

Criminal Justice and Courts Bill

Extension of the offence of Extreme Pornography (possession of pornographic images of rape and assault by penetration)

Background

1. The provisions on possession of pornographic images of rape and assault by penetration extend the current criminal law to ban the possession of extreme pornographic images that depict rape and other non-consensual sexual penetration. The Government is committed to protecting women, and men, from sexual violence.
2. On 7th June 2013 Rape Crisis South London (the "RASASC") wrote an open letter to the Prime Minister highlighting what they considered to be a loophole in the extreme pornography offence at section 63 of the Criminal Justice and Immigration Act 2008.
3. Campaigners suggested that the existing offence criminalising the possession of extreme pornography be extended to cover depictions of rape, including both *actual* rapes, and *simulated* "non-consensual" sexual acts performed by consenting adults. They suggested these images promote sexual abuse of women and girls, and glorify sexual violence against women.
4. The section 63 extreme pornography offence currently covers pornographic images - images which can reasonably be assumed to have been "produced solely or principally for the purpose of sexual arousal" – which are grossly offensive, disgusting or otherwise obscene and which explicitly and realistically depict necrophilia, bestiality or violence that is life threatening or likely to result in serious injury to the anus, breasts or genitals, but does not explicitly include depictions of non-consensual penetration. Depending on the content of the image the offence carries a maximum 3 year prison sentence.

Case for change

5. Having considered the serious matters raised by campaigners and Parliamentarians, the Prime Minister accepted these concerns and announced that the existing law will now be extended to cover images of rape and other non-consensual penetrative sexual activity.
6. The Government believes there is some evidence that viewing these images may have an effect on young peoples' attitudes to sexual and violent behaviour, and that that some men can exhibit heightened aggression towards women after exposure to violent pornography. The Ministry of Justice's rapid evidence assessment into the effects of exposure to extreme pornography (September 2007) highlighted these concerns. Similarly the report, "Basically ...porn is everywhere", by the Children's Commissioner echoed concerns about how exposure to sexualised or violent imagery could affect children and young people.
7. Further, the Government believes that such images are unacceptable and most people would regard them as disgusting and deeply disturbing.
8. The clause will also signal to the public that images depicting women and men being sexually abused are not a legitimate form of pornography, and that such abuse is unacceptable.

9. Indecent photographs and images of children are already covered by other legislation, for example the Protection of Children Act 1978, Section 160 of the Criminal Justice Act 1988 and Section 62 of the Coroners and Justice Act 2009

The amended offence

10. The clause is intended to ensure that the possession of extreme pornographic images depicting rape and/or non-consensual sexual intercourse is criminalised. In order to achieve this the Government is extending the terms of the criminal offence at Section 63 of the Criminal Justice and Immigration Act 2008 to capture this material. The extension of the offence to include a further category of images depicting rape/non-consensual penetrative sexual intercourse is a relatively minor amendment and would still result in a tightly drawn and targeted offence.
11. Scotland's extreme pornography offence (at section 51A of the Civic Government (Scotland) Act 1982) already captures such material and this amendment will bring the law in England and Wales in line with their offence.
12. The general defences and exclusions to the offence will continue to apply.