

# **Submission of The Christian Institute to the Northern Ireland Office's Consultation on the Sexual Offences (Northern Ireland) Order 2007**

## **Introduction**

The Christian Institute is a non-denominational charity established for the promotion of the Christian faith. We have approximately 3,500 supporters throughout Northern Ireland. This includes 388 churches and church leaders from across the Christian denominations. During 2007 the Institute addressed 105 meetings in churches and other Christian organisations across the Province. We operate a full-time office in Belfast.

We uphold traditional, mainstream Christian beliefs about marriage and sexual ethics. In our efforts to promote these beliefs, we have previously contributed to public debates on issues such as divorce law reform, medical ethics and alcohol licensing. Last year the Institute was involved, along with five church denominations in Northern Ireland, in bringing forward a judicial review of the Sexual Orientation Regulations.

## **The Draft Sexual Offences (Northern Ireland) Order 2007**

We welcome the opportunity afforded by the public consultation to comment on this draft legislation. There is much that we strongly welcome in the proposals. In particular, we approve of measures regarding statutory rape of a child under 13, the widening of the age of consent offence to encompass a broader range of sexual assaults, the retention of sexual activity in a public lavatory as a criminal offence, and new offences of soliciting for prostitution and kerb crawling.

However as far as The Christian Institute is concerned one key area of contention remains, namely the proposal to lower the age of consent for sexual activity in Northern Ireland from 17 to 16.

### **Lowering the Age of Consent**

Before considering the implications of lowering the age of consent, it is worth pausing to consider the development of age of consent laws in the British Isles up to the present time.

Modern age of consent laws in Britain and Ireland are largely the fruit of tireless campaigning by the Christian social reformer Josephine Butler. Her long struggle to raise the age of consent in the UK from 12 (as it then was) to 16 was a key element of a more general campaign against the evils of human trafficking for the sex trade. Eighteen years of advocacy led directly to a new age of consent of 16 in the 1885 Criminal Law Amendment Act.

In 1917 an amendment to the Criminal Law Amendment Bill, which would have seen the age of consent for the whole of the UK raised to 17, was defeated in a House of

Commons standing committee by just one vote.<sup>1</sup> Four years later the House of Lords gave serious consideration to a similar proposal<sup>2</sup>, and in 1925 the Report of the Departmental Committee on Sexual Offences against Young Persons listed raising the age to 17 as one of its key recommendations for changes to British sexual offences law.<sup>3</sup>

By 1935 the Oireachtas was responsible for criminal law in the Irish Free State and it used the Criminal Law Amendment Act to raise the age of consent to 17. The Stormont Parliament followed suit with the Children and Young Persons Act 1950. The increase was considered one of the least controversial provisions of the bill and attracted little comment in the Parliamentary debates.

The age of consent in Northern Ireland has remained at 17 ever since. In all that time there has been no concerted public lobby to see it reduced. Some of the Province's elected representatives have already made their support for the status quo very clear. On 21 January this year the Northern Ireland Assembly Ad Hoc Committee on the Draft Sexual Offences (Northern Ireland) Order voted to strongly recommend that the age of consent remains at 17.<sup>4</sup> On 4 February this report was unanimously adopted by the whole Assembly.

All previous discussions dealing with the age of consent have been within the context of protecting vulnerable young individuals and encouraging social stability. When considering a reduction in the age of consent, its effect on child protection, health, marriage and the family must be considered.

Giving oral evidence to the Stormont committee, Minister of State Paul Goggins said that, "We are seeking to put into criminal law the age at which it is a criminal offence to have a sexual relationship with a child".<sup>5</sup> But the criminal law is already states perfectly clearly the age at which it is a criminal offence to have a sexual relationship with a child. There is no ambiguity whatsoever – the age of consent is 17 and it should stay at 17 for the reasons outlined below.

