

## = Obscene Publications Act 1959 =

The Obscene Publications Act 1959 ( c . 66 ) is an Act of Parliament of the United Kingdom Parliament that significantly reformed the law related to obscenity in England and Wales . Prior to the passage of the Act , the law on publishing obscene materials was governed by the common law case of *R v Hicklin* , which had no exceptions for artistic merit or the public good . During the 1950s , the Society of Authors formed a committee to recommend reform of the existing law , submitting a draft bill to the Home Office in February 1955 . After several failed attempts to push a bill through Parliament , a committee finally succeeded in creating a viable bill , which was introduced to Parliament by Roy Jenkins and given the Royal Assent on 29 July 1959 , coming into force on 29 August 1959 as the Obscene Publications Act 1959 . With the committee consisting of both censors and reformers , the actual reform of the law was limited , with several extensions to police powers included in the final version .

The Act created a new offence for publishing obscene material , repealing the common law offence of obscene libel which was previously used , and also allows Justices of the Peace to issue warrants allowing the police to seize such materials . At the same time it creates two defences ; firstly , the defence of innocent dissemination , and secondly the defence of public good . The Act has been used in several high @-@ profile cases , such as the trials of Penguin Books for publishing *Lady Chatterley 's Lover* and *Oz* for the Schoolkids *OZ* issue .

## = = Background and passage = =

Obscene publications were , historically , something for the canon law ; the first prosecution in a court of common law was not until 1727 . Prior to the passing of the 1959 Act , the publication of obscene materials within England and Wales was governed by the common law and the Obscene Publications Act 1857 . The common law , as established in *R v Hicklin* [ 1868 ] 3 QB 360 , set the test of " obscenity " as " whether the tendency of the letter published is to deprave and corrupt those whose minds are open to such immoral influence and into whose hands the publication might fall " , while the 1857 Act allowed any stipendiary magistrate or any two Justices of the Peace to issue a warrant authorising the police to search for , seize and destroy any obscene publications . It was generally accepted that the existing law was heavily flawed , for several reasons . Firstly , the so @-@ called " Hicklin test " from *R v Hicklin* was both unduly narrow and unyielding ; it did not , for example , take into account the intentions of the defendant . Secondly , the test meant that individual sections of a published work could be analysed and the entire work declared obscene , even if the rest of the work was fairly mild . Thirdly , there was no defence based on the public good , and no opportunity to submit evidence showing the artistic merits of the work , and fourthly , works could be destroyed without the author or publisher even being informed and given an opportunity to speak .

During the 1950s , efforts started to attempt reform of the law . Following the prosecution of several notable publishers , the Society of Authors formed a committee ( with Norman St John @-@ Stevas as legal advisor ) to recommend reform of the existing law , submitting their proposals and a draft bill to the Home Office in February 1955 . Instead of the wholesale reform the Society hoped for , the government instead chose limited reform through the Children and Young Persons ( Harmful Publications ) Act 1955 dealing with horror comics , which kept the Hicklin test but required that the work as a whole be examined . The Society and sympathetic Members of Parliament then attempted to introduce a Private Member 's Bill , but this was quashed by the ensuing general election . Another Private Member 's Bill was successfully introduced in March 1957 and sent to a committee . Composed of a mix of censors and reformers , the committee 's recommendations were mixed , consisting of both conservative ( further powers of search and seizure for the police ) and liberal ( the use of expert evidence attesting to the work 's artistic merit ) proposals .

The committee 's proposals were published in March 1958 , and a new bill was introduced under the Ten Minute Rule , failing to gain the requisite support . After A. P. Herbert stood for Parliament on a platform of obscenity reform , the Home Office had a change of heart and introduced a new bill

through Roy Jenkins in 1959 , a compromise between the aims of the campaigners and the goals of the Home Office . It was introduced to the House of Lords by Lord Birkett , received the Royal Assent on 29 July 1959 , and came into force on 29 August 1959 as the Obscene Publications Act 1959 .

