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|---|---|
| <b>Title:</b> Criminal Justice Bill: Criminal Law<br><br><b>IA No:</b> MoJ058/2023<br><b>RPC Reference No:</b> N/A<br><b>Lead department or agency:</b> Ministry of Justice (MoJ)<br><b>Other departments or agencies:</b> Home Office, Crown Prosecution Service (CPS) | <b>Impact Assessment (IA)</b>   |
|   | <b>Date:</b> 14/11/2023   |
|   | <b>Stage:</b> Legislation   |
|   | <b>Source of intervention:</b> Domestic   |
|   | <b>Type of measure:</b> Primary legislation   |
|   | <b>Contact for enquiries:</b><br><a href="mailto:Neil.Stevenson@Justice.gov.uk">Neil.Stevenson@Justice.gov.uk</a> ,<br><a href="mailto:Eleanor.Nicholls@Justice.gov.uk">Eleanor.Nicholls@Justice.gov.uk</a> |
| <b>Summary: Intervention and Options</b>  | <b>RPC Opinion:</b> Not applicable  |

| Cost of Preferred (or more likely) Option |                            |                               |                               |
|---|----------------------------|-------------------------------|-------------------------------|
| Total Net Present Social Value            | Business Net Present Value | Net cost to business per year | Business Impact Target Status |
| -£91.5m                                   | N/A                        | N/A                           | N/A                           |

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

**Measure 1A: Intimate images**

Intimate images can now easily be taken without consent and used for unacceptable, cruel or malicious reasons. This behaviour can be highly intrusive, humiliating and distressing. It is therefore important that we ensure that the Government’s legal framework effectively deals with this behaviour and ensure victims have both the protection they deserve and the confidence in the law when coming forward to report such abuse.

The behaviour targeted is the taking of an intimate image or images of a person without the consent of that person depicted. In addition, we are targeting those who install or adapt equipment with the intention of taking an intimate image or images of a person, without the consent of that person depicted, or enabling someone else to do so. Some of the behaviour targeted at taking of an intimate image or images of a person without consent may in certain circumstances already be caught by existing offences for example the voyeurism offence at section 67 (3) of the Sexual Offences Act 2003, but there are several limitations with the application of these offences. The Government therefore asked the Law Commission (LC) to look into the law around the non-consensual taking and sharing of intimate images, as part of Phase 2 of their Review of Abusive and Offensive Online Communications. The LC recommended a package of offences to update the law covering taking and sharing intimate images without consent and threatening to share such images. The Government introduced provisions in the Online Safety Act to reform the law in relation to sharing and threatening to share such imagery without consent. The Criminal Justice Bill will strengthen the law in relation to the taking of intimate images and the installation of equipment to do so.

**Measure 1B: Encouragement of Self harm**

Encouragement of suicide, or self-harm falling short of suicide, is a matter of great concern. It is already an offence under the Suicide Act 1961 to encourage or assist another person to take or attempt to take their own life. The Online Safety Act 2023 introduced a new offence of encouraging or assisting serious self-harm by means of verbal or electronic communications, publications or correspondence. The CJB will partially repeal and extend the Online Safety Act offence (in relation to England and Wales only) and replace it with a broader one to cover encouraging or assisting serious self-harm by means of communication and in any other way including, for example, direct assistance through the provision of bladed articles with which to self-harm.

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

The policy objective is to ensure the criminal law is adequately equipped to protect the public from the non-consensual taking of intimate images, (along with the installation of equipment to do so) and to manage the most serious of these offenders in the community, including by ensuring that notification requirements are imposed where specific conditions are met. Secondly, the objective is to criminalise the intentional encouragement or assistance, by any means, of serious self-harm, without disproportionately affecting vulnerable people who share their experiences of self-harm, and to ensure that those who perpetrate this behaviour can be brought to justice.

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

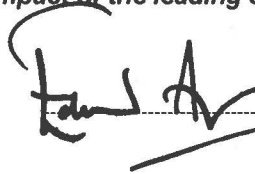
- **Option 0:** Do nothing. No new criminal offences would be created.
- **Option 1:** Create a range of new offences to capture a person who intentionally takes intimate image of a person without that person’s consent and further offences with additional intent elements. Create a new criminal offence to capture a person who installs or adapts equipment to enable themselves or others to commit any of these offences and create a broader offence of encouraging or assisting serious self-harm by means of communications and in any other way.

