



## Whose Age of Consent is it anyway?

Rape Crisis Network Ireland  
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**It is a mistake to remove currently existing levels of child protection by lowering the Age of Consent.**

The legal Age of Consent is being made the scapegoat for an absence of policy, action, resources and legislation which would address a number of the contributing factors to sexual abuse in our society.

The committee recommends this action to the government, undermining protections children currently enjoy, under no particular public pressure to do so, under no domestic or international obligation to do so and for no sound moral or public health reasons.

Essentially there is only one question the committee must answer if members of the committee are to continue to support this recommendation. What benefit can we gain from lowering the age of consent? Let us be clear, by benefit we mean a social good or an improvement in what rights and protections we currently enjoy. We need to know the answer to this question, particularly on behalf of 16 year old girls and boys who would be stripped of current State support and protection.

### Why have an age of consent at all?

Young people, but particularly girls, talk to us all the time about the unwelcome pressure they are under to engage in sexual activity before they are ready. The age of consent supports teenagers as they negotiate the most profound aspect of adulthood, their sexuality. Boundaries, frameworks, information and support are all key responsibilities, we as a society, owe our children as they explore and develop into adulthood. The age of consent is just that. To lower the age of consent not only casts out 16 year olds from that special protection, it also exerts a downward pressure on younger children.

The potentially negative emotional, psychological, health, socio-economic and future life prospects risks for teenagers engaged in young sex are all well documented.

### Why at 17?

At a time in our society where we are in fact ever lengthening aspects of childhood, largely through education, to lower the age of consent makes little sense. As the committee themselves point out when arguing for raising the age of strict liability, the ever earlier sexualisation of young people 'far from justifying provision for a defence of mistake as to age, dictates precisely the opposite course' (page 25). We would contend that it is contradictory for the committee to then argue that the reality of early sexualisation, dictates the age of consent should be lowered.

While there *is* much confusion, particularly amongst young people, about the age of consent this cannot be used as a reason to shave a year off protection from teenagers. The State is charged with the protection and promotion of individuals' rights. It is the state's duty therefore to inform people of their rights and duties where they do not know them. The age of consent in Ireland has been 17 for over 70 years. That the Irish State has failed to tackle

the vested interests of church and parents in our education system and thus denied adequate and mandatory sex education to all children is deeply regrettable but *not* a reason to lower the age of consent. There is no rationale in using ignorance, compounded by state and societal negligence, as a reason to lower the age of consent.

The Committee have argued that setting the age of consent at the same place as the age where strictly liability applies is essential for clarity. However, the 'zone of absolute protection' does not in any way *require* the age of consent to be the same. A desire for neatness in this messy area of the law seems to be the committee's strongest argument. But this is not all. Given the committee have decided that the age of consent should conform to a version of reality it chooses to promote, it recommends that the different ages of maturity and consent in Irish law should be kept under constant review. There is no suggestion from the committee that the age at which strict liability should be set, should be under review. It is conceivable, therefore under these recommendations that the age of consent and the age of strict liability would diverge in the near future, thus nullifying the only rational argument the committee has put forward for the necessity of lowering the age of consent.

### **What is the Age of Consent for anyway?**

The Age of Consent is not simply a legal instrument. The law is never simply about the criminal justice practice which revolves around the potential or actual transgression of the law. It is wrong, for legislators in particular, to understand the law as merely the actions of its servants (lawyers, gardaí, judges etc) as they uphold the law. Rather, the law is a pillar of our nation which functions in shaping, supporting and defining our culture and civilization as we choose to define and live it.

The various functions of the Age of Consent have different levels of importance.

- The Age of Consent is firstly a child empowerment, protection and preventative tool,
- It is secondly a social tool to allow us to set standards for ourselves and shape the kind of society we believe in, the kind of society into which we bring our children, to which we wish to entrust them. This is demarcated by our commitment to the protection of vulnerable people - our line in the sand. The age of the consent is one of our most potent lines in the sand.
- It is a legal tool which proscribes and demarcates behaviour which transgresses the line in the sand. Once the line in the sand is crossed it becomes a tool to criminalise certain behaviour which then allows and empowers the State to intervene. The State intervenes primarily through the criminal justice system to punish and hold accountable transgressors.

