

<b>Title: The Voyeurism (Offences) (No. 2) Bill</b>  <b>IA No: MoJ005/2018</b>  <b>Lead department or agency:</b> Ministry of Justice (MoJ)  <b>Other departments or agencies:</b> Home Office / Attorney General's Office / Crown Prosecution Service	<b>Impact Assessment (IA)</b>	
	<b>Date: June, 2018</b>	
	<b>Stage: Introduction</b>	
	<b>Source of intervention:</b> Domestic	
	<b>Type of measure:</b> Primary legislation	
<b>Contact for enquiries:</b> Tricia Wolford, Sex Offences Policy, Criminal Courts and Criminal Law Policy Unit		
<b>Summary: Intervention and Options</b>		<b>RPC Opinion:</b> N/A

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
£0.1m - £2m	N/A	N/A	No	Zero net cost

**What is the problem under consideration? Why is government intervention necessary?**

The Government seeks to introduce a Bill which will insert a new section 67A into the Sexual Offences Act 2003 making it an offence (with a 2-year max prison sentence) for a person to operate equipment or record an image under another person's clothing with the intention of viewing, or enabling another person to view, their genitals or buttocks (with or without underwear) colloquially known as 'upskirting'. It would capture instances where the purpose is to obtain sexual gratification or cause humiliation, distress or alarm. The offences would attract automatic sex offender registration (SOR) under certain limited circumstances. There have been convictions for "upskirting" under the common law offence of outraging public decency, but this doesn't attract SOR, and is only available when the behaviour is carried out in public and under certain conditions. Voyeurism does not currently catch all conduct either. As such the Government believes a new bespoke offence will more adequately address this behaviour and fill a gap in the law.

**What are the policy objectives and the intended effects?**

The key policy objectives are to: criminalise someone who operates equipment or records an image under another person's clothing with the intention of viewing, or enabling another person to view, their genitals or buttocks (with or without underwear), where the purpose is to obtain sexual gratification or to cause humiliation, distress or alarm.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

Two options are assessed in this Impact Assessment (IA):

- **Option 0:** Do nothing. Under this option, no new criminal offence would be created.
- **Option 1:** Legislate to create a specific criminal offence. The offence will apply in England & Wales.

**Option 1 is preferred.** This will enable the targeted behaviour to be captured in all required areas and ensure sex offender registration is automatically applied where appropriate.

<b>Will the policy be reviewed?</b> The criminal law is kept under regularly review, generally in consultation with key stakeholders, including the CPS and police. <b>If applicable, set review date:</b> Month/Year						
Does implementation go beyond minimum EU requirements?				N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		<b>Micro</b> Yes/No	<b>&lt; 20</b> Yes/No	<b>Small</b> Yes/No	<b>Medium</b> Yes/No	<b>Large</b> Yes/No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)				<b>Traded:</b>		<b>Non-traded:</b>

***I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.***

Signed by the responsible Minister: Lucy Frazer Date: 20/06/2018

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Create new offence to criminalise a person who commits the act of “upskirting”

## FULL ECONOMIC ASSESSMENT

<b>Price Base Year:</b> 2016/17	<b>PV Base Year:</b> 2018/19	<b>Time Period Years</b> 10	<b>Net Benefit (Present Value (PV)) (£m)</b>		
			<b>Low: £0.1m</b>	<b>High: £2m</b>	<b>Best Estimate: £1.1m</b>

<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>	<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Cost (Present Value)</b>
<b>Low</b>	Optional	Optional	<b>Optional</b>
<b>High</b>	Optional	Optional	<b>Optional</b>
<b>Best Estimate</b>			

### Description and scale of key monetised costs by ‘main affected groups’

There will be costs associated with creating the new offence. These have been estimated at up to £0.2m to HMCTS, the LAA and HMPPS per annum. There will also be costs associated with the additional breaches of notification requirements. These have been estimated as £15,000 to HMCTS, the LAA and HMPPS per annum.

### Other key non-monetised costs by ‘main affected groups’

There will be costs associated with the transition to the new offence and with familiarisation costs. We have not been able to quantify these, but we expect these will be minimal.

<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>	<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Benefit (Present Value)</b>
<b>Low</b>	Optional	Optional	<b>Optional</b>
<b>High</b>	Optional	Optional	<b>Optional</b>
<b>Best Estimate</b>			

### Description and scale of key monetised benefits by ‘main affected groups’

There are no expected monetised benefits.