The Government’s preferred approach is option 1 as it best meets the policy objectives.

|   |          |             |                 |          |
|---|----------|-------------|-----------------|----------|
| Is this measure likely to impact on international trade and investment? N/A   |          |             |                 |          |
| Are any of these organisations in scope?  | Micro No | Small No    | Medium No       | Large No |
| What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions?<br>(Million tonnes CO <sub>2</sub> equivalent) |          | Traded: N/A | Non-traded: N/A |          |
| Will the policy be reviewed? It will be reviewed. If applicable, set review date: No set date                             |          |             |                 |          |

*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 Minister:



Date:

15. xi. 2025

## Summary: Analysis & Evidence

## Policy Measure 1A

**Description:** Create a range of new offences to capture a person who intentionally takes intimate image of a person without that person’s consent and further offences with additional intent elements. Create a new criminal offence to capture a person who installs or adapts equipment to enable themselves or others to commit any of these offences.

### FULL ECONOMIC ASSESSMENT

| Price Base<br>Year 23/24 | PV Base<br>Year 24/25 | Time Period<br>10-years | Net Benefit (Present Value (PV)) (£m) |              |                      |
|--------------------------|-----------------------|-------------------------|---------------------------------------|--------------|----------------------|
|                          |                       |                         | Low: -66.8                            | High: -103.2 | Best Estimate: -81.9 |

| COSTS (£m)    | Total Transition<br>(Constant Price) Years |     | Average Annual<br>(excl. Transition) (Constant Price) | Total Cost<br>(Present Value) |
|---------------|--|-----|---|-------------------------------|
|               | Low  | 4.0 |   |                               |
| High          | 11.5                                       | 1   | 10.7  | 103.2                         |
| Best Estimate | 6.6  | 1   | 8.7   | 81.9                          |

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

- Police: Investigating an additional 3950-4900 cases at an estimated annual cost of £6.0-7.4m.
- His Majesty’s Courts and Tribunal Service (HMCTS): an additional 330-490 prosecutions at an estimated annual cost of £0.3-0.4m.
- The Legal Aid Agency (LAA): from an additional 170-250 cases at an estimated annual cost of £0.2-0.4m.
- HM Prison and Probation Service (HMPPS): an additional 10-40 prison places as some offenders will receive a custodial sentence at an estimated annual cost of £0.8-2.4m and a one-off transitional cost of £4.0-11.5m.

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

- Police: Certain offenders may be subject to notification requirements, this is expected to require some additional police time and resource. There may also be some familiarisation costs to the police, which are expected to be minimal as the purposes and structures of the new offences will be familiar.
- CPS: from the costs associated with the additional cases being prosecuted under these offences.
- HMPPS: Cost of custodial and non-custodial sentences that some offenders may receive.

| BENEFITS (£m) | Total Transition<br>(Constant Price) Years |     | Average Annual<br>(excl. Transition) (Constant Price) | Total Benefit<br>(Present Value) |
|---------------|--|-----|---|----------------------------------|
|               | Low  | N/A |   |                                  |
| High          | N/A  | N/A | N/A   | N/A                              |
| Best Estimate | N/A  | N/A | N/A   | N/A                              |

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

It has not been possible to identify any monetised benefits.

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

Victims will benefit as the abuse of intimate imagery is better captured by the criminal law and, where certain criteria are met, trigger notification requirements under Part 2 of the Sexual Offences Act 2003. The imposition of notification requirements in individual cases will assist the management of offenders in the community.

| Key assumptions/sensitivities/risks   | Discount rate (%) |
|---|-------------------|
|   | 3.5%              |
| <ul style="list-style-type: none"> <li>• The LC’s Impact Assessment on Intimate Image Abuse underpins the above analysis. 40% of the impacts that the LC had estimated for the proposed base offence of intentionally taking and sharing intimate images and the impacts of widening the scope to include voyeurism offences are assumed to be the impacts of the offences under this option.</li> <li>• The Average Custodial Sentence Length is between 4-6 months for the base offence and between 6-24 months for the voyeurism offence.</li> </ul> |                   |

### BUSINESS ASSESSMENT (Measure 1A)

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

**Summary: Analysis & Evidence**

**Policy Measure 1B**

**Description:** Create a broader offence of encouraging or assisting serious self-harm by means of communications and in any other way.

