults are exploited in prostitution. Some may have been trafficked to this country explicitly for the purposes of exploitation while others may have become subject to exploitation within this country, through being enticed by a pimp or for whatever other reason. People who sexually exploit children for their own gain – irrespective of whether they participate in any sexual activity with the child – are responsible for that abuse and should be treated accordingly.

66 New offences with severe penalties will signal our intent to take effective action against the perpetrators of such crimes. There will be a

new offence of **Commercial sexual exploitation of a child** which will protect children up to 18 and will cover a range of activity including:

- Buying the sexual services of a child, for which the penalty will be life when the child is aged under 13, 14 years imprisonment when the child is aged 13 to 15; and 7 years imprisonment when the child is aged 16 to 17;
- Causing or encouraging child into commercial sexual exploitation; facilitating the commercial sexual exploitation of a child; and controlling the activities of a child involved in prostitution or pornography, the maximum penalty for all of which will be 14 years imprisonment.

67 In order effectively to investigate and prosecute those who use and trade in indecent images of children it is occasionally necessary for the police and others, such as the Internet Watch Foundation, to look at and make copies of such images from the Internet. This can constitute an offence of “making child pornography”, to which there is currently no defence in law. Although we are confident that the exercise of discretion by the Crown Prosecution Service in authorising such prosecutions means that the risk of prosecution in such circumstances is very small, we believe that children will be better protected if we act to remove this obstacle. We therefore intend to introduce a limited defence to the charge of making child pornography to cover these circumstances, while ensuring that it will not protect users of child pornography themselves.

68 There will be an offence of **Commercial sexual exploitation of adults**, which will cover causing or encouraging men or women to enter into prostitution and controlling in whole or in part the activities of men and women who are prostitutes. This offence will carry a maximum penalty of 7 years imprisonment.

69 The growth of human trafficking linked to sexual exploitation has caused worldwide concern. We have already introduced a new offence of trafficking to control prostitution in the Nationality Immigration and Asylum Act 2002, but we recognise that this is a stop gap measure and needs to be updated to take account of the changes to the law on sexual exploitation set out above. We will therefore also be introducing an offence of **Trafficking people for commercial sexual exploitation**, which will cover recruiting, harbouring, and facilitating the movement of another person for the purposes of commercial sexual exploitation. It will carry a maximum penalty of 14 years imprisonment. This offence will implement the commitment made by the Government to introduce new offences of trafficking for sexual exploitation in line with the UN protocol and the EU framework decision on trafficking. It will apply to persons trafficked from one place to another within the UK as well as across international borders.

70 The White Paper "Secure Borders Safe Haven", published earlier this year, set out a comprehensive approach for victims of trafficking in order to help them give evidence against the traffickers who have brought them here to exploit them. We will make arrangements for their protection and support by providing access to safe accommodation and services such as medical care, legal advice, and counselling. We recognise that in some cases it may be appropriate for them to remain here; however, in many cases it will be more appropriate for them to return home, and to help them do so we will provide additional support and ensure that they have suitable accommodation to return to. We are working with the voluntary sector to set up these arrangements and hope to set up a pilot scheme next year.

71 In addition we are currently developing advice for immigration officers, police and others potentially dealing with trafficking and its victims. This will raise awareness of the difference between people who are trafficked into this country and those who seek to enter the country illegally of their own will, and to help them to treat trafficking victims more fairly.

72 Prostitution itself is not illegal in this country but existing offences cover some of the behaviour related to it, such as soliciting for the purposes of prostitution. We will be reforming some of these offences with a view to making them gender neutral.

73 We will examine the scope for a review of the issues surrounding prostitution and the exploitation, organised criminality and class A drug abuse associated with it.

74 In the meantime, the Government continues to fund a number of prostitution initiatives in different parts of the country. The "What Works" projects are dealing with helping children and adults escape from involvement in prostitution and examining the most effective ways of policing prostitution to deal with the nuisance, fear, anti-social behaviour and disorder caused by it to local residents and the general public.

75 For example, in Bristol, the Pandora project involves partnership between voluntary and statutory agencies, and targets young people (under 21) who are involved, or at risk of involvement, in commercial sexual exploitation. The agencies involved include Bristol City Council, Bristol Drugs Project, Barnardo's, and the Terence Higgins Trust. The project aims to improve the co-ordination of services across the city to support young people and to provide a way out for those involved. It also aims to support young people at risk of becoming involved in prostitution and prevent it from happening.

Chapter 6

Other offences

- Indecent exposure.
- Sexual behaviour in a public place.
- Voyeurism.
- Bestiality.
- Sexual interference with human remains.