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<sup>1</sup> The Times, 16 March 1917

<sup>2</sup> The Times, 16 March 1921

<sup>3</sup> Report of the Departmental Committee on Sexual Offences against Young Persons, 1925, Parliamentary Paper Cmd. 2561, pages 23-24

<sup>4</sup> Northern Ireland Assembly Ad Hoc Committee on Draft Sexual Offences (NI) Order 2007, First Report, 21 January 2008, para. 50 see [http://www.niassembly.gov.uk/adhocs/2007mandate/sexual\\_offences/reports/report15\\_07\\_08R.htm](http://www.niassembly.gov.uk/adhocs/2007mandate/sexual_offences/reports/report15_07_08R.htm) as at 5 February 2008

<sup>5</sup> Northern Ireland Assembly Ad Hoc Committee on Draft Sexual Offences (NI) Order 2007, Official Report, 14 January 2008, see [http://www.niassembly.gov.uk/adhocs/2007mandate/sexual\\_offences/moe/080114.htm](http://www.niassembly.gov.uk/adhocs/2007mandate/sexual_offences/moe/080114.htm) as at 5 February 2008

## **Child Protection**

### *Criminal prosecutions*

In law a person remains a child until they are 18.

Northern Ireland's age of consent law means that children are deemed to be incapable of giving legal consent to sex below the age of 17. Consequently, sexual activity with someone below that age is automatically a criminal offence.

Criminal trials for rape hinge on the issue of consent. In order to best secure a conviction the rape victim will often have to enter the witness box and undergo cross examination by the defence barrister. In the case of an age of consent offence the prosecution only has to prove that the sexual act took place. The child concerned is not required to testify that they did not consent, neither will they face cross-examination.

It is much easier to secure a conviction for an age of consent offence than it is to prove rape. In many borderline cases prosecutors can know that a rape prosecution would be unlikely to succeed and having to give evidence would involve severe trauma to the victim. For these reasons prosecutors can use the option of prosecuting an age of consent offence.

The issue of protection is further complicated by current standards of enforcement of the age of consent. Conviction rates are consistently low for cases involving a victim slightly below the age of consent. Thus the age of consent in real terms operates at a lower age limit than that defined by statute. This is the penumbra effect. In terms of prosecutions, the law generally bites where the victim is aged 15 or 16.

Under the current law someone aged over 17 who manipulates a 16 year old into sexual activity may well not face prosecution because of factors such as the age of the victim and the level of manipulation. If the age of consent was lowered to 16 then in practice older teenagers could manipulate 14 and 15 year olds into sexual activity without facing prosecution. A lower age of consent means that teenagers are exposed to predatory advances at a younger age from a strictly legal point of view, and younger still when the practical enforcement of the law is taken into account.

The Soham murderer, Ian Huntley, provides a particularly tragic example. Huntley was accused on several occasions in the mid 1990s of having sex with underage girls.<sup>6</sup> Had the relevant age of consent been 17 it is far more likely that at least one of the cases concerning 15 year-old girls would have been pursued to prosecution. With a conviction for an underage sex offence Huntley would not have been able to obtain a job in a school.

### *Sex trafficking*

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<sup>6</sup> *BBC News Online*, 17 December 2003, see <http://news.bbc.co.uk/1/hi/uk/3313501.stm> as at 31 January 2008

The current UK age of consent laws owe their origin to Josephine Butler's campaign against human trafficking for the sex trade. Sex trafficking is reported to be on the rise in Northern Ireland. A recent joint initiative was established between the Human Rights Commissions on both sides of the border to investigate human trafficking.<sup>7</sup> Paul Goggins, Minister of State, has also expressed concern regarding the rise in sex trafficking in Northern Ireland.<sup>8</sup>

It seems incongruous that the Draft Sexual Offences Order should propose increasing the law's protection of young people from one kind of sexual exploitation (production of pornography), while decreasing the level of protection the law currently provides against another (sexual activity). Besides encouraging the sex trade within the Province, it must be remembered that Northern Ireland's only land border is shared with a jurisdiction where the age of consent is 17. Thus a lower age of consent in Northern Ireland would give both paedophiles and adolescents living in the Republic of Ireland an incentive to cross the border to engage in sexual activity.

