



Circular No. 2019/01

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This circular is of interest to:	Lord Chief Justice, Justices of the Supreme Court, Master of the Roles, President of the Queen's Bench Division, Justices of Appeal, Senior Presiding Judges, High Court Judges, Crown Court Judges, District Judges (Magistrates' Courts), Bench Chairmen, Clerks to the Justices, Chief Officers of Police, Chief Crown Prosecutors. Judicial Studies Board, Council of Circuit Judges, Magistrates' Association, Justices' Clerks' Society, Registrar of Criminal Appeals, HMCS Area Directors, Crown Court Managers, HM Chief Inspector of Constabulary, National Police Chiefs' Council, Chairpersons of Police Authorities, Association of Police Authorities, The Law Society, the Bar Council, the Criminal Bar Association, Legal Services Commission, Bar Council, Law Centres, Citizens Advice Bureaux

VOYEURISM (OFFENCES): IMPLEMENTATION OF THE VOYEURISM (OFFENCES) ACT 2019.

Introduction

Voyeurism (Offences) Act 2019 (“upskirting”)

Section 1 of the Voyeurism (Offences) Act 2019 inserts two new offences into the Sexual Offences Act 2003, at section 67A, criminalising certain acts of voyeurism. These offences are triable either way and carry a maximum 2-year prison sentence. They come into effect on 12 April 2019 and will not be retrospective. The new offences will apply in England and Wales.

These changes will:

criminalise someone who operates equipment or records an image under another person's clothing (without that person's consent or a reasonable belief in their consent) with the intention of observing or looking at, or enabling another person to observe or look at, their genitals or buttocks (whether exposed or covered with underwear), or the underwear covering the genitals or buttocks, where the purpose is to obtain sexual gratification or to cause humiliation, distress or alarm.

- The offences are subject to a 2-year maximum prison sentence.
- Where committed for the purpose of obtaining sexual gratification, and relevant conditions are met, the offender will be made the subject of notification requirements.

Annex A: Additional Voyeurism Offences: “upskirting”

This Annex provides information on the new offences. The purpose is to provide guidance and this should not be regarded as providing legal advice. Legal advice should be sought if there is any doubt as to the application or interpretation of the legislation.

This Annex is set out under the following headings;

- A) Background and change in legislation
- B) FAQ

A: Background and changes to legislation

“Upskirting” is a colloquial term referring to the action of placing a camera or mobile phone beneath a person’s skirt to take a voyeuristic photograph without their permission.

Prior to the creation of the new offences contained in the Voyeurism (Offences) Act 2019 (the “2019 Act”) no specific offence of upskirting existed. However, many instances of upskirting could, depending upon the particular circumstances, be prosecuted under existing law such as the common law offence of Outraging Public Decency, or the existing Voyeurism offences under section 67 of the Sexual Offences Act 2003.

However, following a campaign led by a victim of upskirting, Ms Gina Martin, a review identified some potential gaps in the law, for example, the Outraging Public Decency offence required the act to have occurred in a ‘public place’ but the definition of what amounted to a ‘public place’ lacked certainty, such that some acts of upskirting might go unpunished.

Additionally, the Outraging Public Decency offence requires two or more people to be present who are capable of seeing the act, even if they did not actually see it. This means that if an incident of upskirting took place in an empty train carriage, a prosecution using the Outraging Public Decency offence may fail.

The other related voyeurism offences also have their limitations, for example, s.67 Sexual Offences Act 2003 is only applicable where the victim is observed doing a private act in a place, which, in the circumstances, would reasonably be expected to provide privacy. These offences do not therefore generally apply to the kind of public spaces where “upskirting” tends to occur.

Ms Gina Martin was supported in her campaign by a number of Parliamentarians, including Wera Hobhouse MP, who initially introduced a Private Member’s Bill (PMB) which aimed to address the potential gaps in the law. This PMB replicated amendments previously made in Scotland to their voyeurism offence in 2012, as set out in s.9 Sexual Offences (Scotland) Act 2009.

Ms Hobhouse introduced her Bill in March 2018, but it was opposed at second reading. The Government immediately committed to bringing forward similar measures as soon as possible, and thereafter introduced the Voyeurism (Offences) (No 2) Bill in June 2018.

The provisions in the 2019 Act create two new offences to criminalise specifically the behaviour known as “upskirting”.

