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of Justice

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**Meg Hillier MP**

House of Commons  
London  
SW1A 0AA

**MoJ Ref:** 53750

**DCMS Ref:** TO2018/04025/DC

19 March 2018

Dear Meg

## **NON-CONSENSUAL NAKED PHOTOGRAPHY**

Following your Parliamentary Questions (115649, 115651 and 116955) concerning the laws governing consent to be photographed and to be photographed naked we committed to write to you once our departments, which both hold responsibility in this area, had more fully investigated the issue.

We are grateful for your patience in this matter and are sorry for not providing this detailed response sooner. We appreciate that this is a sensitive and distressing issue and wanted to provide you with a comprehensive overview of the laws currently in place.

It is important to recognise the distinction between (i) non-consensual photography of certain private acts for the purposes of obtaining sexual gratification, which is a criminal offence and (ii) general non-consensual photography, which is primarily governed by data protection laws.

We understand that there are rules to prosecute offences involving non-consensual photography of certain private acts for the purposes of obtaining sexual gratification. The offence of voyeurism (set out in ss. 67 and 68 of the Sexual Offences Act 2003) already criminalises certain non-consensual photography taken for sexual gratification. For current purposes, this offence applies when someone observes or records another person “doing a private act” without that person’s consent, with the intention of looking at that image (or another person looking at that image) for the purpose of obtaining sexual gratification.

Section 68(1) of the 2003 Act defines a person as “doing a private act” if the person is in a place which would reasonably be expected to provide privacy and: the person’s genitals, buttocks or breasts are exposed or covered only with underwear; the person is using a lavatory; or the person is performing a sexual act of the kind not usually performed in public.

We are aware that as technology advances, the law should keep up with the advancement and we keep this area of the law under review, together with other relevant offences, such as outraging public decency.

More generally, photographs of personal features can be considered personally identifiable information and so are governed by data protection laws. In general, data protection breaches are not criminal, although the worst kind of breaches, including unlawfully obtaining data without the consent of the data controller, are criminalised.

The Data Protection Act covers the processing of photographs and other digital imagery by all organisations. Our laws are designed to ensure that modern, innovative uses of data can continue while at the same time strengthening the control and protection individuals have over their data. Organisations can have a legitimate need to take, store and share digital images of individuals. For example, sporting events wanting to display athletes and spectators, private premises wanting to use digital images in crime prevention and security, media organisations for journalistic purposes. In some instances, consent is sought - for example as a prerequisite of gaining entrance to sporting venues. In other instances, such as journalism, our data protection laws allow for the need to seek consent to be balanced against the public interest of the processing of personal data.

We would not necessarily want to criminalise all photographic images depicting naked people taken without consent because there might be legitimate use for that data in some circumstances. In addition, it may be unreasonable to seek consent in all cases, for example where a CCTV recording captures images of a naked person running onto a cricket pitch or where there is news/media coverage of a public event involving nudity (for example a naked charity bike ride or a naked protest).

The UK's data processing laws do not apply to processing activities undertaken in personal, household or family settings. The current and previous governments have taken this position as to do otherwise would be improperly extend the reach of regulation into personal lives. It would mean, for example, that somebody who collected names and addresses of family members and friends on a database in order to send them a birthday card, or recorded images of people they met on holiday on a video camera would be subject to data protection legislation. We do not think this would be appropriate and our position is consistent with the requirements set at European level under the forthcoming General Data Protection Regulation.

The use of photography within the press is self-regulatory. Publishers and self-regulators issue their own standards codes and codes of conduct that regulate photojournalism. For example, the Independent Press Standards Organisation (IPSO) Editors Code of Practice states:

'It is unacceptable to photograph individuals, without their consent, in public or private places where there is a reasonable expectation of privacy.'

'They must not persist in questioning, telephoning, pursuing or photographing individuals once asked to desist; nor remain on property when asked to leave and must not follow them. If requested, they must identify themselves and whom they represent.'

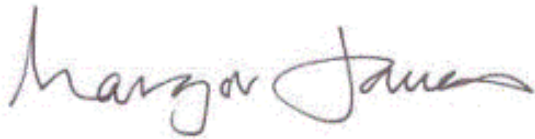
Regulators also issue separate guidance regarding the photography of children.

The Government is in the process of modernising the data protection laws in the UK to make them fit for purpose for our increasingly digital economy and society. The Data Protection Bill was announced in the Queen's Speech on 21 June 2017 and recently concluded passage in the House of Lords. It

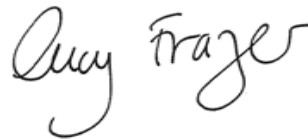
will implement the government's manifesto commitments to update data protection laws. These laws have undergone significant scrutiny in recent months through the development of the Data Protection Bill and provide a comprehensive and modern framework for data protection in the UK.

I hope you find this information useful and that it demonstrates government's commitment to public safety without inappropriately intruding on individuals' private and family lives.

We are copying this letter to Rt Hon Andrea Leadsom MP, Will Quince MP and Stuart Andrew MP, as well as placing a copy in the House of Commons Library.



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and the Creative Industries



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