**FULL ECONOMIC ASSESSMENT**

| Price Base Year 23/24 | PV Base Year 24/25 | Time Period<br>10-years | Net Benefit (Present Value (PV)) (£m) |             |                     |
|-----------------------|--------------------|-------------------------|---------------------------------------|-------------|---------------------|
|                       |                    |                         | Low: -2.0                             | High: -17.4 | Best Estimate: -9.7 |

| COSTS (£m)    | Total Transition (Constant Price) Years |   | Average Annual (excl. Transition) (Constant Price) | Total Cost (Present Value) |
|---------------|---|---|--|----------------------------|
| Low           | 0.6                                     | 1 | 0.2  | 2.0                        |
| High          | 3.7                                     | 1 | 1.6  | 17.4                       |
| Best Estimate | 2.2                                     | 1 | 0.9  | 9.7                        |

**Description and scale of key monetised costs by 'main affected groups'**

- Police: Investigating an additional 46 to 460 cases at an estimated annual cost of £0.1-0.7m.
- His Majesty's Courts and Tribunal Service (HMCTS): an additional 1-10 prosecutions at an estimated annual cost of £4-31k.
- The Legal Aid Agency (LAA): from an additional caseload at an estimated annual cost of £11-89k.
- His Majesty's Prison and Probation Service (HMPPS): where offenders receive a custodial sentence, an additional 2-13 prison places at an estimated annual cost of £0.1-0.8m and one-off transitional costs of £0.6-3.7m

**Other key non-monetised costs by 'main affected groups'**

- Police: There may be some familiarisation costs to the police, which are expected to be minimal as the purposes and structures of the new offence will be familiar.
- CPS: from the costs associated with the additional cases being prosecuted under these offences.
- HMPPS: Cost of custodial and non-custodial sentences that some offenders may receive.

| BENEFITS (£m) | Total Transition (Constant Price) Years |     | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
|---------------|---|-----|--|-------------------------------|
| Low           | N/A                                     | N/A | N/A  | N/A                           |
| High          | N/A                                     | N/A | N/A  | N/A                           |
| Best Estimate | N/A                                     | N/A | N/A  | N/A                           |

**Description and scale of key monetised benefits by 'main affected groups'**

It has not been possible to identify any monetised benefits.

**Other key non-monetised benefits by 'main affected groups'**

The key non-monetised benefit of this option is to people who may be susceptible to encouragement to cause themselves serious harm as it will expand the criminal law to protect them from those who intentionally encourage or assist them, by any means, to cause themselves such harm.

|  |                          |      |
|--|--------------------------|------|
| <b>Key assumptions/sensitivities/risks</b> | <b>Discount rate (%)</b> | 3.5% |
|--|--------------------------|------|

- The existing offence of 'intentionally doing an act of capable of encouraging or assisting the suicide or attempted suicide of another' under section 2 of the Suicide Act 1961, has been used as the best available proxy for this new offence. It is likely that the prevalence of this new offence will be higher compared to its proxy, hence a range of impacts have been presented.
- It is assumed that 80% of cases will be heard in the Crown Court and the remaining 20% in the magistrates' courts.
- The average custodial sentence length is 15 months.

