

Consultation on the possession of extreme pornographic material

Response of the Scottish Council of Jewish Communities

The Scottish Council of Jewish Communities strongly supports the intention expressed in the foreword to this consultation '*to send a clear message that [extreme pornographic material] has no place in our society*'. We strongly believe that legislation is a means by which society indicates its standards and ideals and signposts its aspirations as well as a tool for criminalising particular activities, and we welcome the proposed legislation as an expression and recognition of society's moral values and of the leadership of Government and the Scottish Executive.

We also approve the intention not to criminalise people who have accidental contact with extreme pornography, whether by inadvertently accessing a particular website or more especially through the criminal or malign act of another person.

Q1. Do you think the challenge posed by the internet in this area requires the law to be strengthened?

Particularly in the light of increased internet access, existing legislation is unable to respond effectively to the vast growth in availability of extreme pornographic material online. We do, therefore, believe that new legislation is appropriate to respond to this threat.

Q2. In the absence of conclusive research results as to its possible negative effects, do you think that there is some pornographic material which is so degrading, violent or aberrant that it should not be tolerated?

Negative effects include moral considerations such as reduced sensitivity to the welfare of others, albeit this is difficult for research to quantify. We believe the majority of people would agree that exposure to extreme pornography has a negative effect on their quality of life, and would confirm the view expressed in the consultation paper, that such material is abhorrent. We emphatically agree that society should not be expected to tolerate material that is degrading, violent or aberrant, and that the UK Government and Scottish Executive should show leadership in this regard.

Q3. Do you agree with the list of material set out in paragraph 39?

Yes.

Q4. Do you believe there is any justification for being in possession of such material?

Other than for the purposes of legitimate criminal investigations and properly authorised research we do not believe there is any justification for anyone being designedly in possession of such material.

However, we do not believe that the simple presence of extreme pornographic material on a computer hard disk is sufficient to prove intentional possession without additional evidence as to how the material came to be there. Unless the prosecution is required to prove both the identity of the user and his/her deliberate intent, the proposed legislation would hand a new weapon to those intent on malice.

Q5. Which option do you prefer?

Q6. Why do you think this option is best?

We support the preference expressed in the consultation for option three; to preserve the flexibility of existing bodies to regulate the publication of a range of materials and to legislate for a new free-standing offence as described. We believe that this option will provide the most effective means of regulating this area and of preventing access to degrading, violent and aberrant material. We do, however, caution that legislation must be framed so as not to criminalise anyone who is unknowingly or inadvertently in possession of extreme pornographic material. This is particularly important because electronic files cannot be permanently disposed of, unlike unsolicited pornographic mail.

Q7. Which penalty option do you prefer?

We appreciate that it would not be appropriate if the penalty for possession of material were to be greater than that for distribution of the same material, but do not believe the maximum penalty should be less than 3 years. We therefore support the option of a 3-year maximum penalty for a new offence of possession of extreme pornographic material and an increase to the maximum penalty for existing offences to 5 years in order to retain the differential.

Summary

The Scottish Council of Jewish Communities agrees with the view of the police and other investigators that *'[extreme pornographic] material may often cause serious physical and other harm to those involved in making it.....[and that] such material may encourage or reinforce interest in violent and aberrant sexual activity to the detriment of society as a whole'* We would, therefore, support the introduction of new legislation relating to the possession of extreme pornographic material, though with the reservations and cautions expressed above.

Note: The Scottish Council of Jewish Communities is the representative body of all the Jewish communities in Scotland comprising Glasgow, Edinburgh, Aberdeen and Dundee as well as the more loosely linked groups of the Jewish Network of Argyll and the Highlands, and of students studying in Scottish Universities and Colleges.

In preparing this response we have consulted widely among members of the Scottish Jewish community.