### Other key non-monetised benefits by ‘main affected groups’

There are various non-monetised benefits associated with this policy. These can be grouped under four headings:

- Justice: Individuals who present this behaviour should now be caught under the new offences, thus ensuring criminal behaviour is being captured in the CJS.
- Public Protection: In addition, subject to certain conditions the offence, will attract automatic sex offender notification requirements, which could increase public protection.
- Early intervention: New clearer offences could ensure that the police are able to act under additional circumstances, and increased ability to monitor and manage sex offenders could also ensure the authorities could step in to protect the public where they could not before.
- Deterrence: This policy may have a deterrent effect if offenders cease their behaviour once a specific offence is created. This may benefit the welfare of potential victims of this offence.

### Key assumptions/sensitivities/risks

**Discount rate**

3.5%

The key assumptions made in this IA are as follows:

- That the rate of “upskirting” per head in Scotland is the same as that in England and Wales
- That the proportion of sex offender notification requirements handed out between 2006/07 and 2016/17 which were breached in that period will be the same proportion of breaches for sex offender registrations as a result of the new offence.
- That the progression of “upskirting” cases will match that of the offence of voyeurism.

## BUSINESS ASSESSMENT (Option 1)

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>In scope of OITO?</b>	<b>Measure qualifies as</b>
<b>Costs:</b>	<b>Benefits:</b>	<b>Net:</b>	No	

# EVIDENCE BASE

## A. Background

1. “Upskirting” is the practice of taking photographs under people’s clothing, without their knowledge or consent. It is not a new phenomenon, but technological advances (the ubiquity of digital phones for example) have likely made it more prevalent.
2. Last year the media highlighted the campaign started by Ms Gina Martin, who was the victim of “upskirting” at a music festival, calling for a change in the law to make this a specific sexual offence. The campaign attracted much media interest and cross-party support.
3. There is currently no bespoke “upskirting” offence but the behaviour can be prosecuted under the existing common law offence of outraging public decency (OPD).
4. OPD is committed by a person carrying out a lewd, obscene or disgusting act capable of outraging public decency. The act must be done in public, with at least two people present who are capable of seeing the act, even if they did not actually see it. It is not a sexual offence.
5. While the key offence here remains OPD, there are other offences which may apply to this behaviour, depending on the circumstances:
  - Where the victim is doing a private act, and is in a place which, in the circumstances, would reasonably be expected to provide privacy (for example, a lavatory or a changing room), the offence of voyeurism may apply.
  - The Protection of Children Act 1978 may also be relevant where the victim is under 18. This imposes a strict prohibition on the taking, making circulation and possession with a view to distribution of any indecent photograph of a child under 18. This offence would apply to “upskirting” images of children under 18 years old if they are objectively seen to be indecent. (Section 160 of the Criminal Justice Act 1988 also makes the simple possession of such images an offence)
6. However, while upskirting has been successfully prosecuted, we consider there are potential gaps in the law. For example:
  - There is a lack of certainty over what constitutes a “public place” for the purposes of the OPD offence. The Government wants to ensure clarity and that there is no gap in the circumstances covered by the existing law.
  - The OPD offence is not a sexual offence and does not automatically attract sex offender registration under the Sexual Offences Act 2003. So even if an offender convicted under the OPD offence carried out the behaviour for sexual purposes, sex offender registration was necessary to increase public protection, he could not be made subject to those requirements.
7. The Government therefore believes that there may be some circumstances where “upskirting” may not fall foul of the criminal law, or where if it does, the offender may not be subject to the appropriate monitoring arrangements required under sex offender registration.

## B. Policy Rationale and Objectives

### Rationale

8. The conventional economic rationales for government intervention are based on efficiency and equity arguments. The government may consider intervening if there are failures in the way markets operate (e.g., monopolies overcharging consumers) or where there are failures with existing government interventions (e.g., waste generated by misdirected rules). The proposed new interventions should avoid creating a further set of disproportionate costs and distortions. The

government may also intervene for equity (fairness) and re-distributional reasons (e.g., to reallocate goods and services to more the needy groups in society).

9. In this case, however, government intervention is required to ensure that offenders who carry out this behaviour either in private or public are dealt with in an effective manner. The Government believes that the new offences will ensure that the police and prosecution authorities are fully equipped to deal effectively with those who would carry out this behaviour wherever it may occur and ensure that the public is further protected by the automatic requirements of sex offender registration where appropriate.

### **Policy objectives**

10. The key policy objectives are to:

- a) Criminalise someone who operates equipment or records an image under another person's clothing with the intention of viewing, or enabling another person to view, their genitals or buttocks (with or without underwear), where the purpose is to obtain sexual gratification or cause humiliation, distress or alarm.
- b) Adequately manage particular offenders by adding them to the Sex Offenders Register under specific conditions.
- c) Overall, to ensure the criminal law is fully equipped to protect the public from this intrusive behaviour.

