

The law on sex

January 2011

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 consent to any form of sexual activity is 16 for both men and women, so that any sexual activity between an adult and someone under 16 is a criminal offence.

There are possible defences if the sexual activity does not involve penetrative or oral sex. These are if the older person believed the young person to be aged 16 or over and they have not previously been charged with a similar offence, or the age difference is less than two years.

Sexual intercourse (vaginal, anal) and oral sex between young people aged 13–15 are also offences, even if both partners consent. A possible defence could be that one of the partners believed the other to be aged 16 or over.

Guidance from the Scottish Government acknowledges that not every case of sexual activity in under-16s will have child protection concerns, but young people may still be in need of support in relation to their sexual development and relationships¹.

A range of specific offences protect children under 13, who cannot legally give their consent to any form of sexual activity. The maximum penalty could be life imprisonment for rape, sexual assault, sexual assault by penetration, or causing a young child to participate in sexual activity. There is no defence that the accused believed that the child was older.

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

The law on sex (cont)

under the age of 16 under articles 16 to 19 of the Order, where the other party is aged under 18.

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 procedures². 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 consent^{1, 3-5}.

The various sexual offences laws in force in the UK do not affect the ability of professionals to provide confidential sexual health advice, information or treatment. Each specifically states that this is not an offence if it is in order to protect the young person's sexual health, physical safety or emotional wellbeing.

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, the Sexual Offences (Northern Ireland) Order 2008, and the Sexual Offences (Scotland) Act 2009 introduced a series of child sex offences which equally protect young men from sexual abuse and exploitation.

As current sexual offences throughout the UK are gender neutral, the information in the section on heterosexual sex will also apply to sexual activity between men.

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).

Sex between women

The age of consent is 16 throughout the UK. As current sexual offences are gender neutral, the information in the section on heterosexual sex will also apply to sexual activity between women.

Rape

In each UK country, 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.

A woman cannot be charged with the offence of rape as this is defined as penile penetration, but she could be charged with another offence such as causing a person to engage in sexual activity without consent, sexual coercion or assault, or assault by penetration. These may not all apply in each country.

Sexual assault by penetration

This new offence was introduced in England and Wales by the Sexual Offences Act 2003, the Sexual Offences (Northern Ireland) Order 2008, and the Sexual Offences (Scotland) Act 2009. 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.

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.

The law on sex (cont)

Touching covers all physical contact, whether with a part of the body or anything else, or through clothing.

In Scotland the range of sexual assault offences relating to 'sexual touching' is similar, with the addition of sexual penetration of the vagina, anus or mouth; ejaculating semen onto someone; spitting or urinating onto them. There is some overlap with the offences of rape and sexual assault by penetration.

There also remains a common law offence of assault in Scotland, which has a wider application.

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.

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 a similar offence of sexual exposure in Scotland.

Offences of public indecency or breaching the peace could also apply in the UK, in circumstances such as nude sunbathing or 'streaking'.

Definitions of some common terms

Consent

England, Wales and Northern Ireland: if a person 'agrees by choice and has the freedom and capacity to make that choice'.

Scotland: 'free agreement'. An offence will have taken place if the victim did not consent, or the accused had no reasonable belief that they consented.

The laws of each UK country also allow for a range of circumstances which may affect a person's capacity to freely consent, such as when they are asleep or have been subject to threats or violence

Sexual

England, Wales, and Northern Ireland: if a reasonable person would always consider it to be so; or a reasonable person may consider it to be sexual, depending on the circumstances and intention.

Scotland: if a reasonable person would, in all the circumstances of the case, consider it to be sexual

Legislation

All legislation can be accessed at www.legislation.gov.uk.

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 2009

References

- 1 Scottish Government, *National Guidance – Under-age Sexual Activity: Meeting the Needs of Children and Young People and Identifying Child Protection Concerns*, 2010.
<www.scotland.gov.uk>
- 2 Department of Health, Social Services and Public Safety, Child protection.
<www.dhsspsni.gov.uk> accessed 19 February 2009.
- 3 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>
- 4 National Assembly for Wales, *Best practice advice on the provision of effective contraception and sexual health advice services for young people*. Welsh Health Circular (2001) 041. <www.wales.nhs.uk>
- 5 Northern Ireland. Department of Health, Social Services and Public Safety, *Reference guide to consent for examination, treatment or care*. (Belfast: DHSSPSNI, 2003).
<www.dhsspsni.gov.uk>

sexual health direct is supported by the Department of Health.

Further reading

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

The Scottish Government, *Guidance on the Sexual Offences (Scotland) Act 2009*.
<www.scotland.gov.uk>