

Title: Intimate Image Abuse IA No: LAWCOM0080 RPC Reference No: Lead department or agency: Law Commission Other departments or agencies: Ministry of Justice	Impact Assessment (IA)
	Date: 07/07/2022
	Stage: Development/Options
	Source of intervention: Domestic
	Type of measure: Primary legislation
	Contact for enquiries: Roseanna.peck@lawcommission.gov.uk
Summary: Intervention and Options	RPC Opinion: RPC Opinion Status

Cost of Preferred (or more likely) Option (in 2019 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status Qualifying provision
-£26.09m	£m	£m	

What is the problem under consideration? Why is government action or intervention necessary?

Currently, there is no single criminal offence in England and Wales that governs the taking, making and sharing of intimate images without consent. Instead, we have a patchwork of offences that have developed over time. Each offence has different definitions and fault requirements, and there are some harmful behaviours left unaddressed. 1 in 14 adults in England and Wales have experienced threats to share intimate images or videos. That is the equivalent of 4.4 million people.¹ The law has not kept pace with social and technological developments. There is also inconsistency in the way special measures apply to victims. New comprehensive offences are needed to address the issues identified.

What are the policy objectives of the action or intervention and the intended effects?

- A simplified and comprehensive framework of offences that addresses all criminal intimate image abuse behaviours, that will not become outdated as technology develops.
- More consistent and comprehensive protection for victims of intimate image abuse.
- The public and police will have a clearer understanding of what acts are criminal, leading to more consistent application of the offences, social change, and reduction in abusive behaviours.

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

Option 0: Do Nothing

Option 1: (preferred option as addresses the full range of concerns identified) Repeal existing intimate image offences and replace with new offences: a base offence of taking or sharing an intimate image without consent and no reasonable belief in consent; more serious offences of taking or sharing with either an intent to obtain sexual gratification or to cause humiliation, alarm or distress; an offence of threatening to share; and an offence of installing equipment in order to commit a taking offence. Special measures and automatic anonymity to apply to all victims.

Option 2: To implement only the ancillary orders recommendations: to apply special measures and automatic anonymity to all victims and make Sexual Harm Prevention Orders available for all intimate image offences

Will the policy be reviewed? It will/will not be reviewed. **If applicable, set review date:** Month/Year

Does implementation go beyond minimum EU requirements?		N/A		
Is this measure likely to impact on international trade and investment?		Yes / No		
Are any of these organisations in scope?	Micro Yes/No	Small Yes/No	Medium Yes/No	Large Yes/No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded:		Non-traded:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY _____ Date: _____

¹ Refuge, Naked Threat, 2020 <https://www.refuge.org.uk/wp-content/uploads/2020/07/The-Naked-Threat-Report.pdf>

Summary: Analysis & Evidence

Policy Option 1

Description: Repeal existing intimate image offences and replace with new offences: a base offence of taking or sharing an intimate image without consent and no reasonable belief in consent; more serious offences of taking or sharing with either an intent to obtain sexual gratification or to cause humiliation, alarm or distress; an offence of threatening to share; and an offence of installing equipment in order to commit a taking offence. Special measures and automatic anonymity to apply to all victims.

FULL ECONOMIC ASSESSMENT

Price Base Year 2021/22	PV Base Year 2021/22	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -£17.97	High: -£39.21	Best Estimate: -£26.09

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	n/a		2.16	17.97
High	n/a		4.71	39.21
Best Estimate	n/a		3.14	26.09

Description and scale of key monetised costs by 'main affected groups'¹
Ongoing costs: Increased prosecutions / custodial sentences and legal expenditure arising from new base offence costing, about £672,600, £1.16m and £455,000 per year respectively; Increased prosecutions / custodial sentences and legal expenditure arising from widening scope of intent offences, £166,300, £587,700 and £93,000 per year respectively.

Other key non-monetised costs by 'main affected groups'
Transitional costs: Familiarisation with new base offence and widening scope of existing intent offences required for the judiciary, CPS, legal practitioners and police. Training required in the application of new offence police in particular may need revised procedures to report drafting in line with new criminalisation recommendation.
Ongoing cost: Probation costs as new base offence is introduced.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	n/a		n/a	n/a
High	n/a		n/a	n/a
Best Estimate	n/a		n/a	n/a

Description and scale of key monetised benefits by 'main affected groups'
Transitional benefits: None identified

Other key non-monetised benefits by 'main affected groups'
Ongoing benefits: The deterrent effect of criminalisation in the new base offence should see the reduction in abusive conduct; Avoided emotional distress and adverse physical health impact due to being a victim of abuse; Improved victim experience in court due to better protections such as anonymity; Enhanced confidence in the Criminal Justice System; Educational messaging.

Key assumptions/sensitivities/risks	Discount rate (%)
Assumptions indicated throughout the IA.	3.5

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs:	Benefits:	Net:	

¹ Central estimate figures

Summary: Analysis & Evidence

Policy Option 2

Description: To implement only the ancillary orders recommendations: to apply special measures and automatic anonymity to all victims, and make Sexual Harm Prevention Orders available for all intimate image offences

FULL ECONOMIC ASSESSMENT

Price Base Year 2021/22	PV Base Year 2021/22	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -£1.17	High: -£5.04	Best Estimate: -£2.39
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)	
Low	n/a		0.14	1.17	
High	n/a		0.61	5.04	
Best Estimate	n/a		0.29	2.39	
Description and scale of key monetised costs by ‘main affected groups’¹ Ongoing costs: Anonymity impacts on increased prosecutions of the disclosure offence £60,220 per year; Those increased prosecutions of the disclosure offence will give rise to: increased number of custodial sentences, £195,890 per year; increased legal aid expenditure disclosure offences, £31,000 per year					
Other key non-monetised costs by ‘main affected groups’ Transitional costs: Negligible Familiarisation costs for the judiciary, lawyers, CPS and police as ancillary recommendations are familiar in other offences; Training may be required but likely to form part of CPD. Ongoing costs: Probation costs arising from the increase in Disclosure offences.					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)	
Low	n/a		n/a	n/a	
High	n/a		n/a	n/a	
Best Estimate	n/a		n/a	n/a	
Description and scale of key monetised benefits by ‘main affected groups’					
Other key non-monetised benefits by ‘main affected groups’ Ongoing: Improved victim experience from automatic lifetime anonymity; Enhanced confidence in the criminal justice system; Improved protection for victims.					
Key assumptions/sensitivities/risks				Discount rate (%)	3.5
Assumptions indicated throughout the IA					

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs:	Benefits:	Net:	

¹ Figures used refer to the central estimate

Evidence Base

Glossary

App

Short for “application”, this is software that can be installed on a mobile device, such as a tablet or mobile phone, or a desktop computer.

Artificial Intelligence (AI)

The development of machines that simulate human intelligence processes to enable the performance of tasks such as problem-solving and decision-making.

Deepfake

The term is a blend of the words “deep learning”, which is an artificial intelligence method, and “fake”. It describes realistic synthetically-generated images, video, and audio.

Disclosure

We use this term to describe the act of sharing or making available an intimate image to another. It is not used in this project to refer to criminal disclosure evidence rules.

Extortion

The act of obtaining a gain from another, usually financial, by using threats or force.