### **C. Affected Stakeholder Groups, Organisations and Sectors**

11. The following groups would be most affected by the options considered in this Impact Assessment (IA):

- Victims and potential witnesses (particularly women as victims);
- The police;
- The Crown Prosecution Service (CPS);
- Her Majesty's Courts and Tribunals Service (HMCTS);
- The Legal Aid Agency (LAA); and
- Her Majesty's Prison and Probation Service (HMPPS).

### **D. Description of Options Considered**

12. To meet the policy objectives, the following options as assessed in this IA:

- **Option 0: Do nothing**
- **Option 1: Legislate to make "upskirting" a specific criminal offence.**

13. The preferred option is Option 1 as it best supports the policy objectives.

#### **Option 0 (Do nothing)**

14. Under this option, no new criminal offences would be created. However, whilst offences already exist that could cover behaviour like that addressed by the new offence there are some circumstances where we consider such behaviour may not be fully captured by the criminal law. In addition, not all the relevant existing offences attract sex offender registration requirements, (e.g. OPD).

15. Doing nothing also presents risks for individuals and society as it could signal that in certain circumstances some forms of the intrusive behaviour known as "upskirting" could go unpunished.

## Option 1

16. Under this option a new offence would be created to capture an adult who, for the purposes of sexual gratification, or to cause humiliation, distress or alarm, operates equipment or records an image under another person's clothing with the intention of viewing, or enabling another person to view, their genitals or buttocks (with or without underwear). The offence would be triable either way and have a two-year maximum prison sentence on indictment. Under certain conditions, conviction would result in a defendant being automatically subject to the notification requirements for sex offenders.
17. The conditions under which an offender would be added to the Sex Offenders Register are when the offender has conducted the act with the intention of sexual gratification and:
  - a. where the offender was under 18, they are or have been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
  - b. in any other case—
    1. the victim was under 18, or
    2. the offender, in respect of the offence or finding, is or has been—
      - i. sentenced to a term of imprisonment,
      - ii. detained in a hospital, or
      - iii. made the subject of a community sentence of at least 12 months.
18. The offence would apply in England and Wales.
19. Option 1 will provide clarity, and strengthen the laws dealing with those who would carry out the intrusive behaviour known as “upskirting”. It will tighten up the existing law to ensure that the behaviour could be captured whether it takes place in private or public, and where appropriate and proportionate, attract automatic sex offender registration requirements. These will allow the authorities to manage the risk that may be posed by an offender. Qualifying offenders are managed by the police, HMPPS, and other partners via the Multi-Agency Public Protection Arrangements (MAPPA).

## E. Cost and Benefit Analysis

20. This IA follows the procedures and criteria set out in the IA Guidance and is consistent with the HM Treasury Green Book.
21. Where possible, this IA identifies both monetised and non-monetised impacts on individuals, groups and businesses in England and Wales with the aim of understanding what the overall impact on society might be from the proposals under consideration. IAs place a strong focus on the monetisation of costs and benefits. There are often, however, important impacts that cannot sensibly be monetised. These might be impacts on certain groups of society or some data privacy impacts, positive or negative. Impacts in this IA are therefore interpreted broadly, to include both monetisable and non-monetisable costs and benefits, with due weight given to those that are non-monetisable.
22. The costs and benefits of each proposal are compared to option 0, the do nothing or ‘baseline’ case. As the ‘baseline’ option is compared to itself, the costs and benefits are necessarily zero, as its Net Present Value (NPV).
23. The annual costs and benefits are presented in steady state throughout this IA. All estimates, unless stated otherwise, are annualised figures in 2016-17 prices. For a summary of terminology used in this analysis, please consult the glossary at annex A.

### **Option 1: Create a new offence of “upskirting”**

## Costs of Option One

### Monetised costs

22. To estimate the costs to the criminal justice system (CJS) associated with option 1, we have used data on the analogous Scottish offence to estimate the likely volume of cases which the offence in England and Wales would encompass. This is presented in table 1.

**Table 1: number of prosecutions for the Scottish offence of “upskirting” since 2012/13<sup>1</sup>**

Year	2012-13	2013-14	2014-15	2015-16	2016-17	2012-2017 Average
Volumes	2	4	1	4	3	3

23. From 2012/13 to 2016/17 there were 14 prosecutions for the offence at s. 9 of the Sexual Offences (Scotland) Act 2009. This is a yearly average of approximately 3 cases. Based on the ratio of the population of Scotland to that of England and Wales (Scotland was 9% of the size of England and Wales in mid-2016<sup>2</sup>), we estimate that there will be 30 prosecutions of the offence per annum, on the assumption that the incidence of “upskirting” cases per unit of the population in England and Wales will match that of Scotland.

