

## The law on sex

August 2004

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 section 3 of the Sexual Offences (Scotland) Act 1976, 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 two years' imprisonment. One possible defence is that the man believed himself to be married to the young woman. Also, a man under 23 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

Under the Criminal Law Amendment (Northern Ireland) Act 1885 and the Children and Young Persons Act 1950, the age of sexual consent for women is 17.

In Northern Ireland, the minimum marriage age is 16 with parental consent. An offence against a girl aged 14 carries the maximum penalty of life imprisonment. There is no defence that the man believed her to be 17 or over, whatever her age. Although, in practice, prosecutions are rare, the maximum penalty would be two years' imprisonment, or life if the girl was under 14.

Heterosexual anal intercourse between consenting adults was legalised in 2003 (Criminal Justice (Northern Ireland) Order 2003).

### 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 consent<sup>1-3</sup>. This applies equally in Northern Ireland, where, although the heterosexual age of consent is 17, the age at which you can consent to medical treatment is 16. (See also **fpa** Factsheet *Under 16s: consent and confidentiality in sexual health services*.)

In England and Wales, the Sexual Offences Act 2003 does 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.

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### Sex between men

The age of consent for sex between men is 16 in England, Wales and Scotland, and 17 in Northern Ireland (Sexual Offences Amendment Act 2000, which reduced the age from 18). In England and Wales, the Sexual Offences Act 2003 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 and Wales, the legal age for young women to consent to any sexual activity is 16, whether they are straight, gay or bisexual (Sexual Offences Act 2003). Until this Act was passed, there was no age of consent for lesbian sex laid down in statute.

This is still the case in Scotland and Northern Ireland. 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 and Wales, 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. Under the Sexual Offences Act 2003, a person consents if s/he 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.

In Northern Ireland, a man would commit rape if he has anal or vaginal sexual intercourse with a person, male or female, without their consent (Criminal Justice (Northern Ireland) Order 2003).

Under various case law in each UK country, a man may be charged with raping his wife.

Women cannot be charged with the offence of rape as this is defined as penile penetration, but in England and Wales she could be charged with sexual assault by penetration.

### Sexual assault by penetration

This new offence was introduced in England and Wales by the Sexual Offences Act 2003. 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.

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

### Sexual/Indecent assault

Under the Sexual Offences Act 2003 it is an offence in England and Wales 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.

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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 (Sexual Offences Act 2003). There is also the common law offence of outraging public decency.

In Scotland, indecent exposure is covered by common law.

### References

- 1 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.
- 2 *Family planning services for young people*. Welsh Health Circular WHC (86)17. March 1986.
- 3 *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.  
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