

OBSCENE PUBLICATIONS (PROTECTION OF CHILDREN, etc) (AMENDMENT)

BILL

5AW 1986

A REPRESENTATION from THE PUBLISHERS ASSOCIATION
The Booksellers Association

This Private Member's Bill will receive its Second Reading in the House of Commons on Friday 24 January 1986. It applies a new test of obscenity in the case of an article published in a place to which people under 18 years of age have access. The stated aim of this part of the Bill is to take explicit 'sex and violence' magazines out of general circulation, so that they are available only in licensed sex shops.

The present wording of the Bill puts at risk, however, a much wider range of publications and possible offenders than the stated aim of the presenters and sponsors of the Bill warrants.

(1) the words 'article' and 'publish' will carry the meanings given to them in S.1(2) and (3) of the principal Act, the Obscene Publications Act of 1959. An 'article' clearly encompasses a book as well as a magazine, and to 'publish' an article is to sell it, lend it or offer it for sale.

(2) the opening words of the proposal S.3(A), additional to S.3 of the principal Act, - 'depicts visually, and in actual or

simulated form, acts of masturbation' etc. - carry no qualification to 'depicts', such as 'exclusively' or 'predominantly', and the ambit of 'visually' may be wider than the sense of 'photographically'.

It is clear from these features that while the Bill does not concern printed words on their own, it may well turn out to concern illustrated books sold through bookshops, art galleries, museums, etc. - any place, indeed, 'to which persons under 18 years of age have access'. Serious sex and health manuals, and art books on, for example, Indian erotic culture, for many years widely available in bookshops, may come to be at risk.

The wording of the Bill may also concern jackets and covers of books - 'an article shall be deemed to be obscene if ... it depicts visually ... vicious cruelty towards persons ...' A history of slavery, for example, could through a historical print on its jacket depicting vicious cruelty to slaves be at risk.

Although the defence of public good under S.4 of the principal Act will be available, all the defects of forfeiture proceedings under S.3 of that Act will apply to this amending Bill.

The Bill, in short, exceeds in its present wording what is required to give effect to its stated purpose, and so may erode unjustifiably freedom to publish and freedom to read.