24. To estimate the progression of the case through the CJS we use the offence of voyeurism at s. 67 of the Sexual Offences Act 2003 as a proxy; this bears similarity to the proposed offence given that they both relate to encroaching upon the privacy of another (unwilling) person, often for the purpose of sexual gratification, and are both either-way offences with a maximum penalty of two years on indictment. Based on this, we arrive at a cost per case of £8,000 (distributed across HMCTS, the LAA and HMPPS, see table 2).

25. Data on the proxy offence is derived from the Criminal Proceedings Database (CPD).

**Table 2: unit cost of the proposed offence**

	HMCTS	LAA	Prison	Probation	Total
Cost	£3,000	£2,000	£2,000	£500	£8,000

\*figures may not sum due to rounding

26. The costs to the LAA and HMCTS are heavily informed by the committal rate of the offence in the courts, that is, the proportion of people who are tried in the Crown Court, either because the magistrates decide that the seriousness of the case warrants being sending the defendant to the Crown (often due to the greater sentencing power there) or because the defendant chooses to elect for trial by jury.

27. We estimate a committal rate of 43% for the proposed offence based on the proxy offence.

28. Costs per defendant to HMPPS is dependent on the likelihood of a defendant D being found guilty of the proposed offence. If there is an x% likelihood of conviction then of those convicted the disposals they may receive which have a resource implication are suspended sentence orders (SSOs),

<sup>1</sup> Scottish Criminal Proceedings Database

<sup>2</sup> <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates>

community orders and prison sentences. For the latter, the cost is determined by the average custodial sentence length (ACSL) which those sentenced to prison receive.

29. The relevant data here for the proxy offence recorded in 2016 is detailed in table 3 below.

**Table 3: progression of voyeurism cases in England and Wales, 2016**

	<b>Figures<sup>3</sup></b>
<b>Prosecutions</b>	185
<b>Sentenced</b>	176
<b>Conditional discharges</b>	70
<b>Fines</b>	3
<b>Community orders</b>	0
<b>SSOs</b>	1
<b>Prison sentences</b>	44
<b>ACSL (months)</b>	8.9
<b>ACSL served (months)</b>	4.5

\*Source: Criminal Proceedings Database

30. Thus, there is a 24% chance that D will be sentenced to prison. We assume that D will serve half of his sentence in prison before being released and serving the remainder on license.<sup>4</sup>

31. Costs post-release are determined by the allocation the prisoner to either the National Probation Service (NPS) or a community rehabilitation company (CRC), which is determined by the offender's assessed risk and dangerousness; if the offender is considered high-risk, they will typically be sifted to the NPS. Furthermore, for those offenders receiving either a community order or SSO the probation costs are determined similarly.

32. Given the estimated volume of 30 cases and the unit cost of £8,000, we come to a total gross cost to the CJS (excluding CPS) of £230,000. See table 4.

**Table 4: the gross costs of the proposed offence to the CJS**

	<b>Cost<sup>5</sup></b>
<b>HMCTS</b>	£90,000
<b>LAA</b>	£60,000
<b>HM Prison Service</b>	£60,000
<b>HM Probation Service</b>	£20,000
<b>Prison places<sup>6</sup></b>	3
<b>Total cost</b>	<b>£0.2m</b>

\*Figures may not sum due to rounding

33. The costs arising from the addition of perpetrators to the Sex Offenders Register who satisfy the necessary criteria described at line 17 are difficult to ascertain. The data possessed the proxy

<sup>3</sup> Data comes from the Criminal Proceedings Database

<sup>4</sup> The amount of time a person serves under supervision after release from prison is affected by the Offender Rehabilitation Act 2014 – see annex for further details.

<sup>5</sup> Costs per agency is to nearest £10,000, total cost is to nearest £0.1m

<sup>6</sup> A prison place is a unit equivalent to one person being in prison for exactly one year, i.e. if a person were to be sentenced to two years and serve half or if two people were to be sentenced to 1 year and both are released at half their sentence length.

offence do not detail the age of the victim, if the perpetrator has been sectioned, or the length of any community orders handed out at sentencing.

34. We estimate that, of the 30 people expected to be prosecuted for “upskirting”, 7 will be added to the Sex Offenders Register, based on 7 adults being sentenced to prison.
35. There were around 25,000 people added to the Sex Offenders Register between 2006/07 and 2016/17<sup>7</sup>. In the same period from 2006 to 2016, there have been 10,000 prosecutions for the two

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<sup>7</sup> MAPPA Annual Report 2016/17



offences at s. 91(1)(a) & (2) of the Sexual Offences Act 2003 in relation to the breaching of these notification requirements. This is a breach rate of around 40% (see table 5).

36. In sum, we estimate that 40% of the 7 people expected to be added to the register (i.e. approximately 3 people), will at some point breach their requirements and therefore be prosecuted.