**BUSINESS ASSESSMENT (Measure 1B)**

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



Ministry  
of Justice

# **CRIMINAL JUSTICE BILL**

Criminal Law measures

## **November 2023**

## Evidence Base

### A. Background

#### Measure 1A Intimate Images

1. Developments in IT and electronic communications have progressed at great speed but with the positive and helpful advancements this has brought it also offers new opportunities to abuse people through the misuse of personal and intimate photographs. Deeply intimate or sexual images can now easily be taken with new discreet filming or recording devices, including mobile phones and easily hidden or concealed digital image recording devices.
2. The non-consensual taking of intimate photographs or films can cause great distress to any victim and is a significant and upsetting invasion of personal privacy. Whilst the law is equipped in many cases to deal with such behaviour, for example under offences that deal with voyeurism and “upskirting” there are a number of limitations with the application of these offences.
3. It is important that the Government ensures that the criminal law is fully able to deal with this behaviour and ensures that victims have both the protection they deserve and confidence in the law when coming forward to report such abuse. The Government therefore asked the Law Commission (LC) to look into the law around the non-consensual taking and sharing of intimate images, as part of Phase 2 of their Review of Abusive and Offensive Online Communications.
4. In February 2021, the LC published a consultation paper with provisional proposals for reform of the law. That public consultation ran until 27 May 2021, and the LC received over 350 responses from a range of stakeholders, including groups representing victims, police, legal practitioners, Parliamentarians, and legal academics. That consultation was completed, and the LC published their findings in July 2022<sup>1</sup>.
5. The LC recommended a raft of modern criminal offences to target the taking and sharing of intimate images without consent, and the threatening to share such images. Their proposed reforms were designed to put in place a clearer legal framework, which would broaden the scope of intimate image offences, so that all instances of intentionally taking or sharing intimate images without consent are criminalised, regardless of motivation. Alongside these recommendations, the LC published an impact assessment of these proposed changes.<sup>2</sup>
6. The Government considered the findings of that review and feels a range of offences is necessary to keep the criminal law up to date with developments in technology and to ensure those who take, share or threaten to share intimate imagery can now be effectively targeted, and to provide victims greater protection. As a result, the Government announced its intention to create a raft of provisions, based very closely on the recommendations of the LC, to address fully the abuse of intimate imagery when a suitable legislative vehicle is available.
7. In response, the Government took the early opportunity offered by the Online Safety Bill to create a range of new offences to target specifically those who share, or threaten to share, intimate images.

#### Measure 1B Encouraging or assisting serious self-harm

8. Encouragement of suicide, or self-harm falling short of suicide, is a matter of great concern. It is already an offence under the Suicide Act 1961 to encourage or assist another person to take or attempt to take their own life.
9. In their Modernising Communications Offences report, published in July 2021<sup>3</sup>, the Law Commission said, in reference to creating an offence of encouraging or assisting a person to non-fatal self-harm, that any criminal law solution in this complex area must be properly constrained to ensure that it does not disproportionately impact vulnerable people who harm themselves. They recommended a narrow

<sup>1</sup> [Intimate-image-abuse-final-report.pdf](#)

<sup>2</sup> [Impact Assessment template](#)

<sup>3</sup> [Law Commission Documents Template](#)

offence with a robust fault element that targets the deliberate encouragement or assistance of serious non-fatal self-harm. The formulation of the recommended offence was very similar to the existing offence, under section 2 of the Suicide Act 1961, of encouraging or assisting suicide.

10. In response to concerns raised in Parliament during the passage of the Online Safety Bill, the Government brought forward a new offence in that Bill of encouraging or assisting serious self-harm by means of verbal or electronic communications, publications or correspondence. This Bill repeals the offence in the Online Safety Act 2023 (“the communications offence”) and replaces it with a broader one that replicates the conduct and mental elements set out in the communications offence, but can be committed by means of communication, and in any other way (including, for example, direct assistance through the provision of bladed articles with which to self-harm). Encouraging or assisting serious self-harm by means of communications will, however, continue to be the most prevalent way the offence could be committed so the difference between the impact of the broader offence and the impact of the communications offence is likely to be negligible.

## **B. Rationale and Policy Objectives**

11. The conventional economic approaches to Government intervention are based on efficiency or equity arguments. Governments may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or there are strong enough failures in existing Government interventions (e.g. waste generated by misdirected rules) where the proposed new interventions avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and distributional reasons (e.g. to reallocate goods and services to more vulnerable groups in society).
12. The rationale for intervention in this instance relates to equity, ensuring that the law adequately protects victims from the abuse of intimate images, and people who may be susceptible to deliberate encouragement from causing themselves serious harm.

### **Measure 1A Intimate images**

13. The key policy objectives are to:
  - Ensure the criminal law is adequately equipped to protect the public from this disturbing and distressing behaviour of the abuse of intimate images.
  - Effectively manage these particular offenders, including by ensuring the possibility of notification requirements where specific criteria are met.

### **Measure 1B Encouraging or assisting serious self-harm**

14. The key policy objectives are to ensure that:
  - the criminal law is adequately equipped to protect people from deliberate encouragement to cause themselves serious harm;
  - vulnerable people who share their experiences of self-harm are not disproportionately affected; and
  - those who intentionally encourage or assist others to cause themselves serious harm can be brought to justice.