LGBTQ/+

An abbreviation for lesbian, gay, bisexual, transgender and questioning (or queer for some users of this term). The + stands for other sexual identities including asexual or pansexual.

Nudification

The process of using software to modify existing, non-intimate images, and “strip” the person depicted of their clothes, resulting in an image that makes them appear naked.

Online communication

Communication via the internet between individuals and/or devices with other individuals and/or devices.

Photoshop

A software application for editing or retouching photographs and images.

Post or posting (on social media)

A comment, image or video that is sent so as to be visible on a user’s social media page or timeline (whether the poster’s own or another’s).

Revenge porn

The practice of posting intimate images online without the consent of the person depicted usually as a way of humiliating the victim after a perceived wrong (such as the end of a relationship or refusing advances). The term is sometimes used to describe the hacking of a celebrity's phone and posting intimate images stored on it online to humiliate the victim.

Sexualised photoshopping

Superimposing a victim's head or other body parts onto the body of someone engaging in a sexual act so that it looks like the victim is engaging in the sexual act.

Sexual Harm Prevention Order or SHPO

An order that can be imposed by the court that prohibits someone from doing, or not doing specific acts where such prohibition is necessary for the protection of the public. An order may be imposed on someone if they have been convicted of an offence listed in either Schedule 3 or Schedule 5 of the Sexual Offences Act 2003.

Sharing (on social media platforms)

This refers to sharing as a specific tool enabled on social media platforms, defined as the broadcasting by social media users of web content on a social network to their own social media page or to the page of a third party.

Social media

Websites and apps that enable users to create and share content or to participate in social networking.

Upload

The act of adding content to an internet site or platform.

Upskirting

The act of taking a photograph or video underneath a person's clothing such as a skirt or kilt without consent, typically in a public place.

VAWG

An acronym for violence against women and girls.

Voyeurism

The behaviour of observing or recording private acts of another without their consent usually for the sexual gratification of the perpetrator.

Evidence base

Introduction

The increased use of smartphones and online platforms has made it easier to take photographs or film, alter or create images and send images to our family and friends or the public at large. However, this also means that it is now easier to take or make images of others or to distribute images of others without their consent (whether the images were taken consensually or non-consensually in the first place). This is particularly concerning when those images are “intimate” in nature, such as where the person is nude, engaging in a sexual act or when the image is taken up a person’s skirt or down a female’s blouse.

The non-consensual taking and sharing of intimate images can have a significant and long-lasting impact on victims. We refer to this as intimate image abuse. The harms victims of such abuse experience are serious and significant. These can include psychological harm such as anxiety, depression and post-traumatic stress disorder (PTSD), worsening physical health and financial loss either through time off work or through withdrawing from online spaces which reduces access to networking opportunities. In some cases, there have been reports of attempted suicide and self-harm.

The law recognises that intimate image abuse is harmful and wrongful. At the outset of this project there were 3 specific offences designed to tackle intimate image abuse:

1. Disclosing private sexual photographs and films, under section 33 of the Criminal Justice and Courts Act (“CJCA”) 2015 (the “disclosure offence”);
2. Recording an image of a person doing a private act, under section 67 of the Sexual Offences Act (“SOA”) 2003 (the “voyeurism offence”); and
3. Recording an image of genitals and buttocks, underneath clothing, under section 67A of the SOA 2003 (the “upskirting offence”).

There are also a range of other, less targeted offences that are sometimes used where specific facts permit including blackmail, harassment and stalking, and communications offences. Since publication of the consultation paper, two new relevant offences have been introduced following public campaigns to address specific gaps. First, it is now an offence to threaten to disclose a private sexual image without consent, with intent to distress the person depicted. Secondly, it is now an offence to record an image of someone breastfeeding without consent and with the intent that someone will look at the image either for the purposes of humiliating, alarming or distressing the person depicted, or obtaining sexual gratification. This has given rise to a patchwork of offences used to address the range of intimate image abuse behaviours. We were tasked with reviewing the current legal landscape.

Our terms of reference were agreed as follows:

- to review the current range of offences which apply in this area, identifying gaps in the scope of the protection currently offered, and making recommendations to ensure that the criminal law provides consistent and effective protection against the creation and sharing of intimate images without consent.

In particular:

- to consider the existing criminal law in respect of the non-consensual taking of intimate images, and the non-consensual sharing of intimate images, and to assess whether it is capable of dealing adequately with these behaviours.
- to consider the meaning of terms such as “private” and “sexual” in the context of the taking and sharing of images without consent, with reference to existing legislation, including (but not limited to) section 33 of the Criminal Justice and Courts Act 2015 and section 67 of the Sexual Offences Act 2003.
- to consider the potential impact of emerging technology which allows realistic intimate or sexual images to be created or combined with existing images and how the creation and dissemination of such images is dealt with under existing criminal law.
- to ensure that any recommendations comply with, and are conceptually informed by, human rights obligations, including under Article 10 (freedom of expression) of the European Convention on Human Rights.

Background

Taking and sharing intimate images without consent can cause significant harm to individual victims, their friends and family, and society at large. It is an increasing phenomenon; reports of intimate image abuse to the Revenge Porn Helpline increased by 300% between 2018 and 2021.¹ The domestic abuse campaign and support organisation Refuge reported that 1 in 14 adults in England and Wales have experienced threats to share intimate images or videos. That is the equivalent of 4.4 million people.²

The rapid developments in technology have led to more prolific intimate image abuse; they have also created new ways of offending. The use of deepfake pornography and nudification software is increasingly common. For example, one report suggests there have been thousands of victims of just one digital tool that “strips” images of women so they appear naked. The website received 38 million hits in the first 8 months of 2021. These digitally altered, often explicit, images are not currently covered by the intimate image offences.

In our consultation paper published on 26 February 2021, we identified a number of gaps and limitations that arise from this patchwork of offences and made a number of proposals for reform aimed at ensuring better protection for victims and a more structured legal framework.

We held a three month public consultation and received 354 written responses from members of the public, professionals and organisations. We also held a number of consultation events for stakeholder groups including lawyers, parliamentarians, victim support groups, academics, and professionals working with children and young people.

Problems under consideration

Piecemeal

The law in this area has developed in a piecemeal way, responding to developing trends or identified gaps. For example, the upskirting offence was introduced after a victim and campaigner, Gina Martin, was upskirted at a festival and discovered when she reported it, that it was not a criminal offence. This is because the wording of the voyeurism offence required the victim to have been in a place which would reasonably afford them privacy. A festival is not such a place, therefore the behaviour did not fall within the voyeurism offence. Clearly

¹ https://revengepornhelpline.org.uk/assets/documents/infographic-for-2021-data.pdf?_id=1653314318

² Refuge, Naked Threat, 2020 <https://www.refuge.org.uk/wp-content/uploads/2020/07/The-Naked-Threat-Report.pdf>

unsatisfactory, the law was changed to address that gap. However, as it was introduced in that way, it is so specific that it excludes other, similar behaviour such as downblousing which still remains outside the current offences.