*Lowering the Age of Consent does not in any way enhance these functions of the Age of Consent.* Rather lowering the age of consent:

- Removes 16 year old children from the special protection of the State and exerts a downward pressure on younger children
- Caves into the current market driven culture which demands the ever younger sexualisation of our children. It is to renege on our responsibility to our children and abandon them to potentially harmful market demands in the guise of serving 'reality'.
- Diminishes the role of law and the possible interventions of the State where harm is being perpetuated.

Lowering the age means increased vulnerability of young people to harm and increased licence to get a way with it for the abuser.

## **The Age of Consent is a multi-functional tool, not a cure all**

What is clear is that currently in Ireland the Age of Consent is highly overworked and buckling under the responsibilities it bears. Many of these responsibilities in fact are outside of its remit. It is nonetheless expected to fulfil those responsibilities in the absence of supporting and essential legislation, policy and resources:

There is an absence of:

- adequate and comprehensive, mandatory sexual health education
- a shared public understanding of what consent actually means
- research into the attitudes and behaviours which facilitate sexual violence
- a public awareness raising commitment from the government to address same
- a national network of local sexual health and information services accessible to young people
- Statutory guidelines which outline how professionals offering help and support to children do so safely, responsibly and accountably without paternal consent.

The Age of Consent is but one aspect of the framework in delineating childhood, capacity to consent, autonomy, innocence and sexual violence. It cannot, and ought not to be, asked to fulfil all functions. 'Prevention involves changing the attitudes, beliefs, behaviours and circumstances which lead to child abuse' (ISPCC). Further, it should not be blamed when children make uninformed and poor sexual health choices.

The Age of Consent's downgrading in response to the absence and neglect in other areas of statutory and societal responsibility is inappropriate.

## **Legislating for Reality versus the Ideal**

The committee have argued for the lowering the age of consent on the premise that legislation should reflect reality and not an ideal. This is a mistaken premise. We legislate all the time for the ideal. We ban children from smoking and drinking despite the fact that we know a proportion of children do both. We do not change drink driving limits to conform to the reality of levels of drink driving, instead, we set an ideal bar and demand people conform to that ideal. In fact when the 1935 Act raised the age of consent to 17 it did so on the basis of setting an ideal age of consent in the face of what was deemed as unacceptable licentiousness in those days. But even if we accept the Committee's false premise that legislation or this legislation in particular should be based on the realities. Their assessment of reality does not seem to match the best evidence we have available to us.

The committee tell us that 'it believes that the age of consent, as it currently stands, at 17 years, is so significant a departure from reality that it should be varied' (page 37). However, the most reliable and most up to date statistics<sup>1</sup> tell us that for young people in Ireland today 17 is the median age – not 16, 17! There is a significant minority who are sexual active below the age of consent upward to a quarter. Is it to this minority that 'reality' is to be bent?

So what about the 'reality' of teenage autonomy and their right to choose when they are ready? While we can hope that many sexually active teenagers are in caring, non coercive, non abusive relationships, making fully informed and safe choices, there are many young people who experience a very different reality. Their reality includes un-mitigating pressure,

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<sup>1</sup> In total 7,441 questionnaires were completed in the ISSHR, Oct. 2006

invasive, confusing and unwelcome attention, ignorance, fear, isolation, bullying, coercion and violence. Is this the reality we wish to abandon 16 year old girls and boys to?

## **AGE OF CONSENT IS A GENDERED ISSUE<sup>2</sup>**

It is commonly held by the majority of those consulted that legislation should be gender neutral. Teenagers, when consulted, expressed their strong desire to see boys and girls treated equally under the law<sup>3</sup>.

Yet the ISSHR study<sup>4</sup> uncovered significant differences in the experiences of women and men when they reflected on first and early sex.

What is evident is that:

- An increasing minority of people are having first sex younger, with 22% of women under 25s having sex before 17<sup>5</sup>.
- An unacceptably high level of men, 47% expressing regret at early (pre 15) sex
- Almost double that number of women, 78%, expressed regret at first sex that happened too early (under 15). This is an ever increasing majority.
- Women are also disproportionately represented as the less willing partner in first sex experiences<sup>6</sup>.
- Men aged under 35 were only 50% more likely to regret early sex than those over 55.
- Young women under 25 are 280% more likely to feel they should have waited longer for first sex than women in 1960s Ireland and 240% more likely to regret early first sex than women in late 1980s and early 1990s Ireland.
- In all recent research a serious lack of information and education for young people about sex, has been identified.

It is clear given the combined evidence from the ISSHR, other sources and qualitative research undertaken that, how **the Age of Consent operates, is understood and valued is highly gendered<sup>7</sup>**.

