

CENSORED

NATIONAL CAMPAIGN FOR THE REFORM
OF THE OBSCENE PUBLICATIONS ACTS

N C R O P A

FIGHTING SEXUAL CENSORSHIP

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To: C4 Division
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28th October 1992

Dear Sirs,

RE: LAW COMMISSION NO 177; DRAFT CRIMINAL CODE BILL.

Further to the incorporation of Chapter I into Law Commission Consultation Paper No 122, We set out a critique of other Chapters below:

CHAPTER II SEXUAL OFFENCES

Sec 95. BUGGERY. For the avoidance of doubt, consensual adult heterosexual buggery should be formally legalised. The abolition of common law buggery in Schedule 8 is insufficient as there is a statutory offence under Sec 12 Sexual Offences Act 1956 which should therefore be repealed in Schedule 10

Sec 116 & Schedule 5. INDECENT PHOTOS OF CHILDREN. For the avoidance of doubt, the existing statutes covering this conduct should be specifically repealed in Schedule 10. They are: Protection of Children Act 1978 as amended by Sec 170 & Schedule 16 of the Criminal Justice Act 1988.

The word "obscene" should replace the term "indecent," which has too vague an interpretation. The courts have defined the latter term as including anything which is "immodest or unbecoming." Thus holiday snapshots or video recordings of nude children romping on the beach could criminalise their parents.

Subsection (1) (d) The words "likely to be understood as conveying" should be replaced by "which clearly conveys."

Subsection (2) (b) should be deleted. The burden of proof must be on the prosecution.

Subsection (3) should contain a specific exemption for archives, art galleries, film societies, libraries and museums. Legitimate reasons in (a) should be defined. It must not be left to narrow-minded and/or idiosyncratic magistrates to interpret this.

Subsection (4) is unacceptable. There should be no reversal of the burden of proof. A conviction for this controversial offence can ruin a person's reputation and therefore the normal requirement of "mens rea" is especially important.

COMMITTEE - Alexander Barrie, A.A.Dipl, M.A.I.E.; Professor Gerald Fowler, M.A. (Hons.), F.A.B.E.; Ted Goodman, LL.B. (Sol.); Clifford Hanley; David Kennington, M.A. (Hons.), Litt.D., B.A. (Psy.); Isabel Koprowski, B.A.; Eric E. Miller; Tuppy Owens, B.Sc., Dip.H.S.; Dr. Christine Pickard, M.B., Ch.B

Sec 117. POSSESSING INDECENT PHOTOS OF CHILDREN.

Criminalising mere physical possession without "mens rea" is unacceptable, as also is the reversal of the burden of proof in subsection (3). The Prosecution should have to show that the Defendant believed, or in the circumstances should have believed, that the child was aged under sixteen.

Subsection (2) (a) "Legitimate" must be defined. The term is too vague.

Subsection (2) (c) "Unreasonable" must be defined and not left to arbitrary and erratic interpretation by different courts..

Schedule 5. INDECENT PHOTOS OF CHILDREN. is too wide. This is a very difficult and sensitive area of the law, involving intrusion into people's private lives. Therefore an information by a constable is insufficient. It should be by a Crown Prosecutor. There should be no reversal of the burden of proof in Subsections (3)-(5)

Sections 118 & 119. BESTIALITY. Bestiality should not be prohibited for adults, unless it involves cruelty to an animal. The concept of "consenting animals" should be applied in the same way as that of "consenting adults." Bestiality is lawful in several other European countries (eg Denmark) without ill-effects on man or beast. Humans are themselves a type of animal. Procurement should not be an offence. Consenting adults need no protection regarding their sexual activities. This is stressed by Paragraph 10.9 of the Williams Report (Cmnd 7772) which uses the Report's criterion that prohibition is only justified by harm caused.

Section 120. SEXUAL ACTS IN PUBLIC. Subsection (2)(c) is unacceptable. Consenting adults in this country should have the same freedom as exists on the Continent, where sex-clubs and live sex-shows are lawful. The newly liberated countries of Eastern Europe have recently legalised such exhibitions. (Hungary, for instance, did so on the 1st January 1992). Why should grundyst State nannyism be retained in England? (2) (c) Should be deleted. Live sex shows in enclosed premises, to which public access is regulated, should be lawful as they are in most continental countries eg France, Germany, Hungary & Spain.

(3) (a) For the avoidance of doubt, the definition of "public place" should be expressed to override that in Section 6. The expression "place of common resort" should be deleted because it is too vague."

Section 121 After the words "whether on payment or otherwise" there should be inserted "if there are other members of the public there present who do not consent to such activity taking place."

Sections 123, 124, 125, 126, 127, 129 & 130. PROSTITUTION
These sections are unacceptable. Prostitution, being lawful "per se", should be consensually organised, controlled &/or facilitated. (Coercion is adequately dealt with by other parts of the Code). If not, prostitution becomes, in effect, impossible to practise. It should have the same freedom to operate in this country as it enjoys in other European Community countries (eg Belgium, Denmark, Germany and the Netherlands).

Sections 131, 132 & 133. PROCUREMENT. These sections are unacceptable. Consenting adults need no protection from procurement. To do otherwise constitutes authoritarian State nannyism.

Sections 135 & 136. LOITERING & KERB-CRAWLING.
The words "loiters or solicits" should be replaced by "persistently loiters and solicits" in 135 (1).
The word "and" should replace "or" in line 7 of 136(1).

CHAPTER V: OFFENCES AGAINST PUBLIC PEACE & SAFETY.

Sections 205 & 206. ACTS LIKELY TO STIR UP RACIAL HATRED.
There should be no reversal of the burden of proof.

Sections 207, 208, 209 & 210. ACTS & MATERIAL LIKELY TO STIR UP RACIAL HATRED. These sections are unacceptable as they grossly restrict freedom of expression and reverse the burden of proof. In any event there should be specific exemptions for archives, art galleries, film societies, libraries, and museums. The phrase "offending words or behaviour" in Sec 209 (1) (a) (iii) is totally unjustified. As George Bernard Shaw stated "it is the role of the artist to shock".

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**SCHEDULE 1. PROSECUTION, PUNISHMENT & MISCELLANEOUS
MATTERS..**

The Heading of Column 4 "punishment" is unacceptable. It excludes a purpose of sentencing, namely rehabilitation and should therefore be replaced by the word "penalty". The details in the column should be augmented to include payment of compensation to the victim.

Yours faithfully,

Cllr E Goodman

pp NCROPA Committee.