**Table 5: the breach rate of sexual offender notification requirements from 2006 to 2016**

<b>Number of people added to Sex Offenders Register</b>	<b>25,000</b>
<b>Number of prosecutions for breach</b>	10,000
<b>Breach ratio</b>	40%

\*Number of prosecutions based on Criminal Proceedings Database

37. The unit costs of a breach are estimated as being identical to that of the offences contrary to s. 91(1)(a) & (2). The progression of these cases for 2016 are presented in table 6.

**Table 6: the progression of prosecutions for breach of notification requirements in England and Wales, 2016**

	<b>Figures<sup>8</sup></b>
<b>Prosecutions</b>	1,797
<b>Committal rate</b>	7%
<b>Sentenced</b>	1,848
<b>Conditional discharges</b>	273
<b>Fines</b>	142
<b>Community orders</b>	11
<b>SSOs</b>	453
<b>Prison sentences</b>	675
<b>ACSL (months)</b>	3.5
<b>ACSL served (months)</b>	1.7

\*Source: Criminal Proceedings Database

38. Based on this information, we arrive at an estimate of the unit cost of these breaches, as shown in table 7.

**Table 7: unit cost of breach of notification requirements**

	<b>HMCTS</b>	<b>LAA</b>	<b>Prison</b>	<b>Probation</b>	<b>Total</b>
<b>Cost</b>	£1,000	£500	£1,000	£2,000	<b>£5,000</b>

39. The total costs incurred on the estimate of 3 proceedings per year for this offence are detailed in table 8.

**Table 8: the cost of additional proceedings for the breach of notification requirements caused by additional offenders being added to the Sex Offenders Register**

<sup>8</sup> Data comes from the Criminal Proceedings Database

	<b>Cost<sup>9</sup></b>
<b>HMCTS</b>	£3,000
<b>LAA</b>	£1,000
<b>HM Prison Service</b>	£4,000
<b>HM Probation Service</b>	£6,000
<b>Prison places</b>	<1
<b>Total cost</b>	<b>£15,000</b>

*Net costs for all measures combined*

40. We are not aware of the current baseline number of cases of “upskirting” being prosecuted under other offences such as OPD and therefore it is not possible to determine the net cost of the new offence compared to the costs incurred on the CJS by the behaviour now but there is a considerable chance that the existence of a bespoke offence will lead to prosecutions over and above those currently being pursued under OPD.
41. With that in mind the costs of these measures are estimated to lie somewhere in the region of the costs of the breaches alone (as perpetrators of “upskirting” convicted under the OPD offence are not being subjected to notification requirements currently) and the combined cost of the breaches and the proceedings for the proposed offence.
42. This results in an upper bound to the costs of £240,000, which would arise in the event that all prosecutions of the offence are not already being prosecuted under some existing offence, e.g. OPD (table 9).

**Table 9: net costs of the proposed measures in the Bill**

	<b>Lower bound</b>	<b>Upper bound*</b>
<b>HMCTS</b>	£3,000	£90,000
<b>LAA</b>	£1,000	£60,000
<b>HM Prison Service</b>	£4,000	£60,000
<b>HM Probation Service</b>	£6,000	£20,000
<b>Prison places</b>	<1	3
<b>Total cost</b>	<b>£15,000</b>	<b>£0.2m</b>

\*Numbers are rounded as in table 4

43. **Training and familiarisation costs:** At present we lack information on the training and familiarisation costs incurred on the police and CPS in terms of prosecuting and investigating a new, bespoke offence. We will endeavour to ascertain these costs and engage in dialogue with both.

**Benefits of Option 1**

Non-Monetised Benefits

44. It has not been possible to monetise the benefits arising from introducing this new offence. However, there are several non-monetised benefits arising with this policy.

- **Justice:** those individuals who, for the purposes of sexual gratification, or to cause humiliation, distress or alarm, operate equipment or record images under another person’s clothing with the

<sup>9</sup> Due to low volumes, costs per agency are to the nearest £1,000 and cross-CJS to the nearest £5,000

intention of viewing, or enabling another person to view, their genitals or buttocks (with or without underwear) and who are not currently captured by criminal law should now be targeted under the new offence, thus ensuring such criminal behaviour is being effectively captured in the CJS.

- **Public protection:** the offence, subject to certain caveats to ensure proportionality, will attract automatic sex offender notification requirements, which could add the protection to the public that that entails. The common law offence of offending public decency often being used to charge the behaviour is not a sexual offence and, as such, does not currently offer this extra protection.
- **Early intervention:** new broader, clearer offences could ensure that the police are able to act under additional circumstances, and sex offender management could also ensure the authorities could step in to protect the public where they could not before.
- **Deterrence:** this policy may have a deterrent effect once people become aware of a specific offence criminalising such behaviour, although the evidence on deterrence is mixed. It would also show how serious this behaviour is and should also deter those who consider the intrusive behaviour a prank. This would benefit the welfare of potential victims of this offence.

