



TITLE	SEXUAL COMMUNICATION WITH A CHILD : IMPLEMENTATION OF SECTION 67 OF THE SERIOUS CRIME ACT 2015
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SEXUAL COMMUNICATION WITH A CHILD: IMPLEMENTATION OF SECTION 67 OF THE SERIOUS CRIME ACT 2015

Introduction

Sexual communication with a child

Section 67 of the Serious Crime Act 2015 inserts a new offence into the Sexual Offences Act 2003, at section 15A, criminalising sexual communication with a child. The offence will be triable either way and will carry a maximum 2 year prison sentence. The provisions will come into effect on 3 April 2017 and will not be retrospective. The new offence will apply in England and Wales.

These changes will:

- criminalise a person aged 18 or over who intentionally communicates with a child under 16, who the adult does not reasonably believe to be 16 or over, if the communication is sexual or if it is intended to encourage the child to make a communication which is sexual. The offence will be committed whether or not the child communicates with the adult.
- The offence will apply only where the defendant can be shown to have acted for the purposes of obtaining sexual gratification and is subject to a 2 year maximum prison sentence.

Annex A: sexual communication with a child

This Annex provides information on the new offence. The purpose is to provide guidance and this should not be regarded as providing legal advice. Legal advice should be sought if there is any doubt as to the application or interpretation of the legislation.

This Annex is set out under the following headings;

- A) Background and change in legislation
- B) FAQ

A: Background and change in legislation

In 2014 the National Society for the Prevention of Cruelty to Children (The “NSPCC”) launched a campaign (The “Flaw in The Law” Campaign) in which they suggested a new offence was needed to capture those who communicate sexually with a child.

At Lords Report stage of the Serious Crime Bill Lord Harris of Haringey tabled an amendment (supported by the NSPCC) to create a new criminal offence prohibiting someone over 18 from communicating with a child, where the person acts for a sexual purpose and the communication is sexual or is intended to elicit a response that is sexual.

In light of the NSPCC campaign and Lord Harris’ amendment, the Government agreed to look further at the issue with key stakeholders including representatives of the NSPCC with a view to creating a new offence if this were thought to be appropriate.

The Government completed its consideration and decided to table amendments to the Serious Crime Bill creating a new offence criminalising sexual communication with a child.

At the We Protect Children Online Summit in December 2014 the Prime Minister announced the Government’s intention to create the new offence.

The offence, which will extend to England and Wales will be triable either way and punishable with a maximum sentence of 2 years imprisonment.

Annex B: sexual communication with a child - Frequently Asked Questions

What will the new offence capture?

The new offence criminalises a person aged 18 years or over who intentionally communicates with a child under 16 (who the adult does not reasonably believe to be 16 or over), if the communication is sexual or if it is intended to elicit from the child

a communication which is sexual. The offence is only committed if the adult acts for the purpose of obtaining sexual gratification.

Where can I find the full terms of the new offence?

The new offence is at Section 67 of the Serious Crime Act 2015 which inserts a new s.15A into the Sexual Offences Act 2003.

What is the penalty for the offence?

The offence will be triable either way and subject to a two-year maximum prison sentence. Importantly, the offence will automatically attract the notification requirements for registered sex offenders under the Sexual Offences Act 2003.

Is a two year maximum sentence adequate?

Yes. A two year maximum custodial sentence is appropriate given the nature of the offending behaviour and in comparison with existing offences in this area. Importantly, the offence will automatically attract the notification requirements for registered sex offenders under the Sexual Offences Act 2003.

How will you prevent legitimate behaviour falling foul of the law, for example family chats on safe sex guidance?

The offence has been tightly drawn to apply only where the defendant can be shown to have acted for the purposes of obtaining sexual gratification. Ordinary discussions, for example within families or in an educational context, will not be caught by the offence.

What is the current law in this area?

It may be possible to prosecute individuals for a range of offences in relation to this kind of behaviour, depending on the circumstances. For example, **sections 8 and 10 of the Sexual Offences Act 2003** (the "SOA") make it an offence to cause or incite a child under 13 or 16 respectively to engage in sexual activity. These offences carry a maximum 14 year sentence. They could, depending on the circumstances, apply where a communication with a child (whether sexual or not) could be shown to have caused or incited some kind of penetrative sexual activity by the child. **However, these offences are unlikely to apply if a communication (for example in the form of an e-mail or a text message) sent to a child contains sexual content but does not in any way ask the child to engage in sexual activity.**

Section 127 of the Communications Act 2003 makes it an offence to send a message by means of a public electronic communications network (including the internet) if its content is grossly offensive, indecent, obscene or menacing. Depending on the content of the message, this offence could apply where sexual messages are sent to a child by some form of electronic communication, such as text, e-mail or phone (although it would not cover non-electronic written messages or verbal communication, or electronic messages sent by a private network such as a school intranet). **However this offence is not a sexual offence and does not attract sex offender registration. It would not be appropriate to change that position as the offence criminalises behaviour that may not be sexual in any way.**

The publication of sexual material to a child or children may, depending on the content and circumstances, amount to an offence under the **Obscene Publications Act 1959**. This offence attracts a maximum 5 year prison sentence. It does not attract sex offender registration as it can be committed in a range of ways.

Alongside this a person is guilty of the offence of meeting a child following sexual grooming under Section 15 of the Sexual Offences Act 2003 if the offender meets or communicates with a child (who is under 16 and who the offender does not reasonably believe is 16 or over) on one or more occasions; and subsequently the offender intentionally meets, arranges to meet or travels with the intention of meeting the child, or the child travels with the intention of meeting the offender. The offender must intend, either during or after the meeting, to commit a sexual offence against the child to be found guilty of the section 15 offence, although no such sexual offence need actually take place.

Why create a new offence?

As part of our discussions following the NSPPC campaign, government officials met with representatives of the NSPCC, the police and the CPS to discuss whether a new offence was needed. The Police and the CPS have welcomed the proposals and agree that a new sexual offence will help to ensure young people are fully protected by the law and will allow the authorities to intervene earlier to prevent more serious offending against children. The government therefore decided to act.

Is this an Internet specific offence?

No. The offence applies equally to online and offline communications and irrespective of the way the communication is made (for example it will apply to oral communications and written notes as well as to e-mails and text messages).

How often will this offence be used extra-territorially?

We do not expect the offence to be prosecuted in this way very often. Our starting point, as with all offences, is that criminal behaviour committed abroad should be dealt with by authorities in that jurisdiction wherever possible. However, the Government recognises that it is important that the offence could be prosecuted extra-territorially if necessary in the same way as all other child sex offences.

Useful links

The Serious Crime Act 2015

<http://www.legislation.gov.uk/ukpga/2015/9/contents/enacted>

Explanatory notes on the Serious Crime Act 2015

<http://www.legislation.gov.uk/ukpga/2015/9/notes/contents>

The Sexual Offences Act 2003

<http://www.legislation.gov.uk/ukpga/2003/42/contents>