

Voyeurism (Offences) (No. 2) Bill HL Bill 130 of 2017–19

Summary

The [Voyeurism \(Offences\) \(No. 2\) Bill](#) is a one clause government bill which would insert two new offences into the Sexual Offences Act 2003. The offences would cover the practice of ‘upskirting’: taking a photograph up a person’s clothes without their consent.

The bill “mirrors closely” the measures contained in a private member’s bill introduced by Wera Hobhouse (Liberal Democrat MP for Bath) in March 2018, the [Voyeurism \(Offences\) Bill 2017–19](#).¹ Although the government had indicated its support for Mrs Hobhouse’s bill, the bill was objected to at its second reading on 15 June 2018. The government subsequently announced that it would be introducing its own legislation “to ensure that these important changes are on the statute as soon as possible”.²

The bill was introduced in the House of Commons on the 21 June 2018 and, unusually, had its second reading in committee (rather than in the chamber) on 2 July 2018; the bill formally received its second reading in the chamber, with no debate, on 3 July 2018. The bill was considered in committee on 10 and 12 July 2018 and passed report stage and third reading on 5 September 2018. The bill received cross-party support during its passage through the Commons and was passed unamended.

The bill was introduced into the Lords on 6 September 2018 and is scheduled to receive its second reading on 23 October 2018. The bill would apply to England and Wales.

Background

Upskirting occurs when an individual operates equipment, or records an image, beneath another person’s clothing with the intention of viewing their genitals or buttocks, with or without underwear.³ As outlined by the Parliamentary Under Secretary of State for Justice, Lucy Frazer, at second reading:

It is the practice of taking a photograph up a person’s skirt or clothes without their consent [...] we have to acknowledge that upskirting is taking place—indeed, online guides instruct others how upskirting can be done quickly and easily—and people affected by upskirting have variously described their experiences as “scarring”, “an invasion”, and “embarrassing and humiliating”.⁴

At present, the law in England and Wales does not contain a specific criminal offence for upskirting, and the practice is currently prosecuted under one of two offences: outraging public decency (OPD) or voyeurism. OPD requires that an offence is: “lewd, obscene and disgusting to such an extent as to outrage minimum standards of decency”; two or more persons (excluding the perpetrator) must be present during the act or display, whether or not they are aware of the act or display or are outraged by it; and it must occur in a public place.⁵

Alternatively, the voyeurism offence, contained in section 67 of the Sexual Offences Act 2003, stipulates that a person commits an offence where, for the purposes of sexual gratification he/she observes, operates equipment with the intention of enabling another person to observe or records a person doing a private act, knowing the person does not consent. The offence also covers installing equipment to enable either themselves, or another person, to commit an offence of voyeurism.

Concerns have been expressed that these laws are inadequate in response to upskirting. A public campaign, run in 2017 by Gina Martin, herself a victim of upskirting, received widespread media attention,⁶ with a petition to make upskirting a specific offence receiving over 100,000 signatures.⁷

In Scotland upskirting is already a specific criminal offence; in 2010, the Sexual Offences (Scotland) Act 2009 was amended to stipulate that an offence occurs when a person operates equipment or records an image beneath a person's clothing, without their consent, to observe their genitals or buttocks (whether exposed or covered with underwear). The motivation of the offence must be sexual gratification or "humiliating, distressing or alarming" the victim.⁸ Anyone convicted of upskirting is placed on the sex offenders register.

In September 2017, in response to the Gina Martin campaign, and to concerns expressed by some police and crime commissioners, the then Secretary of State for Justice, David Lidington, committed to a review of the law by Ministry of Justice officials.⁹ As outlined in the explanatory notes to the bill:

This review found that not all instances of upskirting would necessarily be captured by the existing criminal law. For example, the OPD offence requires at least two people to have witnessed the act or be capable of witnessing it, so an instance of upskirting in an otherwise empty train carriage may not be captured. Additionally, the existing law did not make upskirting a sexual offence and so the most serious offenders were not made subject to notification requirements (colloquially known as being put on 'the sex offenders register').¹⁰