76 Certain crimes do not involve direct physical contact with the victim but still cause alarm or distress. At present, exposure or “flashing” can be charged under section 4 of the Vagrancy Act 1824 or section 28 of the Town Police Clauses Act 1847; charges can also be brought under the common law offence of outraging public decency. We will introduce a new gender neutral offence of **Indecent exposure** relating to the exposure of both male and female genitalia in circumstances where the accused intended to cause or where it was reasonably likely that their behaviour would cause alarm or distress. This is designed to catch those whose behaviour is specifically intended to shock another person and would not be used to criminalise, for example, naturists in regulated environments or streakers at sporting events. The offence will carry a maximum penalty of 2 years imprisonment.

77 We will also be introducing a new public order offence, specifically targeted at specified sexual acts that take place in public. The new offence of **Sexual behaviour in a public place** will send out a strong signal of our intention to protect people from being unwilling witnesses to overtly sexual behaviour that most people consider should take place in private. It will be in addition to, and not a replacement for, existing public order offences. However it is not our intention to interfere in everyday behaviour in public that does not cause offence to the vast majority of people such as kissing or cuddling. It is also not our intention to criminalise sexual activity that takes place outdoors but in an isolated place where one would reasonably expect not to be observed. The maximum penalty for the offence will be 6 months imprisonment or a fine or both.

78 We will introduce a new offence of **Voyeurism** to cover cases where a person is secretly observed where he or she had a reasonable expectation of privacy. This offence will apply where the voyeur intended to observe such acts for their own sexual gratification or that of others. It will cover cases where, for example, a peephole or camera is secretly installed. This offence will carry a maximum penalty of two years imprisonment. We would want cases where a photographer takes indecent photographs of someone without their consent and for example posts them on the Internet or in a pornographic magazine to be treated particularly seriously by the courts.

79 Sexual activity with animals is generally recognised to be profoundly disturbed behaviour. A new offence of **Bestiality** will criminalise those who sexually penetrate animals or allow an animal to penetrate them. This offence will complement existing non-sexual offences of cruelty to animals. This offence will carry a maximum penalty of 2 years imprisonment.

80 There is currently no law that covers sexual interference with human remains. Although there is no indication that such activity is anything but extremely rare, we believe that this behaviour is so deviant as to warrant the intervention of the criminal law and are proposing a new offence of **Sexual interference with human remains**, which will carry a maximum penalty of 2 years imprisonment. Where a defendant is suspected of killing their victim, the first priority will clearly be to charge murder or manslaughter. Where there is evidence of sexual penetration of the body after death, it is important that the sexual deviance of the offending behaviour is properly recognised by a separate indictment of sexual interference with human remains. This will ensure that a defendant who is found guilty on both charges is sentenced accordingly and is treated and monitored as a sex offender both in prison and after release. The offence could also apply to cases in which the offender had no contact with the victim prior to death but sexually abused their corpse.

Annex 1

Background to the two Reviews

Sex Offenders

In June 2000, Charles Clarke, then Minister of State at the Home Office, announced a review of the Sex Offenders Act 1997 to identify any areas of weakness in the legislation and to maximise its effectiveness. A range of organisations, including government departments, relevant professional organisations and children's charities were actively involved in the review process.

Just a few weeks later, following the tragic death of Sarah Payne, widespread public concern was expressed about the dangers posed by sex offenders. In response, the Government introduced, in autumn 2000, a number of amendments to the then Criminal Justice and Courts Services Bill to strengthen the Sex Offenders Act. These anticipated some of the work of the Review.

The Review team completed its work and published its recommendations for public consultation in July 2001. Over fifty organisations responded and many of their responses simply supported the proposals in the Review. Some proposed variations on the proposals, or alternatives, a number of which have been included here.

A document containing the response of the Government to each of the recommendations made by the Review and a summary of the responses received in the consultation process has been placed in the Libraries of both Houses of Parliament and is available on-line at www.sexualoffencesbill.homeoffice.gov.uk

Sex Offences

The proposals on sex offences have been developed from the Sex Offences Review set up in January 1999. This was established by the Home Secretary and led by civil servants but was conducted independently of Ministers. The Review was set up with the following terms of reference:

- to provide coherent and clear offences which protect individuals, especially children and the more vulnerable, from abuse and exploitation;
- to enable abusers to be properly punished; and
- to be fair and non-discriminatory.

The Review consultation document "Setting the Boundaries", which was published in July 2000, made a wide range of recommendations that have been considered carefully in light of over 700 responses received during a public consultation period. This, followed by extensive discussions with Ministers and others, has resulted in the proposals set out in this document.

A document containing the response of the Government to each of the recommendations made by the Review and a summary of the responses received in the consultation process has been placed in the Libraries of both Houses of Parliament and is available on-line at www.sexualoffencesbill.homeoffice.gov.uk

