



**Metropolitan Police Service**  
**Response to the Sex Offences Bill**



**METROPOLITAN  
POLICE**

*Working for a safer London*

## INTRODUCTION

1. The Metropolitan Police Service (MPS) welcomes the Sexual Offences Bill. It fully supports the intention to increase public protection and to modernise current laws relating to sexual offences.

2. The MPS was fully engaged with the Home Office in the consultation exercise leading to 'Setting the Boundaries' in July 2000. It also engaged in discussions following the publication of the 'Protecting the Public' command paper. The MPS particularly welcomes the proposals in the Bill that protect children from abuse. We have for many years struggled with loopholes that have allowed offenders to avoid prosecution for the most appropriate offence or in some cases, completely. The Bill fills many loopholes in current legislation.

3. This submission addresses various clauses in the Bill where it considers comment is necessary. These are:

• <b>Rape</b>	<b>2</b>
○ Clause 1	2
• <b>Child related offences</b>	<b>4</b>
○ Clause 17	4
○ Clause 52	5
○ Clause 54-60	5
○ Clause 76	7
○ Clause 77	7
○ Clause 78	7
○ Clause 89	7
○ Clause 110	8
• <b>Suggestions for additional clauses</b>	<b>9</b>

4. If clarity is needed on any aspects of this submission, contact should be made in the first instance with:

**Caroline Halliwell, MPS Parliamentary Advisor on 0207 230 2926**

## **RAPE**

### **Clause 1 (1)**

5. The MPS supports the change of the definition of rape to include penetration of the mouth. Our experience is that this is as serious an offence as rape under the current definition and should be recognised as such.

### **Clause 1(3)**

6. The MPS acknowledges that clause 1 (3) is a contentious subsection, it is necessary in our view for the reasons outlined below:

Case law on the issue of 'consent' is ambiguous with the case of DPP v Morgan & Others [1975] Crim LR 717 invariably used by suspects as a precedent, undermining other case law that suggests that 'reckless' actions by the suspect should be taken account of e.g. R v Pigg (1982) 74 Cr App R 352. It is virtually impossible to prove 'reckless' intent when all the suspect has to say is that 'he believed she/he consented'. We contest that suspects are hiding behind the Morgan ruling despite behaviour that was totally unreasonable in the circumstances (e.g. a minicab driver raping a women passenger).

The Morgan ruling means that legitimate questions about the behaviour of a suspect cannot be put in interview to test 'mens rea' further. Once a suspect has stated that 'he honestly believed she consented' that is normally the end of an interview. Furthermore, in these cases, the onus then frequently focuses on the victim to subsequently prove that she did not consent rather than on the suspect, by both police and courts, to prove that she did. This leads to victims being questioned vigorously on their behaviour with no similar questioning permitted of the suspect. We contend that this is an imbalance that needs addressing.

A test of 'reasonableness' will enable police interviewers to put more detailed questions to the suspect to test out the mental state of the suspect at the time. Answers to such questions will provide evidence to prove/disprove consent and assist the jury in their deliberations.

It is acknowledged that there is only one precedent for the 'objective' test in criminal law, the case of R v Caldwell [1982] AC 341 however, the test of 'reasonableness' is already routinely used in criminal courts. For instance, the concept of what is 'reasonable' police behaviour in the collation of evidence was introduced in the Police and Criminal Evidence Act 1984 with grounds for arrest, search etc. subject to just such an objective test.

7. The rebuttable presumptions within Clause 78 have received some critical comment that this is a violation of the principle of burden of proof. Accepting that this Bill is trying to lay down some guidelines for what is acceptable and not acceptable behaviour in society, we consider that it is

appropriate for a defendant to have to evidence objectively their belief that the person consented in the circumstances listed.

## **CHILD OFFENCES**

### **Clause 17**

8. The MPS considers that this is an essential piece of preventative legislation. The standard of proof will be high and will only be used by police when there is sufficient evidence to prove that the subject intended to commit a relevant offence with the child. It fills an important loophole that has caused significant concern to police and risk to children.

9. The inclusion of 'meets or travels with the intention of meeting' is essential, as our own risk assessments will never allow a child to physically meet an adult who is believed to be a danger to them. The MPS has evidence of one individual who sexually abused three children within fifteen minutes of meeting them.

10. Evidence of intention will therefore be proved by content of messages or conversation and by the subject's actions and possessions at the time of travelling to meet. Consideration will also be taken of the subject's previous convictions in these cases.

11. The MPS has a number of examples of subjects who have engaged children in communication where the content of that communication clearly demonstrates that the communication is sexual. Judge and jury can clearly infer this from the evidence within these communications.

