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'Age of Consent' for Male Homosexual Acts

This Paper updates Research Paper 94/12 by Helena Jeffs. It has been prepared in response to Ann Keen's proposed amendments to the *Crime and Disorder Bill [HL]* [Bill 167 of 1997-98] which aim to lower the age of consent for male homosexual acts from 18 to 16. It sets out the amendments to the *Criminal Justice and Public Order Act 1994* which lowered the age of consent from 21 to 18, and looks at the events leading up to the changes currently proposed. It also gives an overview of some of the many issues which may arise in considering whether the age at which male homosexual acts are illegal should be changed.

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Introductory note

This paper will use the terms 'homosexual' and 'gay' interchangeably. Strong views are often held on the terms used by those on both sides of the argument. It is not proposed to use the term preferred by radical gay activists of 'queer', nor is it intended to use the term MWHSWM (men who have sex with men) used by health workers to focus on sexual behaviour rather than sexual orientation.

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I History of the Law

A. Before 1967

Until the mid-sixteenth century sexual acts between men were dealt with by church courts rather than criminal courts. Following the Reformation and the abolition of church courts, Parliament passed a statute in 1533 which made sodomy a felony for men. This offence was triable in the criminal courts and was punishable by death. The law was based on religious considerations.

In 1861 the death penalty for buggery was abolished in England and Ireland. In Scotland it was not abolished until 1889. Interestingly, this did not signify a softening of attitudes towards homosexuality as in 1885 the *Criminal Law Amendment Act* was passed which prohibited all male homosexual activity, whether public or private. As with many areas of sexual law reform, the provision in the *1885 Act* was originally introduced as a backbench amendment. A commentary on the background to the Act is given by Jeffrey Weeks in his book *Sex, Politics and Society - the regulation of sexuality since 1800.*[1]

> By 1885 social purity was able to tap an anxiety which found a symbolic focus in the 'twin evils' of enforced prostitution and the exploitation of minors, young girls. W. T. Stead's sensational exposé of the latter in his articles on 'The Maiden Tribute of Modern Babylon' generated a sense of outrage with which a wide spectrum of public opinion found itself in sympathy. By the summer of 1885, Anglican bishops, freethinkers and socialists found themselves able to work together in a short-lived coalition against sexual abuse of children. Stead's dramatisation of the issue of sexual exploitation not only stilled for the moment many fundamental conflicts of interest between participants in the agitation, but it also obscured the contradictions inherent in the ideology that informed this agitation against child prostitution.' 1 But under the impact of this pressure Parliament belatedly passed the long-delayed Criminal Law Amendment Act which attempted to suppress brothels, raised the age of consent for girls to sixteen, and introduced in Section 11 new penalties against male homosexual behaviour significantly both in private as well as in public. Further changes, in the 1898 Vagrancy Act and the 1912 Criminal Law Amendment Act, underlined the new legislative involvement with prostitution and homosexuality.
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> The problem we have to grapple with in trying to understand the significance of the events is the contradiction between the ostensibly humanitarian instincts of those who campaigned for legal change, and the controlling impact they had on people's lives, particularly working-class girls and homosexuals. Often seen as a major stage in the humanisation of sexual relations and in the development of a single standard of morality, which was certainly the intention of feminists such as Josephine Butler, the changes nevertheless involved an extension of social regulation of sexual behaviour

There were no further legal developments in this area until the setting up of a committee in 1954 by the Home Secretary to examine the criminal law relating to homosexual offences and prostitution. The Committee was chaired by Sir John Wolfenden and his Report of 1957 forms the basis for the modern law. The Committee had concluded that adult male

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[1] pp 87-88

homosexual relationships in private should no longer be criminal. It was, however, careful to point out that 'the limited modifications of the law which we propose should not be interpreted as a general licence to adult homosexuals to behave as they please'.[2]

The Wolfenden Report explained how the Committee arrived at its decision to recommend the age of 21 as an 'age of consent' for male homosexual behaviour:

> To suggest that the age of adulthood for the purposes we have in mind should be twenty-one leads us to the fourth set of considerations we have mentioned, namely, the consequences which would follow from the decision about any particular age. To fix the age at twenty-one (or indeed at any age above seventeen) raises particular difficulties in this connection, for it involves leaving liable to prosecution a young man of almost twenty-one for actions which in a few days' time he could perform without breaking the law. This difficulty would admittedly arise whatever age was decided upon, for it would always be the case that an action would be illegal a few days below that age and legal above it. But this difficulty would present itself in a less acute form if the age were fixed at eighteen, which is the other age most frequently suggested to us. For whereas it would be difficult to regard a young man of nearly twenty-one charged with a homosexual offence as a suitable subject for " care or protection " under the provisions of the Children and Young Persons Acts, it would not be entirely inappropriate so to regard a youth under eighteen. If the age of adulthood for the purposes of our amendment were fixed at eighteen, and if the " care or protection " provisions were extended to cover young persons up to that age, there would be a means of dealing with homosexual behaviour by those under that age without invoking the penal sanctions of the criminal law.
>
> There must obviously be an element of arbitrariness in any decision on this point; but all things considered the legal age of contractual responsibility seems to us to afford the best criterion for the definition of adulthood in this respect. While there are some grounds for fixing the age as low as sixteen, it is obvious that however " mature " a boy of that age may be as regards physical development or psycho-sexual make-up, and whatever analogies may be drawn from the law relating to offences against young girls, a boy is incapable, at the age of sixteen, of forming a mature judgment about actions of a kind which might have the effect of setting him apart from the rest of society. The young man between eighteen and twenty-one may be expected to be rather more mature in this respect. We have, however, encountered several cases in which young men have been induced by means of gifts of money or hospitality to indulge in homosexual behaviour with older men, and we have felt obliged to have regard to the large numbers of young men who leave their homes at or about the age of eighteen and, either for their employment or their education or to fulfil their national service obligations, are then for the first time launched into the world in circumstances which render them particularly vulnerable to advances of this sort. It is arguable that such men should be expected, as one of the conditions of their being considered sufficiently grown-up to leave home. to be able to look after themselves in this respect also. the more so if they are being trained for responsibility in the services or in civil life. Some of us feel, on various grounds, that the age of adulthood should be fixed at eighteen. Nevertheless, most of us would prefer to see the age fixed at twenty-one, not because we think that to fix the age at eighteen would result in any greater readiness on the part of young men between eighteen and twenty-one to lend themselves to homosexual practices than exists at present, but because to fix it at eighteen would lay them open to attentions and pressures of an undesirable kind from which the adoption of the later age would help to protect them, and from which they ought, in view of their special vulnerability, to be protected. We therefore recommend that for the purpose of

[2] para 24, Cmnd 247, September 1957

> the amendment of the law which we have proposed, the age at which a man is deemed to be an adult should be twenty-one.[3]

The recommended reform was not implemented until 1967 with the passing of the *Sexual Offences Act*. It had by that time been generally accepted that the total prohibition of homosexual behaviour was unenforceable and there was concern that the law was being brought into disrepute. The parliamentary debates on the Sexual Offences Bill show that the relaxing of the law in relation to buggery between consenting adult males (ie those over 21) in private was not due to a lessening of disapproval of such behaviour but rather to the idea that gay men were suffering from a disability and as such should not be subject to the rigour of the criminal law.

Lord Arran, a sponsor of the Bill, made the following remarks at Third Reading in the Lords:

> Because, of the Bill now to be enacted, perhaps a million human beings will be able to live in greater peace. I find this an awesome and marvellous thing. The late Oscar Wilde, on his release from Reading Gaol, wrote to a friend:
>
> > "Yes, we shall win in the end ; but the road will be long and red with monstrous martyrdoms.".
>
> My Lords, Mr. Wilde was right: the road has been long and the martyrdoms many, monstrous and bloody. Today, please God! sees the end of that road.
>
> I ask one thing and I ask it earnestly. I ask those who have, as it were, been in bondage and for whom the prison doors are now open to show their thanks by comporting themselves quietly and with dignity. This is no occasion for jubilation; certainly not for celebration. Any form of ostentatious behaviour; now or in the future any form of public flaunting, would be utterly distasteful and would, I believe, make the sponsors of the Bill regret that they have done what they have done. Homosexuals must continue to remember that while there may be nothing bad in being a homosexual, there is certainly nothing good. Lest the opponents of the Bill think that a new freedom, a new privileged class, has been created, let me remind them that no amount of legislation will prevent homosexuals from being the subject of dislike and derision, or at best of pity. We shall always, I fear, resent the odd man out. That is their burden for all time, and they must shoulder it like men - for men they are.[4]

The *1967 Act* applied only in England and Wales. Scotland came into line with that legislation by the *Criminal Justice (Scotland) Act 1980* and Northern Ireland by the *Homosexual Offences (Northern Ireland) Order 1982*.

B. 1967-94

In 1979, the Home Office Policy Advisory Committee's Working Party report *Age of Consent in relation to Sexual Offences*[5] recommended that the age of consent for homosexual offences should be 18. It pointed out that:

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[3] *ibid*, pp 26-27
[4] HL Deb vol. 285 c522-3, 21 July 1967
[5] HMSO, June 1979

> 49. The point has frequently been made to us that if the Wolfenden reform had been delayed until after 1969 18 might well have been selected as the minimum age. Indeed it is the experience of our judicial members that some persons accused of a homosexual offence with a young man aged over 18 but under 21 genuinely believed, at the time of the offence, that the minimum age was the same as the age of majority. Taking a common sense view it seems to us that, unless there are over-riding reasons to the contrary, it is in accordance with the spirit of the Wolfenden Report today that the minimum age for homosexual relations should be the age at which society for practical purposes deems a young man to be an adult and to be responsible enough to take important decisions, financial, matrimonial and electoral, affecting himself and other members of the community.
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> 50. In short, the age of majority is a most important factor to be taken into account in deciding what the minimum age for homosexual relations should be. Nevertheless, it is our task to make a recommendation on the merits, and this calls for us to consider to what extent young men need protection from consensual buggery and gross indecency, how effective criminal legislation is against such conduct in private and the attitude of society towards it.[6]

The working party considered the issue of the need to protect boys and young men. It said that 'in this connection it is of the utmost importance to decide if possible the age by which a young man's sexual orientation usually becomes fixed, because of the risk that a homosexual seduction before that age might turn him towards heterosexual behaviour and prevent him from developing as a heterosexual'.[7] The Wolfenden Committee had found, following unanimous medical evidence, that the main sexual pattern is laid down in the early years of life and was usually fixed, in the main outline, by the age of 16. The working party was, however, concerned about the minority of young men who have not achieved a settled orientation by the age of 16. Accordingly it recommended that the minimum age for homosexual relations should be 18.[8] The working party also made reference to a feeling on the part of society that anomalous distinctions between the rights of men and women in law should be avoided;[9] the part the law has to play in bringing about acceptance of homosexuals by not discriminating unnecessarily against them;[10] and the role of the law in protecting young people from psychological strain and risk of blackmail.[11]

The working party discussed the role of the criminal law in public and individual health issues. It concluded that it is arguable whether it is a function of the criminal law to protect young men from contracting diseases as a result of homosexuality.[12] The report was, however, published before general public awareness of HIV/AIDS.

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[6] para 49-50
[7] para 51
[8] para 52
[9] para 55
[10] para 56
[11] para 58
[12] para 60

A minority of the working party supported a reduction to 16 with the compromise that between the ages of 16-18 a young man should be protected by the criminal law against the advances of a man who was in a position of authority over him (eg a teacher or employer).[13]

The report of the full Advisory Committee was published in April 1981.[14] It endorsed the recommendation of the working party that the minimum age for homosexual relations between males should be reduced to 18[15] on the basis of the same considerations taken into account by the working party. The Committee reported that the majority of written submissions it received following publication of the working party's report came from homosexual organisations who favoured a reduction in the age to 16. It also said that a number of other bodies, covering a wide range of interests, contributed memoranda in support of 16, 18 or 21, most of them for 18. The Committee was interested to note that a number of bodies who were originally in favour of retaining the present age of 21 had changed their minds in the light of the working paper and expressed support for a reduction to 18.[16]

In 1984 the Criminal Law Revision Commission (CLRC) published its report on *Sexual Offences*,[17] but did not consider the age of consent question as that was within the terms of reference of the Home Office Policy Advisory Committee. The CLRC however made other recommendations for law reform consequent on any reduction of the age of consent. At present a man whose liability to conviction for buggery between males depends solely on the age of his partner cannot plead that he believed his partner to be of or over the minimum age. The CLRC's most relevant recommendation to the issue of age of consent was that a man in these circumstances should have a defence if he genuinely believed that his partner was over the minimum age.[18]

The Howard League for Penal Reform published its working party report on *Unlawful Sex i*n 1985, in which it sought to make recommendations for reform of the law on sexual offences to make the system 'more discriminating, more humane and, above all, more effective in protecting the public'.[19] Some of the difficulties in reaching a consensus on law reform in this area were explained as follows:

> We cannot ignore the fact that abhorrence of other people's sexual habits is often passionate, even if it is not always entirely rational. The condemnation of sexual violence is understandable. Most people regard sexual acts as essentially affectionate, pleasurable and mutual, and rightly condemn the use of sex to express hatred or to inflict humiliation or pain upon an unwilling victim, or to coerce another person for selfish gratification. But even sexual conduct that is loving, pleasurable, mutual and free from violence or exploitation is still condemned by some people, who disapprove of consenting adult homosexuals, or

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[13] para 63
[14] Cmnd 8216
[15] para 55
[16] para 2
[17] Fifteenth Report, Cmnd 9213
[18] para 6.14
[19] para 1.3

> relationships outside marriage. Where children are involved with adults almost everyone strongly condemns the behaviour, whatever the circumstances and regardless of whether there is evidence that such contacts in fact cause harm.
>
> We ourselves have tried to maintain an objective, analytic approach, but the strong feelings engendered by these matters represent an aspect of the problem that must be taken into account before one can make any recommendations.[20]

The different religious, ethnic and cultural groupings of which society is composed was also seen to be a barrier to consensus.

The Howard League Working Party's approach was to explore the prevailing moral climate and to recommend changes to the law to reflect 'more rational and responsible attitudes to sexual behaviour'. The freedom of the individual to regulate his or her sexual conduct in private was taken to be the overriding principle provided there is protection for the young and immature and from exploitation or undue pressure.

