

## Executive summary

Introductory statements:

- Violent and abusive behaviour is not defensible (as everyone agrees).
- But the criminalisation of non-abusive activities engaged in by consenting adults is not justifiable, even if a majority find them distasteful. Gay people were in this position pre-1967.

Part 1:

- The proposed legislation: targets material depicting (i) bestiality, (ii) necrophilia, and (iii) serious violence. It counts as illegal if it is pornographic and real or realistic (if staged).
- False/misleading claims that have figured prominently in the debate:

‘Most respondents to the consultation supported the proposal.’	False, according to the Government’s own report.
‘The legislation will affect only a small number of people.’	No, it will affect hundreds of thousands, if not millions, engaged in non-abusive, consenting activities.
‘The material encourages violent behaviour.’	Not supported by the evidence, according to the Government’s own consultation paper.
‘The material features genuine abuse of non-consenting participants.’	Almost certainly false, and implausible given the evidence.
‘The proposal is simply an update of the Obscene Publications Act (OPA).’	Very misleading: (a) an OPA conviction is much harder to secure; (b) this criminalises simple possession of an image, rather than publication, which is far more intrusive.

Part 2:

- Review of the Government’s justifications for the legislation:

(1) The material encourages violent behaviour.	Not supported by the evidence, according to the Government’s own consultation paper.
(2) The legislation will break the cycle of supply and demand.	Falsely assumes demand is created by supply, and that cutting off supply in the UK will affect material hosted abroad.
(3) People who feature in the material need to be protected.	People who feature in consenting non-abusive productions don’t need protection. Productions that coerce/abuse participants are already illegal everywhere – so the law already protects them.
(4) Society needs to be protected from exposure to the material.	Not clear what society need protecting from. Seems to come down to the danger of encountering something distasteful.
(5) Children need to be protected from exposure to the material.	Argument used here selectively. Other things children shouldn’t see are much easier to obtain (e.g. mainstream pornography or certificate 18 films), so why not ban them too?
(6) Most people would find the material abhorrent.	Once again, this comes down to taste. Free societies do not criminalise people on grounds of taste.

- Likely unintended consequences of the legislation:
  - The law will be unenforceable, and people will not know if they are breaking it (or not) until they have been through a trial. This is a key problem under the HRA and ECHR, according to Rabinder Singh QC. The law would create other human rights problems too.
  - Large numbers of people who pose no threat to society will be criminalised.
  - Putting all these people on the Sex Offenders Register will dilute its importance.
  - Police resources diverted from matters that involve proven harm to matters that do not.

Part 3:

- The legislation could be amended so as to target only material involving abused and non-consenting participants, while excluding material featuring consenting participants in staged and otherwise non-abusive productions. The Government rejected this on the ground that since it would be difficult to prove actual abuse or lack of consent in some cases, it would simply criminalise non-abusive productions featuring consenting participants too.