### **Net Impact of Option 1**

45. The costs of creating a new offence to the criminal justice system are in relation to additional investigations and prosecutions directly from the offence, and in relation to breaches of notification requirements, which will have an ongoing impact on the police, CPS, HMCTS, the LAA, and HMPPS. Though the key benefits of the policy are non-monetised, it is judged that the non-monetised benefits of the policy outweigh the monetised cost.

## **F. Assumptions, Risks and Sensitivity Analysis**

46. The impacts estimated in this IA are based on certain assumptions. These assumptions, and the associated risks, are described in the table below.

<b>Assumptions</b>	<b>Risks / Uncertainties</b>
<p><b><u>Data sources</u></b></p> <ul style="list-style-type: none"> <li>• Data on proxy offences are derived from both the Scottish Criminal Proceedings Database (CPD) and the MoJ's own CPD for 2012/13 – 2016/17 and 2016, respectively.</li> <li>• We assume that the incidence per head of “upskirting” prosecutions in England and Wales will match that of Scotland.</li> <li>• Data from the MAPPA annual report is used for an estimate of the number of people added to the Sex Offenders Register over a decade.</li> <li>• The estimate of the number of offenders added to the SOR is based on the difference between the total number of registered sex offenders in 2006 and 2016.</li> </ul> <p><u>Source:</u></p> <p><a href="https://www.gov.uk/government/statistics/multi-agency-public-protection-arrangements-mappa-annual-report-2016-to-2017">https://www.gov.uk/government/statistics/multi-agency-public-protection-arrangements-mappa-annual-report-2016-to-2017</a></p>	<ul style="list-style-type: none"> <li>• Every effort has been made to ensure that the figures presented are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by courts. Consequently, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used.</li> <li>• Estimating the volumes for the offence in England and Wales based on a simple average of Scottish data from 2012/13 may be inaccurate as it assumes the two populations are homogenous (in respect of their likelihood per unit population to commit the proposed offence).</li> <li>• The proxy offence requires offenders to have committed the offence for sexual gratification whereas this is not necessarily a requirement for the proposed offence. Our data do not indicate if they were sectioned, the length of any community orders or if the victim of the offence was a juvenile. This inhibits our ability to estimate the number of offenders who will become registered sex offenders. It also reduces our ability to estimate probation costs (see below).</li> <li>• The derivation of the estimate for the number of additions to the SOR between 2006 and 2016 ignores whether a person is removed from the register.</li> <li>• There is also an issue that the MAPPA data is based on financial years when the CPD data is based on calendar years and so the periods covered do not perfectly align, but the proxy provides some valuable insight.</li> </ul>
<p><b><u>Committal rate</u></b></p> <p><u>New offence</u></p> <ul style="list-style-type: none"> <li>• We assume a committal rate of 43% for offence of “upskirting” based on the proxy offence of voyeurism.</li> </ul> <p><u>Breach of notification requirements</u></p> <ul style="list-style-type: none"> <li>• We assume a committal rate of 7% for prosecutions of people breaching their notification requirements.</li> </ul>	<ul style="list-style-type: none"> <li>• There is a risk that the actual committal rate for the offences will be lower or higher.</li> <li>• Any fluctuation in the committal rate will affect the costs incurred on the courts and the Legal Aid Agency.</li> </ul>