The Howard League Working Party concluded that there seems to be no support for the theory that boys can be easily 'converted' to homosexuality if they do not already have an inclination for it anyway:

> The possibility of homosexual seduction in childhood bringing about an adult homosexual orientation has been greatly exaggerated. Most adult males with an exclusively homosexual orientation who have had such experiences in childhood report that their homosexual interests and fantasies developed before they had any overt contact with an adult (Bell *et al*, 1981). In other words, a homosexual tendency is more likely a cause than an effect of the paedophilic incident. Moreover, heterosexual males very frequently recall having had sex contact with an older male when they were young without this having made any lasting impression upon their sexual preferences (Schofield, 1965, p. 58). Furthermore, studies of young males who have worked as homosexual prostitutes (Freund, 1974), and follow-up studies of boys known to have been at some time involved with older males (Doshay, 1943; Tindail, 1978; Toisma, 1957) show that these experiences do not suppress a basic heterosexual orientation. On the other hand, imprisoned homosexual paedophiles often claim to have been seduced as boys, but such testimony is suspect of being motivated by a need for self-exculpation.
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> In October 1969 the Dutch Parliament, acting on the advice of a committee headed by a professor of social psychiatry (Speijer, 1969), abolished the law criminalising consensual behaviour with persons of the same sex aged between sixteen and twenty-one. The committee cited, among others, surveys by Giese (1964) and Gebhard *et al* (1965), showing that up to half of adult homosexuals questioned reported having had their first contacts by the age of fifteen, usually initiated by mutual agreement, often after a period of waiting for the opportunity. They concluded that by the sixteenth year the sexual propensity is developed to such an extent that a youngster who is heterosexual cannot be diverted by "seduction" into permanent homosexuality.[21]

The Working Party did, however, acknowledge that the involvement of older homosexual men with young men could lead to some sort of other corruption of the younger person:

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[20] para 1.4
[21] para 4.17

> A more realistic concern about homosexual liaisons between youths and more privileged older men is that they may be corrupting in a non-sexual way because they often involve financial and social patronage. The effect can be to seduce a young man away from regular work, to stimulate unrealistic material ambitions and to undermine his ability or determination to pursue a disciplined career of work and training. When the liaison comes to an end he may turn to frank prostitution or to crime. Girls who have been temporarily 'kept' by wealthier older men are in a somewhat similar position, but they have the possibility of solving their problem by marriage.[22]

Although it accepted these problems the Howard League finally recommended that the rules for heterosexual and homosexual behaviour should be the same. In making this recommendation it relied mainly on the evidence put to it that exposure to homosexuality would not 'convert' inherently heterosexual young men and that the criminal law did not succeed in its attempt to enforce chastity on homosexual men under the age of 21. Its recommendation was not, however, that the age of consent for all should be 16 but rather that a whole new system be introduced. This would involve legal protection from sexual exploitation for everyone under the age of 18 by introducing offences of unlawful indecency and unlawful sexual contact with young children under the age of 14, or with young persons under 18, if the age gap between the participants was greater than two years and, in the case of young persons between 14 and 18, if some trust has been abused or some undue influence has been exerted.[23]

In its draft Criminal Code[24] the Law Commission included provisions for amendment of the law so that the 'age of consent' for homosexuals would become 18. In doing so it sought to implement the recommendation of the Criminal Law Revision Committee in its 15th Report.[25] The policy of the Law Commission was to incorporate into the Code recommendations for the reform of the law made in recent years by official bodies such as the Criminal Law Revision Committee and itself. It specifically states, however, that 'inclusion of ... recommendations made by other Committees implies neither assent nor dissent; we are merely recording in statutory form, in some instances with modifications, what others have recommended'[26]. The draft Code contains the Criminal Law Revision Committee's recommendation for a distinct offence of non-consensual buggery including the Committee's inconsistency about the age at which a man or a woman might lawfully consent to anal intercourse. By clause 97 of the draft Code the minimum age would be 16 for young women and 18 for young men. The Law Commission did not endorse this discrepancy: 'Our own preference would have been a policy which did not discriminate between the sexes in this way'.[27]

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[22] para 4.18
[23] para 10.14
[24] Law Comm 177, HC 299 of 1988-89
[25] paras 6.13 to 6.4, Recommendation 33
[26] para 3.34
[27] para 15.29

Outright Scotland, the Scottish Lesbian, Gay and Bisexual Rights Group, summarised its view of the effects of the pre-1994 law as follows:

- The current age of consent does not stop young gay men from engaging in sexual activity.
- There is no evidence that the higher age of consent reduces the number of people who are homosexually orientated.
- The current law is rarely enforced in Scotland.
- Criminalisation encourages a life of secrecy and deception for young gay people. It also makes them vulnerable to blackmail.
- The current law discourages young gay men from seeking advice about sexually transmitted diseases.
- One in five young gay men has attempted suicide at some time.[28]

Outright Scotland urged the introduction of an equal age of consent to avoid the negative consequences of the law which it perceived. The group also states that 'First and foremost, the issue is one of human rights. In a fair society we should have equal and fair age of consent laws for all young people'. Outright Scotland would like to see the UK come into line with other European Community member states who have, or are introducing, an equal age of consent.

C. The *Criminal Justice and Public Order Act 1994*

On the Second Reading of the Bill which became the *Criminal Justice and Public Order Act 1994*. Edwina Currie announced that she would be tabling amendments which would seek to harmonise the 'age of consent' for heterosexuals and homosexuals at 16. The proposed new clause would apply only in England and Wales and Scotland. This was the first time the issue had been debated since the coming into force of the *Sexual Offences Act 1967*.

During the debate, [29] Tony Blair, the then Shadow Home Secretary, said:

> [The issue] is not at what age we wish young people to have sex. It is whether the criminal law should discriminate between heterosexual and homosexual sex. It is therefore not an issue of age, but of equality. By supporting equality, no one is advocating or urging gay sex at 16 any more that those who would maintain the age of consent for heterosexual sex advocate that girls or boys of 16 should have sex. It is simply a question of whether there are grounds for discrimination. At present, the law discriminates.
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> … people are entitled to think that homosexuality is wrong, but they are not entitled to use the criminal law to force that view upon others … That is why, also, the so-called compromise of 18 is misguided. What is the rationale behind maintaining the stigma but at a different age?
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> … it is wrong to treat a man as inferior because his sexuality is different. A society that has learned, over time, racial and sexual equality can surely come to terms with equality of

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[28] *Why introduce an equal age of consent?* Outright Scotland, 1994. A survey by *Gay Times* in 1992 is cited in support of the last of these points.

[29] HC Deb vol 238 cc74-123, 21 February 1994

> sexuality. That is the moral case for change tonight. It is our chance to welcome people - I do not care whether there are 50,000, 500,000 or five million; it matters not a damn - into full membership of our society on equal terms. It is our chance to do good, and we should take it. [30]

Edwina Currie's amendment was defeated by 307 votes to 280. Included in those who voted for it were John Smith and Neil Kinnock, most of the senior Labour MPs, most Liberal Democrats, including Paddy Ashdown, and 43 Conservatives, including eleven Cabinet ministers and William Hague. Thirteen of the seventeen Ulster MPs, and 38 Labour MPs, including David Blunkett and Ann Taylor, voted against it.

However, this vote was followed immediately by one on Sir Anthony Durant's amendment which aimed to lower the age of consent to 18. This amendment was passed by 427 votes to 162, and supporters included Michael Howard and John Major, and most of the rest of the then Cabinet. Two of Ulster's 17 MPs also voted for it. However, it was opposed by four Cabinet ministers: John Redwood, Chris Patten, Michael Heseltine and John Gummer, and thirteen Labour MPs (five of them in a protest vote against the failure of the first amendment).

154 MPs opposed both amendments: of these, 134 were Conservative, 6 Labour, 7 Ulster Unionists, one Ulster Popular Unionist Party, 3 Democratic Unionist Party, 2 SDLP, and 1 SNP.

An amendment tabled by Simon Hughes which was intended to equalise the age of consent for homosexuals and heterosexuals at 17 was not called. Nor was one tabled by Geoff Hoon which sought to place the burden of proof on whether there was consent on the older person in cases where an older person of either sex seduced a younger person.

The Bill as a whole was given a second reading in the Lords by 290 votes to 247. Lord Longford then sought to reintroduce 21 as the minimum age in the Lords, but this was defeated by 176 votes to 113.[31] Another amendment (tabled by Lord MacIntosh of Haringey, then deputy Labour leader in the Lords) to equalise the age of consent at 16, was rejected by a margin of 174 votes (245 to 71).[32]

The main changes to the law on sex offences introduced by part XI of the *Criminal Justice Act and Public Order Act 1994* when it became law were as follows:

- The age of consent for acts of buggery and gross indecency is lowered to eighteen;[33]
- Heterosexual buggery, where it takes place in private between a man and a woman who are both eighteen or over, is decriminalised;[34]

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[30] HC Deb vol 238 cc97-100, 21 February 1994
[31] HL Deb, 20 June 1994
[32] HL Deb vol 556, cc10-49, 20 June 1994
[33] section 145(1) [England and Wales]; section 145(2) [Scotland]; and section 145(3) [Northern Ireland]
[34] section 143 (England and Wales only)

- Non-consensual buggery of a man or a woman is included in the offence of rape and became punishable by life imprisonment, as was already the case for vaginal rape of a woman;[35]
- Homosexual acts in the armed forces or on merchant ships is no longer a criminal offence (although a homosexual act is still a ground for administratively discharging a member of the armed forces or dismissing a crew member on a UK merchant ship).[36]

'Male rape' could already be prosecuted in Scotland, either as the common law crime of sodomy or as a statutory offence under section 13 of the *Criminal Law (Consolidation) (Scotland) Act 1995* (commission of a homosexual act other than in private or without the consent of both parties or with a person under the age of 18). According to the Northern Ireland Gay Rights Association, the Northern Ireland Office has indicated that it intends to introduce the offence of male rape in its next Criminal Justice Order in Council[37]

[35] section 143 (England and Wales only)
[36] sections146 (England and Wales, and Scotland) and 147 (Northern Ireland)
[37] Information supplied by Jeff Dudgeon, NIGRA, June 1998

II The Present Law

A. Homosexuals

There are three offences which are used as the principal means through which the criminal law regulates homosexual behaviour: buggery, assault with intent to commit buggery and gross indecency between men. The law does not criminalise the state of being homosexual itself.

1. England and Wales

The offence of buggery is contained in section 12(1) of the *Sexual Offences Act 1956* [as amended by the *Sexual Offences Act 1967* and the *Criminal Justice and Public Order Act 1994*]. Buggery is not an offence if it takes place in private and both parties have reached the age of 18. Assault with intent to commit buggery is an offence under section 16 of the *1956 Act*, and the offence of gross indecency is contained in section 13 of that Act. The courts have, so far, declined to define the concept of 'gross indecency' and it is for juries to decide whether any particular behaviour is "grossly indecent". It does, however, cover such acts as mutual masturbation, and the willing participation of two men is necessary.

Section 1 of the *1967Act* provides that a homosexual act in private shall not be an offence provided that the parties consent to it and have reached 18 years of age. Section 1(7) defines a 'homosexual act' as a man committing buggery with another man or committing an act of gross indecency with another man.

The anomaly that buggery between men and women of any age, married or not, was an offence, whereas homosexuals did not commit an offence provided the act of buggery takes place in private, both parties consent and that both are of age, was removed by section 143 of the *Criminal Justice and Public Order Act 1994*. However, there is still a difference in treatment, in that an act of buggery between two men shall not be treated as having been in private if two or more people are present or if it takes place in a public lavatory [section 12 (1B) of the *1956 Act*]. No such provision exists for buggery in private between a man and a woman.

Offences of buggery and attempted buggery are tried on indictment (ie. in the Crown Court) and the maximum punishment depends on the facts:

Facts	**Maximum Punishment**
With boy or girl under 16, or animal	Life
With man under 18 where defendant is 21 or over	5 years
Otherwise	2 years

[Schedule 2, *Sexual Offences Act 1956*]

The maximum punishment for the offence of gross indecency depends on the court in which the defendant is tried. In a Crown Court the maximum punishment is five years' imprisonment where the offender was aged 21 or over and he committed the act with a man under 18. Otherwise it is two years' imprisonment. In a magistrates' court the maximum punishment is six months' imprisonment or a maximum fine of £5,000. Sentencing policy for this offence is not to imprison first offenders.[38]

Under section 8 of the *Sexual Offences Act 1967*, no proceedings can be instituted except by or with the consent of the Director of Public Prosecutions against any man for the offence of buggery, or gross indecency with, another man or for aiding, abetting, counselling, procuring or commanding its commission where either of the men were under the age of 21 at the time of the commission of the offence.

2. Scotland

The law in Scotland was brought into line with the English law by section 80 of the *Criminal Justice (Scotland) Act 1980*. The relevant clause was introduced as a backbench amendment by Robin Cook.[39] This provision (as amended by section 145(2) of the *Criminal Justice and Public Order Act 1994*) is now contained in section 13 of the *Criminal Law (Consolidation) (Scotland) Act 1995*.

The Scottish legislation goes further than the *1967Act* by providing for a defence of mistake as to age. In order that the defence may apply, the defendant must himself be below the age of 24, have had no previous charges for similar offences and have reasonably believed the person was 18 or over.

3. Northern Ireland

The law in Northern Ireland was brought into line with the rest of the UK by the *Homosexual Offences (Northern Ireland) Order 1982* following the judgment of the European Court of Human Rights against the UK in the case of *Dudgeon* (1981). In that case the UK was found to have breached Article 8 of the European Convention on Human Rights which provides that everyone has the right to respect for his private life and that there shall be no interference by a public authority with the exercise of this right except such as is necessary for, *inter alia*, the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. Mr Dudgeon had claimed that by refusing to legalise homosexual behaviour in Northern Ireland the Government was in breach of Article 8.

The facts giving rise to the *Dudgeon* case took place in 1976 and it was at that time that the then Northern Ireland Secretary, Merlyn Rees, announced that he would be reconsidering the

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[38] See, for example, *R v Morgan and Dockerty* [1979] Crim LR 60

[39] HC Deb vol 989 c283, 22 July 1980

laws on homosexuality by referring them to the Northern Ireland Standing Commission on Human Rights. Opinion in Northern Ireland was substantially divided with great opposition in particular from religious organisations including the Roman Catholic bishops and the DUP led by Ian Paisley organised a petition to "Save Ulster from Sodomy" which collected nearly 70,000 signatures. In 1979 the Secretary of State for Northern Ireland announced that the Government did not intend to pursue the proposed reform. Following the *Dudgeon* case, however, the relevant legislation was passed.

4. Offences Abroad

Part II of the *Sex Offenders Act 1997* makes it a criminal offence to incite men to have sex with children abroad. For all the listed offences, even homosexual ones, the Act does not apply where the child was 16 or over at the time. According to Stonewall, the Home Office said it chose 16 'because it seems the most sensible age of all'.[40]

B. Prosecution Policy

It is interesting to note the remarks made by the European Court of Human Rights in relation to prosecution policy in the case of *Modinos v Cyprus* (7/1992/352/426). The judgment was delivered on 22 April 1993. In that case an action was brought against the Cypriot government for breach of Article 8 of the European Convention on Human Rights (the right to private life) in that Cypriot law prohibited male homosexual conduct in private between adults. The Cypriot Attorney-General defended the action on the basis that no prosecutions had been allowed or instituted since the ECHR ruling of 1981 in the *Dudgeon* case. Mr Modinos argued that the policy of the Attorney General not to prosecute could change at any time and a member of the public could bring a private prosecution at any time. This meant that there was no guarantee that he would not be prosecuted. The ECHR found in Mr Modinos' favour by eight votes to one.

Prosecution policy in the UK is not a statement of or an adjustment of the legal position. It is merely a statement of policy that will normally be followed, and does not bind the Crown.

1. England and Wales

The Crown Prosecution Service is responsible for the conduct of most prosecutions in England and Wales. Criminal proceedings brought by any other public body, private organisation or individual are effectively private prosecutions. In England and Wales, and in Scotland, the police take the first steps in the criminal process in that they decide whether or not to charge a person in connection in a particular case.

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[40] 'Age of consent only 16 abroad', *Stonewall newsletter* vol. 4, no. 4, October 1996

In England and Wales, then, crown prosecutors decide whether to prosecute in a case referred to them by the police. There are two stage in the decision to prosecute: the evidential test (whether there is enough evidence) and the public interest test (whether the public interest requires a prosecution). Guidance on these sets of criteria is set out in the *Code for Crown Prosecutors.*[41] The section on the public interest test (pp 7-12) is set out below:

> THE PUBLIC INTEREST TEST
>
> In 1951, Lord Shawcross, who was Attorney General, made the classic statement on public interest, which has been supported by Attorneys General ever since: "It has never been the rule in this country - I hope it never will be - that suspected criminal offences must automatically be the subject of prosecution". (House of Commons Debates, volume 483, column 681, 29 January 1951.)
>
> The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. In cases of any seriousness, a prosecution will usually take place unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour. Although there may be public interest factors against prosecution in a particular case, often the prosecution should go ahead and those factors should be put to the court for consideration when sentence is being passed.
>
> Crown Prosecutors must balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the offender. Some factors may increase the need to prosecute but others may suggest that another course of action would be better.
>
> The following lists of some common public interest factors, both for and against prosecution, are not exhaustive. The factors that apply will depend on the facts in each case.
>
> **Some common public interest factors in favour of prosecution:**
>
> The more serious the offence, the more likely it is that a prosecution will be needed in the public interest. A prosecution is likely to be needed if:
>
> a a conviction is likely to result in a significant sentence;
> b a weapon was used or violence was threatened during the commission of the offence;
> c the offence was committed against a person serving the public (for example, a police or prison officer, or a nurse);
> d the defendant was in a position of authority or trust;
> e the evidence shows that the defendant was a ringleader or an organiser of the offence;
> f there is evidence that the offence was premeditated;
> g there is evidence that the offence was carried out by a group;
> h the victim of the offence was vulnerable, has been put in considerable fear, or suffered personal attack, damage or disturbance;
> i the offence was motivated by any form of discrimination against the victim's ethnic or national origin, sex, religious beliefs, political views or sexual preference;
> j there is a marked difference between the actual or mental ages of the defendant and the victim, or if there is any element of corruption;
> k the defendant's previous convictions or cautions are relevant to the present offence;

[41] Crown Prosecution Service, June 1994

l the defendant is alleged to have committed the offence whilst under an order of the court;

m there are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct; or

n the offence, although not serious in itself, is widespread in the area where it was committed.