### *Reducing protection for young people*

The age of consent exists to protect children, and the lower it is, the more risks young people face. The draft Order recognises that 16 and 17 year-olds are vulnerable and need protection: that is why they cannot be used for the production of pornography, as outlined in Articles 38 to 42. Under-18s are also prohibited from working in or even entering a sex shop.<sup>9</sup>

Lowering the age of consent would see an entire age group (16 year-olds) deprived of a legal protection they currently enjoy and expose another 26,000 young people to the legal, potentially predatory, advances of adults.<sup>10</sup> Legislators wishing to lower the age of consent need to ask themselves, "Can this protection be safely removed from these young people?"

The Northern Ireland Office has not shown any examples of widespread public dissatisfaction with the current age of consent law, or of any public campaigns for a change. We suggest that this is because such examples do not exist. On the other hand, both Catholic and Protestant churches (representing thousands of members) have expressed their opposition to the lowering of the age of consent, as reported in the media.<sup>11</sup>

Northern Ireland's Rape Crisis & Sexual Abuse Centre has also voiced its concerns about plans to lower the age of consent. The Rape Crisis Centre is a long established counselling, advice and advocacy service for the survivors of sexual violence and abuse.

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<sup>7</sup> *The Belfast Telegraph*, 23 June 2006; *Belfast News Letter*, 8 June 2006; *The Belfast Telegraph* (online), 30 May 2007

<sup>8</sup> *The Belfast Telegraph*, 23 June 2006; *The Belfast Telegraph* (online), 30 May 2007

<sup>9</sup> The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985, schedule 2, para. 23

<sup>10</sup> See [http://www.nisra.gov.uk/archive/demography/population/midyear/NI\\_Home\\_Pop\\_sya\(1961-2006\).xls](http://www.nisra.gov.uk/archive/demography/population/midyear/NI_Home_Pop_sya(1961-2006).xls) as at 18 December 2007

<sup>11</sup> *The Observer*, 25 November 2007

Commenting on the age of consent proposal, Rape Crisis Centre Director Eileen Calder stated that:

*“Our concern is to protect vulnerable young men and women from older sexual predators ... What we are concerned about is men in their 20s, 30s, 40s and older preying on young people. And that applies to the gay community as well as the heterosexual community.”*<sup>12</sup>

Older sexual predators are not the only dangerous members of society who would view a lower age of consent as an inducement to target vulnerable 16 year-olds. According to Home Office research, adolescents under 18 commit over a third of all sex offences and many of the victims will be 16 or under. Within the jurisdiction of the only UK police force with the necessary recorded data, the research showed that 12% of recorded sexual crime involved perpetrators under 18 with victims under 16.<sup>13</sup>

### **Protection of child health and wellbeing**

#### *Dangers of encouraging sexual activity at younger ages*

Bringing the age of consent down to 16 sends out the wrong and highly dangerous signal that sex is normal at a younger age. It also will have a damaging effect on the health and wellbeing of children.

Sex is not an activity for children. There are many activities which are unlawful for someone under the age of 18. They cannot gamble, buy knives (a recent change), buy alcohol from a bar, buy certain solvents, or own an imitation firearm.

Young people do not have the physical, emotional and psychological maturity necessary to cope with the consequences of sexual activity. In particular, medical opinion recognises that young women are biologically more susceptible to sexually transmitted infections (STIs) than older women.<sup>14</sup> This is due to at least three key medical factors:

1. Physiological – The hormonal activity which causes the development of secondary sexual characteristics also causes the vaginal lining to convert from just a single cell layer in thickness to multiple cell layer thickness. The thinner the cell layer thickness at the time of first sexual intercourse, the greater the likelihood of trauma (coital injury) which may facilitate the spread of STI pathogens. Another key element of the vagina’s defence against infection, an antibacterial mucus, only develops up to two years after a girl has had her first period.
2. Immunological – Immunologically, a teenage girl is still immature. In particular, levels of a key antibody called secretory IgA have only reached 60% of the adult level by puberty, and this level increases slowly thereafter.