## **C. Affected Stakeholder groups, organisations and sectors**

15. The following groups would be affected by the options considered in this impact assessment (IA):
  - Victims and potential witnesses;
  - The Police;
  - The Crown Prosecution Service (CPS);

- HM Courts and Tribunals Service (HMCTS);
- The Legal Aid Agency (LAA); and
- HM Prison and Probation Service (HMPPS), which includes both the Prison Service (HMPPS-Prison Service, or just ‘prison services’) and the National Probation Service (NPS, or just ‘probation services’).

## D. Description of options considered

16. To meet the policy objectives, the following options are assessed in this IA:

- **Option 0:** Do nothing: Under this option current legislation would continue.
- **Option 1:** Create a range of new offences to capture a person who takes an intimate image of a person without that person’s consent, and further offences with additional intent elements, alongside the creation of a stand-alone offence to capture a person who installs or adapts equipment to enable themselves or others to commit any of these offences and create a broader offence of intentionally encouraging or assisting serious self-harm.

17. Option 1 is the preferred options as this meets the policy objectives.

### Option 0:

18. Under this option no new criminal offences are created. This would mean that there will continue to be circumstances where the taking of an intimate image or images of a person without the consent of that person depicted and the intentional encouraging or assisting serious self-harm by any means is not captured by the criminal law. In addition, to ensure where appropriate such behaviour will attract sex offender notification requirements. However, the provisions in the Online Safety Act 2023, which includes measures to create a range of new offences to specifically target those who share, or threaten to share, intimate images and a measure creating a new offence to capture a person of intentionally encouraging or assisting serious self-harm by means of communication, will remain on the statute book.

### Option 1:

19. The core legislative measures which are considered within this IA are:

#### Measure 1A Intimate images

20. Create a range of new offences to capture a person who intentionally takes intimate image of a person without that person’s consent and further offences with additional intent elements. And create a new criminal offence to capture a person who installs or adapts equipment to enable themselves or others to commit any of these offences.

21. Under this option a range of new criminal offences would be created to capture:

- 1) A person (A) who intentionally takes an intimate image of a person (B) without the consent (or a reasonable belief in consent) of the person (B) who appears to be in the image. This offence will be summary only with a maximum 6-month prison sentence.
- 2) A person (A) who intentionally, takes an intimate image of a person (B) without the consent of the person (B) that appears to be in the image and intends that the person (B) that appears to be in the image is caused alarm, distress, or humiliation. This offence will be triable either way with a maximum sentence of 2 years imprisonment.
- 3) A person (A) who intentionally takes an intimate image of a person (B) without the consent (or a reasonable belief in consent) of the person (B) who appears to be in the image, for the purpose of the defendant (A), or a third person (C), obtaining sexual gratification. This offence will be triable either way with a maximum sentence of 2 years imprisonment, and will, subject to certain caveats, attract sexual offender registration requirements.



22. If a person is convicted of one of these offences but is additionally found not guilty of the offence by reason of insanity or found to be under a disability and to have done the act charged against him, or cautioned in respect of the offence, and one of the following criteria are met, then the sexual offender notification requirements will be imposed:
- a) where the offender was under 18, they are or have been sentenced in respect of the offence to imprisonment for a term of at least 12 months;
  - b) in any other case—
    - i. the victim was under 18, or
    - ii. the offender, in respect of the offence or finding, is or has been—
      - (a) sentenced to a term of imprisonment,
      - (b) detained in a hospital or
      - (c) made the subject of a community sentence of at least 12 months.
  - 4) A new criminal offence to capture a person who installs or adapts equipment to enable themselves or others to commit any of these “taking” offences. This offence will be triable either way with a maximum sentence of 2 years imprisonment. When convicted of this offence with the intent to enable the sexual gratification taking offence, sexual offender notification requirements will apply in the same way as they would for the relevant “taking” offence when the same seriousness threshold is met.
23. All these offences will extend to (and apply in) England and Wales.