The recently implemented breastfeeding voyeurism offence was also introduced after a victim and campaigner, Julia Cooper, was photographed while breastfeeding in a park, and upon reporting it, was told it was not a criminal offence as again, she was in a public place and not somewhere she could expect privacy. The new offence covers only the recording of someone while breastfeeding. Other behaviour excluded from the voyeurism offence by the same mechanism, such as recording images of someone being sexually assaulted in public or changing in a public changing room, still remain outside the current offences. This means that police and prosecutors have to look to other, less well-targeted offences to try and address what is clearly culpable behaviour.

Inconsistent application

The voyeurism, upskirting, and breastfeeding voyeurism offences are in the Sexual Offences Act (SOA) 2003, whereas the disclosure offence is in the Criminal Justice and Courts Act 2015. By virtue of being in the SOA 2003, special measures to assist complainants to give evidence at trial and protective orders can apply in cases of voyeurism and upskirting. The same is not true for instances of disclosure. As an example: person A takes a photo of person B doing a sexual act in private without B's consent. A also hacks the phone of person C and obtains C's private sexual photos. A uploads the images of B and C to a revenge porn website to cause them both distress. B, as a victim of the voyeurism offence, has an automatic right to lifetime anonymity. C does not.

Further, each offence has a different definition of the type of image that is included. This means that someone could take and then share an intimate image, but depending on exactly what the image contains, only the taking but not the sharing would be criminal, or vice versa. The offences also all have different intent elements. This means that someone could take and then share a private sexual image for the purpose of distressing the victim; it would not be an offence to have taken the image for that reason but it would be an offence to share it.

Gaps in provision

As identified above, there are some instances of intimate image abuse which are not covered by the current offences. Most significantly, the specific intent elements limit the offence of sharing so it only applies where there was an intent to cause distress, and limit the taking offences so they only apply where there was an intent to obtain sexual gratification and/or an intent to cause humiliation, alarm, or distress. Taking or sharing an intimate image without consent for any other reason (such as for financial gain or for a laugh), or for no reason at all, is not covered.

Downblousing is not covered by the offences, although upskirting is.

There is some behaviour that is specifically excluded from the offences, causing gaps in protection. For example, sharing an image that was altered to be intimate and sharing an image with the person in the image is excluded from the disclosure offence, even if it is done with the intent to cause the victim distress.

In need of modernisation

The rapid development of technology has left the law in this area lagging behind. The disclosure offence currently excludes images that have been altered to become intimate. Since this offence was introduced, AI technology has improved so much it has made it significantly easier and cheaper for people to create high quality sexual deepfakes, or other digitally altered intimate images such as "nudified" images (where a clothed image of a victim is digitally

stripped by an app). These image, when shared without consent, can cause significant harm to victims.

Section 67 of the Sexual Offences Act 2003 contains the voyeurism offences. This includes an offence of installing equipment in order to commit an offence of observing someone doing a private act. It was not extended to criminalise the installing of equipment in order to commit an offence of recording someone doing a private act. From parliamentary discussion at the time the offence was being introduced, it appears that part of the rationale for that was that technology wasn't available that made that conduct likely. Now it is very easy to find and install equipment such as spy cameras to enable recording someone remotely.

The law needs to reflect these developments and to accommodate any future developments.

Requires simplification

Currently the offences are spread across two different Acts and have a range of differing motivation requirements and definitions. As well as creating the gaps and inconsistencies described above, this creates confusion. The law needs to be simplified so that it is clear exactly when conduct becomes a criminal offence, which offence has been committed and what the outcomes may be. A simplified law will benefit police, prosecutors, victims and the public at large.

Objectives

1. A simplified and comprehensive framework of offences that address all criminal intimate image abuse behaviours, that will not become outdated as technology develops.
2. More consistent and comprehensive protection for victims of intimate image abuse.
3. The public and police will have a clearer understanding of what acts are criminal, leading to more consistent application of the offences, social change, and reduction in abusive behaviours.

Rationale for intervention

The conventional economic approach to Government intervention in order to resolve a problem is based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way markets operate or in existing interventions. In both cases the proposed intervention should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for reasons of equity.

The problem is that there is no disincentive towards the pursuit of harmful behaviour which often has devastating consequences and can reverberate beyond the individual. Economy-wide implications result as (for example) the threat to share intimate images impacts directly upon the individual who subsequently exhibits emotional distress. This can lead to severe mental and physical health problems and withdrawal from productive endeavours. The current patchwork of offences leaves such gaps in protection that many people conducting criminally wrongful behaviour are able to easily evade liability and continue their abusive, harmful conduct.

The issue is exacerbated by the rapid growth in the circulation of intimate images made possible through technological advances. The identified gaps in legal provision due to technological advances require government intervention, as new technologies are being used to perpetuate existing abusive dynamics and harm others with impunity. Criminalisation of such harmful actions provides the deterrent effect. In the absence of the deterrent effect there is no obvious means to sanction harmful conduct which continues to grow with new technological

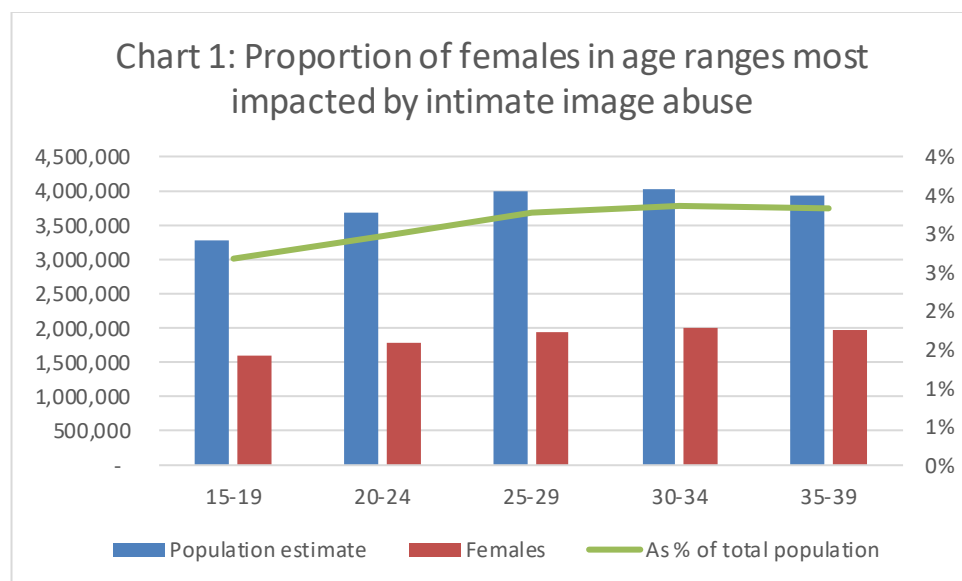
developments. Moreover, its growth disproportionately impacts on women, ethnic minorities, those with disabilities and members of LGBTQ+

Scale and scope

Everyone who has a device that takes images and connects to the internet has the potential to take and share an intimate image with just the click of a button. Of course, not everyone who takes or shares an intimate image will be committing an offence and the majority of these instances will be consensual and harmless. Both the current laws and our recommended offences are targeted at criminally culpable behaviour where someone is acting without consent of the person depicted or is threatening that person. However, we do recognise that the ease with which anyone could take or share an intimate image means the potential for committing these offences is vast.