12. The MPS also has examples of communication where the offender has at no time mentioned sex but by virtue of their conversations, the phrases used, their behaviour and the items in their possession clearly demonstrate their intentions.

13. Two communications prior to the meeting or intended meeting will prove persistence, continuity and a course of conduct by the offender.

14. It is accepted that there are concerns about the liberty and privacy of people who communicate innocently with children. It is our intention to use this piece of legislation with the care and consideration it deserves. The MPS will not target people or consider the use of this legislation unless there is significant evidence or intelligence suggesting that the person involved is attempting to groom children for sex.

### **Subsection 4(b)**

15. The MPS does not believe that the sentence of five years is appropriate considering the nature of the offence. It is possible that we may have to consider other offences e.g. child abduction if the sentence is more appropriate. The MPS suggests a sentence of 7 years. This is in line with all other sentences within the Bill.

## **Clause 52 (2)**

16. The MPS does not agree that the age for a “child” should be raised to 18 years. It currently has significant difficulty explaining the seriousness of the offences of possession, making or distributing indecent images of persons under the age of 16. The increase of that age, to that which is over the age of lawful sexual intercourse for females, would make this an almost impossible task. If there is the political will to increase the age we would ask that it is as a completely separate offence not included within The Protection of Children Act 1978 offences.

17. The MPS also believes that the exceptions at 1a would actually put us in the position we are currently in with rape in that we have to argue and prove consent. This would not be useful for the protection of children.

18. It is suggested that this clause also be used to alter the description of indecent images to include indecent or abusive drawings or tracings however they are made. A suggested wording is ‘sexualised drawing or tracings however they are made’. The MPS has a large collection of such images, which are simply copies of photographs drawn onto paper and distributed in the same way as photographs and pseudo photographs. Under law at present these are not illegal. They contain identifiable images of children in sexual acts and are as harmful as the photographs themselves.

19. The MPS also suggests that consideration be given to making the possession, making or distribution of writing that clearly describes sexual acts against children for sexual gratification, as this can be as harmful as images.

## **Clauses 54 – 60**

20. The MPS supports the introduction of legislation that protects children against abuse for commercial purposes. It has concerns, however, about the terminology used. The term ‘child pornography’ undermines the nature of the act. Child pornography is created through the abuse of the child either sexually or through the abuse of trust. Child pornography intimates that the child partakes in this wilfully and consensually for the purpose of personal or financial gain; this is not the case. Children are usually physically sexually assaulted to create these images or coerced into believing that the pose they perform is normal. The images are in no way done for the benefit of the child. The term ‘pornography’ intimates this. A better term would be ‘production or making of indecent or abusive images of children’.

21. The MPS accepts that this is further defined within Clause 60 subsection 2 but juries considering the charges will be unable to understand the full implications of the acts.

22. The MPS submits that the term ‘prostitute’ or ‘prostitution’ should be amended to ‘abuse through prostitution’. The MPS does not consider that the wording fully describes what the child is put through.

As an example the wording in Clause 55(1)(a) should read

- 'he intentionally causes or incites another person (B) to be abused through prostitution, or to be involved in the making or production of abusive or indecent images'

The MPS also has two main concerns in respect of prostitution offences, all of which specify '*Intentionally*'.

The people controlling, managing and living off the earnings of prostitution usually try to distance themselves from what is happening. Yet, by a painstaking method of investigation it can invariably be shown that they had knowledge of the prostitution and financially gained from the enterprise. To have to prove the intention or state of mind of the pimp is likely to be far more difficult.

E.g. The pimp who drops his girl off in a red light district then waits at home for her to bring back the money. If he says, "yes I knew she was working as a prostitute and giving me money. But she wants to do it. It's not my intention she does it".

E.g. The brothel owner who advertises his premises for massage and takes a huge percentage of the earnings. It is generally a front for prostitution, which we can prove, and the fact that he had knowledge of what the girls were doing. Again he will say, "I run a massage parlour it's not my intent that they engage in prostitution but I know they give extras for cash".

The offences need to be worded ***Intentionally or Knowingly***

The second concern is around the new definition of *prostitute* or *prostitution*.

Historically the MPS has been able to show that premises have been advertising sexual services over a period of time. Women known to be prostitutes can be shown working there. Observations show the volume of punters using the premises. Surveillance will show the person controlling the women visiting the premises when they are open. A picture can be built up, drawing inferences, showing the size and financial benefit of the enterprise.

Under the new definition you will only be able to demonstrate that there is a prostitute working there or prostitution taking place when that person specifically offers sexual acts. Operationally it is only possible to make two or three test purchase visits to prove offers of sex.

It would appear from the wording in the Bill that it would no longer be possible to paint a picture and draw an inference that the premises were constantly being run as a brothel.