<p><b><u>Disposals given / ACSL</u></b> <b><u>New offence</u></b></p> <ul style="list-style-type: none"> <li>We assume the distribution of disposals for the new offence to be identical to that of the proxy offence of voyeurism given that both are either-way offences, with a 2-year max, and involve the invasion of another (unwilling) person's privacy.</li> <li>We assume an ACSL of 9 months for the proposed offence.</li> </ul> <p><b><u>Breach of notification requirements</u></b></p> <ul style="list-style-type: none"> <li>We assume an identical distribution of disposals for the offences related to breaching notification requirements as those recorded in 2016.</li> <li>We assume an ACSL for these offences of 3.5 months.</li> </ul>	<ul style="list-style-type: none"> <li>Deviations in the disposals handed out for either the proposed offence or the breach offence to their respective proxies, particularly the ACSL, would lead to inaccuracies in the resource impact of the Bill.</li> <li>This is less the case with the breach of notification requirements as the effect of the Bill here is to increase the volume of proceedings of these existent offences and therefore the current data is likely to be more accurate.</li> <li>Voyeurism by definition is an offence conducted for sexual gratification; "upskirting" is not. Given that, in the cases where a person is convicted of the offence but not for sexual intentions, it is likely that the severity of their sentence would be lower than that of the proxy.</li> </ul>
<b><i>Cost assumptions</i></b>	
<p><b>HMCTS costs:</b></p> <ul style="list-style-type: none"> <li>Costs to HMCTS are based upon timings data. To generate the costs by offence categories, HMCTS timings data for each offence group were applied to court costs per sitting day. HMCTS timings data for the magistrates' courts come from the Activity based costing (ABC) model, the Timeliness Analysis Report (TAR) data set and the costing process. The costs are in 16/17 figures. The timings data for the Crown Court is derived from the Criminal Court Statistics Quarterly for January to March 2017.</li> </ul> <p><a href="https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-january-to-march-2017">https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-january-to-march-2017</a></p> <ul style="list-style-type: none"> <li>The estimated costs per sitting day in the magistrates' courts and Crown Court respectively are approximately £2,100 and £2,400 (to the nearest £100 in 2016/17 prices). The HMCTS costs are based on average judicial, staff, estates and other costs coming from the jurisdictional costs model.</li> </ul> <p><i>Source: HMCTS jurisdictional cost model</i> A sitting day is assumed to be 5 hours. We assume that proceedings involving multiple defendants occur concurrently. If proceedings occur separately then it is assumed that the cost per case is the cost per defendant.</p>	<p><b>HMCTS average costs per sitting day:</b></p> <ul style="list-style-type: none"> <li>Costs may be subject to change if the figures in the HMCTS provisional jurisdictional model are revised.</li> </ul> <p><b>Timings data for types of cases:</b></p> <ul style="list-style-type: none"> <li>The average time figures which provide the information for the timings do not include any down time. This would lead to an underestimate in the court costing.</li> <li>Timings do not consider associated admin time related with listing a case for court hearings. This could mean that costings are an underestimate.</li> <li>The data which informed the timings data excludes cases where a bench warrant was issued, no plea recorded, indictment to lie on file, found unfit to plead, and other results.</li> <li>Committals for sentence exclude committals after breach, 'bring backs' and deferred sentences.</li> </ul>

<p><b>Legal aid costs:</b></p> <p><u>Magistrates' courts</u></p> <p>We assume a legal aid eligibility rate of 50% in the magistrates' courts. The cost per case defended is estimated at £500, the average for all cases funded by the LAA in 2016/17.</p> <p><u>Crown Court</u></p> <p>We assume an eligibility rate of 100% in the Crown Court. Legal aid offence categories in the Crown Court are chosen in line with guidance in the Criminal Legal Aid (Remuneration) Regulations 2013</p> <p><a href="http://www.legislation.gov.uk/ukxi/2013/435/pdfs/ukxi_20130435_en.pdf">http://www.legislation.gov.uk/ukxi/2013/435/pdfs/ukxi_20130435_en.pdf</a></p>	<ul style="list-style-type: none"> <li>• Variance in the legal aid eligibility rate assumed for cases in the magistrates' courts would impact the costings.</li> <li>• Assuming a 100% eligibility for legal aid in the Crown Court carries several risks. Firstly, an individual may refuse legal aid. Secondly, an individual may be required to contribute to legal aid costs. Lastly, the size of this contribution can vary.</li> <li>• More than one defendant prosecuted per case and therefore more solicitors and barristers per case than assumed thus understating the actual cost.</li> <li>• Legal aid costs will typically be informed in part by the length of any trials and costs involved in gathering evidence and costs related to the new offence are not especially likely to perfectly conform to the existing averages.</li> </ul>
<p><b>HM Prison Costs</b></p> <ul style="list-style-type: none"> <li>• We assume that each defendant will serve half their custodial sentence in prison and will be released on license for the remainder if sentenced for 2 years or more.</li> <li>• Those sentenced to under 2 years serve half their custodial sentence in prison, half on license and post-sentence supervision so that the supervision period totals 12 months. These changes were introduced by the Offender Rehabilitation Act 2014.</li> <li>• The cost per year of managing a prisoner is based on the average cost per prisoner In 2016/17: £23,000.</li> </ul> <p><u>Source: HMPPS Annual Reports and Accounts 2016-17</u></p>	<ul style="list-style-type: none"> <li>• The cost of additional prisoners entering the estate is dependent on the current population (for example, if there was no space for additional prisoners, then any inflow would cost far more than the average given that contingency measures would have to be used to house said offenders).</li> <li>• Using the average cost is reliable, but in reality, the costs would be dependent on the type of prison to which an offender is sent. For example, housing Category A prisoners (where more serious offenders are sent) and juveniles will likely be costlier than housing less serious offenders, who require less intensive security.</li> <li>• The assumption of an offender being released after half their sentence does not necessarily account for any time spent in remand.</li> </ul>
<p><b>HM Probation Service:</b></p> <ul style="list-style-type: none"> <li>• Probation costs are divided into the National Probation Service (NPS) and community rehabilitation companies (CRCs). NPS manage high-risk offenders and CRCs are private companies and third sector organisations that manage low and medium risk offenders.</li> <li>• We assume the same proportion of offenders being allocated to the NPS (dependant on whether they serve less than 12 months or if they are entering probation post-custody / through a community sentence or SSO) as the average for all sentences.</li> <li>• Our costs are based on a cost-per-start, which does not account for the length of time a</li> </ul>	<ul style="list-style-type: none"> <li>• The distribution between NPS and CRC for a specific offence category may not mirror the average distribution across all categories.</li> <li>• The proportions of offenders managed by NPS/CRCs may be different to those assumed and costs could be higher or lower if more offenders are managed by NPS or CRCs, respectively.</li> <li>• The average costs paid to CRCs are particularly difficult given the way that these funds are paid out</li> <li>• Calculating probation costs on a per-start basis has obvious limitations given that</li> </ul>

