



Consultation Response

Reforming the Law on Sexual Offences in Northern Ireland

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1. Introduction

- 1.1** *Love for Life* is a project that supports young people and their carers in the area of relationships and sexuality education, through programme delivery, training, research and community partnership.

- 1.2** Working in over 50% of Secondary schools across Northern Ireland, *Love for Life* delivers age appropriate presentations as part of the school's RSE delivery, working within the ethos and moral framework of the school.

- 1.3** All *Love for Life* work is underpinned with an acceptance of each individual as being incredibly unique and special irrespective of what choices they make in any area of their lives.

- 1.4** *Love for Life* strongly advocates the role of personal development within education, with focus firmly on the holistic development of the young person – physically, intellectually, emotionally, socially and spiritually. All work is done within a personal development model of 'information giving, attitude and value formation and skill development'.

- 1.5** In view of our work with children and young people, our response will focus particular attention on issues around capacity, consent and the protection of children against sexual abuse as dealt with specifically in Chapter 3 of the consultation document.

2. Comments on Chapter 1: Introduction

- 2.1** *Love for Life* welcomes the Government's commitment to strengthen the law in Northern Ireland around sexual offences and welcomes the opportunity for further and fresh debate.

- 2.2** While recognising the comprehensive debate and review, which has taken place in Westminster culminating in the Sexual Offences Act 2003, we would urge the Government to allow time for further debate to take place here, recognising rightly in the consultation document that the context is different in Northern Ireland.
- 2.3** *Love for Life* welcomes the objective of putting particular safeguards in place to protect the most vulnerable. Specific attention should be given to existing child protection policies and the need to afford particular protection to all children. The Convention on the Rights of the Child recognises a child as a person under 18 years due to their evolving capacity.
- 2.4** *Love for Life* would welcome a wider discussion on the 'public policy parameters of what constitutes acceptable sexual behaviour', particularly with regard to underage sexual activity. This will be explored further in section 3. Recent research shows that 77% of Northern Irish young people are delaying first sex until they reach the age of consent.¹

3. Comments on Chapter 2: Rape and Sexual Assault

Consent

- 3.1** *Love for Life* would agree that consent should be defined by statute and should take as its basis the form of "agrees by choice, and has the freedom and capacity to make that choice". **(POINT 5)**
- 3.2** In view of the acceptance of the evolving capacity of the child and the existing child protection policies and procedures particular to Northern Ireland², all cases of sexual activity with under-14s should be recognised by law as circumstances where it shall be conclusively presumed that consent was not present. **(POINT 6)**

¹ http://www.bbc.co.uk/radio1/bareall/survey_results.shtml

² Area Child Protection Committees' Regional Child Protection Policy and Procedures – Section 9.47

3.3 *Love for Life* would express concern that there is no age limit in current law below which a child is incapable of giving consent. We would argue strongly for a statutory definition of capacity, which recognises the evolving capacity of a child and role of society to 'protect immature children from decisions that they lack the competence and experience to make for themselves'.³ Article 5 of the Convention on the Rights of the Child states that direction and guidance given by parents and other persons legally responsible for the child must be provided in 'a manner consistent with the evolving capacities of the child'. **(POINT 10)**

4. Comments on Chapter 4: Children

4.1 *Love for Life* welcomes the recognition in 'Setting the Boundaries' that children 'are not, and should not, be able to consent to any form of sexual activity in the same way as adults'. (see point 3.3)

4.2 It is, therefore, imperative in considering changes to the law on sexual offences in Northern Ireland, that all children are afforded the same protection from potential risks of exploitation and abuse, a child being defined as any person under 18 year of age.

4.3 In view of underage sexual activity, we support the introduction of a concept of rape and sexual assault of children below a certain age without the need to prove a lack of consent. However, while the age introduced for England and Wales is under 13, we would propose that this apply for under 14 in Northern Ireland in order to comply with existing child protection policies and procedures, which clearly state that "in all cases where the sexually active young person is under the age of 14, there must be a discussion with Social Services who will make the necessary enquiries and will

³ Lansdown, G. 'The Evolving Capacities of the Child – Innocenti Insight'. UNICEF/Save the Children

consult with partner agencies, including the Police, as appropriate"⁴ **(POINT 14)**