= = Act = =

The Act is relatively short , divided into 5 sections , the fifth covering the extent of the Act and its commencement date . Section 1 covers the test to determine if something is obscene ; an article is taken to be obscene if the entire article " is , if taken as a whole , such as to tend to deprave and corrupt persons who are likely , having regard to all relevant circumstances , to read , see or hear the matter contained or embodied in it " . The test is based on " persons " ; DPP v Whyte [ 1972 ] AC 849 established that it was not sufficient for an individual to be depraved or corrupted , it must be that a significant number of people likely to read it would become corrupt . " article " is defined within Section 1 as anything containing material that is read or looked at , any sound recordings and any film or other picture record . A publisher , as used in the Act , is also defined in Section 1 ; " publisher " is taken to mean anyone who " distributes , circulates , sells , lets on hire , gives , or lends it , or who offers it for sale or for letting on hire " , or " in the case of an article containing or embodying matter to be looked at or a record , shows , plays or projects it " . The Criminal Justice and Public Order Act 1994 amended this section to include the transmission of the article electronically .

Section 2 covers the actual prohibition of publishing " obscene material " . Section 2 ( 1 ) creates a new offence , " publishing an obscene article " , which replaces the common law misdemeanour of " obscene libel " which was previously the crime . Somebody can be found guilty of this regardless of if it was done for profit or not . Where the article is a film , the consent of the Director of Public Prosecutions is required before a prosecution can commence . Section 2 ( 4 ) states that , where an article is obscene , no other common law charges should be brought , and it should instead be dealt with through the 1959 Act , intended to limit prosecutions to those crimes found in this Act . Section 2 ( 5 ) creates a defence of " innocent dissemination " ; if the publisher can prove that they did not anticipate any obscenity problems , and did not examine the article in question for such issues , they cannot be convicted .

Powers of search and seizure are covered by Section 3 , which also repealed the Obscene Publications Act 1857 . This section allows a Justice of the Peace , if satisfied that there are reasonable grounds to believe obscene publications are kept on certain premises for profit , to issue a warrant for that location . This warrant allows a police officer to enter the premises , search them and remove any suspect publications ; if such publications are found , the officer can also take records relating to the businesses trade . The articles must then be brought before a magistrate and either forfeited by the owners or returned . The owner , author or publisher of the articles , or the person from whom they were seized , may appear before the magistrate to argue why they should not be forfeited .

Section 4 creates the defence of public good , which applies both to prosecutions for publication of obscene materials and to the forfeiture proceedings described in Section 3 . This allows for a valid defence if the defendant can show that the publication of the materials was justifiable as for the " public good " , which is defined as " in the interests of science , literature , art or learning , or of other objects of general concern " . Experts and their testimony are admissible for determining the value of such publications . This section was initially treated very strictly by trial judges , but this attitude was reversed after the 1976 trial of the book Inside Linda Lovelace , where the jury found the publishers not guilty despite the judge saying that " if this isn 't obscene , members of the jury , you may think that nothing is obscene " . Three years later the Williams Committee recommended that restrictions on written pornography be lifted , and these restrictions have been largely abandoned .

= = Notable prosecutions under the Act = =

= = = Lady Chatterley 's Lover trial = = =

The first noted prosecution under the Obscene Publications Act was of Penguin Books in *R v Penguin Books Ltd* . [ 1960 ] for publishing *Lady Chatterley 's Lover* . The book , which contained the use of the words " fuck " and " cunt " multiple times , along with sexual scenes , was banned completely in England and Wales until the conclusion of the trial ; by the mid @-@ 1980s , it was on the school syllabus . Penguin Books relied on Section 4 's " public good " defence , with academics and literary critics such as E. M. Forster and Helen Gardner testifying at the trial that the book was one of literary merit . The trial at the Old Bailey eventually ended with a not guilty verdict , allowing the book to be openly published and sold in England and Wales for the first time since it was published in 1928 . This trial and its verdict is seen as heralding " a new wave of sexual ' morality ' for which the 1960s is now famous " . Graham Lord wrote that the case " was the first trumpet call of the permissive society , the moment many believe that British morality , manners and family life began seriously to deteriorate " .

