

## Part V Marital Rape

### **Unlawful sexual intercourse**

1. Sections containing references to "unlawful sexual intercourse" to which *amendments* are proposed :

- (i) section 117 (definition);
- (ii) section 118 (rape);
- (iii) section 124 (intercourse with girl under 16).

2. Sections containing references to "unlawful sexual intercourse" to which *no amendments* are proposed (the Administration needs to clarify whether the UK Court of Appeal's interpretation of "unlawful sexual intercourse" in *R v Chapman* applies) :

- (i) section 123 (intercourse with girl under 13);
- (ii) section 125 (intercourse with mentally incapacitated person);
- (iii) section 127 (abduction of unmarried girl under 18 for sexual intercourse);
- (iv) section 132 (procurement of girl under 21);
- (v) section 133 (procurement of mentally incapacitated person);
- (vi) section 141 (permitting young person to resort to or be on premises or vessel for intercourse, prostitution, buggery or homosexual act);
- (vii) section 142 (permitting mentally incapacitated person to resort to or be on premises or vessel for intercourse, prostitution or homosexual act).

### **Unlawful sexual act**

3. Sections containing references to "unlawful sexual act" to which *amendments* are proposed:

- (i) section 119 (procurement by threats);
- (ii) section 120 (procurement by false pretences);
- (iii) section 121 (administering drugs to obtain or facilitate unlawful sexual act).

(By proposing to add "marital intercourse" after "unlawful sexual act", the Administration needs to clarify whether the HK Court of Appeal's interpretation of "unlawful sexual act" in section 119 in *HKSAR v Chan Wing Hung* applies, i.e. illicit, outside the bonds of marriage)

4. Sections containing references to "unlawful sexual act" to which *no amendments* are proposed (consent is not relevant):

- (i) section 128 (abduction of mentally incapacitated person from parent or guardian for sexual act)
- (ii) section 134 (detention for intercourse or in vice establishment);
- (iii) section 135 (causing or encouraging prostitution of, intercourse with, or indecent assault on, girl or boy under 16);
- (iv) section 140 (permitting girl or boy under 13 to resort to or be on premises or vessel for intercourse)

### **Other relevant sexual offences**

5. Section without references to "unlawful sexual intercourse" or "unlawful sexual act" to which *amendments* are proposed :

- (i) section 146 (indecent conduct [act of gross indecency] towards child under 16).

6. Section without references to "unlawful sexual intercourse" or "unlawful sexual act" where consent is relevant and to which *no amendments* are proposed :

- (i) section 118A (non-consensual buggery);
- (ii) section 122 (indecent assault).

(The Administration needs to consider whether section 122(3) should be amended to provide for consent as an additional condition for defence similar to section 124)