



**Response for Public Consultation on  
Obscene Publications Legal Guidance**

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1: Do consultees agree or disagree with the guidance that the showing or realistic depiction of sexual activity / pornography which constitutes acts or conduct contrary to the criminal law is (subject to the statutory defences) likely to be obscene?

A poll of members of the Criminal Bar whose practices have or may include these types of cases, reveals that whilst there are reservations as to the present efficacy of the old law and issues of subjectivity, they do agree with the guidance.

2: Do consultees agree or disagree with the guidance that prosecutors must exercise real caution when dealing with the moral nature of acts not criminalized by law, and that the showing or realistic depiction of sexual activity / pornography which does not constitute acts or conduct contrary to the criminal law is unlikely to be obscene?

Again members agree with the guidance, but repeatedly observe that caution should be exercised in view of the right to freedom of expression in Article 10, which requires the act to be interpreted in accordance with the principle of proportionality, and the prosecutor to act compatibly.

3: Do consultees agree or disagree with the guidance that prosecutors, when assessing obscenity, should consider:

- Whether the activity is consensual;
- Whether or not serious harm is caused;
- Whether or not it is inextricably linked with other criminality; and
- Whether the likely audience is not under 18 or otherwise vulnerable.

These are sensible and inevitable considerations for assessing whether a prosecution is required in the public interest.

However, the definition of obscenity has a different focus, and there is a limit to how far prosecutorial guidance can be used to re-write a legislation drafted 60 years ago.

4: Do consultees agree or disagree with the guidance that the showing or realistic depiction of other acts or conduct which are contrary to the criminal law is also capable of being obscene?

Members agree in theory with the proposition but would be cautious about prosecuting anything that falls outside the definition of an extreme pornographic image within ss. 63 (7), (7A), CJIA 2008, given that is Parliament's most recent discussion related to the topic.

5: Do consultees have any further suggestions for guidance to prosecutors in assessing "obscenity" when considering allegations falling under the Obscene Publications Act 1959?

That ss. 63(7), (7A) CJIA 2008 ought to be a starting point for categories of material publication of which should be prosecuted.

How did you hear about this consultation (delete as applicable)?

- National press
- Television or Radio
- Specialist press (e.g. Law Society Gazette)
- CPS Website
- Other website
- CPS Twitter feed
- Other Twitter feed (or social networking site)
- Other (please specify) – CPS Contacted the CBA directly.