#### **Clause 74**

23. The MPS has concerns for the safety of children through aspects of this clause. The clause indicates that it will be lawful to have sex with another in a cubicle of a public toilet. Toilets are places in which children are frequently abused by paedophiles. By allowing this activity to take place lawfully it will prevent worried members of the public notifying police, potentially leading to the undetected abuse of children. It is suggested that sex in a cubicle of a public toilet should be illegal for this reason.

#### **Clause 76**

24. The MPS fully supports the notion that children under 13 are unable to provide consent. The charging and conviction of persons involved in sexual activity with children under this age should be convicted of the most appropriate offence i.e. Clauses 2,4,6 and 8.

25. There are concerns about whether the offence of unlawful sexual intercourse with a female under 16 should remain on the basis that some paedophiles that commit offences against males will argue the same case. It is however felt that the offence of buggery covers this defence. This may require further discussion.

#### **Clause 77**

26. We agree the definition of consent.

#### **Clause 78**

27. We support this section and make particular note of Subsection 7 – 8. For the purpose of dealing with child offences, this is most likely to support allegations of rape and sexual assault made against adults by children between 13 and 16 years who are not sexually experienced or knowledgeable and whom the offender deceives. We support this.

#### **Clause 89**

28. The MPS submits that a subsection be included stating that any person subject to the notification requirements make themselves available to police at a reasonable time to assess the risk posed by the subject. At present police are expected to manage the risk by subjects on 'the sex offenders list' together with other partner agencies. Part of that risk assessment and management is that police will visit and speak to the individual. If he/she refuses to speak to police we have no power to proceed any further, thus making the management difficult. The inclusion of this requirement would allow us to make an informed assessment. Breach of this subsection should be treated as a breach of the notification requirement.



**Clause 110**

29. Subsection 3(a) and (b)

These are already covered previously in the act and can be removed.

## **SUGGESTIONS FOR ADDITIONAL CLAUSES**

### **Forfeiture of property used in crime**

30. The MPS submits that it should be a statutory requirement that any person who is convicted or cautioned for an offence where indecent images are found or involved must forfeit any equipment on which those images were stored. This would include computers and related media, videos, photographs and drawings.

31. At present it is necessary for police or prosecution agencies to request forfeiture once a person is convicted in court. It does not allow for occasions when a subject is cautioned.

32. In addition to this, differing orders are being given which can cause confusion and additional work for police. The MPS is, on occasions, being told that only the images will be forfeited and destroyed. This necessitates someone physically checking the computer again clearing the images and checking it a third time. If the Act stated the above this additional work would be removed.

33. It is also submitted that this is one of the few areas where part of something that is used in crime is forfeited. If a subject uses his car to commit an armed robbery the MPS does not remove the wheels and give it back to him.

### **Registration of mobile phones**

34. To protect children from subjects who use pay-as-you-go mobile phones to prey on children the MPS would ask that legislation be introduced to audit and trace these.

35. Mobile phones are used by paedophiles to communicate with children through text messages and verbally. Paedophiles also give them to children as gifts and as a means of maintaining control and contact with them. With the development of technology it will be possible to identify a person a small distance away from someone who has their mobile phone on and target them. It is anticipated that this ability will also allow suspects to obtain a personal profile of the other user in the same way as is done on the Internet. This will allow them to target children who fall within their age range and sexual preference. This has the potential to create serious risk to children.

36. To limit this and to allow police and law enforcement agencies to detect and prevent crime it is submitted that it should be a requirement that any person purchasing a pay-as-you-go mobile phone provide two forms of identity and complete a registration form which is managed by the service provider in the same way as subscribed phones.

## **Anonymity of persons until charged**

37. Sexual offences cause substantial interest by the media. An allegation or revelation that somebody has been involved in some form of sexual offence, particularly involving children is often a national story.

38. The impact of discovery, arrest or publication of the fact that someone has allegedly been involved in sexual offences has a dramatic affect on the person concerned. Current research indicates that between 5% and 7% of persons arrested for child abuse related offences commit suicide.

39. Additionally, there is huge public interest in and outrage against persons involved in the abuse of children. This can lead to public disorder, threats to alleged offenders and criminal activity by 'interested parties'.

40. All of these issues have to be managed by police and we are sometimes forced to take action that may not be in the best interests of all concerned because a subject's name has been published or broadcast by the media.

41. The MPS recommends that legislation be included that prevents the publication or broadcast of the name of a person alleged or believed to be involved in any sexual offence involving children (including the possession, making or distribution of indecent or abusive images of children) until they are charged with that offence.

42. The only exception to this should be where:  
The chief officer of police believes that it is necessary to do so to:  
Prevent or detect crime or in the interests of public health or safety.