In the course of our project we have identified groups who experience intimate image abuse in an acute, disproportionate, or particular way that warrant specific consideration. The majority of victims are women, with research suggesting that up to 90% of victims are women.³ Men are more likely than women to be victims of a particular type of intimate image abuse known as sextortion, often committed by criminal gangs.⁴ Research has found that LGBTQ+ people are four times more likely to be victims of so-called revenge porn than heterosexual people.⁵ Children and young people are at particular risk of being victimised; research indicates that children and young people are more likely than people from other age groups to become victims of intimate image abuse.⁶ In the year after the disclosure offence was introduced in England and Wales, 36% of victims were 19 or younger and 39% were between 20 and 29.

Consider the below chart⁷ which shows the population breakdown [in England and Wales] by most impacted age group and gender [female]. For each of the 5 age groups about 3 percent of the total population is particularly vulnerable. The cumulative impact across all 5 bands is some 15 percent.



³ Cyber Civil Rights Initiative Research.

⁴ <https://revengepornhelpline.org.uk/resources/helpline-research-and-reports/revenge-porn-helpline-cases-and-trends-of-2021/>

⁵ Data Society and Research Institute

⁶ Elena Sharratt, "Intimate image abuse in adults and under 18s" (2019)

⁷ See Analysis of population data tools, ONS, <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/datasets/analysisofpopulationestimatestoolforuk> last visited 23.06.2022

We also know that victims from marginalised ethnic groups can have different experiences, both in terms of the abuse suffered, and the criminal justice response, facing additional barriers such as lack of cultural understanding. Research from *Revealing Realities* found that girls from disadvantaged backgrounds experienced more negative outcomes than girls from more advantaged backgrounds.⁸ It is reported from one study of US adults that young people (18-25), sexual minorities, disabled people, and black and minority ethnic people are more likely to be victims of intimate image abuse.⁹

Because a lot of intimate image abuse is not currently criminalised, or is wrapped up in other offences such as communications offences or harassment, understanding the true scale is challenging. We can draw on the data available for reporting, charging and prosecutions under the current offences, from surveys and reports to help organisations. However, these may not reflect the real scale; support organisations including the Revenge Porn Helpline and Refuge indicate that the number of offences reported are only a fraction of the instances occurring.¹⁰

Disclosure offence: A report by RADAR AI, based on data provided by 34 police forces in response to a Freedom of Information Act request, indicated that at least 28,201 incidents of the disclosure offence were reported between April 2015 and December 2021. 6.2% of these resulted in a suspect being charged or summonsed to court.¹¹

Magistrates' Court data for disclosure offence (HO offence code 00871)

Values	2017	2018	2019	2020	2021
Proceeded against	294	224	189	167	221
Proceedings discontinued	8	8	4	2	5
Discharge Section 6 Magistrates' Courts Act 1980	-	-	-	-	1
Charge withdrawn	14	15	13	6	10
Charge dismissed	5	7	5	2	5
Convicted at magistrates' court	225	157	139	125	162
Sentenced at magistrates' court	202	134	115	103	139
For trial at Crown Court	42	37	28	32	38
Committed for Sentence at Crown Court	23	23	24	22	23

Voyeurism: The latest available data from the ONS is up to March 2020. We note that data collection has been impacted by the pandemic. The ONS sexual offences crime data combines the offences of exposure and voyeurism. Currently we cannot extract the data that is specific to the recording voyeurism offence. Between April 2019 and April 2020, there were 10,772 reported cases of exposure and voyeurism. This is an increase from 10,172 the previous year, and is the sixth year in a row that cases have increased.¹²

⁸ *Revealing Reality, Not Just Flirting*, (June 2022).

⁹ Yanet Ruvalcaba and Asia A. Eaton "Nonconsensual Pornography Among U.S. Adults: A Sexual Scripts Framework on Victimization, Perpetration, and Health Correlates for Women and Men" (February 2019) *Psychology of Violence* 10(1) referenced in <https://inform.org/2022/02/03/pornography-platforms-the-eu-digital-services-act-and-image-based-sexual-abuse-clare-mcglynn-and-lorna-woods/>.

¹⁰ See <https://www.independent.co.uk/life-style/women/what-is-sex-tortion-revenge-porn-helpline-b2083502.html> and <https://www.independent.co.uk/news/uk/england-wales-police-data-refuge-b2080235.html>.

¹¹ See <https://www.independent.co.uk/news/uk/england-wales-police-data-refuge-b2080235.html>.

¹² <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/sexualoffencesinenglandandwalesoverview/march2020>

Magistrates' Court data for voyeurism offences (HO offence code 08810)

Values	2017	2018	2019	2020	2021
Proceeded against	164	128	139	102	121
Proceedings discontinued	3	2	2	3	5
Discharge Section 6 Magistrates' Courts Act 1980	-	-	-	-	-
Charge withdrawn	8	5	9	4	8
Charge dismissed	9	4	6	2	3
Convicted at magistrates' court	98	79	82	72	75
Sentenced at magistrates' court	82	59	61	57	51
For trial at Crown Court	46	38	40	21	30
Committed for Sentence at Crown Court	16	20	21	15	24

Upskirting: In the first two years of the upskirting offence (up to June 2021), there were 63 defendants and 175 offences charged (over both limbs of the offence: operating equipment and recording an image). This data only includes completed prosecutions. The CPS reported that the number of offences charged doubled in the second year.¹³

Magistrates' Court data for upskirting offence (HO offence code 08812)

Values	2019	2020	2021
Proceeded against	11	21	25
Proceedings discontinued	-	-	1
Discharge Section 6 Magistrates' Courts Act 1980	-	-	-
Charge withdrawn	-	-	3
Charge dismissed	-	-	-
Convicted at magistrates' court	10	17	19
Sentenced at magistrates' court	8	17	13
For trial at Crown Court	1	4	2
Committed for Sentence at Crown Court	2	-	6

Threats to share: The domestic abuse campaign and support organisation Refuge reported that 1 in 14 adults in England and Wales have experienced threats to share intimate images or videos. They also reported that this behaviour is most prevalent amongst young people (aged 18-34), with 1 in 7 young women experiencing such threats.¹⁴ This data is based on a survey conducted in June 2020 of 2,060 adults in England and Wales. The threat to disclose offence was only recently introduced and as such, we have not had sight of data of reports or convictions yet.

General prevalence

The data available for the existing offences helps us understand the prevalence of reporting and prosecutions. Our recommended specific intent offences will cover much of the same behaviour therefore the prevalence shown in the data above is a useful indicator of likely reports and prosecutions. There will be some differences that are hard to quantify from the data available. One change will be that the current offences do not include the sharing, or threatening to share, of altered images. We understand this is a prevalent behaviour but do not have data on how or when it would be prosecuted. For example, we refer to a report earlier that suggests there have been "thousands" of victims of just one of the digital tool that "strips" images of women so they

¹³ <https://www.cps.gov.uk/cps/news/upsirting-public-urged-report-offenders-prosecutions-double>.

¹⁴ Refuge, The Naked Threat (2020).

appear naked.¹⁵ This would be an altered intimate image. We do not know how many of these were subsequently shared without consent.