= = = Schoolkids Oz trial = = =

In 1971 the editors of *Oz* were tried for publishing obscene materials , specifically the *Schoolkids Oz* issue . *Oz* was an underground magazine with a circulation of 40 @,@ 000 which aimed to challenge the " older generation 's outdated beliefs and standards of behaviour and morality " . For its 28th issue , 20 teenagers were invited to contribute and edit it . The published version was 48 pages long , with the front consisting of a sheet from the French erotic book *Desseins Erotiques* , which depicted four naked women licking each other and performing sex acts . Inside were articles about homosexuality , lesbianism , sadism and a cartoon strip which showed Rupert Bear " ravaging " a " gipsy granny " . John Mortimer acted for the defence , and after the longest obscenity trial in English legal history the defendants were convicted . After a three @-@ day hearing in the Court of Appeal of England and Wales , this conviction was overturned ; the Court of Appeal recognised 14 errors of law and a large number of errors of fact in the trial judge 's summing up to the jury .

= = = Later cases = = =

Later cases have included :

1976 : the *Inside Linda Lovelace* obscenity trial ( found not guilty )

1991 : David Britton 's " *Lord Horror* " prosecution ( not prosecuted - banned under the act , but later overturned )

2009 : *R v Walker* where Darryn Walker was found not guilty under the Obscene Publications Act for posting a story entitled " *Girls ( Scream ) Aloud* " , a fictional written account on an internet erotic story site describing the kidnap , rape and murder of pop group *Girls Aloud* .

2010 : Gavin Smith who was charged after discussing his fantasies about spanking children . After the Crown Prosecution Service appealed the judge 's original ruling that there was no case to answer , he was subsequently convicted in 2012 .

2012 : *R v Peacock* where a man was unsuccessfully prosecuted for selling DVDs featuring BDSM , fisting and urolagnia .

= = Impact and assessment = =

The Act was found deficient in a variety of ways . Firstly , the test meant that " sting " operations where the police purchased " obscene " materials were not considered sufficient evidence of publication , since the police were not considered easy to " corrupt " due to their regular exposure to the materials . It also meant that prosecutors often had to prove that purchasers were unaware of the obscene nature of material on sale prior to purchase , as those who actively sought out such material were deemed not likely to be corrupted by it . Secondly , the offer of such materials for sale

was not held to be publication , since it was merely an invitation to treat . Thirdly , the courts held in *Straker v DPP* [ 1963 ] 1 QB 926 that negatives for photographs could not be forfeited if it was not intended to publish them , regardless of their obscene nature . As a result , the Act was amended by the Obscene Publications Act 1964 , which created the offence of " possessing obscene articles for publication or sale " and also extended " obscene materials " to cover photograph negatives . Another criticism levelled at both Acts was that they failed to define " obscene " properly , relying on the old , common law definition and giving no help to the judge or jury as to how to apply it properly . The National Campaign for the Repeal of the Obscene Publications Acts ( NCROPA ) was set up in 1976 by the actor David Webb ; it operated until the late 1990s .

= = = Current situation = = =

In 1996 there were 562 cases brought , in which 324 individuals were convicted . Even with this small number of trials , a third of convictions resulted in prison sentences , and only a small number of cases went to jury trials . The number of prosecutions has fallen , from 309 in 1994 , 131 in 1999 , 39 in 2003 to 35 in 2005 . This decline may be partly due to the behaviour of modern jurors , who are less likely to consider material as depraving and corrupting , and are reluctant to convict defendants for the private use of material amongst consenting adults . Another reason for the decline may be the range of alternative legislation which can now often be used in place of the Act . Suggestions given by the Crown Prosecution Service include :

Section 63 of the Criminal Justice and Immigration Act 2008 ( " extreme pornography " )

Protection of Children Act 1978

Video Recordings Act 1984 and 2010

Indecent Displays ( Control ) Act 1981

Customs Consolidation Act 1876 , Amendment Act 1887 ( Importation of Indecent and Obscene Material )

Children and Young Persons ( Harmful Publications ) Act 1955 .

The Act continues to have a significant impact in English law , as its precedents serve to provide a definition of obscenity that is used in other legal contexts . For instance , anything deemed likely to contravene the Act is prohibited from videos awarded an R18 certificate by the British Board of Film Classification . A list of the categories of material most commonly prosecuted under the Act is published by the Crown Prosecution Service .