Some common public interest factors against prosecution:

A prosecution is less likely to be needed if:

a the court is likely to impose a very small or nominal penalty;

b the offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence);

c the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgment;

d there has been a long delay between the offence taking place and the date of the trial, unless:

- the offence is serious;
- the delay has been caused in part by the defendant;
- the offence has only recently come to light; or
- the complexity of the offence has meant that there has been a long investigation;

e a prosecution is likely to have a very bad effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence;

f the defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated. The Crown Prosecution Service, where necessary, applies Home Office guidelines about how to deal with mentally disordered offenders. Crown Prosecutors must balance the desirability of diverting a defendant who is suffering from significant mental or physical ill health with the need to safeguard the general public;

g the defendant has put right the loss or harm that was caused (but defendants must not avoid prosecution simply because they can pay compensation); or

h details may be made public that could harm sources of information, international relations or national security.

Deciding on the public interest is not simply a matter of adding up the number of factors on each side. Crown Prosecutors must decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

The relationship between the victim and the public interest

The Crown Prosecution Service acts in the public interest, not just in the interests of any one individual. But Crown Prosecutors must always think very carefully about the interests of the victim, which are an important factor, when deciding where the public interest lies.

Youth offenders

Crown Prosecutors must consider the interests of a youth when deciding whether it is in the public interest to prosecute. The stigma of a conviction can cause very serious harm to the prospects of a youth offender or a young adult. Young offenders can sometimes be dealt with without going to court. But Crown Prosecutors should not avoid prosecuting simply because of the defendant's age. The seriousness of the offence or the offender's past behaviour may make prosecution necessary.

> **Police cautions**
>
> The police make the decision to caution an offender in accordance with Home Office guidelines. If the defendant admits the offence, cautioning is the most common alternative to a court appearance. Crown Prosecutors, where necessary, apply the same guidelines and should look at the alternatives to prosecution when they consider the public interest. Crown Prosecutors should tell the police if they think that a caution would be more suitable than a prosecution.

The previous edition of the Code had included a specific section on sex offences, but this was omitted from the current version. The Explanatory Memorandum issued at the same time as the new Code explained that this does not mean that the Crown Prosecution Service no longer regards them as among the most serious offences that can be committed, simply that the pertinent issues were covered in the general list of relevant factors.[42]

Michael Howard said in a BBC Radio interview in February 1994 that the new age of consent would be implemented in England and Wales: 'the law must be enforced in this matter, as it is in all other matters'. Individual police officers would have discretion, based on guidance he would be issuing soon afterwards, which would include using cautions for first-time offenders. But there was speculation that the CPS would be unwilling to prosecute in consenting relationships.[43]

2. Scotland

On 28 November 1991 Crown Office Circular 2025 was issued to Procurators Fiscal by the Lord Advocate. The circular stated that the Lord Advocate considered that the public interest was not served by routinely prosecuting all persons who participated in those consensual homosexual acts which remain unlawful. The terms of the circular received extensive publicity and on 20 December 1991 a new Crown Office Circular No 2025/1 was issued to Procurators Fiscal. The Lord Advocate had taken the view that there was a public misapprehension that the earlier circular amounted to a unilateral change in the law. The new circular made reference to a continuing review of prosecution policy in this area and set out new directions. These directions included the following:

> 1. Where both of the participants are over 18 years but one or both are under 21 years and the act has taken place in private and where there are circumstances pointing to exploitation, corruption, or breach of trust, prosecution would be appropriate. Where the Procurator Fiscal receives a report involving individuals in this age group and none of these circumstances is present, but the Procurator Fiscal considers there are other circumstances which would justify proceedings, a report should be made to Crown Office for consideration by Crown Counsel.

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[42] Crown Prosecution Service, June 1996, p. 16, para. 5.2

[43] 'Scots law officers urged to prosecute under-age gays', *The Scotsman,* 23 February 1994

> 2. Where both of the participants are over 16 years but one or both are under 18 years and the act appears to have been consensual and in private, the Procurator Fiscal should report the case to Crown Office for consideration by Crown Counsel.
>
> 4. Where it appears that one of the parties has engaged in homosexual acts *before* the occasion under consideration and has acted as a prostitute, there is little justification in pursuing the client of such an individual, while ignoring his activity as a prostitute....."

Following the 1994 vote, the Lord Advocate, Lord Roger, was put under pressure by Bill Walker to revoke the Crown Office circular to procurators-fiscal (no 2025/1, 20 December 1991).[44] He said he would review it once the new age of consent became law.[45] The Crown Office have confirmed that advice has now been issued stating that it is not considered in the public interest *routinely* to prosecute people who have consensual homosexual intercourse with those aged over sixteen.[46] The Lord Advocate has directed procurators fiscal to report to the Crown Office for Crown counsel's consideration cases of consensual homosexual acts in private where both of the participants are over 16 year but one or both are under 18 years.[47]

C. Heterosexuals

1. England and Wales

It is an offence to have sexual intercourse with a girl under the age of 16 in England and Wales[48]. It is important to note that an offence is committed even if the intercourse is consensual. The law does not provide specifically for the protection of boys under 16 (or 17 in Northern Ireland) who are subject to sexual advances from older women but such behaviour could be caught by a number of more general sexual offences such as indecent assault.

Section 6 of the *Sexual Offences Act 1956* sets out the offence of unlawful sexual intercourse with a girl under the age of 16. This offence is punishable by a maximum of two years' imprisonment if convicted by a Crown Court or six months' imprisonment and/or a fine not exceeding £5,000 if convicted by a magistrates' court. Section 5 of the *1956 Act* makes unlawful sexual intercourse with a girl under 13 an offence. This offence carries a maximum punishment of life imprisonment.

The history of the age of consent for girls shows that 16 is a relatively high age compared to previous centuries. For over 700 years the criminal law has by statute prohibited men from having unlawful sexual intercourse with girls below a certain age. Originally, in 1275, the age

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[44] HC Deb, 22 February 1994
[45] HC Deb, 8 and 25 February 1994
[46] Information provided by the Policy Group of the Crown Office, 18 September 1997
[47] HC Deb c419, 21 July 1997
[48] section 6, *Sexual Offences Act 1956*

was 12 and it was not changed until 1875 when the *Offences Against the Person Act*[49] raised it to 13. In 1885 the *Criminal Law Amendment Act*[50] raised the age again - this time to the present age of 16. The 1885 legislation was enacted after a campaign aimed at eliminating child prostitution and the sexual exploitation of young girls. It was also the legislation which introduced the offence of gross indecency between men.

The age of consent is something of a misnomer as section 6 of the *1956 Act* does not mention consent. It is possible that a girl under 16 could give her consent to sexual intercourse but in law the man will still be guilty of an offence. If the girl had not consented then the charge would almost certainly be rape. In the *Report on the Age of Consent in Relation to Sexual Offences*[51] the Policy Advisory Committee on Sexual Offences (PACSO) discussed whether the legal fiction of the age of consent should be replaced with a term more accurately representing the law. This had been advocated to PACSO by the Sexual Law Reform Society but was rejected on the grounds that the expression is 'convenient for describing the age below which the consent of a girl is no answer to a charge of having sexual intercourse with her'.[52] The report rejected the expression in relation to homosexuals preferring the term 'minimum age'. It noted that the Campaign for Homosexual Equality was critical of the use of this term on the grounds that it stigmatised homosexual relations and that it failed to make any new concept apparent. PACSO took the view, however, that it would be 'artificial to call ages as high as 18 and 21 .... "ages of consent"'.[53]

2. Scotland

The law is substantially the same as for England and Wales. Sexual intercourse with a girl under the age of 12 may be charged as rape (which is a common law offence). Under section 5(1) of the *Criminal Law (Consolidation)(Scotland) Act 1995* sexual intercourse with a girl who is not yet 13 is an offence punishable on conviction by indictment by life imprisonment. Sexual intercourse with a girl aged between 13 and 15 is an offence under section 5(3) of the *1995 Act.* Sexual acts falling short of intercourse are also criminal if committed with a girl under the age of 16 (*1995 Act*, section 6).

3. Northern Ireland

The age of consent in Northern Ireland is 17.[54] A person can marry at the age of 16, and so section 1 of the *Age of Marriage Act (NI) 1951* provides a defence for a husband who has sexual intercourse with his 16 year old wife.

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[49] 38 and 39 Vict c94
[50] 48 and 49 Vict c69
[51] Cmnd 8216, April 1981
[52] para 6
[53] para 27
[54] Section 5, *Criminal Law Amendment Act 1885* (as amended by the *Children and Young Persons (Northern Ireland) Act 1950*)

D. Lesbians

There are not, and never have been, specific offences relating to lesbianism in the United Kingdom. On 4 August 1921, however, Mr Macquisten moved an amendment to the *Criminal Law Amendment Bill* which sought to criminalise lesbian behaviour. He gave the following reasons for the amendment:

> It is one which, I think, is long overdue in the criminal code of this country, I have had professional experience of very calamitous and sad cases due to gross practices indulged in of the kind specified in the Criminal Law Amendment Act, and which are referred to in my Amendment. These moral weaknesses date back to the very origin of history, and when they grow and become prevalent in any nation or in any country, it is the beginning of the nation's downfall. The falling away of feminine morality was to a large extent the cause of the destruction of the early Grecian civilisation, and still more the cause of the downfall of the Roman Empire. One cannot in a public assembly go into the details; it is more a matter for medical science and for neurologists; but all lawyers who have had criminal and divorce practice know that there is in modern social life an 'undercurrent if dreadful degradation, unchecked and uninterfered with. I believe that if the sanction - that is to say, the punishment - of the law were imposed upon it, it would go a long way to check it, and believe that it would be possible to do great deal in that way to eradicate it. Neurologists will tell you how largely the spread of the use of cocaine and other drugs is due to the dreadful nerve deterioration which besets many of the idle part of our population. In the course of my experience I have seen happy homes wrecked in this way. Only tonight I was speaking with a man whom I have known for a comparatively short time, and who told me how his home had been ruined by the wiles of one abandoned female, who had pursued his wife, and later some other misconduct happened with a male person which enabled him to get a divorce. But for that he would have been shackled for life to that abandoned person, who had forgotten all the dictates of Nature and morality. I do not wish to speak on the matter at any length. I know that to many Members of this House the mere idea of the suggestion of such a thing is entirely novel; they have never heard of it. But those who have had to engage either in medical or in legal practice know that every now and again one comes across these horrors, and I believe that the time has come when seeing that we are going to make an alteration in the law to deal with a question of morality with which it is necessary to deal, this matter, on account of its civil and sociological effects, this horrid grossness of homosexual morality should also be grappled with. This is the far more deep-seated evil, and it is only right that this House which has the care of the law and to large extent the morals of the people, should consider it to be its duty to do its best to stamp out an evil which is capable of sapping the highest and the best civilisation.[55]

The amendment was later defeated in the Lords on the grounds first given in the Commons by Lt Col Moore-Brabazon that it would draw attention to lesbians and 'do harm by introducing into the minds of perfectly innocent people the most revolting thoughts'.[56]

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[55] HC Deb vol. 145 c1799-1800, 4 August 1921
[56] *ibid* c1806

General offences such as indecent assault could be used to convict lesbian women for sexual activities. By section 14 of the *Sexual Offences Act 1956* it is an offence for a person (male or female) to make an indecent assault on a woman. Section 14(2) states that a girl under the age of 16 cannot in law give any consent which would prevent an act being an assault for these purposes. This gives an effective age of consent of 16 (the relevant age in Northern Ireland is 17). In 1984 the Criminal Law Revision Committee recommended that the age of consent for lesbian sexual acts should remain at 16.[57]

E. The Armed Forces

The decriminalisation of homosexual acts undertaken in private between two consenting males over the age of 21, which was brought about by the *Sexual Offences Act 1967*, did not extend to members of the armed forces. However, section 146 of the *Criminal Justice and Public Order Act 1994* repealed those sections of the *1967 Act* which related to members of the armed services and the merchant navy. Therefore homosexual acts committed by such people will not in themselves be offences which are not offences under civilian criminal law. Nevertheless, such acts may constitute a ground for dismissal, and in some circumstances may be constitute an offence under the Service Discipline Acts.[58] In addition it is Ministry of Defence policy not to accept homosexual activity within the armed forces and Service personnel who are found to be involved in homosexual activity are administratively discharged.

The government has stated that it is starting from a position of supporting the policy of excluding homosexuals from the services, but that it will 'seek to establish the way forward in consultation with the Chiefs of Staff'.[59] In 1995, the Labour Party stated that in power it would establish a commission to examine the question of homosexuality in the armed forces. During the debate on the Currie amendment to the *Armed Forces Bill* in 1996, Labour Members were given a free vote. The Leader of the Opposition himself did not vote.

In office, Labour defence ministers have supported a continuing ban on homosexual servicemen. The Ministry of Defence continues to fight both the homosexual ex-Service cases in the two European courts (*The Daily Telegraph* 15/7/97 and *The Guardian* 14/1/98 and see below). The Government launched a Strategic Defence Review in May 1997, which is now expected to be concluded by mid-year. The Government's position on this subject was set out during the last defence debate by Secretary of State, George Robertson:

> We have made it clear that the issue of homosexuality in the armed forces will be the subject of a free vote during this Parliament. The Government will advance proposals on that subject,

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[57] Criminal Law Revision Committee Fifteenth Report: *Sexual Offences*, Cmnd 9213, April 1984, para 11.4
[58] the Army Act 1955, the Air Force Act 1955 or the Navy Discipline Act 1957.
[59] Dr John Reid, Minister of State at the Ministry of Defence, HC Deb 297 c359 W, 7 July 1997

> having taken into account, among other things, the view of the armed forces and the European courts on the matter.[60]

Legal action against the ban by those discharged from the armed forces for their homosexuality continues in the two European Courts. Although Lustig-Prean *et al* failed in their bid to persuade the Court of Appeal to rule in their favour, their case is now being considered by the European Commission of Human Rights with a view to a possible referral to the European Court of Human Rights. A judgment might take around two to three years. The British Government has sent in legal submissions which oppose any lifting of the ban. However, the case is now stayed for two reasons. Firstly, the Government has apparently claimed that some of Lustig-Prean's co-defendants have yet to exhaust all their legal remedies in the UK relating to sex discrimination law. (All national legal remedies need to be exhausted before the ECHR is entitled to hear a case.) Secondly, the ECHR is awaiting progress in the European Court of Justice on the case of Terry Perkins, a former RN sailor also dismissed on grounds of his sexual orientation before taking any further action itself. This case has been taken forward on the basis of the Equal Treatment Directive, but following the ECJ's ruling in February 1998 in the case of *Grant v South West Trains Ltd.* that Directive did not cover sexual orientation, it is debatable whether it will succeed. It has been speculated that the *Grant* case may have led Perkins' lawyers to consider whether they should pursue his application further.[61]

It is in the above context that the Government may seek to pre-empt any Court decision by lifting the ban. According to *The Observer*,[62] there have been discussions in the Government on how exactly this might be done. A Defence White Paper, the first under the new Labour Government, is due soon, and could contain further information on how the Government seeks to proceed with this matter. *The Observer* article suggests that both the Secretary of State and Dr Reid and the Army and Air Force Chiefs have recently altered their stance on the ban, although resistance to its removal continues in the Navy. Major John Gilles, a high-ranking Scottish army officer, is also reported as having called for the ban to be lifted.[63]

Australia, New Zealand and Canada no longer regard homosexuality as a bar to military service. In the US President Clinton has faced considerable opposition from Congress and from within the armed forces to his election promise to lift the ban on homosexuality in the US armed forces.