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<sup>12</sup> *The Observer*, 25 November 2007

<sup>13</sup> Grubin, D, *Sex Offending Against Children: Understanding the Risk*, Home Office, 1998, pages 21 and 23

<sup>14</sup> *Tracking the Hidden Epidemic: trends in STDs in the United States*, Centers for Disease Control and Prevention, US Department of Health and Human Services, 2000, page 4

3. Behavioural – Teenage girls’ sexual partners are more likely to be older, more experienced sexually, and therefore potentially infected with an STI.<sup>15</sup>

Many young people who have engaged in teenage sexual activity have admitted regretting this later in life. The largest and most academically robust study ever carried out of sexual activity was the *National Survey of Sexual Attitudes and Lifestyles* published in 1994. Analysis of this British survey found that 58.5% of girls whose first act of intercourse was under-age later regretted it as “too soon”.<sup>16</sup>

The 2001 *National Survey of Sexual Attitudes and Lifestyles* asked a statistical sample of 16-24 year olds whether they had had sex before 16.<sup>17</sup> A Government study in the same year enables a comparison to be made with Northern Ireland.<sup>18</sup> The findings reveal a stark contrast, shown in table 1 below:

**Table 1**

	Percentage of 16-24 year olds that had sex before 16
Great Britain	27.9
Northern Ireland	15

Legislators need to ask whether they would rather 15% of under-16s engage in sexual activity or 28% (almost double the proportion – with all the attendant problems of teenage pregnancy and sexual disease). The role of the age of consent no doubt makes a crucial contribution to this difference.

It has been claimed that there is a common misconception among teenagers in Northern Ireland that the age of consent is already 16. The burden is upon those making this claim to support it with evidence, which we have yet to see. Even if it were true, it does not justify a change in the law. If there was common misconception about speed limits in Northern Ireland it seems unlikely that many would advocate changing them for that reason. Indeed, we would question whether this argument would be posited in relation to any other existing law.

#### *Sexual health: Teenage pregnancy and STIs*

Some have suggested that the current age of consent of 17 inhibits young people from accessing sexual health advice and treatment. On this argument 16 year-olds who know that they are committing illegal sexual acts will not ask for such treatment and therefore risk teenage pregnancy and sexually transmitted infection. Supporters of this view appear to maintain that a lower age of consent actually reduces the teenage pregnancy rate and curb the spread of STIs.

<sup>15</sup> Duncan, ME, Tibaux, G, Pelzer, A et al, “First Coitus Before Menarche and Risk of Sexually Transmitted Disease”, *The Lancet*, 335, 1990, page 338-40; Duncan, M E, ‘Anal Intercourse - The Medical Risks’ (unpublished paper, 2000)

<sup>16</sup> Johnson A M, Wadsworth J, Wellings K et al, *Sexual Attitudes and Lifestyles*, Blackwell 1994, Table 4.13, page 96

<sup>17</sup> Erens B, McManus S, Prescott A et al, *National Survey of Sexual Attitudes and Lifestyles II: Reference tables and summary report*, page 27, table 1.1 and page 30, table 2.1

<sup>18</sup> Northern Ireland Health and Social Wellbeing Survey 2001, Sexual Health Results - First experience of sexual intercourse tables, page 1, see [http://www.nisra.gov.uk/whatsnew/wellbeing/sexual\\_health/First%20experience%20of%20sexual%20intercourse.PDF](http://www.nisra.gov.uk/whatsnew/wellbeing/sexual_health/First%20experience%20of%20sexual%20intercourse.PDF) as at 20 December 2007

A lower age of consent will not reduce teenage pregnancy rates – otherwise the teenage pregnancy rate in other UK regions would not be as high as it is. The obvious comparison to make is with Great Britain, where the age of consent is already 16.

Table 1 has already shown that far fewer under-16s engage in sexual activity in Northern Ireland compared to Great Britain. Therefore the lower age of consent in Northern Ireland is surely playing some role in preventing young people from engaging in sexual activity in the first place, which is the only certain method of avoiding pregnancy or sexually transmitted infection.

Regarding teenage pregnancy, there are 3 times as many children born or aborted by 15 year old girls in England and Wales than there are in Northern Ireland. At the age of 16 the figure is still 2.5 times as many (table 2).