**Measure 1B Create a broader offence of intentionally encouraging or assisting serious self-harm**

24. Under this option a broader offence would be created to capture a person who intentionally encourages or assists, by any means, another person or persons to cause themselves serious harm.
25. The offence would be triable either way and have a 5-year maximum prison sentence following conviction on indictment, or 6 months’ imprisonment following summary conviction. The offence would extend to England and Wales and, subject to consent, to Scotland and Northern Ireland.
26. The broader offence, like the communications offence, is designed to capture only the most serious behaviour and includes essentially the same two key constraints. The first is that the defendant must do an act capable of encouraging or assisting the serious self-harm of another person. The second is that the defendant’s act must be intended to encourage or assist the serious self-harm of another person. “Serious self-harm” means self-harm amounting to, in England and Wales and Northern Ireland, grievous bodily harm within the meaning of the Offences Against the Person Act 1861 and in Scotland to serious injury, and it includes successive acts of self-harm which cumulatively reach that threshold. An offence may be committed regardless of whether serious self-harm occurs.
27. The broader offence will also have extraterritorial application and so will apply to an act done outside the UK by an individual who is habitually resident in the UK.

**E. Costs and Benefits Analysis**

28. This IA follows the procedures and criteria set out in the Impact Assessment Guidance and is consistent with HM Treasury Green Book guidance.
29. Where possible, IAs identify both monetised and non-monetised impacts on individuals, groups and businesses in Great Britain with the aim of understanding what the overall impact on society might be from the proposals under consideration. IAs place a strong focus on monetisation of costs and benefits. There are often, however, important impacts which cannot sensibly be monetised. Impacts in this IA are therefore interpreted broadly, to include both monetisable and non-monetisable costs and benefits, with due weight given to those that are not monetised.

30. The costs and benefits of the options are compared to Option 0, the counterfactual or ‘do nothing’ option. As the counterfactual is compared to itself, the costs and benefits are necessarily zero, as is its net present value (NPV).
31. The impacts in this IA have been estimated as follows:
- Monetised costs and benefits are stated in current, that is 2023/24, prices.
  - The Net Present Cost (NPC) of each measure has been calculated for a ten-year period starting in 2024-25.
  - Discounting base year of 2024/25.
  - Where appropriate, 20% optimism bias has been applied to future costs (excluding the one-off cost of constructing a prison place).
  - Unless otherwise stated, the annualised costs are those which would be achieved in ‘steady state’ (i.e. when the measure is fully in operation).

### Measure A Intimate images

32. Create a range of new offences to capture a person who intentionally takes an intimate image of a person without that person’s consent and further offences with additional intent elements. Create an additional new offence to capture a person who installs or adapts equipment to enable themselves or others to commit any of these “taking” offences.

### Method

33. The LC published an impact assessment (IA) in July 2022<sup>4</sup> on the proposed reforms to the criminal law around intentionally taking and sharing intimate images without consent. In the Online Safety Act the Government created a range of new offences to target specifically those who share or threaten to share intimate images. The impacts for these measures included in the Online Safety Act will be outlined in a separate IA.
34. The Government is introducing new measures targeted at taking intimate images without consent: the base offence of taking of an intimate image without consent and additional more serious offences to tackle taking such images to cause alarm, distress or humiliation, or for sexual gratification. A further offence will capture persons who install or adapt equipment with the intention of committing any ‘taking’ offences. In what follows, we have assessed the impacts of these ‘taking’ intimate images offences in this IA.
35. The LC analysis estimated the additional impact of this proposed base offence of intentionally taking and sharing intimate images. In that IA the LC estimate that 40% of the estimated additional offences will apply solely to the ‘taking’ of intimate images offences being estimated under this option.
36. In addition, the LC estimated the impact that the additional, more serious taking offences would have, by comparing them to the scope of existing voyeurism offences. It is expected that the impact they estimated by considering a widened scope of voyeurism offences will also apply to the new offences under this option. As such, two elements from the LC analysis have been used as a basis for estimating the impacts of this option, the 40% of the base offences and the additional impact of the widened scope of voyeurism offences.
37. These elements of the LC analysis present a low and high scenario, the volumes of which are given in table 1, and table 2 below. The volumes for these scenarios are then used to calculate the impact of option 1.

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<sup>4</sup> [Impact Assessment template](#)

38. The LC estimate the number of additional reports for the base offences by applying a range of assumptions for the increase in number of police reports, prosecution, and subsequent convictions on an existing disclosure offence as a comparator offence. The assumptions applied were as follows:

- 25% - 45% increase in number of reports submitted of the disclosure offence.
- The proportion of reports leading to prosecutions was assumed to be 6-8% in years 1-4 following introduction rising to 10-12% from year 5 onwards.
- 74% of prosecutions result in convictions, based on the 3-year average (2017-2019) for the existing disclosure offence.