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[60] HC Deb c616, 27 October 1997
[61] *The Guardian*, 18 February 1998
[62] 23 November 1997
[63] 'End gay ban, says Scots army chief', *Gay Times,* April 1998

III Attitudes to homosexuality

There are no reliable estimates of the numbers of male homosexuals in the UK. The suggested figures range between one and 10%. There are problems in making estimates of this nature because of individuals' reluctance to categorise themselves as homosexual. Health educators have found that there are men who have sex with men who describe themselves as heterosexual.

It is not known what might lie behind homosexuality. The causes and origins are complicated and obscure, and are the subject of lively debate in scientific circles. Some argue that it is nature and some that it is nurture. Some regard homosexuality as an illness and others that it is a rational choice made by an individual. Recently there have been reports of scientists finding a genetic cause which would make homosexuality 'inherited',[64] or that there exist differences in the brains of heterosexuals and homosexuals.[65] In July 1995 a second group confirmed the 1993 findings that male homosexuality may be partly genetic in origin. The new research, by Dr Stacey Cherny of the Institute of Behavioural Genetics in Boulder, Colorado, found that a 'significant proportion' of the 33 pairs of homosexual brothers who were studied carried the same gene on the X chromosome that was identified by Dr Hamer. Some had heterosexual brothers who did not share the same gene, and no sign of it was found among 36 pairs of lesbian sisters.[66] Later research, by a group including Dr Hamer, found the gene, known as Xq28, in two-thirds of the 32 pairs of gay brothers studied.

It is difficult to know how to respond legislatively when there is so much disagreement on the nature of homosexuality. One way of approaching the problem might be to see if the UK is out of line with other European countries at present. This subject will be discussed *post* in part VIII. Various social and psychological consequences are said to result from the present law. For example, many feel that the present law causes great distress to young men under the age of consent who are either struggling to come to terms with their sexuality or to "come out" (ie letting others know of their homosexuality). At present, they may be committing an offence under the *1967 Act* whether or not their sexual partner is over 18 and whether or not it is consensual behaviour. It is also argued that the law reinforces the idea that all gay men participate in anal intercourse and leads to certain misconceptions about what homosexuality involves.

The present law was designed to protect those thought to be young and vulnerable. The fixed age of 21 was, at the time, the age of majority and even though the age of consent for girls engaging in heterosexual acts was 16 there was thought to be a certain logic in fixing the age for men at 21. Although the age of majority was lowered to 18 by section 1 of the *Family Law Reform Act 1969* the *1967 Act* was not altered accordingly until 1994.

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[64] 'Gays may have genetic link', *The Times*, 16 July 1993
[65] 'Is homosexuality in the brain?', *The Times*, 8 July 1993
[66] 'Gay gene', *The Times*, 3 July 1995

Homosexual men and heterosexuals are not, therefore, treated equally in law. The different treatment of male homosexuality is often justified on the basis that seduction of young men by older homosexuals may be exploitative. For example the Home Office Policy Advisory Committee on Sexual Offences made the following comments in its 1979 *Working Paper on the Age of Consent in relation to Sexual Offences:*

> Many young people aged 16 are still at school or have just started work; some of the latter are lodging in all-male hostels in their town of work. They are all to some extent at risk of seduction by homosexuals, especially those in authority over them. Some boys may be confused about their sexuality and a boy who is so confused is particularly open to exploitation. The majority of us do not think that it is a sufficient answer to say that a 16 year old boy is strong enough to repulse any unwanted homosexual advances: the fact that the boy consents to homosexual advances does not mean that he is unlikely to be harmed.[67]

However, it is also argued that the present law excludes gay teenagers from informative sex education (including matters of sexual and emotional health). Local authorities, schools and Area Health Authorities can be reluctant to provide such information, either because they do not want to be involved in an area where the subject under discussion is illegal or because they do not want to fall foul of section 28 of the *Local Government Act 1988* which prohibits local authorities from promoting homosexuality.

A. Public opinion

It is interesting to compare the results of the following surveys.[68] The *British Social Attitudes* survey, carried out since 1983, used to ask respondents about their attitude towards homosexuality. The percentage agreeing with the statement that **'sexual relations between two adults of the same sex are always wrong'** peaked in 1987 but fell thereafter. This peak may have been connected to the start of the HIV epidemic:[69]

1983	50%
1984	54%
1985	59%
1987	64%
1989	56%
1990	58%
1993	50%

Since 1993 the question has not been asked by the survey. In late 1995 however, MORI put a similarly phrased question to a sample of young and middle aged adults. They were asked which of various sexual activities they found distasteful or morally wrong, and were also asked which of these activities they had done:

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[67] para 54, HMSO, June 1979
[68] provided by Patsy Hughes, Social and General Statistics section.
[69] *British Social Attitudes,* various years

	Wrong			Done		
	All	16-34	35-54	All	16-34	35-54
Having sex with someone of the same sex	40%	39%	42%	7%	8%	6%

Source: British Public Opinion January-February 1996, MORI

40% of respondents said they thought homosexual sex was wrong. Because of the age of this sample one would expect it to show less disapproval of homosexuality than a survey across all ages, but even so, this seems to confirm the downward trend recorded above in the *British Social Attitudes* polls.

More recently, in 1997 NOP carried out a survey of attitudes to homosexuality. The main results are shown in the table below (small percentages of 'don't knows' are not included). Geographically, there was no significant difference between people questioned in the North, South and Midlands, but social class did have some effect on the results, with non-manual workers generally being more positive towards homosexuality than manual workers. The survey did not give any clear indication of different attitudes between men and women:

Percentages

		Sex		Age				Social Class	
	All	Male	Female	16-24	25-34	35-54	55+	Non-manual	Manual
Are you in favour of lowering the age of consent for homosexuals from the current 18 years to 16?									
In favour	28	27	29	41	45	28	13	36	22
Against	72	73	71	59	55	72	87	64	78
Would you say that, regarding society's attitude to homosexuality,									
Society is more tolerant than it was 5 years ago	71	73	70	71	66	72	73	76	67
Society's atttitude is about the same as it was 5 years ago	19	17	20	20	23	21	14	17	20
Society is less tolerant than it was 5 years ago	6	6	6	5	6	6	8	7	5
Regarding your own attitude to homosexuality, are you									
More tolerant than you were 5 years ago	23	20	26	35	26	20	19	22	24
Of similar attitude	65	67	63	57	69	70	62	68	63
Less tolerant than you were 5 years ago	10	11	8	5	5	8	16	8	11

Survey carried out in July 1997

Source: NOP

Overall, just under a third of people were in favour of lowering the age of consent for homosexual sex from 18 to 16, and over 70% of people thought society more tolerant of homosexuality today than it was five years ago. The percentage in favour of lowering the age of consent (28%) is higher than that found in polls in earlier years,[70] but a large majority of people remains against such an option, when the question is phrased in this way. In 1992 when one survey asked whether the age of consent should be the same for everyone, irrespective of their gender or sexual orientation, 74% said it should.[71]

B. Opposition to Reform

Much has been written on why the age of consent for homosexuals should be changed but far less on why it should not. Religious attitudes to homosexuality are discussed *post* [part VI]. The main opposition to law reform comes from groups or organisations concerned with preserving or returning to the traditional notion of the family. These groups make few comments specifically relating to the age of consent have been made but arguments against homosexuality are common. For example, the Conservative Family Campaign (CFC) published a pamphlet in 1991 setting out a programme for legislative reform and support for the traditional family in Britain today.[72] Although the pamphlet does not discuss homosexuality in any detail it does state that it regards it as a 'serious issue'.[73] The CFC's statement of purpose says that

> in seeking to assist and support the less fortunate members of society, who suffer particularly from lying outside the structure of a traditional family base, we have in practice encouraged and funded the growth of alternative lifestyles in a de facto policy of discrimination against the family. This, of itself, has fuelled more problems of the same type.

Commenting on John Major's meeting in September 1991 with Sir Ian McKellan, the actor and gay rights campaigner, the CFC was reported as saying that it regarded homosexuality as 'sterile, disease-ridden, God-forsaken'[74] and that 'it stretches the imagination that the Conservative Party, the party of the family, could even being to contemplate making it easier for homosexuals to make their sexual contacts and corrupt the young'.[75]

C. Legislating on Issues of Morality

In the 1960s Professor H L A Hart attempted to answer the question: Is the fact that certain conduct is by common standards immoral a sufficient cause to punish that conduct by law? Professor Hart inclined to the libertarian view of J S Mill that the only purpose for which power can rightfully be exercised over any member of a civilised community against his will

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[70] see Library Research Paper 94/12
[71] Harris survey for Stonewall, again see Library Research Paper 94/12
[72] *Families in Danger*, Conservative Family Campaign (1991)
[73] p 5
[74] 'Major is urged to review law on gays', *The Independent*, 25 September 1991
[75] 'Major has talks with gay activist', *The Guardian*, 25 September 1991

is to prevent harm to others. A person's own good, either physical or moral is not sufficient warrant.[76]

It is said that the existence of an established religion means that Parliament faces a dilemma over whether legislation on moral issues should reflect Christian morality.

Patrick Devlin, later Lord Devlin, entered into a vigorous intellectual debate with Professor Hart on the proper scope of the criminal law with the publication of *The Enforcement of Morals* (1965). His view was that the function of the criminal law is to enforce a moral principle and nothing else. A moral principle should be measured by the level of intolerance, indignation and disgust felt by society towards certain behaviour. He also took the view that the loosening of moral bonds is the first step towards national disintegration. With the decline of religion, the State should punish sin. Professor Hart, however, believed that laws should conform to human practice. Failure to give expression to these standards weakens the moral authority of the law and the society it seeks to uphold.

Hart's view can be seen at work in areas of sexuality other than homosexuality. For instance, the criminal law does not punish adultery even though it may be thought to be morally wrong.

The Wolfenden Report which led to the decriminalisation of private consensual acts between men over the age of 21 by the *Sexual Offences Act 1967* outlined its approach to making recommendations on moral issues and its view of how law and morality interact:

> It will be apparent from our terms of reference that we are concerned throughout with the law and offences against it. We clearly recognise that the laws of any society must be acceptable to the general moral sense of the community if they are to be respected and enforced. But we are not charged to enter into matters of private moral conduct except in so far as they directly affect the public-good; nor does our commission extend to assessing the teaching of theology, sociology or psychology on these matters, though on many points we have found their conclusions very relevant to our thinking,
>
> Further, we do not consider it to be within our province or competence to make a full examination of the moral, social, psychological and biological causes of homosexuality or prostitution, or of the many theories advanced about these causes. Our primary duty has been to consider the extent to which homosexual behaviour and female prostitution should come under the condemnation of the criminal law, and this has presented us with the difficulty of deciding what are the essential elements of a criminal offence. There appears to be no unquestioned definition of what constitutes or ought to constitute a crime. To define it as " an act which is punished by the State" does not answer the question: What acts ought to be punished by the State? We have therefore worked with our own formulation of the function of the criminal law so far as it concerns the subjects of this enquiry. In this field, its function, as we see it, is to preserve public order and decency, to protect the citizen from what is offensive or injurious, and to provide sufficient safeguards against exploitation and corruption of others, particularly those who are specially vulnerable because they are young, weak in

[76] see J S Mill, *On Liberty* (1859) and H L A Hart, *Law, Liberty and Morality* (1963)

body or mind, inexperienced, or in a state of special physical, official or economic dependence.

It is not, in our view, the function of the law to intervene in the private lives of citizens, or to seek to enforce any particular pattern of behaviour, further than is necessary to carry out the purposes we have outlined. It follows that we do not believe it to be a function of the law to attempt to cover all the fields of sexual behaviour. Certain forms of sexual behaviour are regarded by many as sinful, morally wrong, or objectionable for reasons of conscience, or of religious or cultural tradition., and such actions may be reprobated on these grounds. But the criminal law does not cover all such actions at the present time; for instance, adultery and fornication are not offences for which a person can be punished by the criminal law. Nor indeed is prostitution as such.

We appreciate that opinions will differ as to what is offensive, injurious or inimical to the common good, and also as to what constitutes exploitation or corruption; and that these opinions will be based on moral, social or cultural standards. We have been guided by our estimate of the standards of the community in general, recognising that they will not be accepted by all citizens, and that our estimate of them may be mistaken.

We have had to consider the relationship between the law and public opinion. It seems to us that there are two over-definite views about this. On the one hand, it is held that the law ought to follow behind public opinion, so that the law can count on the support of the community as a whole. On the other hand, it is held that a necessary purpose of the law is to lead or fortify public opinion. Certainly it is clear that if any legal enactment is markedly out of tune with public opinion it will quickly fall into disrepute. Beyond this we should not wish to dogmatise, for on the matters with which we are called upon to deal we have not succeeded in discovering an unequivocal " public opinion," and we have felt bound to try to reach conclusions for ourselves rather than to base them on what is often transient and seldom precisely ascertainable.[77]

[77] *Report of the Committee on Homosexual Offence and Prostitution* Cmnd 247, September 1957, pp 9-10

IV Proposals for reform

A. The Amendments to the *Crime and Disorder Bill [HL]*, Bill 167 of 1997-98

1. Background

Many MPs have supported a motion in favour of social justice for gay men and lesbians, first tabled on 14 July 1997.[78] Amongst other matters, this motion calls for a review of the law as it affects the age of consent, immigration rights, employment in the armed forces, pension rights for couples and rights to consensual sexual activity, as well as the repeal of 'Clause 28'. *The Times* recently reported that a group of Labour MPs are setting up a parliamentary lesbian and homosexual equality group to lobby for changes in the law, adding that the group appears to have the tacit support of Home Office ministers.[79]

In the unreported case of *R v Turner et al*, two of the men known as the Bolton Seven were given suspended sentences by Bolton Crown Court following convictions for buggery and gross indecency on 20 February 1998. Community sentences and probation orders were imposed on the other five. These sentences are currently under appeal. The men had taken part in private sex parties in their own homes between 1996 and 1997, which had been videotaped for their personal use. All of the men involved consented, and none was harmed, but one of the men was a few months under 18 at the time and more than two people were present. An early day motion tabled by Dr Evan Harris drew attention to this case, and was signed by 57 MPs:

> That this House notes with grave concern the case of the Bolton 7 who were convicted following private, consenting, victimless homosexual behaviour; notes that the prosecution was brought under the age of consent legislation found to be a breach of basic human rights by the European Commission of Human Rights and under the ban on homosexual relations involving the participation or presence of more than two persons (section 1 of the Sexual Offences Act 1967), which violates Article 8 of the ECHR - the right to privacy; notes that the 1956 and 1967 Sexual Offences Acts unfairly discriminate against homosexuals; calls for equalisation of treatment of homosexuals and heterosexuals under the criminal law; and, in the light of the Government's decision to give the House a free vote on the age of consent and not to contest the ECHR ruling, calls for the police and Crown Prosecution Service to use their discretion and suspend prosecutions under the gay age of consent legislation until Parliament has reconsidered; and believes that custodial sentences in the case of the Bolton 7 and other such cases of consenting homosexual behaviour are not in the public interest nor in the interests of justice.[80]

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[78] EDM 243 of 1997-98, 14 July 1997
[79] 'Labour gay campaign', *The Times*, 9 March 1998
[80] EDM 717 of 1997-98, 2 February 1998

In the summer, the Government rejected the suggestion that a proposal to lower the age of consent be contained in the *Crime and Disorder Bill*. In a written answer to a Parliamentary Question on 18 July 1997, Alun Michael, Minister for Criminal Policy, stated:

> The Government have long held the view that setting the age of consent for homosexual acts is a matter for Parliament to decide, and that it should be the subject for a free vote at a suitable opportunity. It seems unlikely that the scope of the Crime and Disorder Bill will be wide enough to provide that opportunity.[81]

On 29 July, when asked if the Government would be introducing legislation to create an equal age of consent for heterosexual and homosexual relationships, a similar response was given by the Scottish Office Minister for Home Affairs and Devolution, Henry McLeish.[82]

Following the report of the European Commission of Human Rights in the Sutherland case[83] which concluded that the government had a case to answer before the European Court of Human Rights [see section VIII C, *post*], the government and the applicant applied to the Court for the case to be deferred pending Parliamentary consideration of the issue. The parallel case of Morris was deferred at the same time. An article in *The Guardian* of 2 October 1998 suggested that the Government expected the vote to take place on a backbench amendment to the *Crime and Disorder Bill*, and that ministers had resisted pressure from some Labour MPs for the matter to be dealt with in a Private Members Bill.