**Table 2**

	Combined maternity and abortion figures per 1,000 girls	
	15 years of age	16 years of age
England and Wales <sup>19,20</sup>	11.6	27.7
Northern Ireland <sup>21,22</sup>	4	11.9

Again, since the pregnancy rates of 15 and 16 year olds are far higher in England and Wales than in Northern Ireland, the lower age of consent must be considered an important, perhaps crucial, factor in this difference.

Lowering the age of consent would inevitably be followed not only by increasing numbers of teenage mothers in Northern Ireland but, even more tragically, by increasing numbers of young women travelling to the mainland for abortions.

<sup>19</sup> Taking 2006 figures of maternities (1,012, from *Birth Statistics: Review of the Registrar General on Births and Patterns of Family Building in England and Wales, 2006*, ONS, The Stationery Office, 2007, Table 3.2, page 10) plus abortions (2,948, from *Statistical Bulletin – Abortion Statistics, England and Wales: 2006*, Department of Health, ONS, 2007, Table 4a) divided by estimated 15 year old female population in thousands (342.5, from *England and Wales; estimated resident population by single year of age and sex; Mid-2006 Population Estimates*, ONS, StatBase, August 2007, Table 3);  $1,012+2,948=3,960$ .  $3,960/342.5=11.6$

<sup>20</sup> Maternities, 3,537 (from *Birth Statistics: Review of the Registrar General on Births and Patterns of Family Building in England and Wales, 2006*, ONS, The Stationery Office, 2007, Table 3.2, page 10); Abortions, 5,859 (from *Statistical Bulletin – Abortion Statistics, England and Wales: 2006*, Department of Health, ONS, 2007, Table 4a); Population, 339.7 (from *England and Wales; estimated resident population by single year of age and sex; Mid-2006 Population Estimates*, ONS, StatBase, August 2007, Table 3);  $3,537+5,859=9,396$ ;  $9,396/339.7=27.7$

<sup>21</sup> Taking 2006 figures of maternities (29, from *Registrar General's Annual Report 2006 – Section 3 Births*, NISRA, 2007, Table 3.10) plus abortions (23, taken from *Statistical Bulletin – Abortion Statistics, England and Wales: 2006*, Department of Health, ONS, 2007, Table 12c) divided by estimated 15 year old population in thousands (12.8, from *Registrar General's Annual Report 2006 – Section 2 Population*, NISRA, 2007, Table 2.1);  $29+23=52$ ;  $52/12.8=4.1$

<sup>22</sup> Maternities, 113 (from *Registrar General's Annual Report 2006 – Section 3 Births*, NISRA, 2007, Table 3.10); Abortions, approximately 39 (half 16-17 figure of 78 from *Statistical Bulletin – Abortion Statistics, England and Wales: 2006*, Department of Health, ONS, 2007, Table 12c); Population, 12.8 (from *Registrar General's Annual Report 2006 – Section 2 Population*, NISRA, 2007, Table 2.1);  $113+39=152$ ;  $152/12.8=11.9$

The rate of sexually transmitted infections (STIs) among under-16s is 2.5 times higher in England and Wales than it is in Northern Ireland (table 3).<sup>23</sup>

**Table 3**

	Sexually transmitted infections per 1,000 girls under 16
England and Wales	1.16
Northern Ireland	0.45

Again, one obvious difference between the two regions which would account for the higher rate of STIs in England and Wales is the lower age of consent.

To suggest that lowering the age of consent will help to combat high teenage pregnancy and STI rates flies in the face of clear evidence. Young people in the Province are safer for longer than their counterparts in Great Britain.

In other areas of health the Government is going in the opposite direction. In England and Wales the legal age for buying cigarettes has been raised to 18. Whilst smoking cigarettes is unhealthy and prolonged use results in many serious and often fatal illnesses, no one would ever argue that such consequences could follow from a single act of smoking. However, a single act of sexual intercourse can result in a young person becoming pregnant or contracting a serious, even fatal, disease.

*Sexual health: Anal intercourse*

The age of consent law covers a range of sexual activity, including anal intercourse as well as vaginal sex.

