

## **SEXUAL OFFENCES (AMENDMENT) ACT 2000**

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### **EXPLANATORY NOTES**

#### **COMMENTARY ON SECTIONS**

##### ***Sections 1 and 2: Age of consent***

9. *Subsections (1) and (2)* of section 1 of the Act deal with the age of consent in England and Wales. They substitute the word “eighteen” with the word “sixteen” where it appears in Section 12 and paragraph 16 of Schedule 2 to the Sexual Offences Act 1956 (as amended) and in section 1 of the Sexual Offences Act 1967. Extracts with the changes shown are set out at the end of these notes. The result is that:

- consensual buggery with another person is not an offence if the act takes place in private and both have attained the age of 16 (rather than 18 at present);
- an act of buggery with a man or an act of gross indecency with a man or being a party to the commission of such acts in private is not an offence provided that both parties have consented and have attained the age of 16 (rather than 18);
- the prosecution will have to show that one of the parties had not attained the age of 16 (rather than 18) at the time of the act;
- the greater maximum penalty which is available to the courts when a man over 21 commits the offences of (i) indecency between men or (ii) attempting to procure the commission by a man of an act of gross indecency will now apply where the other male is under 16 (rather than 18 at present).

These changes affect the maximum penalty for offences of buggery and attempted buggery contrary to section 12(1) of the 1956 Act which are provided for in paragraph 3 of Schedule 2 to that Act. The maximum penalties for the offence of buggery will now be as follows:

- If committed with a person under the age of 16 or with an animal, life imprisonment. This applies equally whether the offence was committed in public or in private;
- If committed by a person aged 21 or over with a person aged 16 or 17, 5 years imprisonment;
- In any other case, 2 years imprisonment.

The same maximum penalties will apply in respect of the offences of attempted buggery.

*Subsection (2)* also substitutes the word “sixteen” for the word “twenty-one” in section 8 of the 1967 Act. Extracts with the changes shown are set out at the end of these notes. The effect is that the Director of Public Prosecutions’ consent to the institution of proceedings for gross indecency with another male, buggery with another male or aiding, abetting, counselling, procuring or commanding the commission of these offences, will only be required where one of the males involved is under the age of 16 (rather than 21 at present). This change from 21 to 16 may appear more substantial than the other age changes proposed, but this is because by an oversight no consequential

*These notes refer to the Sexual Offences (Amendment) Act 2000  
(c.44) which received Royal Assent on 30 November 2000*

change from twenty-one to eighteen was made in the 1994 Act in line with the other age changes contained in that legislation.

10. *Subsection (3)* makes similar changes to the law in Scotland and substitutes the word “eighteen” with the word “sixteen” where it appears in section 13 of the Criminal Law (Consolidation) (Scotland) Act 1995. Extracts with the changes shown are set out at the end of these notes. The result is that consensual acts in private of sodomy or gross indecency or shameless indecency by one male person with another will not be an offence provided the parties to the act are aged 16 or over.
11. *Subsection (4)* makes similar changes to the law in Northern Ireland. However, the age of heterosexual consent in Northern Ireland is set at 17, so where the number “18” appears in the Homosexual Offences (Northern Ireland) Order 1982 (as amended) the word “17” is substituted for it. Extracts with the changes shown are set out at the end of these notes. The result is that consensual acts in private of buggery with another man, an act of gross indecency with another man or the act of being a party to the commission by a man of such an act, will not be an offence provided the parties to the act are aged 17 or over.
12. *Section 2* provides that no offence is committed in England and Wales under sections 12 and 13 of the Sexual Offences Act 1956 (as amended) by a person under the age of 16 if:
  - he or she engages in buggery with a person over 16;
  - he commits an act of gross indecency with a male over the age of 16;
  - he is a party to the commission of an act of gross indecency with a person over 16.

Extracts with the changes shown are set out at the end of these notes. The section does not affect the liability of a person over the age of 16 who engages in such activities with a person under the age of consent - they continue to commit an offence. Both parties remain liable in the criminal law if they are both under the age of 16. Similar changes to those mentioned above are also made to the law in Scotland and Northern Ireland to decriminalise a male under 16 (17 in Northern Ireland) who engages in homosexual activities with someone over that age.