Stephen Twigg wrote in a supplement to *Gay Times* in May 1998 that he wanted to see as many MPs support equality as possible. He said that an 'overwhelming' number of Labour MPs support change, as do 'large' numbers of Liberal Democrat and nationalist MPs and a 'growing' number in the Conservative Party. [84] In the same supplement, Ann Keen said:

> The bottom line is that, at 16, we are judged to be able to cope with saying we are heterosexual, so, therefore, there is no argument that the age should not be the same if you are gay or lesbian.[85]

Ann Keen's involvement in this issue is said to be connected with the fact that the son with whom she had been reunited 27 years after he was adopted, is gay.[86]

A recent report in *The Times* suggests that Tony Blair, Jack Straw, Paddy Ashdown and William Hague would all support an amendment to equalise the age of consent.[87] However, the report also quotes Julian Brazier, president of the Conservative Family Campaign, as

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[81] HC Deb vol 298 c347w, 18 July 1997
[82] HC Deb vol 299 c168w, 29 July 1997
[83] Application No 25186/94
[84] *Equality 2000*, p 1
[85] *ibid*, p 5
[86] 'Gay son was MPs crusade inspiration', *The Times*, 25 April 1998
[87] 'Gay sex at 16 to be legal by summer', *The Times*, 16 April 1998

having said that 'we will oppose this because of the sexualisation and exploitation of young people'.[88]

Stonewall is not in favour of amendments which would simply replace '18' with '16' in the relevant legislation. Instead, in its pamphlet *The Case for equality: Arguments for an equal age of consent* [January 1998] it called for the repeal of the offences of gross indecency and buggery. Instead, it wanted to see two universal offences which applied regardless of sex or sexual orientation: one offence of having sex with a young person under the age of consent, and one of having sex in public and causing offence. The latter proposal is similar to one recommended by the Criminal Law Revision Committee in 1984[89] which was never implemented.

2. The main amendment

The principal amendment was tabled by Ann Keen:

> *Reduction in age at which certain sexual acts are lawful*
>
> Ann Keen
> Mrs Eleanor Laing
> Mr James Wallace
> Mr Stephen Twigg
> Mr Shaun Woodward
> Dr Evan Harris
>
> To move the following Clause:- **NC1**
>
> '.- 1) In subsections (1A) and (1C) of section 12 of the Sexual Offences Act 19 56 (buggery), for the word "eighteen" there shall be substituted the word "sixteen".
>
> (2) In subsections (1) and (6) of section 1 of the Sexual Offences Act 1967 (amendment of law relating to homosexual acts in private), for the word "eighteen" there shall be substituted the word "sixteen".
>
> (3) In section 13 of the Criminal Law (Consolidation) (Scotland) Act 1995 (homosexual offences)-
>
> (a) in subsections (1) and (5)(c), for the word "eighteen"; and
> (b) in subsection (8), for the word "18", there shall be substituted the word "sixteen".
>
> (4) In paragraphs (1) and (5) of Article 3 of the Homosexual Offences (Northern Ireland) Order 1982 (homosexual acts in private), for the word "18" there shall be substituted the word " 17".'.

This new clause is intended to lower the age of consent for buggery/sodomy (both homosexual and heterosexual), as well as for acts of gross indecency between men, from 18

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[88] *ibid*

[89] Fifteenth report on Sexual Offences, Cmnd 9213, April 1984, para 10.15

to 16 in England and Wales, and in Scotland. The proposed new age of consent for such acts in Northern Ireland is 17, which would bring it into line with the heterosexual age of consent there and with the law in the Republic of Ireland.

3. Other amendments

Joe Ashton and Crispin Blunt have both tabled amendments to Ann Keen's proposed new clause which aim to introduce a system similar to those in some continental countries (for which see section VIII *post*). Mr Ashton would like to see the age of consent being kept at eighteen for buggery and gross indecency where one party is in a position of authority, influence or trust in relation to the other, and Mr Blunt's amendment seeks to prohibit homosexual acts (as well as buggery of a woman) where one of the parties is over twenty-one and the other is between sixteen and eighteen.

Joe Ashton has also proposed that it should be an offence for a person to have sexual intercourse with a girl under the age of eighteen where that person is in a position of authority, influence or trust in relation to the girl [New Clause 8]. However, no definition of a 'position of authority, influence or trust' is given. The difficulties with such a provision were considered by the Policy Advisory Committee on Sexual Offences,[90] which concluded that current criminal law in this area was satisfactory, and that 'the threat of disciplinary proceedings should be sufficient to deter most [professional] men from abusing their position to take unfair advantage of girls aged 16 and 17'.

Another amendment by Ann Keen relates to section 8 of the *Sexual Offences Act 1967*, which states that the consent of the Director of Public Prosecutions is required for prosecuting homosexual acts where either of the men involved was under twenty-one. This section was not amended when the age of consent was reduced to 18; Mrs Keen would like to see the age of sixteen substituted for that of twenty-one.

An amendment tabled by Dr Evan Harris seeks to remove the perceived anomaly that homosexual acts are not considered to be in private if more than two people are present, whereas no such provision applies for heterosexual acts. This wording was originally agreed on following a division in the House of Lords on an amendment to the *Sexual Offences Bill [HL] 1964-65*, which was a precursor of the Bill which became the *Sexual Offences Act 1967*.[91] Dr Harris's amendment is intended to remove the relevant sections of legislation in England and Wales, Scotland and Northern Ireland, whilst leaving in place the provisions relating to homosexual acts in public toilets [New Clause 4].

Dr Harris has also tabled an amendment seeks to ensure that people convicted of an offence which has ceased to be illegal by virtue of the relevant sections of the *Crime and Disorder Act 1998* should no longer be subject to the registration requirements of the *Sex Offenders Act 1997*.

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[90] Cmnd 8216

[91] HL Deb cc361-76, 21 June 1965

B. Sixteen or eighteen?

The debate on law reform in this area raises ethical, philosophical and political questions. Opinions tend to be strongly held on both sides of the debate. Strongly held religious views add another dimension.

Although the proposed new clause seeks to lower the age of consent for homosexual men to 16, this is not necessarily the age acceptable to all those in favour of reform. Arguments in favour of 18 have traditionally been on the basis that boys mature psychologically about two years later than girls and so should have an age of consent two years higher. The same argument is not usually advanced in relation to heterosexual boys although there are some who would like to see the age of consent for heterosexuals raised to 18. A survey of 2,100 gay and bisexual men for the lesbian and gay rights group Stonewall found that 57% had had sexual relations with a member of the same sex before the age of 18.

The British Medical Association has recently reconsidered its position on an appropriate age of consent for homosexuals. In the Report to its Council the BMA's Board of Science notes that:

> Although complete sexual maturity is reached about the same average age in both sexes, research on children's development carried out by Tanner, reveals that the growth spurt in girls occurs two years earlier than that in boys. However, growth spurt is only one of many measures of development. In girls adolescent growth spurt, in the sequence of events that occur at puberty, is placed earlier than in boys. Growth spurt may be the first event of puberty in girls but in boys the first indicator of puberty is likely to be enlargement of the genitals. There is little solid information on the relationship between emotional and physiological development and it is primarily common-sense that dictates the notion that emotional attitudes are related to physiological events.[92]

The Report also notes that homosexuality is no longer regarded as a pathological condition by recognised medical authorities (eg the World Health Organisation, the International Classification of Diseases). The report concludes that the "causes" of homosexuality remain poorly understood and are almost certainly multi-factorial:

> Neuroanatomic variations between homosexual and heterosexual men and genetic linkage studies have been reported within the last few years. Psychological influences during childhood have also been implicated, in particular the nature of the mother-child relationship. A common feature of these factors is that they operate at a *much* earlier age than 16. On this basis the BMA now supports 16 as the age of consent.

These arguments were not convincing to Richard Whitfield, Chairman of the National Family Trust, who argued:

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[92] *Age of Consent for Homosexual Men* 1993/94

> A function of the law is to protect the vulnerable, immature, and inarticulate. Sir Ian McKellen ('Closet homophobes', December 5), like too many articulate commentators on youth sexuality, views sexual intimacy largely as a matter of biological readiness. Issues of our slower emotional development are conveniently omitted from advocacy.
>
> Sexual intimacy, of whatever kind, can be damaging to individual identity if entered into before both parties are psychologically ready for its long-term emotional consequences.
>
> From that standpoint there is a case for increasing the age of consent beyond 16 for heterosexual intercourse rather than reducing it from 21 for emergent homosexuals.
>
> So long as we view persons largely as biological objects and that sadly is the thrust of most sex and Aids 'education' our sexual behaviour will continue to be less dignified and certainly far more dangerous than that of farmyard animals.[93]

The Lesbian and Gay Youth Movement take the view, however, that the campaign for 16 has become 'something of a superstition - it's just a magic number'. They are concerned with the 15 year old whose sexual acts would continue to fall outside the law. Their argument could be backed up by the evidence gathered by Project SIGMA (see section V, *post*) that the median age of first sexual contact for young gay men is 15.7 years. OutRage is campaigning to lower the age of consent to 14 for homosexual and heterosexual sex.

Stonewall, the lesbian and gay equality group, has campaigned vigorously for a debate on lowering the age of consent for homosexual men to 16. In its pamphlet *The Case for equality: Arguments for an equal of consent* [January 1998] the group stated its belief that 'the criminal law as it relates to sexual offences should be designed to protect the young and vulnerable, not to police sexual behaviour by imposing different standards for men and women, for heterosexuals and gays'. In a briefing note prepared for MPs on the amendments to the *Crime and Disorder Bill* on 15 June 1998, Stonewall say that 'the issue is about equality not about age', and recognised the arguments of those who argue that the age of consent should be eighteen for everyone. However, it goes on to say that 'it is not practical or desirable to try and criminalise all young people between the ages of 16 and 18', and pointed out that young people can leave school and young heterosexuals can get married at 16. It rejects the argument for lowering the age of consent to 14.

It has been reported that the Bishop of Monmouth (Church of Wales) and the Bishop of Edinburgh (Scottish Episcopal Church) have favoured the reduction of the homosexual consent to 16. A Lesbian and Gay Christian Movement press release of 17 January 1994 reports the Bishop of Monmouth as saying:

> The sanctions of criminal law are probably the least effective way of ensuring mature and moral sexual behaviour. The most important thing is to protect young men and women from temptation and exploitation by their elders and to make it possible for them to seek help and advice. An equal age of consent

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[93] Letter to *The Times*, 16 December 1991

> would be the best way of creating the right conditions for young people to seek any help and advice they sought.

and the Bishop of Edinburgh:

> I support the law of equivalence in the area of sexual consent. I see this issue as not about human sexuality but of human rights. 16 is the right age.

The Archbishop of York, the Bishop of Bath and Wells and the Bishop of Oxford (all Church of England) were reported to have favoured a lowering of the age of consent to 18. The Bishop of St Albans, who is an evangelical in the Church of England, wanted it kept at 21.[94]

The views of other opponents of reform were set out in a *Guardian* article of 14 January 1994.[95] Many of those took the view that 16 was too young as young people are vulnerable emotionally at that age. For example, Mary Whitehouse said:

> Having spent quite a lot of my life working with teenagers, I understand that emotional and sexual development varies enormously, child by child. I remember an official report on this once said you can get as much as a five year difference in that development amongst teenage children and therefore to lower the age of consent to 16 could put youngsters under a very great deal of pressure and I would be wholly opposed to that. You see, if it's 18 you could get youngsters of 17 and 16 coming under pressure, so I think it's best left.

The Northern Ireland Gay Rights Association (NIGRA) wanted to see parity with the rest of the UK in this area rather than equality with heterosexuals in Northern Ireland - ie, they wanted the age of consent for homosexuals to be 16, not 17. It is NIGRA's view that the UK has already received an adverse judgment from the European Court of Human Rights when the law in Northern Ireland was out of line with the rest of the UK (see the *Dudgeon case* discussed *post*) and that it would be unwise for that situation to arise again. NIGRA also argues that the legislative changes made in the Republic of Ireland in 1993 (see section VIII A *post*) to harmonise the age of consent for both heterosexuals and homosexuals should be followed in the UK as a whole. The age of consent in the Republic is now 17 for everyone. NIGRA would like to see the issue of the difference in ages of consent between Northern Ireland and the mainland addressed by the impending Home Office review of sexual offences,[96] and has drawn attention to the problems which may arise as a result of the setting up of a new assembly for Northern Ireland.[97]

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[94] 'Age limit for homosexuals splits bishops', *Daily Telegraph*, 10 January 1994
[95] 'Consent or Coercion?', *The Guardian*, 14 January 1994
[96] announced by Home Office Minister Alun Michael on 15 June 1998 - HC Deb vol. 314 c10
[97] information supplied by Jeff Dudgeon, NIGRA, June 1998

C. Broader reforms

The Labour Peer Baroness Turner of Camden, introduced a *Sexual Orientation Discrimination Bill* in the House of Lords on 13 May 1998.[98]It follows from an earlier Sexual Orientation Discrimination Bill, which passed through its Lords stages in May 1996 with support from both the Labour and Liberal Democrat front benches. The Bill seeks to amend the *Sex Discrimination Act 1975* and the *Equal Pay Act 1985* to give explicit protection to lesbian and gay people. In the recent case of *Grant v South West Trains*,[99] the European Court of Justice ruled that the *Equal Treatment Directive* (implemented in the UK by the *Sex Discrimination Act 1975*) could not be extended to cover discrimination on the grounds of sexual orientation.

An amendment to the *Human Rights Bill [HL]*, Bill 119 of 1997-98 sought to ensure that it would protect against discrimination on the grounds of sexual orientation. However, the government rejected this proposal on the grounds that it could lead to British courts interpreting Article 14 of the Convention more broadly than it has been interpreted at Strasbourg, which 'would be contrary to the principle of the bill which is to improve access to convention rights, not to modify or widen them'.[100]

A further amendment to the current *Crime and Disorder Bill* relating to homosexuals was tabled by Richard Allen. It sought to extend the provisions relating to sentencing of racially aggravated offences to all crimes motivated by prejudice, including homophobia. However, Mike O'Brien stated that this amendment would risk diluting the signal the government wants to send about racial violence and harassment, and confirmed that the government 'want to focus solely on racist cases'.[101]

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[98] HL Deb vol. 589 c 1080, 13 May 1998
[99] Case C-249/96 (*The Times*, 23 February 1998)
[100] Letter from Mike O'Brien, Minister of State at the Home Office, to OutRage, 27 May 1998
[101] letter from Mike O'Brien to OutRage, 27 May 1998

V Health Issues

One of the main arguments for reform is that it would improve the access of young gay men to health education information, particularly on HIV and AIDS.