Anal sex carries particularly high health risks which 16 year olds would be exposed to if the age of consent was to be lowered. There are inherent health risks in anal intercourse because the rectal wall is not as tough as the vaginal lining, resulting in a greater danger that penetration will cause a tear, in turn leading to infection. These dangers are true for both men and women, and both heterosexuals as well as homosexuals can engage in anal intercourse. That said, the evidence suggests that the overwhelming majority of homosexual men will engage in anal sex whereas the overwhelming majority of heterosexual men will not.<sup>24</sup>

Professor Gordon Stewart (Emeritus Professor of Public Health at Glasgow University) has studied the comparative risk of HIV according to the type of sexual

<sup>23</sup> Totalled figures of Chlamydia, Gonorrhoea, Syphilis, Herpes and Warts in under-16s seen at GUM clinics in 2006 (from *Diagnoses and Rates of Selected STIs as seen at GUM Clinics: 2002-2006*, Health Protection Agency, table 2a (England=2293), table 3a (Wales=109) and table 5a (Northern Ireland=35)) divided by population figures in thousands for 13-15 year olds (NI=77.3 from *Registrar Generals Annual Report 2006 – Section 2 Population*, NISRA, 2007, Table 2.1; E&W=2071.8 from *England and Wales; estimated resident population by single year of age and sex; Mid-2006 Population Estimates*, ONS, StatBase, August 2007, Table 3).  $35/77.3=0.45$  per 1,000 in Northern Ireland;  $2402/2071.8=1.16$  per 1,000 in England and Wales.

<sup>24</sup> Johnson A M, Wadsworth J, Wellings K et al, *Sexual Attitudes and Lifestyles*, Blackwell, 1994, pages 216, 217 and 163

activity. He has calculated that for men the risk of acquiring HIV through anal intercourse is at least 2,700 times the risk from vaginal intercourse.<sup>25</sup>

Anal sex carries such a high medical risk for homosexual men that the UK Blood Transfusion Service will not accept blood from any man who has ever had sex with another man, even if it was 'safe sex' with a condom.<sup>26</sup> Even in Canada, a country with very liberal legislation regarding sexual activity, medical regulations restrict the use of organs from active homosexuals for transplants because of the risk of transmitting HIV or hepatitis.<sup>27</sup>

*The effect of the previous reduction in the age of homosexual consent*

It was very strongly argued that the age of homosexual consent needed to be reduced from 18 to 16 in Great Britain (and to 17 in Northern Ireland) in order to encourage young people to feel less inhibited about going for sexual health advice and treatment. This argument is strikingly similar to one of the arguments now being used to suggest a reduction of the age of consent to 16. It should be noted that, in every year since the age of homosexual consent was lowered in 2001, the number of new HIV diagnoses among 16-24 year olds has been significantly higher than any year before the reduction.<sup>28</sup>

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<sup>25</sup> Stewart, G, 'Scientific Surveillance and the Control of Aids: A Call for Open Debate', *Health Care Analysis*, 2, 1994, pages 279-286

<sup>26</sup> 'Why we ask gay men not to give blood,' see <http://www.transfusionguidelines.org.uk/index.asp?Publication=DL&Section=12&pageid=391> as at 19 December 2007

<sup>27</sup> *Cells, Tissues, and Organs for Transplantation and Assisted Reproduction: General Requirements CSA Standard*, Annex E "Exclusionary Criteria for Risk Factors Associated with HIV, HBV, and HCV", Canadian Standards Association, March 2007, and *CBC News*, 18 January 2008, see <http://www.cbc.ca/health/story/2008/01/18/health-transplant.html> as at 1 February 2008

<sup>28</sup> The Collaborative Group for HIV and STI Surveillance, *Testing Times: HIV and other Sexually Transmitted Infections in the United Kingdom: 2007*, Health Protection Agency, Centre for Infections, page 97, figure 3.4.3

## Protection of the family

*Children are best protected when family life is strong*

As the Government has admitted, “marriage is the surest foundation for raising children”.<sup>29</sup> The best outcomes for children are for those who are raised by married parents. This is across a whole range of factors including health, education, likelihood to have a stable family as an adult, likelihood to experience abuse and likelihood to have a criminal record.