4.4 *Love for Life* opposes any moves to change the age of consent in Northern Ireland from 17 to 16 year of age. The age of consent is in place to protect children from abuse or exploitation by adults and therefore, while recognising the gender discrepancy, the age of consent should remain at 17 for all children. The motivation for increasing the age in the *Children and Young Persons Act 1950* was one of child protection, and the justification for lowering it simply to bring it in line with England, Wales and Scotland is insufficient. It is also worth noting that The Sexual Offences Act 2003 also redefines a child for the purposes of the Protection of Children Act 1978 for England and Wales, as a person under 18 years rather than 16 years of age (3.5.11). Child protection measures must become stronger and tighter, not weakened by any changes to the law around age of consent. **(POINT 16)**

4.5 The Bichard Inquiry highlighted concern that 'the issue of underage sex may not be taken sufficiently seriously by the police or by social services generally'⁵, highlighting again the need for child protection messages to be clear and coherent and the law to be strengthened to protect those in society who are most vulnerable.

4.6 *Love for Life* believes that all sexual activity with children below the age of legal consent is illegal, whether it is between an adult and an underage child or two underage children. We strongly support the view expressed in 'Setting the Boundaries' that 'sexual relationships between children are capable of being exploitative and children can, and do, coerce and abuse each other'. Recent figures have shown that almost 90% of 15-19years olds said they felt pressured to have sex⁶. **(POINT 18)**

⁴ Area Child Protection Committees' Regional Child Protection Policy and Procedures – Section 9.47

⁵ The Bichard Inquiry

⁶ http://www.bbc.co.uk/radio1/bareall/survey_results.shtml

- 4.7** It is our view that the exceptions as outlined in 3.7.39 for consensual underage sexual activity effectively legitimise underage sexual activity and undermine the very purpose of having an age of consent. Such proposals effectively legalise sexual activity between teenagers 13 years and over, and disregard the need for legal protections, which are in place because of a child's perceived immaturity and vulnerability. Evidence suggests that many adolescents up to the age of 16 find it difficult to imagine risks and consequences of decisions and recognise the vested interests of others⁷. **(POINT 20)**
- 4.8** Exceptions to the age of consent would only weaken the existing law and existing child protection policies and procedures and would communicate the message that sexual activity among 13 year olds is acceptable sexual behaviour.
- 4.9** In addition, exceptions to the age of consent in Northern Ireland would result in huge inequalities across the UK with regard to the protection of young people by the law, taking account of the fact that under the Sexual Offences Act 2003 all sexual activity with a young person under the age of consent is an offence.
- 4.10** *Love for Life* accepts that criminal law should not be a barrier to the provision of advice, guidance and treatment on health and relationships to young people. HOWEVER, the provision of advice, guidance and treatment must always advocate a child's best interests over their rights. All work with underage young people around the area of relationships and sex must promote a personal development/prevention centred model, where child protection is paramount. **(POINT 23)**
- 4.11** *Love for Life* does not foresee an increase in prosecutions in cases of consensual underage sex, as such cases would not be in the public interest. However, there must be appropriate non-criminal interventions for young people under the age of consent, which act as an effective deterrent.

⁷ Lansdown, G. 'The Evolving Capacities of the Child – Innocenti Insight'. UNICEF/Save the Children

- 4.12** Multi-disciplinary child protection guidelines must be implemented by all those working with children in order to ensure that a full risk assessment is carried out and children are offered the same level of protection across all disciplines. Questions need to be asked of those working in isolation with children around their capacity and skills to make judgements about a child's individual capacity. There is little evidence to date of a collaborative approach around underage sexual activity, where child protection is given primacy.
- 4.13** It is vital to ensure that the law is robust and that guidelines are developed between the Office of Public Prosecution, PSNI, Social Services and the Department of Health, which ensure that the provision of advice, guidance and treatment on health and relationships can be given to young people, but ALWAYS within a system that ensures a multidisciplinary child protection approach is always taken.

5. Conclusion

- 5.1** *Love for Life* believes that all children in Northern Ireland should be afforded the same protection from potential risks of exploitation due to the nature of their evolving capacity, a child being defined as any person under the age of 18 years of age.
- 5.2** *Love for Life* opposes any change to the law on the age of consent in Northern Ireland and any moves to create exceptions to that age, only weakening the existing law and child protection policies and procedures.
- 5.3** We support the introduction of a concept of rape and sexual assault of children below a certain age without the need to prove a lack of consent and propose that this apply for under 14 in Northern Ireland in order to comply with existing child protection policies and procedures

5.4 *Love for Life* calls on all agencies and disciplines providing services to underage young people to strengthen and implement multidisciplinary child protection guidelines, which ensure that a full risk assessment is carried out and the protection and best interests of the child are not compromised.