The offences, which extend to England and Wales, will be triable either way and be punishable with a maximum sentence of 2 years imprisonment.

The Voyeurism (Offences) Act 2019 received Royal Assent on 12 February 2019.

Annex B: Voyeurism additional offences: “upskirting”- Frequently Asked Questions

What conduct will the new offences capture?

The new offences criminalise someone who operates equipment or records an image under another person’s clothing (without that person’s consent or a reasonable belief in their consent) with the intention of viewing, or enabling another person to view, their genitals or buttocks (with or without underwear), in circumstances where the genitals, buttocks or underwear would not otherwise be visible, where the purpose is to obtain sexual gratification or to cause humiliation, distress or alarm.

(See sections 67A (1) and (2) of the Sexual Offences Act 2003)

Where can I find the full terms of the new offences?

The new offences are to be found within section 67A of the Sexual Offences Act 2003 (as amended by the Voyeurism (Offences) Act 2019).

What is the penalty for the offences?

The offences will be triable either way and subject to a two–year maximum prison sentence. Importantly, where committed for the purposes of obtaining sexual gratification and the relevant condition is satisfied, the offender will automatically be made the subject of notification requirements and so become a registered sex offender.

(See section 67A (4) of the Sexual Offences Act 2003)

Is a two-year maximum sentence adequate?

Yes. A two-year maximum custodial sentence is appropriate given the nature of the offending behaviour and is in keeping with sentencing for existing offences in this area.

(See section 67A (4) of the Sexual Offences Act 2003)

Will offenders go on the sex offenders register?

Notification requirements (commonly referred to as being placed on the sex offenders register) are a common feature of sexual offences, and assist the police with the management of sex offenders within the community.

If either of the offences is committed for the purpose of obtaining sexual gratification the same thresholds apply as those for existing voyeurism offences (under section 67 Sexual Offences Act 2003) will apply. This is to ensure that the more serious sexual cases of upskirting trigger the requirements.

(See Paragraph 34A of Schedule 3 to Sexual Offences Act 2003)

What about those who attempt the new offences?

The Criminal Attempts Act 1981 would apply to the new offences in appropriate circumstances. This means that, where a person intends to carry out an upskirting offence and does an act which is more than merely preparatory to committing one of the offences (for example, by attempting to take a photo up a person's skirt but failing to do so because their phone / camera is not switched on properly), they can still be charged with attempt to commit that offence.

(See section 1 of the Criminal Attempts Act 1981)

Will victims be granted “automatic anonymity”?

Victims of the new offences will be entitled to automatic reporting restrictions, often referred to as “automatic anonymity”.

Automatic reporting restrictions provide complainants in cases involving sexual offences with lifetime protection from being identified in the media, prohibiting publication of identifying details such as names, addresses, or photos.

(See Paragraph 31 of Schedule 6 of the Sexual Offences Act 2003)

Prior to the reforms in the 2019 Act what was the law in this area?

Upskirting has been successfully prosecuted on occasions under the common law offence of Outraging Public Decency. In certain circumstances, it might also have been captured by the voyeurism offences under the Sexual Offences Act 2003 and, in the case of a child, the offence of taking an indecent photograph of a child under the Protection of Children Act 1978.

Why create a new offence?

The Government wanted to ensure that victims of upskirting were left in no doubt that their complaints would be taken seriously, and that perpetrators would be properly punished.

There had been a number of successful prosecutions under the existing law, but it did not necessarily cover all circumstances in which upskirting occurred. For example, the Outraging Public Decency offence required at least two people to have

witnessed the act or to be capable of witnessing it, in a public space. This was not straightforward.

Instances of upskirting that happened in a public place could still be prosecuted under the Outraging Public Decency offence, and those that occurred in a private place might have been covered by existing voyeurism offences. However, there was a 'grey area' in the law around such behaviour when it happened in places that were not private but also weren't fully accessible to the public, such as schools and work places. The amendments to the Sexual Offences Act 2003 address these issues.

By creating a specific upskirting offence the government is strengthening the law in this area and ensuring that the most serious sexual offenders are made the subject of notification requirements

Useful links

The Voyeurism (Offences) Act 2019

www.legislation.gov.uk/ukpga/2019/2/contents/enacted

The Sexual Offences Act 2003

www.legislation.gov.uk/ukpga/2003/42/contents

The Criminal Attempts Act 1981

www.legislation.gov.uk/ukpga/1981/47/contents