Currently, marriage in Northern Ireland is considerably stronger than in the rest of the UK. The most recent figures available show that the divorce rate in Northern Ireland is 57% of that in England and Wales. There are also fewer children born outside of marriage in Northern Ireland as compared to England and Wales.

**Table 4**

	Divorce rate per 1000 married couples	Percentage of maternities outside marriage
England and Wales <sup>30,31</sup>	12.2	44
Northern Ireland <sup>32,33</sup>	7	38

The proportion of families headed by a cohabiting couple in Northern Ireland is half that in the rest of the UK.<sup>34</sup>

**Table 5**

	Proportion of families headed by a cohabiting couple
England	13
Scotland and Wales	12
Northern Ireland	6

All of these figures demonstrate the much greater stability of the family unit in Northern Ireland when compared to other UK regions. Legislators must understand that lowering the age of consent will encourage Northern Ireland’s teenagers to engage in behaviour that will undermine this culture of family stability.

Sex is a powerful thing. Governments throughout the world acknowledge this fact by enacting laws which govern sexual activity. Lowering the age of consent makes it more likely that young people would engage in recreational sex. This in turn would lead to more distorted relationships, more teenage pregnancies, poorer sexual health,

<sup>29</sup> Supporting Families - A Consultation Document, Home Office, 1998, page 4, para 8

<sup>30</sup> *Divorces fall by 7 per cent in 2006*, ONS, see <http://www.statistics.gov.uk/cci/nugget.asp?id=170> as at 20 December 2007

<sup>31</sup> *Birth Statistics: Review of the Registrar General on Births and Patterns of Family Building in England and Wales, 2006*, ONS, The Stationery Office, 2007, Table 3.2, page 10 [289,266/662,915=0.44]

<sup>32</sup> Married, re-married or separated couples, figures from *Registrar General Annual Report 2006*, NISRA, Section 8, Divorces, table 8.9

<sup>33</sup> *Registrar General’s Annual Report 2006 – Section 3 Births*, NISRA, 2007, Table 3.10 [8,772/23,044=0.38]

<sup>34</sup> *Married couple families still the majority*, ONS, see <http://www.statistics.gov.uk/cci/nugget.asp?id=1161> as at 20 December 2007

less social responsibility, and the sort of family breakdown which is so tragically prevalent in Great Britain.

### **The marriage exception**

The same legislators who raised Northern Ireland's age of consent to 17 also explicitly set the age of marriage at 16, providing an exception to the age of consent for married couples.<sup>35</sup> Marriage cannot take place without the consent of the parents involved. And only a handful of marriages take place where one party is aged 16.

The draft Sexual Offences Order itself gives express exemptions for legally married couples under the age of 18 from several key provisions.<sup>36</sup> It is therefore enshrined in law (to be reinforced further if the Sexual Offences Order is enacted with the relevant articles intact), that marriage is a special institution.

### **Legal Parity**

Much play has been made of the apparent necessity for, or at least desirability of, parity between Northern Ireland's age of consent and that of the rest of the UK.

No such need exists. Northern Ireland has its own legislative assembly, with members elected by the local population to govern the jurisdiction. We should not forget that it was local representatives who enacted the current age of consent in 1950, or that the current local representatives recently supported a report that strongly recommended retaining it at 17. There are distinct differences in the legal framework between Northern Ireland and the rest of the UK. The fact that the Abortion Act 1967 does not apply to Northern Ireland is a significant example. Alcohol licensing legislation is also different between both areas.

Direct parity with the rest of the UK must have been irrelevant to the Northern Ireland Office when it initially consulted on sexual offences in 2006. Proposals to legalise teenage sex down to 13 where there were no more than 3 years between the parties had no precedent in any other part of the UK.

In his evidence to the Northern Ireland Assembly's Ad Hoc Committee on the Draft Sexual Offences Order, Minister of State Paul Goggins claimed that "It is important to have consistency in that area [age of consent laws], wherever possible, across the entire United Kingdom. In a sense, the burden of proof goes the other way — it must be proved that there is a compelling reason for having a different age of consent in Northern Ireland than elsewhere in the UK".<sup>37</sup> Yet when a law has existed entirely without controversy for 58 years, and in the absence of any obvious public desire for a change, the burden of proof certainly lies with those proposing to make the change.