In April 2018, the Secretary of State for Justice, David Gauke, indicated that "there was a strong case for looking at the law and considering whether we need to change it".¹¹ On 15 June 2018, the government announced its support for the private member's bill introduced by Wera Hobhouse (Liberal Democrat MP for Bath).¹²

Wera Hobhouse introduced her private member's bill, the [Voyeurism \(Offences\) Bill](#) on 6 March 2018. The bill would have amended the Sexual Offences Act 2003 to reflect the wording used in the Sexual Offences (Scotland) Act 2009, that is to introduce two offences of voyeurism, these being either the operation of equipment or the recording of an image under another person's clothing with the intention of viewing their genitals or buttocks, with or without underwear. The motivation of the offence, as in Scotland, was required to be either for obtaining sexual gratification or humiliating, distressing or alarming the victim.

Second reading of the bill was scheduled for 15 June 2018, with the Government announcing its support for the bill on the same day.¹³ However, the bill was objected to by Sir Christopher Chope (Conservative MP for Christchurch), and, in accordance with parliamentary procedure, the bill progressed no further.¹⁴ The fate of the bill received widespread media attention,¹⁵ with Sir Christopher Chope subsequently claiming that he had been "scapegoated", arguing that he objected to legislation being brought in with no debate at second reading, and with the Government "hijacking time that is rightfully that of backbenchers".¹⁶ The Government subsequently announced that it would be introducing its own legislation "to ensure that these important changes are on the statute book as soon as possible".¹⁷

Provisions of the Bill

The bill, as introduced in the House of Lords, seeks to amend section 67 of the Sexual Offences Act 2003, by inserting two new offences covering the practice of upskirting.

New section 67A subsection 1 would mean that a person (A) commits an offence if they operate equipment beneath the clothing of another person (B) to allow either themselves or another person (C) to observe person B's genitals or buttocks or the underwear covering them, in circumstances in which they would otherwise not be visible.

Subsection 2 mirrors the provisions of subsection 1 and would mean that a person committed an offence where a person (A) records an image beneath the clothing of another person (B) which is of B's genitals or buttocks, or the underwear covering B's genitals or buttocks, in circumstances where the genitals, buttocks or underwear would otherwise not be visible.

For both offences person A would operate equipment or record an image without B's consent and without reasonably believing that B consented. In addition, under subsection 3 the purpose of person A in operating equipment (subsection 1) or recording an image (subsection 2) must be:

- obtaining sexual gratification (whether for A or C);
- humiliating, alarming or distressing B.

The new offences would be triable either way. The maximum sentence following summary conviction (in a magistrate's court) would be twelve months' imprisonment, or a fine, or both. The maximum sentence following conviction on indictment (at the crown court) would be two years' imprisonment.

The bill would also allow that in certain circumstances offenders could be placed on the sex offenders register. These circumstances are:

- For offenders aged over 18-years old: the offence was committed for sexual gratification and either the victim was under 18, or the offender has been sentenced to imprisonment; or detained in hospital; or made the subject of a community sentence of at least twelve months.
- For offenders aged under 18-years old: the offence was committed for sexual gratification and the offender is or has been sentenced to imprisonment for at least twelve months.

The bill would apply to England and Wales; it would come into force at the end of the period of two months after royal assent.

House of Commons Stages

Second Reading

The bill was considered at a second reading committee on 2 July 2018. Opening proceedings, the chair of the committee, Karen Buck (Labour MP for Westminster North) stated:

I shall spend a moment outlining the procedure for this second reading committee, because it is an uncommon type of committee. The committee is charged with recommending to the House whether the bill ought to be read a second time. Debate in committee replaces a debate on

second reading in the House so, after the committee has made its recommendation, the question on second reading in the House will be decided without further debate.¹⁸

The Parliamentary Under Secretary of State for Justice, Lucy Frazer, introduced the bill for the Government. Arguing that the bill would address a “gap in the law” she emphasised that it would “protect women and [...] proceeds with the support of all parties”.¹⁹ She paid tribute to the “tireless work” of Wera Hobhouse, and campaigners Gina Martin and her lawyer Ryan Whelan.