A number of studies have reported that young gay men are more likely to engage in high HIV risk taking than older men. Project SIGMA is a major research group in this area funded by the Department of Health and the Medical Research Council. In its Working Paper on *Young Gay Men in England and Wales: Sexual Behaviour and Implications for the Spread of HIV*[102] it analysed much of the research in this area and concluded that there are serious methodological problems with the research undertaken. Its finding was that young gay men were more likely currently to engage in receptive anal intercourse (due to a higher number of regular or monogamous relationships and perhaps to an assumption by the less experienced that anal intercourse is the main form of gay sex) but that they are also marginally more likely always to use a condom and less likely never to use one. The conclusion was, therefore, that the results suggest that young gay men seem more likely to reduce the risks of HIV infection by using a condom.[103] The report states that 'the findings clearly contradict the contention that young men are pathologically unable to follow safer sex practices through lack of experience, ability to negotiate or failure personally to identify as being at risk'.[104]

Project SIGMA also found that knowledge of HIV risks among young gay men and a commitment to safer sexual practices is at least as widespread amongst young gay men as their older counterparts.[105] It is well documented that among gay and bisexual men knowledge of HIV risks is generally accurate and universally high.

Project SIGMA reported, however, on the difficulties of reaching young gay men with HIV/AIDS information and education:

> Statutory sector HIV/AIDS education initiatives targeted at young people usually assume that their audience is entirely heterosexual and that the needs of the homosexual minority will be met by initiatives emanating from within the voluntary sector [Homans & Aggieton, 1988; Weatherburn & Hunt, 1992]. While it is certainly the case that the earliest and most effective health education initiatives have come from the gay community, they will have failed, and continue to fail, to reach those men who have not (yet) found their way into mainstream gay communities.
>
> It is unlikely that schools will provide the sort of information needed by young homosexual men, since they are required by the 1988 Education Act to deal with sex education within the context of the family, and emphasise love, marriage and procreation. Unlike other European countries (eg. the Netherlands) there is little or no discussion of 'healthy sexuality'. Section 28 of the 1988 Local Government Act further limits the possibility of positive discussion of

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[102] Health Education Authority, December 1991
[103] para 3.4
[104] p 13
[105] para 3.6

> homosexuality in schools and colleges. More importantly, in the UK voluntary agencies have rarely specifically targeted gay youth for HIV/AIDS health education initiatives [Weatherburn & Hunt, 1992].
>
> Young gay men in Great Britain remain, therefore, a group invisible in much research and ignored in much intervention work.

The Project found that the median age at which its sample group reported their first homosexual experience is just under 15 years and that the vast majority of these were consensual despite the provisions of the *1967 Act.*

The Health Education Authority also acknowledges that the effect of the present law (both the *1967 Act* and section 28 of the *Local Government Act 1988)* can limit health promotion activities among young homosexual men under the age of. Its view is that much of the restriction is self-imposed by health educators and that there is no restriction on aiming health promotion at young gay men, nor on limiting education in schools aimed at the purpose of treating or preventing of disease. In practice it would seem, however, that the law is often misunderstood or misinterpreted.[106]

> The BMA Council has gone further by not only pointing out the effect of the current law on inhibiting effective health education and health care but by voting overwhelmingly to support a lowering of the age of consent for homosexual men to 16. In its Press Statement of 13 January 1994 the BMA stated that 'unsafe sexual behaviour and HIV infection have both increased among homosexual men after a period of decline and that recent figures for new HIV transmissions show that younger men are disproportionately affected'. It also notes that 'the average age at which homosexual men have their first homosexual encounter is 15.7 years and changing the current law is unlikely to affect this'. The Press Statement concludes by saying 'there is no convincing medical reason against reducing the age of consent for male homosexuals to 16 years, and to do so may yield positive health benefits'. The BMA's previous position was that the age of consent for homosexuals should be lowered to 18.[107]

The Royal College of Psychiatrists in submitting evidence to the Criminal Law Review Committee supported an equal age of consent of 16, stating, 'on the whole we agree that it is now appropriate to make no distinction in the age of consent between heterosexual and homosexual practices'.

On the question of access to health education on safer sex, the BMA outlines some possible reasons why young gay men might not receive appropriate advice:

> They fear seeking professional advice (eg from doctors, teachers, youth workers) because to do so would be to admit to having committed a crime;
>
> Support groups or youth organisations for homosexual men aged 16-20, where they exist at all, tend to keep a low profile and avoid drawing attention to themselves. This means that many homosexually active young men will not know of sources of support and peer education;

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[106] Information supplied by the Health Education Authority, January 1994

[107] p 1, *Age of Consent for Homosexual Men* - Report to the Council of the British Medical Association from the Board of Science and Education

> "Official" homosexual community organisations and clubs operate a clear over-21 policy to comply with the present law. This means that younger men are denied access to the advice which such organisations can provide and are less exposed to the social climate within the organised homosexual community, which strongly supports "safer sex".
>
> They feel stigmatised and regarded as not part of the broader society due to the criminalisation of their sexual behaviour.[108]

The Royal College of Psychiatrists in 1994 endorsed its view expressed to the Policy Advisory Committee on Sexual Offences in 1979 that there are no psychological or developmental reasons why the age of consent should not be 16.[109]

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[108] *ibid* pp3-4

[109] Information supplied by the Royal College of Psychiatrists, January 1994

VI Religious Views

A. The Bible

The story of Sodom is the classical starting point for the presumed Biblical prohibition of homosexual behaviour:

> CHAPTER 19
>
> AND there came two angels to Sodom at even; and Lot sat in the gate of Sodom: and Lot seeing *them* rose up to meet them; and he bowed himself with his face toward the ground;
> 2 And he said, Behold now, my lords, turn in, I pray you, into your servant's house, and tarry all night, and wash your feet, and ye shall rise up early, and go on your ways. And they said, Nay; but we will abide in the street all night.
> 3 And he pressed upon them greatly; and they turned in unto him, and entered into his house; and he made them a feast, and did bake unleavened bread, and they did eat.
> 4 But before they lay down, the men of the city, *even* the men of Sodom, compassed the house round, both old and young, all the people from every quarter:
> 5 And they called unto Lot, and said unto him, Where *are* the men which came in to thee this night? bring them out unto us, that we may know them.
> 6 And Lot went out at the door unto them, and shut the door after him,
> 7 And said, I pray you, brethren, do not so wickedly.
> 8 Behold now, I have two daughters which have not known man; let me, I pray you, bring them out unto you, and do ye to them as *is* good in your eyes: only unto these men do nothing; for therefore came they under the shadow of my roof.
> 9 And they said, Stand back. And they said *again,* This one *fellow* came in to sojourn, and he will needs be a judge: now will we deal worse with thee, than with them. And they pressed sore upon the man, *even* Lot, and came near to break the door.
> 10 But the men put forth their hand, and pulled Lot into the house to them, and shut to the door.
> 11 And they smote the men that *were* at the door of the house with blindness, both small and great: so that they wearied themselves to find the door.

The word 'to know', in verse 5, is used 943 times in the Old Testament but it is only interpreted as meaning 'to have sex' in ten places, this being one of them.

Leviticus 20 is also cited against homosexuality:

> 13 If a man also lie with mankind, as he lieth with a woman, both of them have committed an abomination: they shall surely be put to death; their blood *shall be* upon them.

In the New Testament there are generally thought to be three references to homosexuality, all of them in Pauline Epistles. In two cases passing references are made to homosexual sin within a list of other sins. It is in the Epistle to the Romans that the main reference occurs:

> 26 For this cause God gave them up unto vile altercations: for even their women did change the natural use into that which is against nature:
> 27 And likewise also the men, leaving the natural use of the woman, burned in their lust one toward another; men with men working that which is unseemly, and receiving in themselves that recompense of their error which was meet.

An article in *Widening the Horizons* the Reverend Dr Jeffrey John analyses these biblical passages.[110] His analysis can be summarised thus:

- The Sodom story relates to attempted gang rape and has no relevance to the ethical issues surrounding homosexuality.
- The Leviticus prohibition against male (not female) homosexual behaviour is clear.
- The Pauline reference forms part of a larger rhetorical question designed to bring together both the Jewish and Gentile factions in the Roman Church.

Although the author of that article takes the view that the nature of Christian revelation itself, as well as new knowledge and new social conditions, calls Christians to reassess ethical tradition and to strive for new ideals in every age, he does acknowledge that many Christians see insuperable obstacles to Christian acceptance of homosexual relationships in the Biblical texts. Even those who believe that not all of the Old Testament rulings no longer have force continue to see the Pauline text as teaching against homosexuality.

B. The Anglican Church

Since the 1970s the gay liberation movement within the churches have asserted that there is no contradiction between their sexuality and Christian spirituality.

The Church of England has moved some way in that direction in recent years although the Archbishop of Canterbury has said that the Church must consider the interests of people who find homosexuality deeply offensive as well as the needs of the gay community.[111] The general attitude of the Church of England is opposition to the practice of homosexual acts, but acceptance of gay people in the Church. A statement by the House of Bishops in December 1991 said:

> The Church in its pastoral mission ought to help and encourage all its members, as they pursue their pilgrimage from the starting-points given in their own personalities and Circumstances, and as they grow by grace within their own particular potential. It is, therefore, only right that there should be an open and welcoming place in the Christian community both for those homophiles who follow the way of abstinence, giving themselves to friendship for many rather than to intimacy with one, and also for those who are co conscientiously convinced that a faithful, sexually active relationship with one other person, aimed at helping both partners to grow in discipleship, is the way of life Cod wills for them. But the Church exists also to live out in the world the truth it has been given about the nature of God's creation, the way of redemption through the Cross, and the ultimate hope of newness and fulfilness of life. We have judged that we ourselves and all clergy, as consecrated public and representative figures, entrusted with the message and means of grace, have a responsibility on behalf of the whole Body of Christ to show the primacy of this truth by striving to embody it in our own lives. But we also wish to stress the Church's care for and value of all her clergy alike, and that where the Church's teaching results for any ordained person in a burden grievous to be borne we, the bishops, as pastors to the pastors, will always be ready to share in any way we can in the bearing of that burden.

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[110] *Christian Action Journal* (Summer 199) p 12ff

[111] reported in 'A word for the clerical gays', *The Guardian*, 28 May 1991

> The story of the Church's attitude to homosexuals has too often been one of prejudice, ignorance and oppression. All of us need to acknowledge that, and to repent for any part we may have had in it. The Church has begun to listen to its homophile brothers and sisters, and must deepen and extend that listening, finding throughout prayer and reflection a truer understanding and the love that casts out fear. If we are faithful to Our Lord, then disagreement over the proper expression of homosexual love will never become rejection of the homosexual person. [112]

The report did, however, state the opposition of the House of Bishops to homosexual clergy:

> We come now to the question of the homophile clergy. Within the population as a whole a small percentage is predominantly homophile in orientation. It may well be that in the ordained ministry, as in the arts and the caring professions, the percentage is higher. We believe that the great majority of such clergy are not in sexually active partnerships. What we know for a fact is that the ministries of many homophile clergy are highly dedicated and have been greatly blessed. God has endowed them with spiritual gifts, as he has his other ministers, and we give thanks for all alike.
>
> There are, however, questions to be faced concerning the ministry of homophile clergy who believe that the right way of life for them is that of an exclusive and permanent but also sexually active partnership. These
>
> From the time of the New Testament onwards it has been expected of those appointed to the ministry of authority in the Church that they shall not only preach but also live the Gospel. These expectations are as real today as ever they were. People not only inside the Church but outside it believe rightly that in the way of life of an ordained minister they ought to be able to see a pattern which the Church commends. Inevitably, therefore, the world will assume that all ways of living which an ordained person is allowed to adopt are in Christian eyes equally valid. With regard to homophile relationships, however, this is, as we have already explained, a position which for theological reasons the Church does not hold. Justice does indeed demand that the Church should be free in its pastoral discretion to accommodate a God-given ideal to human need, so that individuals are not turned away from God and their neighbour but helped to grow in love toward both from within their own situation. But the Church is also bound to take care that the ideal itself is not misrepresented or obscured; and to this end the example of its ordained ministers is of crucial significance. This means that certain possibilities are not open to the clergy by comparison with the laity, something that in principle has always been accepted.
>
> Restrictions on what the clergy may do also stem from their pastoral function. If they are to be accessible and acceptable to the greatest number of people, both within the Church and outside it, then so far as possible their lives must be free of anything which will make it difficult for others to have confidence in them as messengers, watchmen and stewards of the Lord. There can be no doubt that an ordained person living in an active homophile relationship does for a significant number of people at this time present such a difficulty.
>
> These questions are additional to those which arise in the case of the Christian people in general, and they relate to the representative and pastoral responsibilities of the clergy. [113]

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[112] *Issues in Human Sexuality - A Statement by the House of Bishops* (December 1991), para 5.23-4
[113] para 5.11-5.14

In a pastoral letter from thirty-six leading bishops and archbishops, international leaders of the Anglican church accepted that homosexuals in stable relationships could live lives of 'genuine Christian character' respite being at variance with Christian moral tradition, and agreed to re-examine their stance on homosexuality. The Archbishop of Canterbury, Dr George Carey, proposed at a meeting of the General Synod on 17 July 1998 that the Lambeth Conference, which is attended by all the world's Anglican bishops and meets once a decade, should consider setting up an international commission to look at the issue of human sexuality ahead of next Conference in 2008. However, it is reported that he has since come under fire from the Rt Revd John Spong, Bishop of Newark, New Jersey, for refusing to meet Christian gay rights campaigners.[114]

On 4 November 1997, in an interview in *The Times*, the Right Revd Richard Harries announced that he had 'changed his mind' since the 1994 vote on the age of consent, and now supported the lowering of the age of consent for homosexuals to 16. He referred to 'recent evidence from the European Court, the British Medical Association and elsewhere' which suggested that 'people's sexuality is well formed by the age of 16', and went on to say that 'the idea of prosecuting people of 17 for having sex really is very unproductive'. Bishop Harries is the Bishop of Oxford, chairman of the Church of England bishops' group on homosexuality, and an adviser to the Archbishop of Canterbury.

The Rt Revd Richard Holloway, Primus of the Scottish Episcopal Church, is a member of the Lesbian and Gay Christian Movement (although he is not himself gay) and gave the keynote speech at its 1998 Annual Conference. In an interview with *Gay Times* in May 1998, he included the gay community in the category of 'socially excluded' about which he has always been concerned.

The view of the Lesbian and Gay Christian Movement is expressed in their pamphlet *Christianity and Homosexuality - A short introduction:*

> Most Christians have believed and most churches have taught that you cannot be a Christian and express your love for another person of the same sex in a sexual relationship. They believe that God has condemned this through the Bible.
>
> We must remind ourselves of the world the people of the Bible actually lived in. Life was hard, and survival was a nation's first concern. Today, in the West, we may find it hard to comprehend the emphasis placed on child-bearing in ancient societies. In biblical times people were faced every day with basic threats to their individual and communal survival and to ensure its future. Therefore, forms of sexuality which seemed to he at odds with the institution of the family were rejected and condemned. The law of the Jews in Christ's time illustrated this general pattern, though in other respects it represented for its day a more careful and merciful code than the traditions of neighbouring peoples.
>
> Christianity began as a Jewish sect; Christ was a Jew and so were all his apostles. Though the new Christian faith replaced the old Jewish law in the eyes of the early Christians, both are intimately and inextricably linked. Ancient fears about homosexuality were deeply founded in

[114] 'US Bishop clashes with Carey over gay"apartheid"', *The Guardian*, 25 November 1997

> the consciousness of early Christians, whether Jewish or not, and Christianity itself certainly did not remove them.
>
> The story of Sodom and Gomorrah is often quoted; but the real point of it is an understandable condemnation of what amounts to gang rape. It is not a condemnation of homosexual relationships as we would understand them today. It is significant that when Jesus used the story of Sodom he said that the people of that city would find the Day of Judgement easier to bear than those who refused to welcome his disciples and give them hospitality (Luke 10:l1-12). And whenever else the destruction of Sodom and Gomorrah is referred to in the Bible, homosexuality isn't even mentioned.
>
> Jesus himself said nothing about homosexuality as such, but he did teach the importance of love and commitment in relationships. He condemned the Pharisees for keeping only to the letter of the law and for ignoring the fact that the law served a higher purpose. The Sabbath, like all of God's gifts to us, was made for us to use - with responsibility. And our sexuality is one such gift.
>
> Paul in his letters condemned the practice of heterosexual men having intercourse with male prostitutes in pagan temples. He thought this idolatrous because human beings were used as objects of worship rather than honour being given to God. It was all destructive of love, and Paul then showed how Christ's power can rescue us from such a pattern of life if we commit ourselves to him in trust. God wants us, through Jesus, to love one another even as he loved us (John 13:34).
>
> In many respects the Church was limited by the social outlook of the times and places where the Gospel was preached. Attitudes have always changed, however slowly. Only in the last century was slavery abolished, but Paul accepted it without question. And it is only in recent times that the churches have started to examine the position of women in their own organisations and in society in general. The time is now right to have a critical look at homosexuality in a Christian context.