The significant change in terms of prevalence of criminal conduct will be with the introduction of our base offence. This will capture the taking and sharing of intimate images without consent and is not limited by any specific intent as the current offences are, therefore many incidents that fall outside the current offences (and are therefore not reflected in the data above) would now be criminal. To establish the potential number of offences that may fall to be charged and prosecuted under the base offence, we look first at available data on the generic prevalence of intimate image abuse and then look at prosecutorial data of offences we deem similar.

One study conducted in Australia, New Zealand and the UK found that 1 in 3 participants had experienced some form of “image-based sexual abuse”: taking or sharing of intimate or sexual images without consent, including threats to share.¹⁶ This shows the potential scope of the abuse, although we note that this study has some limited applicability for our purposes (it includes participants outside this jurisdiction and the types of images and acts asked about in the survey do not match exactly the offences we recommend).

We have looked at the data available from magistrates’ courts for offences of harassment and the improper use of a public electronic communications network. These are both summary only offences, that have similarities with the type of abuse and the type of conduct required as the base offence.

Magistrates’ Court data for section 127 Improper use of public electronic communications network (HO offence code 19607)

Values	2017	2018	2019	2020	2021
Proceeded against	1,665	1,491	1,282	1,100	1,342
Proceedings discontinued	61	68	73	65	69
Discharge Section 6 Magistrates’ Courts Act 1980	-	-	-	-	-
Charge withdrawn	142	165	126	111	145
Charge dismissed	51	47	33	24	36
Convicted at magistrates’ court	1,407	1,208	1,049	897	1,090
Sentenced at magistrates’ court	1,390	1,196	1,036	886	1,076
For trial at Crown Court	4	3	1	3	2
Committed for Sentence at Crown Court	17	12	13	11	14

Magistrates’ Court data for section 2 Harassment offence network (HO offence code 19594)

Values	2017	2018	2019	2020	2021
Proceeded against	6,109	5,176	4,167	3,331	4,082
Proceedings discontinued	222	240	215	232	301
Discharge Section 6 Magistrates’ Courts Act 1980	-	-	-	-	-
Charge withdrawn	820	701	598	448	572
Charge dismissed	283	222	169	107	189
Convicted at magistrates’ court	4,776	4,003	3,171	2,534	3,004
Sentenced at magistrates’ court	4,730	3,969	3,136	2,505	2,965
For trial at Crown Court	8	10	14	10	16
Committed for Sentence at Crown Court	46	34	35	29	39

The base offence we recommend is a summary only offence with a recommended maximum sentence of six months’ imprisonment, and would therefore be tried in magistrates’ courts. We estimate that, for a trial, 80-85% of cases would require half a day. It is likely the majority of cases will require up to three witnesses (a police officer, the complainant and the defendant)

¹⁵ https://www.huffingtonpost.co.uk/entry/deepfake-tool-nudify-women_n_6112d765e4b005ed49053822

¹⁶ Nicola Henry, Clare McGlynn, Asher Flynn, Kelly Johnson, Anastasia Powell, Adrian J. Scott, *Image-based Sexual Abuse: A Study on the Causes and Consequences of Non-consensual Nude or Sexual Imagery*, July 2020, Routledge

and the examination of digital evidence. The remaining 15-20% of cases may require a full day trial. These will be cases where there is lengthier digital evidence required, additional witnesses, or an expert witness (such as a medical or digital forensic expert).

The specific intent offences will be either way. On conviction on indictment we recommend a maximum sentence of 2 or 3 years imprisonment, on summary conviction we recommend a maximum sentence up to the general limit for summary conviction (which is currently 12 months' imprisonment). This generally reflects the maximum sentences and mode of trial for the current intimate image offences. As the magistrates' court data above indicates, the majority of the existing intimate image abuse either way offences are tried summarily.

Court costs

Both the Crown Court and Magistrates' Court have 5 hour long sitting days where the average cost of judicial and staff salaries is indicated in table 9 below.¹⁷

Table 1: Crown Court and Magistrates' Court average staff and judicial cost per sitting day [5 hours]

	Crown Court	Magistrates' Court
Judicial	£981	£130
Non-judicial	£541	£981
Total	£1,522	£1,111
Upated 2020/2021 cost	£1794	£1309
Hourly cost ¹⁸	£359	£262

Cost of crime

The Home Office Cost of Crime report¹⁹ identifies three sources of cost as a result of criminal activity as follows:

- cost in anticipation of crime
- cost as a consequence of crime, and
- cost in response to crime.

In the case of intimate images, one of the most significant costs arises from the emotional harms of which fear, depression and anxiety/panic attacks are prevalent markers. Using 'other sexual offences' as a proxy for intimate image abuse, the estimated unit cost of emotional harm is £3,700 [in 2015/16 prices].

Main stakeholders

- Prosecution agencies, such as the CPS.
- HM Courts and Tribunal Service.
- Lawyers and legal academics.
- Victim support groups e.g. South West Grid for Learning (who run the Revenge Porn Helpline), Women's Aid, and Refuge.

¹⁷ Her Majesty's Courts and Tribunal Services Annual Report and Accounts 2013-14 (24 June 2014), page 7.

¹⁸ Rounded to nearest £10

¹⁹ <https://www.gov.uk/government/publications/the-economic-and-social-costs-of-crime> last visited 30/06/2022

- Organisations who work with particular groups of potential victims eg the NSPCC and Muslim Women's Network UK.

Option description

This impact assessment compares Option 1 against the do nothing [option 0]:

- Option 0 – Do nothing. Under this option the problems outlined above would persist.
- Option 1 – (preferred): Implement all recommendations and repeal the existing offences.
- Option 2 – Implement only the ancillary orders recommendations: to apply special measures and automatic anonymity to all victims, and make Sexual Harm Prevention Orders available for all intimate image offences.

Option 0: Do Nothing

Current law	Problems caused
The disclosure offence sits in the Criminal Justice and Courts Act (CJCA) 2015, the voyeurism and upskirting offences sit in the Sexual Offences Act (SOA) 2003.	Victims of offences that sit in the SOA 2003 are automatically eligible for special measures and lifetime anonymity. SHPOs are also available to offences specified in the SOA.
There are three different offences for the recording of different types of images (voyeurism, upskirting and breastfeeding voyeurism offences)	This creates confusion and can lead to inconsistent application.
The disclosure offence covers images that are "private and sexual"; a different range of images from the recording offences. The voyeurism offence covers images of someone doing a private act. The upskirting offence covers images taken underneath clothing of genitals or buttocks where they would not otherwise be visible. The breastfeeding voyeurism offence covers images taken of someone breastfeeding.	Each offence covers a different range of images. This creates confusion, gaps and can lead to inconsistent application.
The disclosure offence specifically excludes sharing with the person depicted (under section 33(2) CJCA 2015) and sharing an image that is made private and sexual by altering (section 5(5) CJCA 2015).	Sharing without consent altered intimate images and sharing with the person depicted are wrongful and harmful behaviours that are not currently criminalised.
Section 33(1) CJCA 2015 makes it an offence to disclose a private sexual image without consent if it is done with the intent of causing the person depicted distress.	Disclosing an intimate image with any other intent, or with no identifiable intent at all, is excluded from the offence. Disclosing to cause distress is not the only criminally culpable conduct.
Section 67(4) SOA 2003 makes it an offence to install equipment in order to commit an	This does not reflect the fact that equipment can be and is installed in order to take