39. Table 1 below, applies the assumptions described above and the further assumption that 40% of these impacts will apply to 'taking' of intimate images offences being proposed under this option, to calculate the additional police recorded cases, prosecutions, and convictions. Table 1 uses these assumptions to derive 'low' and 'high' scenarios for recorded cases, prosecutions and convictions.

**Table 1: Additional police reports, prosecutions and convictions for base offence**

| Offence data type     | Low scenario | High scenario |
|-----------------------|--------------|---------------|
| Police recorded cases | 3,570        | 4,140         |
| Prosecutions          | 300          | 430           |
| Convictions           | 220          | 320           |

40. The assumption that the LC used to estimate the impacts of the widening the scope of the existing voyeurism offences was that there would be 20% - 40% increase in the number of prosecutions of these offences. The increase in police recorded cases have been calculated by applying this uplift to the existing reports of this offence.

41. The conviction rate used for the additional voyeurism offences was 93%, in line with 3-year average (2017-2019) for convictions of this offence.

42. Table 2 below, applies the stated assumptions and estimates the increase in police recorded cases, prosecutions and convictions from the widened scope of voyeurism offences. Again, the table presents these estimates in the form of 'low' and 'high' scenarios.

**Table 2: Additional police reports, prosecutions and convictions for widened scope of voyeurism offence.**

| Offence data type     | Low scenario | High scenario |
|-----------------------|--------------|---------------|
| Police recorded cases | 380          | 760           |
| Prosecutions          | 30           | 60            |
| Convictions           | 30           | 50            |

## Costs of Measure A

### Monetised Costs

#### *Police*

43. The 3,570-4,140 and the 380-760 additional police recorded cases estimated as the impacts of the base offence and the additional voyeurism offences respectively, will result in an increased caseload for police.
44. The average police cost for a 'Violence without injury' offence, estimated to be £1,500<sup>5</sup>, has been used as the best available estimate for the cost of these offences. This is because the category of 'Other sexual offences' includes more serious offences which require significantly more resource. In contrast, 'violence without injury' offences include offences which are similar in behaviour to the taking of intimate images offences, such as stalking and harassment.
45. Multiplying the estimated additional cases of the base offence by this unit cost gives an estimated annual cost of £5.4-6.3m. Multiplying the estimated additional cases of the voyeurism offence by this same unit cost, gives an annual cost of £0.6-1.2m. Therefore, the total annual cost to police is estimated to be between £6.0m and £7.4m.

#### HMCTS

46. The additional 300-430 and the 30-60 additional prosecutions estimated as the impacts of the base offence and the widened scope of voyeurism offences respectively will result in an increased caseload for HMCTS.
47. As a summary only offence, the 300-430 additional prosecutions arising from the base offence will be heard in the Magistrates' Court only. Conversely, the offence of voyeurism and the new more serious taking offences are triable either way, so the 30-60 additional prosecutions from widening its scope will be heard in both and magistrates' courts and Crown Court. It is estimated that 30% of these cases will be heard in the Crown Court and 70% in the magistrates' courts, in line with the 3-year average (2017-2019) for voyeurism offences. On this basis, the additional voyeurism offences will be between 10-20 in the Crown Court and 20-40 in the magistrates' courts.
48. The additional prosecutions under the base offence are estimated to result in an annual cost to the magistrates' courts of £0.2-0.3m. The additional prosecutions for the voyeurism offence are estimated to result in an annual cost to the magistrates' courts of between £0.02-0.03m and an annual cost to the Crown Court of £0.03-0.05m. Therefore, the total cost to HMCTS is estimated to be between £0.3-0.4m.