Women have an attachment to the Age of Consent that is altogether different to men's understanding of the Age of Consent. To generalise very broadly we can characterise the gender differences as follows: Men tend to immediately consider the Age of Consent and its criminalisation of young sex. It seems evident to them that the fact that young people are increasingly having 'consensual' and 'harmless' sex at a young age, nullifies the Age of Consent. Women, on the other hand, talk about pressure and vulnerability and the important role the Age of Consent plays in protecting girls from having sex before they are ready. Women tend to talk from personal experience.

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<sup>2</sup> There were 13 people on this joint committee, 3 women. The 2 FG women opposed it along with Jim O'Keeffe FG their party colleague. The remaining woman, senator Geraldine Feeney FF, voted for it along with her 3 party colleagues. All the men bar one, voted to lower the Age of Consent.

<sup>3</sup> *Report on the Outcome of consultations with teenagers on the issues to be considered by the Minister for Children when examining the Age of Consent for sexual activity*, Office of the Minister for Children, November 2006. Conducted by National Youth Council of Ireland, Foróige, Youth Work Ireland (& Pavee Point conducted an internal one). There were 210 participants were aged 15-18, 90 male and 120 female.

<sup>4</sup> *Irish Study of Sexual Health and Relationships*, Crisis Pregnancy Agency, 2006

<sup>5</sup> 224 underage girls gave birth in 2005 and 654 in 2004

<sup>6</sup> 13% of women reported they were less willing to engage in first sex than their partner as opposed to 4% of men (ISSHR).

<sup>7</sup> The gender discrimination contained in Section 5 of the 2006 Act is a separate issue. It is unnecessary and undesirable as it decriminalises potential underage motherhood but continues to criminalise fatherhood if the mother is underage. The ISPCCA put forward in their submission that it would be possible to exempt females who become pregnant from criminalisation and to treat them differently and sensitively. We would add that discretion should also be shown to minor fathers and those in close age proximity where there are no other criminal circumstances to the sexual act, bar the underage sex act itself.

Worryingly, the ISSHR report also found that education and social class were significant factors in determining the likelihood of engaging in younger sex. This behaviour compounds existing disadvantage, by incurring higher risks of poor outcomes ‘such as early child bearing and higher rates of STIs and a strong association with risky behaviour in later life’<sup>8</sup>.

## PEER SEX

### **How do you legislate for ‘consensual’, under the Age of Consent, sex?**

Underage sex is by definition non consensual – the Age of Consent is a line beyond which the law does not recognise the minor’s capacity to consent. While some underage children may be making fully informed choices and negotiating non abusive sexual relationships, the law has very little ability to distinguish the individual capacity and maturity of any given child. The law tends towards the absolutes. What contribution can the law make to supporting, listening to and talking to teenagers about their sexual choices as they emerge into adulthood?

### **Who are we protecting children from?**

Children are often a danger to each other. A debate on the Age of Consent cannot simply focus on the protection of our children from older predators. It must face up to the reality that a quarter of perpetrators of child sexual abuse are themselves juveniles (SAVI)<sup>9</sup>. Therefore, when peer sex becomes sex abuse is far from exceptional.. To lower the Age of Consent on the basis that young people are ‘doing it anyway’, is to overlook or discount the fact that a significant number of those the sexually active children are engaged in raping other children.

This consideration is often absent from the debate on the Age of Consent. For example, the law reform commission (1990, 4.10) stated that child abuse legislation’s primary object was to prevent the abuse of authority and trust, not to render criminal the exploratory sexual activities of young persons of the same age. One submission to this committee took this a step further and argued for the ‘criminalisation of such activity *only* where there is a specified age differential as between parties’ (my emphasis). The Age of Consent at 17 offers protection not only from older predators but also where there is sexual violence between peers.

## CONCLUSION

The government must face up to their commitments in properly addressing the protection and safety of minors from sexual coercion and violence. The committee have mapped out many of the raft of measures which can achieve this. The adequate and secure resources must be forthcoming and secure to make the implementation of these recommendations meaningful. Lowering the age of consent would be additional, inappropriate and counter productive.

The Age of Consent is a societal good. If we seek to lower it, the case must be made that doing so has a societal benefit. The fact that we have reneged on our responsibility to inform, educate, protect and provide for children, cannot be the rationale for the diminution of the Age of Consent.