Responding for the Opposition, the Shadow Minister for Justice, Yasmin Qureshi, indicated that the Labour Party “do not object or seek to amend any part of the bill”. However, she commented that the “delay in getting here has been wholly unnecessary and frankly scandalous”.²⁰ Wera Hobhouse, welcomed the support of “government and colleagues across the House” but urged wider consideration of the “inconsistency of the law, as it stands, against sexual offences”.²¹

Wider concerns about the law were also evident in the remarks of Maria Miller, chair of the House of Commons Women and Equalities Committee, who queried how issues such as ‘revenge porn’ or the production of ‘deepfake’ pornography, should be dealt with under the law.²² In addition, she suggested that the bill should be amended to: ensure all upskirting was captured by the law, regardless of the motivations of the offender; make disclosure of images obtained through upskirting a criminal offence; and ensure that all upskirting against under-18s was a notifiable sex offence (offenders would be put on the ‘sex offenders register’).

The committee agreed to a recommendation that the Voyeurism (Offences) (No. 2) Bill should be read a second time.²³ The bill subsequently received second reading in the chamber without a debate.

Committee Stage and Report

The bill was considered in committee on 10 and 12 July 2018 and received its report stage and third reading on 5 September 2018. The bill passed all its stages unamended. Amendments discussed at both committee and report stage included:

- amendments to make all upskirting an offence, rather than specifying that the motivations of an offender were obtaining sexual gratification or humiliating, alarming or distressing the victim;
- making the disclosure/distribution of an image recorded through upskirting an offence;
- considering at sentencing if the crime was motivated by misogyny and, if so, treating this as an aggravating factor which increased the seriousness of the offence.

No amendments were pushed to a division.

Motivations of an Offender

Introducing her amendment at committee, Liz Savile Roberts (Plaid Cymru MP for Dwyfor Merionnydd) argued that it sought to “ensure that all upskirting is illegal, regardless of the motivation”. The amendment would have removed the necessity of an offender operating equipment or recording an image with the motive of either obtaining sexual gratification or humiliating, alarming or distressing the victim. This, she argued, would capture upskirting that was undertaken as “group bonding or banter”.²⁴

The proposed amendment received support from both Stella Creasey (Labour MP for Walthamstow) and Wera Hobhouse (Liberal Democrat MP for Bath) who stressed the importance of putting the victim, rather than the motivations of the offender, at the centre of legislation.²⁵ Responding for the Government, the Justice Minister Lucy Frazer noted she understood the objective of the amendments, but claimed that the motivations mentioned in the bill were familiar to the English legal system and had a precedent in law, therefore “we know it will catch inappropriate wrongdoing”.²⁶ The amendment was withdrawn.

The issue was revisited at report stage with Maria Miller, chair of the House of Commons Women and Equalities Committee, arguing “there should never be an instance when it is acceptable to take a photo up anyone’s skirt without their consent”.²⁷ Responding, Lucy Frazer stated that the “reason those motivations are identified in the bill is that they are used in other current legislation”. In addition, she reiterated her contention that the bill would already capture offenders where the motivations of an offender were financial gain or “having a laugh”.²⁸ The amendment was withdrawn.

Disclosure of Images

During committee stage, Liz Saville Roberts introduced an amendment tabled by Maria Miller which sought to make the disclosure of images obtained through upskirting a criminal offence.²⁹ The amendment also proposed the introduction of a defence for individuals who had operated equipment or recorded an image for the prevention or detection of crime and there was no intent to record or observe another person’s genitals, buttocks or underwear.

