Briefing for the Public Petitions Committee

Petition Number: PE1614
Main Petitioner: Richard Morris
Subject: Adult Consensual Incest

Calls on the Parliament to urge the Scottish Government to amend the law against adult consensual incest, to provide: that an offence occurs only where one of the participants (even if consenting) was under the age of 21; for those who have previously been convicted of incest when both participants were consenting and over 21 years of age to have any sentences received ended; for convictions to be removed from criminal records of any individuals previously convicted and for a compensation scheme to be established.

Proposed Reform

The principal reform sought by the petition is a change to the criminal law of incest – decriminalising consensual sexual intercourse between adults aged 21 or over where it is currently illegal under the law of incest.

The other issues raised by the petition relate to people convicted under the current law and may be seen as dependent on acceptance of the principal reform as described above. In light of this, the following focuses on the call to narrow the scope of the current offence.

Previous Petition

The petitioner lodged a similar petition (PE1599) during the last parliamentary session, seeking the same change to the scope of the current offence. The petition was considered and closed by the then Public Petitions Committee on 26 January 2016:

“The Convener: Our next petition is PE1599, by Richard Morris, on adult consensual incest, or ACI. Members have a note from the clerk, the petition and a SPICe briefing. I think that everyone has had a chance to read the petition. Normally, we would ask the Scottish Government for its position on a petition, unless there were extenuating circumstances. Given that the Scottish Law Commission undertook a report on this issue as recently as 2007 and concluded that the majority view at the time ‘favoured retaining the offence’ and ‘the current definition’, I suggest to the committee that we close the petition under rule 15.7 of the standing orders. There would be no value in taking forward the petition, because I cannot see that the position on the issue would have changed in the
intervening period. I have had no indication at all that there is any desire to see that changed, but I am open to committee members either agreeing or disagreeing with me.

David Torrance: I am happy to support your suggestion, convener.

Jackson Carlaw: Having read the detail of the petition, I do not think that an argument is made that would justify the petition continuing because a public interest was being served.

The Convener: I think that everyone agrees with my suggestion, and on that basis I close the petition.” (Official Report, col 33)

Current Law

In relation to Scotland, section 1 of the Criminal Law (Consolidation) (Scotland) Act 1995 provides for an offence of incest covering sexual intercourse with certain blood relatives. For men the list of relatives is: mother; daughter; grandmother; granddaughter; sister; aunt; niece; great grandmother; and great granddaughter. For women, there is a parallel list of male relatives. The section also provides that sexual intercourse with an adoptive parent or former adoptive parent, or adopted child or former adoptive child, is incest. Various defences exist.

The offence of incest applies to sexual intercourse, meaning penile-vaginal intercourse. It does not apply to sexual activity between members of the same sex or other sexual activity between a male and female not falling within that definition.

Section 2 of the Criminal Law (Consolidation) (Scotland) Act 1995 provides for a separate offence where a step-parent (or a former step-parent) has sexual intercourse with a step-child (or former step-child).

Sections 42 to 45 of the Sexual Offences (Scotland) Act 2009 set out an offence of sexual abuse of trust held in relation to a child under the age of 18. People in various situations may be in a position of trust (eg parents and teachers). The offence is broader in terms of the type of sexual activity covered (including same-sex) but, as noted above, is limited in terms of age of the victim.

In relation to England and Wales, the Sexual Offences Act 2003 includes offences relating to sex with an adult relative. Compared to the Scottish offence of incest, the offences in the 2003 Act are wider in terms of the type of sexual activity covered (including same-sex).

Previous Reviews

The last major review of the law of incest in Scotland was by the Scottish Law Commission (SLC). It published a report on the topic in 1981. This was implemented in the Incest and Related Offences (Scotland) Act 1986, the provisions of which were later consolidated in the 1995 Act.
In 2007, the SLC published a report on rape and certain other sexual offences, which was implemented in the 2009 Act. In the discussion paper which preceded the report the SLC asked whether, given other sexual offences (both existing and proposed), there should continue to be a separate offence of incest. In its report, the SLC summarised its final position as follows:

“Although some consultees considered that there was no need for a separate offence and others were unsure, the majority favoured retaining the offence. However, there was no suggestion from those consultees that the current definition of incest should be expanded. Accordingly we make no proposal for any change to the existing law in relation to the offence of incest.” (para 5.3)

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