

## **Criminal Justice and Licensing (Scotland) Bill – call for written evidence**

### **Introduction**

The Scottish Government's *Criminal Justice & Licensing (Scotland) Bill* contains provisions to criminalise the possession of material that is considered to be extreme pornography. Engender supports the introduction of these provisions, and welcomes the opportunity to submit written evidence, to the Justice Committee, with specific regard to said provisions.

### **The proposals**

Section 34 of the bill – if passed by Parliament – will make it illegal to possess extreme pornographic material. For material to fit this definition it must be all of the following:

#### **(a) Obscene**

Subsection 51A (2) provides that an extreme pornographic image must be “obscene”, “pornographic” and “extreme”. The test of “obscene” means that the material must be of such a nature that it would fall within the category of the material whose sale etc. is already prohibited under section 51 of the 1982 Act.

It is our understanding that there is no definition of obscene, although courts apply a common law test of whether the material is ‘calculated to deprave or corrupt persons open to depraving or corrupting’.

#### **(b) Pornographic**

Subsection 51A(3) defines an image as being “pornographic” if it is of such a nature that it must reasonably be assumed to have been made solely or principally for the purpose of sexual arousal.

#### **(c) Extreme**

Subsection 51A(6) provides that an image is extreme if it depicts, in an “explicit” and “realistic” way any of the following—

- (a) an act which takes or threatens a person’s life,
- (b) an act which results, or is likely to result, in a person’s severe injury,
- (c) rape or other non-consensual penetrative sexual activity,
- (d) sexual activity involving (directly or indirectly) a human corpse,
- (e) an act, which involves sexual activity between a person and an animal (or the carcass of an animal).

### **Engender’s response to the proposals**

Engender takes a clear stance on pornography and indeed views ALL pornography as violence against women because it is a systematic practice of exploitation and subordination based on sex, which differentially harms women.

In terms of being both a cause and a consequence of violence against women pornography is central in creating and maintaining sex as a basis for discrimination. The bigotry and contempt it produces with the acts of aggression it justifies, harms women's opportunities for equality and rights of all kinds (Scottish Women against Pornography 2004).

We are aware that there is already legislation in place which criminalises the display, publishing, selling and distribution of extreme pornography, and possession with a view to onward sale or distribution. However, unlike child pornography, there is currently no legislation in place which makes it an offence simply to possess extreme pornography.

The proposed legislation sends a clear message to both pornography users and the wider public that accessing this material is unacceptable and is certainly not harmless. Engender holds that this legislation is needed to reduce the potential for broad cultural harm and address the demand for extreme pornography, which has led to the proliferation of rape pornography, in particular across the internet. Such sites are easily accessible for anyone, including young people, to find and because pornography is so incredibly powerful in creating and maintaining the distorted thinking, rape myths and child abuse myths that exist in society, these sites contribute to a culture where rape is not only condoned but validated.

Our objections to extreme pornography are based on cultural harm and its abusive and degrading portrayal of females and female sexuality and not simply on its sexual content or explicitness. In extreme pornography, sex is presented as abusive and violent towards women and sexualises their abuse, systematically exploits and portrays them as objects to be abused, degraded and bought. It perpetuates the myths that women are sexually available, can be persuaded or forced to have sex and are subordinate to men.

Pornography's presentation of violence and sexual abuse can support an environment in which the perpetrators of rape are rarely convicted (according to Scottish Government figures for 2006/07 only 2.9% of rapes recorded by the police led to a conviction). Pornography perpetuates myths about rape exist which can make it hard for sex offence victims to be believed or seen as credible and makes it more difficult for them to come forward and be treated with fairness.

Engender welcomes the specific reference to rape and other non-consensual penetrative sexual activity within the definition of extreme pornography. Unlike similar legislation in England & Wales, the bill does not make a distinction between 'violent' rape, and rape in general, a distinction which is extremely unhelpful and which we are glad to see is being rejected in Scotland.

## **Specific comments / recommendations for amendments to the proposals**

Engender endorses Rape Crisis Scotland's and the Women's Support Project's proposals that consideration should be given to the following changes / additions to the bill, which Engender agrees would make it stronger and more effective in tackling the proliferation of this type of material:

### **(1) Amendment to definition of extreme**

Change wording to:-

(b) an act which results, or threatens to result, in a person's severe injury,  
The use of "threatens to" instead of "likely to" would increase the proposals scope to cover all acts of rape which could all be said to threaten severe injury but not all are likely to result in severe injury.

### **(2) Broaden the scope of material covered to include non- photographic visual depictions of extreme pornography**

As the bill is currently written, to meet the definition of 'extreme', the material in questions must be explicit and realistic. The terms "explicit" and "realistic" require that the act depicted in the image must be clearly seen, lifelike and convincing and appear to a reasonable person to be real. It is not required that the act itself is real.

There is a strong feeling that there is a missed opportunity in not including non-photographic representations of extreme acts in the bill. For example, depictions of extreme pornography on virtual worlds such as Second Life, where the pornography is violent, extreme and interactive, but where the images are not photographic. Engender also agrees that it would be vitally important to enact similar legislation in relation to child pornography.

### **(3) Broaden the definition of extreme to include depictions of incest**

Although the legislation will cover depictions of rape and non consensual penetrative sexual activity which fit the definition of obscene and pornographic, this will not necessarily cover pornography which glorifies incest, unless it is clear that the young woman depicted is not of an age to consent. Serious consideration must be given to extending the definition of extreme to include depictions of incest which is an illegal activity to ensure these types of materials are covered by the legislation.

### **(4) Ensure a clear definition of possession**

Clarity is required as to what "possession" covers. Will it cover those people who access pornography without downloading files? Although the bill does not criminalise accidental or single viewing, we believe it must cover repeated viewings of this type of material, whether or not the material was actually downloaded.

## General comments

Engender welcomes the provisions in the bill which we believe are a good starting point for action to address the harm caused by pornography. There is little doubt that Scotland has set the standard in the UK for violence against women work yet it must be acknowledged that we cannot identify real progress in making women safer.

What is objectionable about pornography is its abusive and degrading portrayal of females and female sexuality and not simply about how 'extreme' it is, in sexual content or explicitness.

Further reform is certainly needed in order to change our culture. It must be widely recognised and accepted that pornography is a form of violence against women, a violation of their human rights and is intrinsically linked with the inequality of women in our society. Engender holds that there is a real and urgent requirement do something meaningful to address the issues of *both* cause and consequence.

Public education is a vitally important part of this, which includes public education on the introduction of the proposed legislation but also a broader public education campaign on the realities of accessing internet pornography. This is a 'live' issue at Engender and we are currently preparing to consult with our members on their thoughts and indeed awareness around issues of accessibility and the 'normalisation' of such material and related activities within our society today.

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