offence under section 67(1) (observing) but not section 67(3) (recording).	intimate images without consent, as well as to observe someone doing a private act.
The voyeurism offence covers the recording of someone without their consent doing a private act, in a place that would reasonably be expected to provide privacy under section 68 SOA 2003.	This excludes images taken of someone who is nude, partially nude, toileting or engaging in sexual activity in a public place whether it was voluntary or not. It also excludes upskirting and downblousing.
The voyeurism offence covers the recording of someone without their consent doing a private act, if there was intent that someone would look at the images for the purpose of obtaining sexual gratification under section 67(3) SOA 2003.	Recording an intimate image with any other intent or purpose, or for no identifiable purpose at all, is excluded from the offence. Recording for sexual gratification is not the only criminally culpable conduct.
Section 67A makes it an offence to record an image of someone's genitals or buttocks underneath their clothing if it is done with the intent that someone will look at the image to either: obtain sexual gratification or humiliate, alarm or distress the person depicted (under section 33(3) CICA 2015).	Images of breasts taken underneath clothing are excluded. Recording an intimate image with any other intent or purpose, or for no identifiable purpose at all, is excluded from the offence. Recording for sexual gratification or to humiliate, alarm or distress the victim is not the only criminally culpable conduct.

Option 1: Repeal existing intimate image offences and replace with new offences: a base offence of taking or sharing an intimate image without consent and no reasonable belief in consent; more serious offences of taking or sharing with either an intent to obtain sexual gratification or to cause humiliation, alarm or distress; an offence of threatening to share; and an offence of installing equipment in order to commit a taking offence. Special measures and automatic anonymity to apply to all victims.

This is not an exhaustive list of all our recommendations but covers those likely to be of particular public interest as well as those with significant costs and/or savings.

1. A base offence: it should be an offence intentionally to take or share an intimate image without consent, and without reasonable belief in consent. There should be a defence if there was a reasonable excuse for the taking or sharing. We also recommend a number of elements that would limit the scope of the base offence and exclude behaviour that is less harmful and/or less culpable such that it should not warrant criminalisation. For example, intimate images taken in public such as of a streaker at a football game, and intimate images that have previously been consensually shared in public, such as on a porn site, will be excluded from the scope of the offences. Images of young children of a kind that are ordinarily shared between family members and friends will also be excluded.
2. A more serious offence: it should be an offence intentionally to take or share an intimate image without consent, with the intention of humiliating, alarming or distressing the person depicted. This will replace the current disclosure, voyeurism and upskirting offences.
3. A more serious offence: it should be an offence intentionally to take or share an intimate image without consent, and without reasonable belief in consent, with the intention that the image will be looked at for the purpose of obtaining sexual gratification. This will replace the current disclosure, voyeurism and upskirting offences.
4. A threat offence: it should be an offence to threaten to share an intimate image with the intention of causing the victim to fear that the threat will be carried out, or being reckless

as to whether the victim will fear that the threat will be carried out. This will replace the current threat to disclose offence.

5. An installing offence: it should be an offence to install equipment with the intention of enabling someone to commit the offence of taking an intimate image without consent.
6. A definition of intimate that covers images that are sexual, nude, partially nude and toileting. The sharing offence should apply equally to all intimate images whether “original” or altered.
7. Automatic lifetime anonymity and automatic eligibility for special measures at trial for all victims of intimate image abuse, and restrictions on cross examination of witnesses.
8. Sexual Harm Prevention Orders and notification requirements should be available in cases of intimate image abuse where there is relevant sexual conduct of sufficient seriousness.

The recommended framework of offences uses one consistent definition of an intimate image, covers the full range of perpetrator motivations, and applies protective measures for victims consistently. It is a simplified and modernised approach that will enable more consistent application and better understanding of the parameters of the criminal law.

Implementing a base offence will address the most significant concerns raised by consultees about the current offences.

Stakeholders and consultees have repeatedly told us that motivations such as for a joke, for financial gain, or for higher social standing are equally harmful motivations that would not satisfy the intent elements in the current offences. A base offence as recommended is best placed to capture the wide ranging types of intimate image abuse it is appropriate to criminalise.

The specific intent offences will largely replace the existing offences as they reflect similar conduct and intent requirements, but provide a clearer, more consistent framework. The recommendations would extend the scope of the current offences in a few important ways; sharing of altered images either to obtain sexual gratification or cause humiliation, alarm, or distress, and sharing for the purpose of obtaining sexual gratification would now be included. Including sharing of altered images was another key issue for consultees. There have been public campaigns recently to extend the current offences in this way in recognition of the serious harm the conduct causes.

The recommended installing offence fills a gap in the current voyeurism offence. The technology exists and is accessible; people are able to buy and install equipment to enable the taking of images without consent, such as spy cameras.

Option 2: Implement only the ancillary orders recommendations.

1. Automatic lifetime anonymity and automatic eligibility for special measures at trial for all victims of intimate image abuse, and restrictions on cross examination of witnesses.
2. Sexual Harm Prevention Orders and notification requirements be available in cases of intimate image abuse where there is relevant sexual conduct of sufficient seriousness.

This would extend the availability of ancillary orders as described above, creating parity between victims of the current offences. All other problems with the current law identified above would remain.

Public Consultation Exercise

Following publication of the Consultation Paper, we conducted a three month public consultation period. During this time we held seven consultation events for different groups of stakeholders including victim support groups, academics, parliamentarians, and legal professionals. We also held a roundtable event focussing on children and young people which was attended by a range of stakeholders including law enforcement, online safety professionals, lawyers who work with children, organisations that work with children, and with teachers. In addition, we had a number of one to one meetings with individuals and organisations to discuss issues most relevant to them.

We received 354 written responses. We received responses from a mixture of individuals submitting personal responses, individuals submitting responses in a professional capacity, and organisational responses. Responses were received from members of the public, prosecutors, policing bodies, legal professionals, judiciary, parliamentarians, legal and social academics, medical professionals, educators, organisations that work with victims, and organisations that work with potential perpetrators of intimate image abuse. This consultation process has informed our final recommendations, and we are very grateful to those who met with us or responded to our consultation for their considered contributions.

There was substantial support for law reform to address the issues we had identified. Consultees demonstrated a clear need for an improved, simplified and comprehensive framework of criminal offences and better, more consistent, protection for victims of intimate image abuse.

Monetised costs and benefits of each option

This Impact Assessment identifies monetised and non-monetised impacts on individuals, groups and businesses with the aim of understanding what the overall impact to society might be from implementing these options. The costs and benefits of the proposed scheme are compared to the “do nothing” option.

Impact Assessments place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). When calculating the net present social value²⁰ (“NPSV”) we use a time frame of ten years, with the present being year 0. We assume the transitional costs and benefits occur in year 0, the current year, unless otherwise indicated. Ongoing costs and benefits accrue in years 1 to 10. We would normally apply a discount rate of 3.5%, in accordance with HM Treasury guidance.

Population volumes greater than 100 have been rounded to the nearest 10, volumes less than 100 have been rounded to the nearest 5

Option 0: Do nothing [base case]

Because the “do nothing” option is compared against itself its costs and benefits are necessarily zero, as is its NPSV.