However, other Christian groups are opposed to any change in the law relating to homosexuals. A report by the Manchester-based organisation, the Marantha Community, entitled *Homosexuality: the Medical, Social, Religious Implications* was circulated in March 1998. It links homosexuality to low life expectancy, high murder rates, promiscuity and high levels of domestic violence. Another report, prepared by the Revd David Holloway on behalf of the Christian Institute, states that homosexuals are promiscuous; that sexual orientation is not fixed by 16; and that people can 'stop' being homosexuals.

C. Methodism

The Methodist Church is the largest free church in England. At its 1990 Conference it voted to reject a move to impose a hard-line stance on homosexuals in the ministry, and in 1993 voted not to bar homosexuals from the ministry, but also not to authorise their ordination. At its 1994 Conference, church leaders' welcoming of gays and lesbians was supported, although insistence on chastity for all outside marriage was reaffirmed. This compromise position was contained in a report prepared by the Methodists' human sexuality commission.

D. Church of Scotland

In 1993 the General Assembly of the Church of Scotland rejected a ban on the blessing of gay and lesbian relationships. A report on human sexuality published by the Board of Social Responsibility of the Church of Scotland on 3 March 1994 re-affirmed the traditional view that 'the practice of homosexual acts is contrary to God's will', but at the same time called on the General Assembly to deplore all prejudice against homosexuals.

E. Roman Catholicism

The Roman Catholic Church's official teaching remains that to engage in homosexual relations falls into the category of the most grievous offence, mortal sin. Strictly, sexual activity should never be separated on purpose from reproduction. This allows, therefore, no scope for licit homosexual activity. Indeed the Pope has said that homosexuality is an 'intrinsic moral evil' and 'an objective disorder'. The view is that there is 'no right to homosexuality' and that 'sexual orientation does not constitute a quality comparable to race, ethnic background etc in respect to non-discrimination'. Roman Catholic homosexuals can take full part in church activity only if they abstain from sex.

The Vatican has however said that 'homosexuals are human and have the same rights as all persons, including work and housing'. Cardinal Basil Hume, the Archbishop of Westminster, was reported as having said that 'being a homosexual person is neither morally good nor morally bad; it is homosexual genital acts that are morally wrong'.[115] Cardinal Hume added, at the time of the last debate on the age of consent, that a 'prudential judgment' should be made 'as to whether or not the common good of society will be best served by a further decriminalisation of homosexual genital acts', although he apparently accepted that there was an argument in favour of a this.[116] In a paper prepared in response to requests for clarification of the Roman Catholic Church's position on homosexuality, Cardinal Hume later stated that 'love between two persons, whether of the same sex or of a different sex is to be treasured and respected'. However, he reaffirmed that the Church does not recognise a right to sexual acts, which it teaches are morally wrong.[117]

F. Judaism

Traditional Jewish law prohibits sexual relations between members of the same sex. It takes a harsher position against sexual relationships between men than those between women because the former are prohibited by biblical injunctions whereas the latter are prohibited only by later rabbinical legislation.

The Orthodox view was summed up by the former Chief Rabbi, Lord Jacobovitz as follows:

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[115] 'Hume's fear on gay consent age', *The Times*, 4 February 1994
[116] *ibid*
[117] 'Hume highlights divisions over homosexuality', *The Guardian*, 8 March 1995

> homosexuality is a grave departure from the natural norm which we are charged to overcome like any other affliction[118]

In Orthodox communities the subject of homosexuality is largely taboo. It is seen as a threat to family life which is the cornerstone of Jewish religious life. Non-Orthodox communities offer a growing acceptance and institutional support of gay Jews. Homosexual Jews are experiencing difficulties in reconciling the prohibition on homosexuality with the rejection of celibacy under Jewish law. Legitimate sexual activity is encouraged and sexual expression not restricted to procreation within Judaism.

G. Islam

The Quran - the primary source of Islam - is explicit in its condemnation of homosexuality, leaving scarcely any loophole for a theological accommodation of homosexuals in Islam. For instance, it states: 'If two men among you are guilty of lewdness, punish them both. If they repent and amend, leave them alone'.[119]

Little debate on the issue has taken place in Muslim societies and it is thought that there has been no attempt at granting any kind of recognition of equality to homosexual believers.[120]

H. Hinduism

The theology of homosexuality in Hinduism is extremely complicated. In *Homosexuality and World Religions* the following conclusions are drawn after a survey of Hindu literature:

> It appears from the foregoing account that, save for the emphasis on renunciation, Hinduism is a sex-positive religion in relation to all the three ends of human life - *dharma, artha, kama* and even in relation to *moksa* in the context of Tantra. This should not be taken to mean, however, that it also views homosexuality within the general field of sex in a positive light. Dharma and Artha literature is somewhat opposed to it; Kama literature is not opposed to it but is not markedly supportive either. In any case, it is constrained by Dharma values. Moksa literature would have no sex at all, heterosexual sex as in some forms of Tantra, or only symbolic homosexualism in some forms of devotional Hinduism. That even symbolically some forms of Hinduism should be latently homosexual is indeed significant.
>
> We should, however, distinguish between Hindu religious attitudes and Hindu cultural attitudes. As a religion, Hinduism is perhaps more tolerant of homosexuality than it is as a culture, and the underlying reason seems to be historical. Among the various non-Hindu cultures with which Hindu culture has undergone significant periods of encounter are the Creek, the Islamic, and the British. It has been suggested that such traces of homosexuality as one finds in ancient India may have been at least in part due to the Greek presence.[121]

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[118] quoted in 'Through a gay viewfinder', *The Guardian*, 22 July 1993
[119] Koran 4th Sutra, v. 15-16
[120] *Homosexuality and World Religions* ed. Swindler (1993), p 181
[121] *ibid* p 68

I. Buddhism

There is a scarcity of scholarly analyses of Buddhism and homosexuality. The diversity of Buddhist tradition has, at different places and times, led to divergent opinions regarding homosexuality. The evidence seems to suggest, however, that Buddhism has been for the most part neutral on the subject. The principal question for Buddhism has not been one of heterosexuality versus homosexuality but one of sexuality versus celibacy.[122]

[122] *ibid* p82

VII Political Parties

A. The Labour Party

At its 1992 Party Conference the Labour Party voted in support of a motion calling for the age of consent for homosexuals to be lowered to 16. The Party's 1992 election manifesto had contained a commitment to a free vote on the issue rather than a statement of the policy to introduce protective legislation to outlaw discrimination against lesbians and gay men contained in *Meet the challenge, Make the change: A new agenda for Britain.*[123] The 1997 election manifesto did not contain any specific commitments on sexuality discrimination, but stated that 'attitudes to race, sex and sexuality have changed fundamentally. Our task is to combine change and social stability'.

At the 1994 Labour Party conference a motion recommitting Labour to an equal age of consent for homosexuals and heterosexuals was carried by 97.6% to 2.4% of the vote. The motion called for legislation 'to ensure that lesbians and gay men have the same rights and protections in law as those enjoyed by other sections of society'. The Labour Campaign for Lesbian and Gay Rights (LCLGR) had launched a new campaign for equality in the summer of 1994.

Twenty of the twenty-two members of the current Cabinet voted in favour of setting the age of consent at 16 in 1994 (the two exceptions were David Blunkett and Ann Taylor).

The Prime Minister's message to the 1997 Pride Festival stated that 'the new Labour Government wants to build a new Britain free from discrimination', and the 1997 Labour Party conference included a gay night.

B. Conservative Party

The former prime minister, Margaret Thatcher, did not support a change in the age of consent for homosexuals, but John Major was viewed by gay organisations as more sympathetic. William Hague voted for a common age of consent of 16 in the vote on Edwina Currie's amendment to the *Criminal Justice and Public Order Bill 1994.*[124]

The Tory Campaign for Homosexual Equality (TORCHE) aims to suggest an approach to homosexual law reform issues which is "broadly consistent with two of the essential principles of Conservatism: equality before the law, and the freedom of adults to lead their private lives as they wish, provided they do not harm others". TORCHE supports a common age of consent of 16, the ability of homosexuals to serve in the Armed Forces, more general sexual law reform in relation to penalties for sex offences in public, the repeal of section 28

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[123] Labour Party, 1989, p 64
[124] HC Deb vol.

of the *Local Government Act 1988* and other equality issues. It does not support positive discrimination to advance gay rights.

On the other hand, the Conservative Family Campaign is opposed to any lowering of the age of consent for homosexuals.

C. The Liberal Democrats

The Liberal Democrat election manifesto for 1997 stated that 'in a free and tolerant society, discrimination on any grounds is unacceptable. Diversity is a source of strength.'

D. Other Parties

The Scottish National Party and the SDLP both have specific anti-discrimination policies in relation to homosexuals. Although this might imply a common age of consent, it is also explicitly stated in the SNP's policy. Plaid Cymru has no specific policy in this area but it does have a consistent policy of equality of treatment. Sinn Féin's 'Policy for Lesbian, Gay and Bisexual Equality' encourages Britain to improve such equality in the 'Six Counties'.[125]

[125] 23-24 March 1996

VIII The European Perspective

Most European countries have a common age of consent for heterosexual and homosexual sex. The following table shows the age of consent for European Union countries:

	Male/Female	Female/Female	Male/Male
Austria	14	14	14 (#1)
Belgium	16 (#2)	16 (#2)	16 (#2)
Denmark	15	15	15
Finland	16 (#3)	18 (#3)	18 (#3)
France	15	15	15
Germany	16	16	16
Greece	17	-	17
Ireland	17	17	17
Italy	14 (#4)	14 (#4)	14 (#4)
Luxembourg	16	18	18
Netherlands	16 (#5)	16 (#5)	16 (#5)
Portugal	16 (#6)	16 (#6)	16 (#6)
Spain	12 (#7)	12 (#7)	12 (#7)
Sweden	15 (#8)	15 (#8)	15 (#8)
United Kingdom	16 (#9)	16 (#9)	18

#1 - it is illegal for a male over 19 to commit homosexual acts with a male between 14 and 18
#2 - heavier penalties are levied against those in authority
#3 - the Finnish parliament is considering lowering the common age of consent to 15
#4 - if one of the participants is an older family member or guardian, the age of consent is 16
#5 - if a person between the ages of 12 and 16 commits a sexual act with another person between those ages, they will not be prosecuted unless there is a complaint from the other participant, a parent or a guardian. However, if a person over 16 commits a sexual act with a person under 16, they will be liable for prosecution regardless of whether or not a complaint has been made.
#6 - it is illegal for a person aged 18 or over to commit sexual acts with a person under 18
#7 - if a person between the ages of 12 and 16 has committed a sexual act with a person over 16, the older person may be liable to prosecution if the younger person's parents complained
#8 - there is no statutory age of consent. In general, consensual sexual relations are not penalised from the age of 12, although a person aged over 16 who has sex with a person aged between 12 and 16 may be liable to prosecution
#9 - 17 in Northern Ireland

A. Republic of Ireland

Until 1993 homosexual acts were illegal under Irish law and punishable by life imprisonment. The *Criminal Law (Sexual Offences) Act 1993*, passed on 24 June 1993, changed the law by decriminalising sexual activity between males over the age of 17. The age of consent for heterosexuals is also 17.

The Irish government received an adverse ruling in 1988 from the European Court of Human Rights in the case of *Norris.* Irish Senator David Norris took his case to the ECHR on the

basis that Irish legislation interfered with his right to respect for his private life under Article 8.1 of the European Convention.

At the second stage of the Bill, however, the Minister for Justice, Mrs Geoghegan-Quinn made it clear that the ECHR ruling was not the only reason for a change in the law:

> While it is the case that the main sections of the Bill arise against a background of the European Court decision in the Norris case, I think that it would be a pity to use that judgment as the sole pretext for the action we are now taking so as to avoid facing up to the issues themselves. What we are concerned with fundamentally in this Bill is a necessary development of human rights. We are seeking to end that form of discrimination which says that those whose nature it is to express themselves sexually in their personal relationships, as consenting adults, in a way which others disapprove of or feel uneasy about, must suffer the sanctions of the criminal law. We are saying in 1993, over 130 years since that section of criminal law was enacted, that it is time we brought this form of human rights limitation to an end. We are recognising that we are in an era where values are being examined and questioned and that it is no more than our duty as legislators to show that we appreciate what is happening by dismantling a law which reflects the values of another time.
>
> That process of change is not easy and, understandably, many people worry that the traditional values which they hold so dear, and many of which are fundamentally sound, are under siege from emerging modern realities. But, of course, it is not a matter of laying siege to all the old certainties, nor is it a matter of jettisoning sound values simply to run with a current tide of demand, which may or may not be a majority demand. It is, rather, a matter of closely looking at values and asking ourselves whether it is necessary, or whether it is right, that they be propped up for the comfort of the majority by applying discriminatory and unnecessary laws to a minority, any minority.
>
> We as a people have proved our ability to adopt a balanced and mature approach in dealing with complex social issues. In this context I am particularly pleased to note that, by and large, the public debate which has taken place in relation to the area covered by the Bill has been marked by a lack of stridency and by a respect for the sincerity of the views held by others.[126]

On the setting of the age of consent Mrs Geoghegan-Quinn said that the Government could find 'no compelling reason' for a different age of consent applying to homosexual acts and to heterosexual acts [cl976]. She acknowledged that 'this common age of consent is quite high by European standards' [cl976] but she was satisfied that 17 was the right age for Ireland. In reply to the debate Mrs Geoghegan-Quinn responded to the argument that a higher age of consent should be set for homosexuals:

> As I said in my statement earlier, there is no logical reason for assuming that, while persons of 17 are capable of giving valid consent to heterosexual activity, persons of homosexual orientation do not acquire such capacity until they are older. Under-lying any such proposition would be the idea that homosexual orientation carries with it the burdens of lack of maturity or lower intellect. There is no basis for any such assumption. Not all individuals of 17 years are mature or capable of forming valid consent, and this has been acknowledged by most Deputies. That applies equally to homosexuals and heterosexuals.[127]

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[126] Dáil Éireann Debates vol 432 cc1971-2, 23 June 1993
[127] *ibid* cc2044-5

Senator David Norris welcomed the Irish legislation and in an article in the *Irish Times* of 25 June 1993 he said that he was 'immensely proud to be a citizen of this Republic. It would have been so easy to be lazy and merely to introduce the provisions of the British *Sexual Offences Act 1967*. There is little doubt in the light of the consequences of the *Dudgeon* judgment that such a measure would have passed the test of the European Court of Human Rights. But the British model is an incompetently phrased, mean-minded, parsimonious and begrudging piece of legislation that continues to vitiate the lives of gay people in the United Kingdom 30 years after its passage.'