<p>person will be subjected to supervision by the probation service.</p>	<p>they will clearly be highly dependent on how long an offender is being managed. Unfortunately, the data is limited in that we do not know how long a community order or SSO lasts from the data used for estimating the progression of the new offence.</p>
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## G. Wider Impacts

### Equalities

47. The new offence can be committed by a man or a woman, and victims can be of either gender. However, the majority of victims are likely to be women. It is intended that the new offence will capture this intrusive form of harassing, intimidating and victimising others, in particular women.
48. Whilst men are more likely to be the perpetrators of these new offences we do not consider that the provisions will amount to indirect discrimination against them as it is a proportionate means of achieving the legitimate aim of protecting victims from criminal behaviour.
49. Although we do not expect any disproportionate impact on protected groups, we will assess this to ensure that is the case. We will monitor data where it is collected.
50. For further information, please consult the equalities statement accompanying this impact assessment.

## H. Monitoring and Enforcement

51. We have estimated the impact on costs and main affected groups and will monitor this.
52. The criminal law is kept under regularly review, generally in consultation with key stakeholders, including the CPS and police.

## **Glossary**

**Cost per defendant:** the cost per defendant is a cost per person proceeded against. It is a weighted cost that accounts for the proportion of defendants tried in the magistrates' and Crown Court, the proportion of offenders sentenced to each disposal and the average time those sentenced to a custodial sentence spend in prison. It tells you the average cost of a proceeding from the beginning of that proceeding to the end of the case (whether the offender is found guilty or not and accounting for the range of disposals possible).

**Criminal justice system:** the CJS encompasses the Crown Prosecution Service (CPS), Her Majesty's Courts and Tribunals Service (HMCTS), the Legal Aid Agency (LAA) and HM Prison and Probation Services.

**Magistrate:** a magistrate is a lay person who volunteers to preside over cases in a magistrates' court. They are not legal professionals and they must be deemed suitable for the role as well as undertake mandatory training from legal professionals to ensure competence on their part.

**Summary-only offence:** an offence that is triable only in the magistrates' court; all proceedings will start and end in the magistrates' court.

**Triable-either-way offence:** an offence that is triable in either the magistrates' court or Crown Court. Some proceedings will start and end in the magistrates' court whereas others will start in the magistrates' court but end in the Crown Court. In triable either way cases, defendants can elect to stand trial in the Crown Court or they can be sent for trial in the Crown Court because the offence is deemed serious enough.

**Indictable-only offence:** an offence that is triable only in the Crown Court; all proceedings will start in the magistrates' court but will be sent straight for trial in the Crown Court.

**Magistrates' courts:** magistrates cannot normally order sentences of imprisonment that exceed six months (or 12 months for consecutive sentences). The magistrates' courts deal with only offences that are summary, meaning an indictable-only offence will only go to a magistrates' court for a preliminary hearing before being sent to the Crown Court. In more complex cases a district judge will hear cases. An offence that may be tried in the magistrates', but does not have to be, is known as a **summary offence**.

**Crown Court:** deals with the more serious, indictable cases, for example murder, rape, serious fraud/theft and serious cases of assault. In the Crown Court, the defendant's culpability and guilt is determined by a jury. An offence that may be tried in the Crown, but does not have to be, is known as an **indictable offence**.

**Proceeding:** the start of legal action brought against somebody charged with committing a criminal offence.

**Disposal:** the end result of a trial at court. In this publication the disposals of interest are sentences, but other disposals are possible, for example where there is no finding of guilt and the defendant is acquitted.