²⁰ Costs to society are given a negative value and benefits a positive value. After adjusting for inflation and discounting, costs and benefits can be added together to calculate the Net Present Social Value (NPSV) for each option. See HMT Green Book at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/685903/The_Green_Book.pdf#page=1&zoom=auto,-47,842 p 21 (last visited 22 March 2022).

Option 1: Repeal existing intimate image offences and replace with new offences: a base offence of taking or sharing an intimate image without consent and no reasonable belief in consent; more serious offences of taking or sharing with either an intent to obtain sexual gratification or to cause humiliation, alarm or distress; an offence of threatening to share; and an offence of installing equipment in order to commit a taking offence. Special measures and automatic anonymity to apply to all victims.

Costs

Transitional Costs

Familiarisation

The recommended introduction of a new base offence and additional intent offences will require some time investment in understanding the changes. The conduct, type of investigation and prosecutions required are already known to those working in the area: the judiciary, CPS, defence lawyers and police. The existing intimate image offences provide a framework for awareness of the conduct and the type of investigation needed. Investigations are likely to require digital investigation and witness interviews. The elements of the offences are drawn from familiar legal concepts such as “reasonable belief in consent” Some of the existing offences have been relatively recently implemented. This means that there should be recent awareness.

Training

Training will be required as the new framework includes new offences and employs a new definition of intimate. Police, judiciary, CPS and defence lawyers will need training to make them aware of the changes and how they impact on their role in prosecutions. For lawyers it is likely this could be done as part of their CPD obligations. Police will require training in the new elements and definitions, so that they can record and investigate appropriately. As mentioned above, the type of investigation needed will be similar to the existing offences so training would be limited to the law rather than investigative skills. The judiciary will also need to be familiar with new sentencing guidelines. As noted above, some of the existing offences have been relatively recently implemented. This means that training will have been given on the recent changes.

Drafting

It is anticipated that drafting of new legislation will not require additional legislative resources beyond that which is set aside for the regular amendments and changes that occur.

Ongoing costs

Increased number of prosecutions - New base offence

A significant proportion of the behaviour that would be caught by the base offence is not currently a criminal offence. With the recommended changes coming into effect there will be the commensurate increase in reports to police, along with charges and prosecutions for intimate image abuse offences. This offence is summary only and if a trial is necessary, will be heard in magistrates’ courts. Table 2 below provides an estimate of additional prosecution costs incurred using the existing numbers of reports submitted under the disclosure offence as a useful comparator. The disclosure offence is more limited by the intent requirement than our base offence will be. However, we have assumed that a proportion of those reports (as opposed to

prosecutions) would be of behaviour that will fall within the scope of the new base offence. We know that members of the public report crimes without full knowledge or understanding of the limitations of applicable offences, quite understandably.

Table 2: Annual increase in prosecution costs [£m]

	Low estimate	Central estimate	High estimate
No. of police reports ²¹	8,920	9,630	10,340
No. prosecuted ²²	750	910	1,080
Magistrates' Staffing cost	£0.56m	£0.67m	£0.80m

Assumptions:

- 25% - 45% [low/high estimate with 35% being the central estimate] increase in number of reports submitted of the disclosure offence²³
- Proportion of reports leading to prosecutions: Years 1-4, 6-8% of reports [low-high estimate with 7% the central estimate] improves to 10-12% from year 5
- 85% of prosecutions take half a day in the Magistrates' Court and the remaining 15% take a full day.

Annual cost of additional prosecutions = £0.67m [central estimate]

Present value over 10 years = £5.59m

Increased number of convictions [increased prison sentences]

The increased number of prosecutions under the new base offence will result in the rise in numbers convicted. There will be the increase in the number of custodial sentences. Our recommendations provide for a maximum sentence of 6 months imprisonment under the base offence. See table 3 below setting out the estimated cost implications based on the new base offence.

Table 3: Annual cost of increased convictions [£m]

	Low estimate	Central estimate	High estimate
No. of prosecutions	750	910	1,080
No. of convictions	550	670	800
Cost of remand	£0.78m	£1.16m	£1.66m

Assumptions:

- Conviction rate similar to existing disclosure offence²⁴
- Sentence variation from 4-6 months with 50% of that time being served in custody and the rest on license in the community.
- Cost per prisoner in a Category D prison.
- 95% of the perpetrators are men.
- 30% of those convicted will receive a sentence of imprisonment.

²¹ Rounded to nearest 10

²² 10 year average annual

²³ 28,200 reports over 5 years from 34 police forces. There are 43 police forces in England and Wales, using a simple average suggests in the region of 35,700 reports over 5 years if all included based on simplified assumptions.

²⁴ Based on conviction rate evident in existing Communication and Harassment offences.

Annual cost of additional prosecutions = £1.16m [central estimate]

Present value over 10 years = £9.67m

Legal aid impact

As a result of the new base offence there will be greater expenditure on legal aid. The average cost of legal aid in the Magistrates' Court is £500. See table 4 below.

Table 4: Annual Legal Aid cost [£m]

	Low estimate	Central estimate	High estimate
No. of additional prosecutions	750	910	1,080
Legal aid budget	£0.38m	£0.46m	£0.54m

Annual cost of additional prosecutions = £0.46m [central estimate]

Present value over 10 years = £3.78m

Probation cost impact

Probation costs would apply where an offender is given a community or custodial sentence. These will be limited by the maximum sentence available for a summary only offence. The Sentencing Council currently advise that for a 6 month custodial sentence, a offender will spent 3 months in custody, 3 months in the community on licence and will then be subject to supervision for a further 9 months.

Cost to police from additional reports required under the new base offence

The costs to police for additional reporting will reflect the percentage uplift we expect in number of reports made. The length of time and detail required to make a report, and therefore the cost, will vary depending on the nature of the individual case. However, as above we note that police are used to writing reports for similar conduct and will be familiar with the type of investigation needed. The base offence is a clearer offence than the current provisions, it will be easier to understand and apply, therefore less time should be spent identifying which of the current patchwork of offences would apply and trying to understand the different types of images covered by each.

Increased number of prosecutions under widened scope of existing offences

The recommendations would extend the scope of the current offences in some ways; sharing of altered images either to obtain sexual gratification or cause humiliation, alarm, or distress, and sharing for the purpose of obtaining sexual gratification would now be included which they are currently not. Table 5 below sets out the estimated additional costs. In the following tables we refer to three of the existing offences. Our recommendations would be to repeal and replace those, rather than extend their scope in the current form they are drafted. However, the data available upon which we can estimate the numbers and costs draw on the three existing offences. Therefore, we include for transparency the figures as separated by these three

offences. The reports and prosecutions going forward would be a total of all three categories, under two separate additional intent offences.