A Fine Gael attempt to introduce an amendment to raise the age of consent to 18 was thwarted by filibustering tactics from its own 'liberal' wing. Guy Mitchell explained Fine Gael's reasons for seeking to introduce 18 as the age of consent:

> Fine Gael will support those sections of the Bill dealing with this area but will table an amendment on Committee Stage to increase the age from 17 years, as proposed in the Bill, to 18 years. It is the view of my party that 18 years, being the age of majority, is the appropriate age that should apply in this case. My party is conscious of the fact that teenage years can be tender years and is anxious to strike the correct balance between removing unnecessary criminal taboos and protecting vulnerable people under the law. There is a case for making the age of heterosexual and homosexual offences equal, but on balance my party feels that a case has been made already by the Law Reform Commission for a differentiating in certain circumstances. My party feels that such differentiation would be justified in this particular case.
>
> In this regard I want to say that it is not my wish to reflect in any way on the sexuality of anybody, homosexual or heterosexual. It is about time that this legislation was brought up to date. But it is the opinion of the Fine Gael Party, having considered the matter, that 18 should be the appropriate age in relation to this particular offence.[128]

B. European Union

The Committee on Civil Liberties and Internal Affairs of the European Parliament published a report on equal rights for homosexuals and lesbians in the EC on 26 January 1994.[129] It called on Member States to abolish all legal provisions which criminalise and discriminate against sexual activities between persons of the same sex, and to apply the same age of consent to homosexual and heterosexual activities alike.[130] The Report was followed by a Resolution of the European Parliament, passed by a vote of 159 to 96 MEPs, which also called for a common age of consent and asked the European Commission to bring forward proposals for member states to stop prosecuting homosexuality as a gross indecency or public nuisance.[131]

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[128] *ibid* cc1983-5
[129] A3-0028/94
[130] paragraphs 5 and 6
[131] EP Minutes, 8 February 1994

Under the new amendments to the *Treaty of Amsterdam*, agreed last autumn, Article 6A would enable European legislation to be adopted to eliminate various forms of discrimination, including discrimination based on sexual orientation.[132]

C. European Convention on Human Rights

In February 1994 the European Commission of Human Rights ruled admissible a complaint by three men[133] that the United Kingdom was in breach of Articles 8 and 14 of the European Convention on Human Rights because of the difference in the age of consent for homosexuals and heterosexuals. Article 8 grants everyone 'the right to respect for his private and family life, his home and his correspondence', and Article 14 states that 'the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status'. However, in the light of the intervening vote on the age of consent which reduced the age of consent for homosexuals to 18, the case was not referred to the European Court (all three men were over 18 at the time).

However, the European Commission of Human Rights later concluded that the United Kingdom also had a case to answer for setting the homosexual age of consent at 18, following a complaint brought by Euan Sutherland in June 1994.[134] Again the accepted ground for the complaint was breach of Articles 8 and 14 of the European Convention on Human Rights. The government was asked to justify the continuing inequality in the treatment of gay men, and, in particular, the criminalisation of the young gay men involved. It replied that it is using the discretion allowed to it under the 'margin of appreciation' to allow young men time to consider their sexuality, and to prevent young gay men from setting themselves apart from society at too young an age.[135] After hearing the arguments for both sides, the Commission ruled (by 14 votes to 4) that there had been a violation of Article 8 taken in conjunction with Article 14, and that the case was admissible.[136] Following this report, the Government announced that it and the applicants had agreed to apply to the Court for the case to be deferred pending a vote in Parliament 'at the earliest opportunity', and that the parallel case of Morris would also be deferred.[137]

A gay man who was prosecuted for having a sex party with friends at his home has also taken his complaint to the European Commission of Human Rights.[138] The government has responded to a request from the Commission for its views on the legal position of gay male

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[132] referred to in para. 42 of the ruling of the European Court of Justice in the case of *Grant v South West Trains*, Case C-249/96

[133] Ralph Wilde, Hugo Greenhalgh and William Parry, who brought the case with the backing of Stonewall

[134] Application no 25186/94

[135] 'Government argues in Europe to keep gay sex at 18', *Gay Times*, August 1995

[136] adopted on 1 July 1997

[137] 'Statement on age of consent following report by European Commission on Human Rights', *Home Office press notice 033/97*, 7 October 1997

[138] known as the *ADT case* because of the man's desire to remain anonymous

sex parties, which are currently illegal if more that two people are present.[139] However, the Commission has not yet announced its opinion.

The *Human Rights Bill [HL]*, Bill 119 of 1997-98, currently before Parliament, seeks to give effect in domestic UK law to the rights contained in the *European Convention on Human Rights*.[140]

D. Council of Europe

On 8 July 1981 the Committee on Social and Health Questions of the Council of Europe presented a draft recommendation on discrimination against homosexuals.[141] The Rapporteur's explanatory memorandum makes the following remarks about the age of consent for homosexuals:

> I deliberately left out one crucial issue which is highly controversial and on which reaching a consensus seems an almost impossible job. This the question of the age of consent for sexual acts before which the act becomes a crime and is legally prosecuted. It is being understood here that the case of legal prosecution applies mostly to the "adult" who is involved in a homosexual act with a person below the legally accepted age. It is quite understandable that every society would prefer to fix this limit according to its own social and cultural maturity. It is, however, not quite understandable why in the same country the authorised age for sexual acts should be different for heterosexual and homosexual young boys and girls.

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[139] section 1(2), *Sexual Offences Act 1967*
[140] For further details of the *Human Rights Bill*, see Research Papers 98/24 and 98/27
[141] Consultative Assembly 33rd Session 1981-82, Doc 4755

Appendix: Court proceedings and cautions

Tables 1 to 4 show court proceedings and cautions of males for a range of sexual offences in England and Wales, from 1993 to 1996. This covers the two years before and after the *1994 Criminal Justice and Public Order Act* came into force.

When the 1994 Act amended the *Sexual Offences Act 1956* it not only lowered the age of consent for homosexual men but altered the definitions of a number of sexual offences, so interpretation of the figures and comparison across years is difficult. Even with the offences broken down into the detail shown in the tables, it is impossible to produce a total figure for all homosexual offences. For example, the large number of prosecutions for buggery with a boy under 16 or a woman or an animal includes an unknown number of homosexual or consensual acts.

According to the Secretary of State for Northern Ireland, information is not available about the ages of persons convicted of, or involved in, homosexual offences in Northern Ireland.[142]

In Scotland, less detailed data are available. The numbers of persons proceeded against, and with a charge proved, where the main offence was a homosexual act under s.80(7) of the *Criminal Justice (Scotland) Act 1980*, s.13(5) of the *Criminal Law Consolidation Act 1995* or under the Common Law in Scotland are shown below. The figures for 1990 to 1995 are revised.

	1990	1991	1992	1993	1994	1995	1996
Proceeded against							
16-20	13	9	4	7	1	4	4
21 and over	76	105	77	71	91	60	44
Total[1]	89	114	81	78	93	64	49
Charge proved							
16-20	13	9	4	6	1	4	0
21 and over	73	99	75	70	85	54	44
Total[1]	86	108	79	76	87	58	45

[1] Totals include 8-15 year olds

Source: Scottish Office

[142] HC Deb vol 298 c741-2, 24 July 1997

Table 1

Court proceedings and cautions of males for certain sexual offences, England and Wales 1993
before the Criminal Justice and Public Order Act 1994 - 'age of consent' 21

	Prosecutions				Cautions				Convictions				Immediate custody			
	10-17	18-20	21+	Total	10-17	18-20	21+	Total	10-17	18-20	21+	Total	10-17	18-20	21+	Total
Buggery																
With a boy under 16 or woman or animal	18	18	257	293	19	-	8	27	4	5	126	135	-	5	101	106
With male over 16 without consent	-	2	33	35	-	2	2	4	-	3	14	17	-	1	11	12
By male over 21 with male under 21 with consent	1	-	7	8	-	1	1	2	-	-	4	4	-	-	4	4
By male with male other than above	-	3	5	8	6	6	3	15	-	1	4	5	-	-	2	2
Attempted buggery																
With boy under 16 or woman or animal	5	1	9	15	5	-	2	7	5	1	14	20	1	-	9	10
With male over 16 without consent	-	-	2	2	-	-	1	1	-	-	2	2	-	-	2	2
By male over 21 with male under 21 with consent	-	-	1	1	-	-	-	-	-	-	-	-	-	-	-	-
By male with male other than above	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Assault with attempt to commit buggery	1	-	5	6	-	-	-	-	-	-	2	2	-	-	2	2
Indecency between males																
By male over 21 with male under 21	1	3	88	92	1	2	49	52	-	1	51	52	-	-	4	4
By male with other male other than above	1	8	439	448	12	20	389	421	-	5	332	337	-	-	2	2
Procuration																
Male over 21 procuring male under 21 to gross indecency	-	-	11	11	-	-	7	7	-	-	7	7	-	-	-	-
Male procuring male over 21 to gross indecency (a)	1	-	26	27	1	-	32	33	-	-	22	22	-	-	-	-
Soliciting by male	1	8	199	208	6	14	185	205	-	6	118	124	-	-	-	-

(a) other than cases of procuring acts of buggery which are not offences

Source: Home Office

Table 2

Court proceedings and cautions of males for certain sexual offences, England and Wales 1994
before the Criminal Justice and Public Order Act 1994 - 'age of consent' 21

	Prosecutions				Cautions				Convictions				Immediate custody			
	10-17	18-20	21+	Total	10-17	18-20	21+	Total	10-17	18-20	21+	Total	10-17	18-20	21+	Total
Buggery																
With a boy under 16 or woman or animal	37	14	291	342	25	-	16	41	17	6	110	133	1	4	88	93
With male over 16 without consent	-	-	23	23	2	-	2	4	-	1	22	23	-	-	15	15
By male over 21 with male under 21 with consent	1	1	4	6	1	-	-	1	-	1	6	7	-	-	4	4
By male with male other than above	-	-	5	5	3	1	1	5	-	-	1	1	-	-	-	-
Attempted buggery																
With boy under 16 or woman or animal	2	2	17	21	4	1	1	6	2	3	11	16	-	3	9	12
With male over 16 without consent	-	-	1	1	-	-	1	1	-	-	1	1	-	-	1	1
By male over 21 with male under 21 with consent	-	-	-	-	-	-	-	-	-	-	2	2	-	-	2	2
By male with male other than above	-	-	1	1	-	-	-	-	-	-	1	1	-	-	1	1
Assault with attempt to commit buggery	1	-	6	7	3	-	-	3	-	-	2	2	-	-	-	-
Indecency between males																
By male over 21 with male under 21	3	2	71	76	2	3	37	42	2	2	57	61	-	-	8	8
By male with other male other than above	3	9	520	532	8	5	382	395	2	6	411	419	-	-	-	-
Procuration																
Male over 21 procuring male under 21 to gross indecency	-	-	13	13	-	-	18	18	-	-	8	8	-	-	-	-
Male procuring male over 21 to gross indecency (a)	1	-	23	24	-	-	72	72	1	-	18	19	-	-	-	-
Soliciting by male	-	8	116	124	4	5	245	254	-	6	76	62	-	-	1	1

(a) other than cases of procuring acts of buggery which are not offences

Source: Home Office

Table 3

Court proceedings and cautions of males for certain sexual offences, England and Wales 1995, 'age of consent' 18

	Prosecutions				Cautions				Convictions				Immediate custody			
	10-17	18-20	21+	Total	10-17	18-20	21+	Total	10-17	18-20	21+	Total	10-17	18-20	21+	Total
Buggery																
With a boy under 16 or a woman or animal	11	3	110	124	4	-	4	8	4	2	80	86	2	1	72	75
With male over 16 without consent	-	-	3	3	1	-	1	2	-	1	7	8	-	-	4	4
By male over 21 with male under 21 with consent	-	-	1	1	-	-	-	-	-	-	1	1	-	-	1	1
By male with male other than above	-	-	-	-	-	-	-	-	1	-	1	2	1	-	-	1
By male of a male under 16	5	2	41	48	2	-	-	2	1	2	26	29	-	2	26	29
Other	-	-	8	8	1	-	2	3	-	1	8	9	-	1	6	7
Attempted buggery																
With boy under 16 or woman or animal	-	-	6	6	1	-	-	1	-	-	14	14	-	-	11	11
With male over 16 without consent	-	-	-	-	-	-	-	-	-	-	2	2	-	-	2	2
By male over 21 with male under 21 with consent	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Assault with attempt to commit buggery	-	1	4	5	2	-	-	2	1	-	-	1	-	-	-	-
Indecency between males																
By male over 21 with a male under 21	2	2	47	51	4	2	41	47	-	2	51	53	-	-	9	9
By male with other male other than above	2	6	274	282	2	-	126	128	1	1	237	239	-	-	4	4
Gross indecency by a male aged 21 or over with a male under 18	-	-	10	10	-	-	4	4	-	-	11	11	-	-	4	4
Gross indecency by a male aged under 18 with another male	2	-	-	2	3	-	-	3	2	-	-	2	-	-	-	-
Gross indecency by a male aged 18 or over with another male aged 18 or over	-	-	149	149	-	6	159	165	-	-	105	105	-	-	1	1
Procuration																
Male over 21 procuring male under 21 to gross indecency	-	-	8	8	-	-	14	14	-	-	8	8	-	-	-	-
Male procuring male over 21 to gross indecency	1	-	7	8	-	-	16	16	-	-	9	9	-	-	-	-
Male living off earnings of male prostitute	-	-	1	1	-	-	-	-	-	-	1	1	-	-	1	1
Male over 21 procuring or attempting to procure male under 21 to gross indecency with another male	-	-	1	1	-	-	-	-	-	-	2	2	-	-	1	1
Procuring or attempting to procure male to gross indecency with male other than above	-	-	6	6	1	1	19	21	-	-	1	1	-	-	-	-
Soliciting by male	1	1	109	111	1	6	119	126	1	2	69	72	-	-	-	-

some definitions of offence with very few known offenders have been omitted

Source: Home Office

Table 4

Court proceedings and cautions of males for certain sexual offences, England and Wales 1996, 'age of consent' 18

	Prosecutions				Cautions				Convictions				Immediate custo	
	10-17	18-20	21+	Total	10-17	18-20	21+	Total	10-17	18-20	21+	Total	10-17	18-20
Buggery														
With a boy under 16 or a woman or animal	-	-	16	16	2	-	3	5	-	-	5	5	-	-
With male over 16 without consent	1	-	2	3	-	-	-	-	-	-	2	2	-	-
By male over 21 with male under 21 with consent	-	-	-	-	-	-	-	-	-	-	-	-	-	-
By male with male other than above	-	-	-	-	-	-	1	1	-	-	-	-	-	-
By male of a male under 16	9	-	57	66	5	-	-	5	2	3	61	66	-	1
Other	-	-	10	10	2	-	1	3	-	-	5	5	-	-
Attempted buggery														
With boy under 16 or woman or animal	-	-	3	3	1	-	-	1	-	-	2	2	-	-
With male over 16 without consent	-	-	-	-	-	-	-	-	-	-	-	-	-	-
By male over 21 with male under 21 with consent	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Assault with attempt to commit buggery	-	-	3	3	-	-	-	-	-	-	-	-	-	-
Indecency between males														
By male over 21 with a male under 21	-	-	10	10	-	2	25	27	-	-	4	4	-	-
By male with other male other than above	1	2	129	132	2	1	56	59	1	2	90	93	-	-
Gross indecency by a male aged 21 or over with a male under 18	-	-	9	9	-	-	4	4	-	-	11	11	-	-
Gross indecency by a male aged under 18 with another male	-	-	-	-	11	-	-	11	1	-	-	1	-	-
Gross indecency by a male aged 18 or over with another male aged 18 or over	-	4	126	130	-	3	200	203	-	2	108	110	-	-
Procuration														
Male over 21 procuring male under 21 to gross indecency	-	-	1	1	-	-	5	5	-	-	1	1	-	-
Male procuring male over 21 to gross indecency	-	-	-	-	1	-	8	9	-	-	-	-	-	-
Male living off earnings of male prostitute	-	-	2	2		-	-	-	-	-	3	3	-	-
Male over 21 procuring or attempting to procure male under 21 to gross indecency with another male	-	-	-	-	-	-	3	3	-	-	3	3	-	-
Procuring or attempting to procure male to gross indecency with male other than above	-	-	6	6	1	-	22	23	-	-	5	5	-	-
Soliciting by male	-	4	99	103	4	2	54	60	-	2	66	68	-	-

some definitions of offence with very few known offenders have been omitted

Source: Home Office