The committee has failed to put forward any sound arguments for the greater good and/or improvement of child protection in lowering the age of consent. We, therefore, call on

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<sup>8</sup> ISSHR, Chapter 6

<sup>9</sup> *Sexual Violence and Abuse in Ireland: A national Study of Irish Experiences, beliefs and attitudes concerning sexual violence*, Hannah McGee et al, Royal College of Surgeons in Association with Dublin RCC, 2002.

committee members to rescind their support for this flawed and ill-conceived proposal. So that we may progress without further delay to implementing the rest of the critical and welcome recommendations of this excellent committee.

## **APPENDIX:**

### **PRACTICAL CONCERNS**

Any unintended negative side effects of the Age of Consent ought to be dealt with in additional legislation and guidelines. It is highly inappropriate to downgrade the Age of Consent itself because we have failed in our public responsibility to put in place the public awareness and whatever additional resources and legislative steps necessary, to ensure the Age of Consent can operate in its intended capacity/ies and it causes no harm.

The Committee have argued that given the age of Consent for medical procedures is 16, it makes sense for the Age of Consent for sex to be the same. Many Sexual Health organisations were of the same opinion. Lowering the age of consent is not the solution to protecting and providing for the sexual health of young people.

Comparing Age of Consent to medical Age of Consent is not appropriate. One is aimed at curative and supportive treatment and the other has high levels of negative outcomes associated with it. Given the potentially negative health, psychological and socio-economic outcomes associated with early first sex, it may be more appropriate to compare Age of Consent for sex with that for smoking, drinking and exposure to violent images and messages which are deemed harmful.

#### **How to ensure access to health services?**

Child services must be readily accessible without parental consent. The professionals and peers in those services need the adequate framework and guidelines to protect them also. Investing in the Children First Guidelines and examining how best to formally incorporate Gillick competence into Irish legislation and practice is an urgent task. The committee having identified this problem but have made no recommendations to establish statutory guidelines which would appropriately address this problem.

#### **How does the threat of Criminalisation effect children's sexual health choices?**

There is no evidence to prove that children avoid medical and health services because of a fear of criminalisation. In the absence of such evidence we cannot conclude that it is the Age of Consent that is the major obstacle to access and sexual health for minors. Perhaps a more useful question would be to ask, if we had no Age of Consent would that significantly impact on teenagers' access to services and their involvement in good and safe sexual health practices? It is much more plausible to contend that many of the obstacles teenagers face in accessing information and adopting good sexual health practices are cultural and developmental. Criminalisation is clearly not an adequate response to underage sex, rather education, public awareness and fully committing to and resourcing services is. It is not appropriate or proven that the Age of Consent is the cause of the lack of information, self and mutual care teenagers enjoy around their sexuality.

### **International Practice**

### **Should Ireland's Age of Consent conform to international 'standards'?**

This is simply not a good argument. Even if every country in the world had 16 why would this make it appropriate for us? If there is to be some sort of European harmonisation in the future why would that be in a downward direction to the lowest common denominator (Holland 12, Spain 13) and not upward to 17? For Ireland to do something it has to be for reasons that arise out of our experience and make sense in and for Ireland - not because everyone else is doing it! The Joint committee have rejected international norms as a sound rationale.

The UK is 16 but Northern Ireland is 17 although they are talking of lowering theirs to 16. All teenagers and adults should know what the Age of Consent is. If they do not, that is a failure on the part of the government. It is the duty of the State to ensure all steps have been taken to ensure everyone knows their rights. Education is a key aspect of that information dissemination. Currently, Ireland has no compulsory sex education modules in our schools. It is, therefore, possible to go through school without ever being taught what the Age of Consent is. The Committee recommend mandatory sex education. This is the first step in building a solution.

### **Joint Committee on Child Protection Members**

James Breen (Independent), John Curran (Fianna Fáil), Olwyn Enright (Fine Gael), Brendan Howlin (Labour Party), M.J. Nolan (Fianna Fáil), Jim O'Keeffe (Fine Gael), Peter Power (Fianna Fáil) **(Chairman)**

**Senators:** Geraldine Feeney (Fianna Fáil), Derek McDowell (Labour Party), Sheila Terry (Fine Gael), Jim Walsh (Fianna Fáil)

**Ex Officio Members:** Deputy Michael McDowell - Minister for Justice, Equality and Law Reform and Deputy Brian Lenihan - Minister of State at the Department of Health and Children, at the Department of Justice, Equality and Law Reform and at the Department of Education and Science, with special responsibility for children

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