

LRC releases consultation paper on miscellaneous sexual offences

The following is issued on behalf of the Law Reform Commission:

The Review of Sexual Offences Sub-committee of the Law Reform Commission today (May 16) released a consultation paper making preliminary proposals for the reform of law concerning miscellaneous sexual offences. The consultation will last for three months.

These offences include incest, exposure, voyeurism, bestiality, necrophilia and acts done with intention to commit a sexual offence. It also includes a review of homosexual or homosexual-related buggery and gross indecency offences in the Crimes Ordinance. The paper is the third and final part of the overall review of the substantive sexual offences.

Speaking at a press conference, the Chairman of the Review of Sexual Offences Sub-committee, Mr Peter Duncan, SC, said that apart from making recommendations to reform some of the existing sexual offences, the Sub-committee also recommends introducing a number of new specific sexual offences.

These sexual offences are largely concerned with the protective principle, gender neutrality, respect for sexual autonomy, and avoidance of distinctions based on sexual orientation.

The main recommendations contained in the paper are:

- (1) the retention of the specific offence of incest, but with elements of the offence being reformed. Further, the Hong Kong community should consider the extent of the sexual conduct which would constitute incest and whether the offence should extend to adoptive parents;
- (2) the proposed creation of a new offence of sexual exposure to cover exposure of one's genitals in private or public in a sexual manner targeting a specific victim;
- (3) the proposed creation of a new offence of voyeurism to criminalise acts of non-consensual observation or visual recording (for example, a photograph, videotape, or digital image) of another person done for a sexual purpose;
- (4) the existing offence of bestiality be replaced by an offence of sexual intercourse with an animal;
- (5) the proposed creation of a new offence of sexual activity on a dead person;
- (6) the proposed creation of a new offence of administering a substance for sexual purposes to replace the existing offence of administering drugs to obtain or facilitate an unlawful sexual act;

(7) the proposed creation of a new offence of committing an offence with intent to commit a sexual offence to replace the existing offence of assault with intent to commit buggery;

(8) the proposed creation of a new offence of committing an offence of trespass with intent to commit a sexual offence to replace the existing offence of burglary (with intent to rape); and

(9) the proposed abolition of some of the existing homosexual or homosexual-related offences: assault with intent to commit buggery; procuring others to commit homosexual buggery; gross indecency by man with man otherwise than in private; and procuring gross indecency by man with man.

Mr Duncan said that the recommendations in the consultation paper are intended to facilitate discussion and do not necessarily represent the Sub-committee's final conclusions. He added that the Sub-committee would welcome views, comments and suggestions on any issues discussed in the consultation paper.

The Review of Sexual Offences Sub-committee was formed in 2006 and has since completed a consultation paper and a report on the issue of a register of sex offenders. It has also completed a report recommending the abolition of the common law presumption that a boy under 14 is incapable of sexual intercourse. The Statute Law (Miscellaneous Provisions) Ordinance 2012 was enacted in July 2012 to implement the relevant recommendation.

In September 2012, the Sub-committee published a consultation paper on rape and other non-consensual sexual offences which represents the first of the three consultation papers published by the Sub-committee on the overall review of the substantive sexual offences. In November 2016, the Sub-committee published the second consultation paper on sexual offences involving children and persons with mental impairment.

Copies of the consultation paper are available on request from the Secretariat of the Law Reform Commission at 4/F, East Wing, Justice Place, 18 Lower Albert Road, Central, Hong Kong. The consultation paper can also be accessed on the Commission's website at www.hkreform.gov.hk.

All the views should be addressed to the Secretary, Review of Sexual Offences Sub-committee, Law Reform Commission (4/F, East Wing, Justice Place, 18 Lower Albert Road, Central) by mail, by fax (3918 4096) or by email (hklrc@hkreform.gov.hk) on or before August 15, 2018.