

HOUSE OF REPRESENTATIVES

Supplementary Order Paper

Wednesday, 30 October 1985

HOMOSEXUAL LAW REFORM BILL

Proposed Amendment

Mr BURDON, in Committee,* to move the following amendment:

Proposed clause 5A: To insert on page 4, after clause 5, the following clause:

5A. Defence to charges under sections 141 and 142—

(1) The principal Act is hereby amended by inserting, after section 142, the following section:

“142A. It shall be a defence to a charge under section 141 or section 142 of this Act if the person charged proves—

“(a) That the other party consented; and

“(b) That the other party was of or over the age of 20 years or that the person charged had reasonable cause to believe, and did believe, that the other party was of or over that age.”

(2) Section 141 (3) of the principal Act is hereby amended by inserting, before the words “It is no defence”, the words “Subject to **section 142A** of this Act,”.

(3) Section 142 (4) of the principal Act is hereby amended by inserting, before the words “It is no defence”, the words “Subject to **section 142A** of this Act,”.

EXPLANATORY NOTE

It is intended to move this amendment only if *clauses 3 to 5* are defeated. The effect would be to leave the present law unchanged in relation to homosexual acts committed with or upon males under 20 years of age, while decriminalising consensual homosexual acts with persons of or over that age.

The following points should be noted:

(a) The defence is available regardless of the age of the person charged. Thus, if the person charged is 18 years old, and the other party is of or over the age of 20 years, the person charged will be entitled to the defence set out in this Paper. If, however, the other party is charged, that other party would not be entitled to the defence. The rationale for this approach is that the law is seeking to protect minors from adults, not the other way around.

(b) Section 142 of the principal Act presently applies to both heterosexual as well as homosexual sodomy. The effect of this proposed defence is, therefore, to decriminalise heterosexual acts of sodomy committed on adult consenting females as well as homosexual acts of sodomy committed on adult consenting males.