Table 5: Annual increase in prosecutions through widened scope [£m]

	Low estimate	Central estimate	High estimate
No. of disclosure offences	85	95	105
Cost of Crown/Mags.	£0.10m	£0.12m	£0.13m
No. of voyeurism offences	30	45	60
Cost of Crown/Mags.	£0.03m	£0.04m	£0.06m
No. of upskirting offences ²⁵	n/a	n/a	n/a
Cost of Crown/Mags.	n/a	n/a	n/a
Total cost ²⁶	£0.14m	£0.17m	£0.20m

Assumptions:

- 20% - 40% [low/high estimate with 30% being the central estimate] increase in number of prosecutions of the disclosure offence²⁷
- 20% - 40% [low/high estimate with 30% being the central estimate] increase in number of prosecutions of voyeurism offences
- 10% - 20% [low/high estimate with 15% being the central estimate] increase in number of prosecutions of upskirting offence²⁸
- 85% of cases in the Magistrates' Court last half a day, the remaining 15% last 1 day
- 90% of cases in the Crown Court last 1 day, the remaining 10% last 2 days

Annual cost of additional prosecutions = £0.17m [central estimate]

Present value over 10 years = £1.38m

Increased number of prison sentences under widened scope of existing offences

As a result of the increased number of prosecutions there are increased custodial sentences across all three offence groups. See table 6 below.

Table 6: Annual increased cost of custodial sentences

	Low estimate	Central estimate	High estimate
No. of offences	115	140	165
Custodial sentence	£0.24m	£0.59m	£1.41m

Assumptions:

- Sentence variation from 6 - 24 months with 50% of that time being served in custody and the rest on license in the community.
- Cost per prisoner in a Category D prison
- 95% of the perpetrators are men
- 30% of those convicted will receive a sentence of imprisonment.

²⁵ Numbers too low to be reliable

²⁶ Rounding means total might not reflect parts

²⁷ 28,200 reports over 5 years from 34 police forces. There are 43 police forces in England and Wales, using a simple average suggests in the region of 35,700 reports over 5 years if all included based on simplified assumptions.

²⁸ Using 2021 data only as this is a new offence and previous years affected by covid

Annual cost of custodial sentences = £0.59m [central estimate]
Present value over 10 years = £4.89m

Additional legal aid expenditure for extended scope

Legal aid expenditure in response to additional cases now being prosecuted. See table 7 below.

Table 7: Annual Legal Aid cost [£m]

	Low estimate	Central estimate	High estimate
No. of additional prosecutions	115	140	165
Legal aid budget	£0.08m	£0.09m	£0.11m

Annual cost of increased legal aid = £0.09m [central estimate]
Present value over 10 years = £0.77m

Benefits

Transitional benefits

None identified

Ongoing benefits

Reduced number of incidents/events

The deterrent effect of the recommended criminalisation of sharing intimate images without consent is expected to realise reduced numbers of incidents. As a direct result less emotional distress will be experienced by would-be victims. There is also the economy-wide gain from those who are employed as this factor will not inform lost productivity.

By way of illustrative example if the deterrent effect of criminalisation leads to a reduction of just 1% in the number of reports under the new base offence this would be equivalent to 96 fewer people suffering emotional distress [over £400,000 in 2021/22 prices].

A reduced number of incidents and a more robust criminal justice response will also have the benefit of improving people's experience online. Victims have reported being driven offline as a way of escaping the abuse. This means they are less able to engage in prosocial activities, education, job hunting and contributing to wider social issues. This is a cost to them personally and to society. An improved criminal justice response and reduction in incidents would improve this situation.

Improved victim experience in court

A key issue for consultees was extending the ancillary orders to all victims. Extending automatic anonymity and special measures to all victims will improve the court experience for victims. It can also help improve reporting and prosecution rates. These provisions already exist for victims of voyeurism and upskirting offences.

Extended scope recognises serious harm and fills current gaps in provision

The recommendations would extend the scope of the current offences in some ways; sharing of altered images either to obtain sexual gratification or cause humiliation, alarm, or distress, and sharing for the purpose of obtaining sexual gratification would now be included which they are currently not. Including sharing of altered images was another key issue for consultees. There have been public campaigns recently to extend the current offences in this way in recognition of the serious harm the conduct causes.

Improved confidence in the criminal justice system

Offences such as the disclosure offence receive a very high volume of reports but deliver a relatively low rate of prosecution which impacts on confidence in the criminal justice system. With a clearer offence which is easier to apply consistently and which meets people's expectations of what to expect in this area the expectation is the higher rate of prosecutions, greater rate of convictions and more consistent response from police.

Educational messaging

The recognition of the full range of intimate image abuse as a criminal offence helps with educational messages about the harmful effect of the abusive behaviour and may help with cultural change to more considered behaviour.

Option 2

Transitional cost

Similar areas to option 1 but far less significant in coverage as option 2 relates only to ancillary orders.

Ongoing cost

Increased prosecutions

The impact of anonymity on the prosecution rate would only apply to incidents of the disclosure offence as the other offences have this in place. See table 8 below.

Table 8: Annual increase in prosecution costs [£m]

	Low estimate	Central estimate	High estimate
No. prosecuted ²⁹	35	45	60
Mags and Crown Court costs	£0.05m	£0.06m	£0.08m

Assumptions:

²⁹ 10 year average annual

- 15% - 25% [low/high estimate with 20% being the central estimate] increase in number of reports submitted of the disclosure offence³⁰
- 85% of cases prosecuted in the Magistrates take half a day and the remaining 15% take a full day.
- 90% of cases prosecuted in the Crown Court last 1 day, the remaining 10% last 2 days

Annual cost of additional prosecutions = £0.06m [central estimate]

Present value over 10 years = £0.50m

Increased custodial sentences

As prosecutions increase custodial sentences are likely to rise in line with current conviction rates. See table 9 below.

Table 9: Annual increased cost of custodial sentences [£m]

	Low estimate	Central estimate	High estimate
No. of offences	35	45	60
Custodial sentence	£0.07m	£0.20m	£0.49m

Assumptions:

- Sentence variation from 6 - 24 months with 50% served [12 months central estimate]
- Cost per prisoner in a Category D prison
- 95% of the perpetrators are men
- 30% of those convicted receive a sentence of imprisonment.

Annual cost of custodial sentences = £0.20m [central estimate]

Present value over 10 years = £1.63m

Increased legal aid expenditure

Legal aid expenditure incorporates both Magistrates and Crown Court cases with those in the former costing £500 and £1,000 for the latter. See table 10 below.

Table 10: Annual legal aid expenditure [£m]

	Low estimate	Central estimate	High estimate
No. of additional prosecutions	35	45	60
Legal aid budget	£0.02m	£0.03m	£0.04m

Annual cost of legal aid = £0.03m [central estimate]

Present value over 10 years = £0.26m

³⁰ 28,200 reports over 5 years from 34 police forces. There are 43 police forces in England and Wales, using a simple average suggests in the region of 35,700 reports over 5 years if all included based on simplified assumptions.

Increased probation costs

As outlined in option 1

Benefits

Transitional benefits

None identified

Ongoing benefits

Improved victim court experience

As outlined in option 1

Enhanced confidence in the criminal justice system

As outlined in option 1

Specific impact assessments

- Equality impact assessment

We believe the recommendations set out in Option 1 will have no adverse impact in terms of the protected characteristics – as confirmed by our responses to the Equality impact assessment screening questions. On this basis we are not required to complete a full equality impact assessment.

- Justice impact assessment.

The impact on the justice system of our proposals is considered throughout this impact assessment. In summary, as we detail above, we expect there to be additional costs through the increased number of prosecutions.