



OFFICIAL SENSITIVE  
Voyeurism (Offences) Bill Committee  
Sent via email: [scrunity@parliament.uk](mailto:scrunity@parliament.uk)

10 July 2018

Dear Committee,

## 1. Background

- 1.1. The Crown Prosecution Service is the principal public prosecuting agency for conducting criminal prosecutions in England and Wales. It is headed by the Director of Public Prosecutions. The main responsibilities of CPS are to provide legal advice to the police and other investigative agencies during the course of criminal investigations, to decide whether a suspect should face criminal charges following an investigation, and to conduct prosecutions both in the magistrates' courts and the Crown Court.
- 1.2. The Voyeurism (Offences) (No.2) Bill was introduced to the House of Commons and given its First Reading on Thursday 21 June 2018 and its Second Reading on Monday 2 July 2018. The following is intended to assist consideration of its provisions.
- 1.3. We are grateful for the opportunity to make submissions in relation to this Bill and the following are observations we make from a prosecutor's perspective to assist consideration of the terms of the Bill.

## 2. Submission

- 2.1. We note firstly that the Bill criminalises the observation by equipment, or recording of images, "beneath" clothing. We invite consideration as to whether "beneath" is necessary, given that the Bill makes clear that the observation or recording criminalised



is that which permits the observer or recorder to see underwear, genitals or buttocks which are not otherwise visible. This appears, whether the observation or recording is beneath or not, to address the mischief at which the Bill is aimed.

- 2.2. We note secondly that the Bill does not seek to criminalise the observation or recording of a woman's breasts which, if done when a woman's breasts are not otherwise visible would also appear to be a mischief at which this Bill is directed, namely the integrity and dignity of persons and their bodies.
- 2.3. The Bill uses the phrase "would not otherwise be visible". Consideration might be given to adding to this, "...or be as visible as the [observation by equipment] [recording] permits". A person's underwear, for instance, may partly be visible but it may remain impossible for a person to observe or record that person's underwear more extensively.
- 2.4. The Bill criminalises observation or recording without the complainant's consent. Unlike other sexual offences, this offence is commonly committed without the complainant's knowledge. Consideration might be given to providing that the offence is committed where the complainant either does not know or consent.
- 2.5. We note that the Bill does not criminalise a person who is in possession of images which have been recorded without a person's consent but where it cannot be shown that they recorded the images e.g. a person with hundreds of such photographs on their computer but no forensic evidence of how they came to be taken. We further note that there is no power of forfeiture over such images. We invite consideration that if possession is not to be an offence, then a power of forfeiture of such images both for those who possess them and those who are convicted of having recorded them might nonetheless be made available.
- 2.6. The Bill introduces purposes for which such activities are committed. We anticipate that most offending will fall comfortably within these categories. However, this is another element that the prosecution will need to prove. It is not inconceivable that suspects will advance the defence that this purpose is not made out beyond reasonable doubt and/or that they had another purpose, such as "high jinks". Consideration could be given as to whether purpose is a necessary or relevant element of the offence (once it has been proved that the conduct is intentional, and given that it involves an affront to the integrity and dignity of the victim).

2.7. We note lastly that it is not proposed to add this offence to the list of offences, including voyeurism, which attract automatic anonymity under the provisions of the Sexual Offences (Amendment) Act 1992. The CPS will, where appropriate, consider an application for discretionary anonymity under the provisions of section 46 Youth Justice and Criminal Evidence Act 1999.

I reiterate that these are prosecutorial observations intended to invite consideration of the terms of the Bill. I hope this letter assists the Committee. However, if there are any further issues on which the Committee requires assistance then we would be happy to assist.

Yours faithfully,

A handwritten signature in blue ink that reads "Alison Saunders".

**ALISON SAUNDERS CB**  
**DIRECTOR OF PUBLIC PROSECUTIONS**