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<sup>35</sup> Age of Marriage Act (Northern Ireland) 1951, Section 1 (1)

<sup>36</sup> Draft Sexual Offences (Northern Ireland) Order 2007, Articles 30 (Offences against children under 18: abuse of position of trust), 35 (Familial sex offences against children under 18) and 56 (Care workers for persons with a mental disorder)

<sup>37</sup> Northern Ireland Assembly Ad Hoc Committee on Draft Sexual Offences (NI) Order 2007, Official Report, 14 January 2008, see [http://www.niassembly.gov.uk/adhocs/2007mandate/sexual\\_offences/moe/080114.htm](http://www.niassembly.gov.uk/adhocs/2007mandate/sexual_offences/moe/080114.htm) as at 5 February 2008

Neither the NIO nor anyone else has publicly cited a single case where the discrepancy between Northern Ireland's age of consent and that of the rest of the UK has proved problematic. The Assembly Ad Hoc Committee concluded that those advocating the change were required to make the case for it and had failed to do so.<sup>38</sup>

If a case is being made regarding the need for consistency, it should not be forgotten that the only country to share a land border with Northern Ireland, the Republic of Ireland, has an age of consent of 17. A reduction in the North would give sexual predators living in the Republic an incentive to cross the border to abuse young people. Mr Goggins also told the Assembly committee that "if sexual predators — in other words, people who would exploit and abuse people — are attracted to come across the border because the age of consent is lower here, in a sense it is immaterial what the age of consent is".<sup>39</sup> But it is most certainly material what the age of consent is, because the incentive to cross the Irish border only exists if the age of consent is lower on one side. Perhaps the Minister meant that once the age of consent in the North is lower it is immaterial how much lower, because whether the age is 16 or 6 a situation advantageous to sexual predators will have been created. Again, we would question the wisdom of deliberately creating such a situation.

### **Discrimination**

It is alleged by some that an age of consent of 17 is discriminatory against young people in the Province. But the law frequently recognises the need to protect young people from dangerous activities, and such restrictions are never commonly considered discriminatory. Laws addressing the sale of alcohol, owning firearms, gambling and driving motor vehicles may be considered restrictive to young people, but no one suggests reducing the degree of protection they ensure because they are "discriminatory". If genuine age discrimination exists, the evidence discussed shows that it is young people in mainland Britain who suffer discrimination because an age of consent at 16 rather than 17 exposes them to the risks of sexual activity at an earlier age.

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<sup>38</sup> Northern Ireland Assembly Ad Hoc Committee on Draft Sexual Offences (NI) Order 2007, First Report, 21 January 2008, para. 49 see [http://www.niassembly.gov.uk/adhocs/2007mandate/sexual\\_offences/reports/report15\\_07\\_08R.htm](http://www.niassembly.gov.uk/adhocs/2007mandate/sexual_offences/reports/report15_07_08R.htm) as at 5 February 2008

<sup>39</sup> Northern Ireland Assembly Official Report, see [http://www.niassembly.gov.uk/adhocs/2007mandate/sexual\\_offences/moe/080114.htm](http://www.niassembly.gov.uk/adhocs/2007mandate/sexual_offences/moe/080114.htm) as at 5 February 2008

## Conclusion

The age of consent provides an important protection for vulnerable young people. The onus is therefore on the Government to provide a compelling case for lowering the age from 17 to 16. It has manifestly failed to do so. A law purporting to “put children and young people at the centre of the proposals”<sup>40</sup> should not involve any lowering of the current age of consent. Doing so would threaten the clear advantages in teenage sexual health and the strength of family life that the Province has over the rest of the UK. Furthermore, the Northern Ireland Assembly’s own report clearly recommends retaining the existing age of consent, with support from both sides of the community divide.

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<sup>40</sup> *Explanatory Document: Proposed Draft Sexual Offences (Northern Ireland) Order 2007*, Northern Ireland Office, November 2007, page 8