Responding for the Government, Lucy Frazer argued that the distribution of images was not limited to upskirting, “it is a wider problem than this specific offence”. She pointed to a current Law Commission review looking into the onward sharing of images and noted the danger of cutting across current work through agreeing the amendment.³⁰ The amendment was withdrawn with Ms Saville Roberts noting “I shall work with others to redraft and refine the amendment, in discussion with members in the other place, with the intention of tabling it on report”.³¹

A similar amendment was considered during report stage. Tabled by Maria Miller, the amendment was also sponsored by Liz Saville Roberts who argued it closed “the biggest loophole in this legislation” arguing “just as the motivation clause of this legislation means that not all upskirting would be outlawed, nor does the present legislation outlaw distribution in all cases”.³²

Responding, Lucy Frazer argued that the Government “share the intention and desire” to deal with the distribution and sharing of images, but that the issue should be looked at more widely. She pointed again to a Law Commission review into online abuse that the Department for Digital, Culture, Media and Sport had commissioned, which is due to report on existing law in October. The minister promised that the Government would subsequently “ask the Law Commission to take forward a more detailed review of the law around the taking and sharing of non-consensual intimate images”.³³

Misogyny

Speaking to her amendment, which would have made misogyny an aggravating factor for an offence of upskirting, Stella Creasey (Labour MP for Walthamstow), noted “currently, when aggravating factors are dealt with in sentencing [...] there is a gap, which means protection is not offered in relation to somebody’s sex, although we offer that protection around somebody’s sexuality, racial background or religious background”.³⁴

In response, the Justice Minister, Lucy Frazer, noted “judges already take into account, on a factual basis in sentencing, the circumstances of the case”. Creating an additional aggravating factor for the upskirting offence, she argued, would be “inconsistent with all other sexual offences. There is no rationale for the amendment to apply specifically to this offence alone”.³⁵ Replying to the minister, Stella Creasey urged the Government to commit to a review about the “anomaly” of not protecting sex in the same way race or religion was protected during sentencing. The amendment was withdrawn.³⁶

Stella Creasey also tabled an amendment on misogyny during report stage. Speaking to her amendment, she argued that the amendment “was not about criminalising wolf-whistling or flirting. It is about recognising existing crimes that are motivated by hostility towards somebody because of their gender, as well as recognising what they are—hate crimes”.³⁷ Replying for the Government, Lucy Frazer, Parliamentary Under Secretary of State for Justice, argued that the “narrow bill” was unsuitable for debating whether misogyny should become a hate crime. Instead, she announced:

[...] I will be asking the Law Commission to undertake a review of the coverage and approach of hate crime legislation, following its earlier recommendation to do so. This will include how protective characteristics, including sex and gender characteristics, should be considered by new or existing hate crime law [...] I will confirm that the Ministry of Justice will make available the necessary funds for the review and I will write to the Law Commission this week outlining our intention. On that basis, I ask the hon. Member for Walthamstow to withdraw her amendments.³⁸

Withdrawing her amendment, Stella Creasey welcomed the review as “a positive reflection of what this place can achieve” noting “we have just sent a message to every young woman in this country that we are on their side”.³⁹

Third Reading

As the bill had been certified as relating exclusively to England and Wales, the House of Commons resolved itself into a legislative grand committee (England and Wales) to consider third reading of the bill. For the Government, Lucy Frazer thanked “members across the House who have engaged with this bill as it has progressed” noting “this is a simple but important piece of legislation with a very clear purpose—to fill a gap in the law in the prosecution of those who upskirt” and committed to a post-legislative review in two years’ time to “ensure that the offences that the bill will introduce are as effective and as comprehensive as intended”.⁴⁰

Shadow Justice Minister Yasmin Qureshi echoed these sentiments, congratulating campaigner Gina Martin and Wera Hobhouse for highlighting upskirting as an issue, which she described as “a depraved violation of privacy”.⁴¹ Wera Hobhouse (Liberal Democrat MP for Bath) the original proponent of a private member’s bill on voyeurism and upskirting, argued:

[...] the bill is a credit to all those who are seen as everyday ordinary women who have achieved something extraordinary. By campaigning, by pressuring those in power and by protesting—with pants!—when the campaign faced adversity, they have ensured that upskirting will become what it deserves to be: a specific sexual offence.⁴²

The bill was read a third time.

Further Information

- House of Commons Library, [Voyeurism \(Offences\) \(No. 2\) Bill 2017–19](#), 17 August 2018
- Ministry of Justice, [Voyeurism \(Offences\) \(No. 2\) Bill: Factsheet](#), June 2018
- FullFact, '[Upskirting: What's the Legal Situation?](#)', 27 June 2018
- David Pannick, '[The Upskirting Bill Must be Scrutinised Properly to Make it Effective](#)', *Times* (£), 5 July 2018

- ¹ House of Commons Justice Committee, '[Letter from Lucy Frazer, Parliamentary Under Secretary of State for Justice, to Bob Neill, Chair of Justice Select Committee—Voyeurism \(Offences\) \(No. 2\) Bill](#)', 21 June 2018.
- ² See: [HC Hansard, 18 June 2018, col 41](#); and House of Commons Justice Committee, '[Letter from Lucy Frazer, Parliamentary Under Secretary of State for Justice, to Bob Neill, Chair of Justice Select Committee—Voyeurism \(Offences\) \(No. 2\) Bill](#)', 21 June 2018.
- ³ [Explanatory Notes](#), p 2.
- ⁴ [HC Hansard, 2 July 2018, col 1](#).
- ⁵ Law Commission, [Simplification of Criminal Law: Public Nuisance and Outraging Public Decency](#), June 2015.
- ⁶ BBC News, '[Upskirting—Now One Victim is Fighting Back](#)', 9 August 2017.
- ⁷ Care2 Petitions, '[I Had Upskirt Photos Taken of Me—Sign to Make this a Sexual Offence in England & Wales!](#)', accessed 6 October 2018.
- ⁸ Sexual Offences (Scotland) Act 2009, s 9(7).
- ⁹ [HC Hansard, 5 September 2017, col 18](#).
- ¹⁰ [Explanatory Notes](#), p 3.
- ¹¹ [HC Hansard, 24 April 2018, col 724](#).
- ¹² Ministry of Justice, '[Government Acts to Make 'Upskirting' a Specific Offence](#)', 15 June 2018.
- ¹³ *ibid*.
- ¹⁴ For more information on parliamentary procedure in this area, see: House of Commons Information Office, '[Factsheet: Private Members' Bills Procedure](#)', June 2010.
- ¹⁵ See, for example: Harriet Marsden, 'Chope's Ignorant Objection to the Upskirting Bill Shows How Little Female Consent Matters to a Lot of Men in Power', *Independent*, 16 June 2018.
- ¹⁶ *Bournemouth Daily Echo*, '[Christchurch MP Christopher Chope: I DO Support Upskirting Ban](#)', 17 June 2018.
- ¹⁷ See: [HC Hansard, 18 June 2018, col 41](#); and House of Commons Justice Committee, '[Letter from Lucy Frazer, Parliamentary Under Secretary of State for Justice, to Bob Neill, Chair of Justice Select Committee—Voyeurism \(Offences\) \(No. 2\) Bill](#)', 21 June 2018.
- ¹⁸ [HC Hansard, 2 July 2018, col 3](#).
- ¹⁹ *ibid*, cols 3–4.
- ²⁰ *ibid*, col 6.
- ²¹ *ibid*, col 9.
- ²² *ibid*, cols 10–11.
- ²³ *ibid*, col 22.
- ²⁴ [HC Hansard, 12 July 2018, cols 37–8](#).
- ²⁵ *ibid*, cols 45–6.
- ²⁶ *ibid*, col 39.
- ²⁷ [HC Hansard, 5 September 2018, col 261](#).
- ²⁸ *ibid*, col 281.
- ²⁹ [HC Hansard, 12 July 2018, col 49](#).
- ³⁰ *ibid*, cols 49–50.
- ³¹ *ibid*, col 52.
- ³² [HC Hansard, 5 September 2018, col 274](#).
- ³³ *ibid*, col 282.
- ³⁴ [HC Hansard, 12 July 2018, col 52](#).
- ³⁵ *ibid*, col 56.
- ³⁶ *ibid*, cols 57–8.
- ³⁷ [HC Hansard, 5 September 2018, cols 254–5](#).
- ³⁸ *ibid*, col 279.
- ³⁹ *ibid*, col 283.
- ⁴⁰ *ibid*, col 284.
- ⁴¹ *ibid*, col 277.
- ⁴² *ibid*, col 287.

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