#### LAA

49. The additional 300-430 prosecutions and the 30-60 additional prosecutions estimated as the impacts of the base offence and the widened scope of voyeurism offences respectively will also result in an increased caseload for the LAA.
50. It is assumed that 75% of defendants are eligible for Legal Aid in the Crown Court and 50% are eligible in the magistrates' courts. There is, therefore, estimated to be an additional 150-220 legal aid cases in the magistrates' courts for the base offence. Using the same split of cases as calculated above and the same eligibility requirements, there is estimated to be an additional 6-12 cases in the Crown Court and an additional 10-20 cases in the magistrates' courts for the widened scope of voyeurism offences.
51. The annual cost to the LAA in the magistrates' courts for the additional prosecutions under the base offence is estimated to be £0.16-0.22m. The annual cost to the LAA for the additional prosecutions under the widened scope of voyeurism offences is estimated to be £0.06-0.12 in the Crown Court and £0.01-£0.02m in the magistrates' courts. Therefore, the total additional cost, per year, to the LAA is estimated to be between £0.2-0.4m.

<sup>5</sup> [The Home Office Report: The economic and social costs of crime](#) give the average police cost for a 'violence without injury' offence as £1,010 (2022/23 prices) for all recorded and unrecorded crime. To derive the cost for recorded crime only, a multiplier of 1.5 is used, this means cost per additional investigation will be £1,500.

*HMPPS*

52. *The additional 220-320 convictions calculated in table 1 and the additional 30-50 convictions calculated in table 2 as the estimated impacts of the base offence and the widened scope of voyeurism offences respectively will have an impact on HMPPS as some offenders will receive custodial sentences.*
53. The LC's analysis assumed 30% of those sentenced will receive a custodial sentence. For the base offence they assumed the sentence length received will be 4-6 months, and for the widening scope of voyeurism offences they assumed the sentence length would be 6-24 months. The same assumptions have been applied to assess the impacts on prisons for this option.
54. On this basis, it is estimated that the additional convictions for the base offence will result in 130-290 months of additional prison time per year meaning that an additional 10-20 prison places will be required. The additional convictions for the voyeurism offence will result in 20-190 months of additional prison time per year meaning that an 2-16 additional prison places will be required.
55. The published cost<sup>6</sup> (£46,696 in 2021/22 prices) of a prison place per year uplifted to 23/24 prices is £51,011, applying 20% OB this figure rises to £61,213. Therefore, the additional months of prison time is estimated to result in an annual average resource cost of £0.7-1.5m for the base offence and £0.1-1.0m and for the widened scope of voyeurism offence.
56. We have assumed that additional prison places will need to be constructed at a cost of £290,000 per place to accommodate the additional prison demand. Therefore, the additional prison places required will result in a cost of £3.5-7.0m for the base offence and £0.6-4.7m for the widened scope of voyeurism offence. The annual cost to HMPPS is estimated to be between £0.8-2.5m and the total one-off cost to HMPPS is estimated to be between £4.1-11.7m.
57. The Net Present Value (NPV) of Option 1 across 10 years is estimated to be between **-£66.8m and -£103.2m**. The NPV is negative as there are no monetised benefits.

Non-monetised Costs*Police*

58. There may also be some familiarisation costs for the police for the new offences. These impacts have not been monetised but are assumed to be minimal.
59. The new offence of taking an image for the purposes of obtaining sexual gratification, and the new offence of installing or adapting equipment to enable the commission of that taking offence, will mean that some offenders may be subject to notification requirements. The notification requirements, responding to any breaches (the breach rate is very low) and the police-administered voluntary tagging scheme, are expected to require some additional police time and resource. In the absence of robust evidence, however, these potential additional impacts have not been quantified.

*CPS*

60. There will be costs to the CPS associated with the additional cases being prosecuted under these offences, however, it has not been possible to monetise these due to lack of information on CPS unit costs.

**Benefits of Measure 1A**Monetised benefits

61. It has not been possible to identify any monetised benefits associated with this option.

Non-monetised benefits

<sup>6</sup> Costs per prison place and costs per prisoner 2021 to 2022 summary (publishing.service.gov.uk)

*Victims*

62. This option will strengthen the criminal law so that it more adequately captures the intrusive and distressing practice of taking intimate photographs or films without consent. It will offer greater protection to victims, and where certain criteria are met, trigger notification requirements in any individual case, which assist the authorities to manage the offender in the community.
63. Further, the deterrent effect of criminalisation in the new base offence should see a reduction in abusive conduct; this should result in the avoidance of emotional distress and adverse physical health impacts due to being a victim of such abuse. In addition, the provisions should provide improved victim experience in court due to better protections such as anonymity.
64. Overall, this should result in enhanced confidence in the Criminal Justice System.

**Measure 1B Create a broader offence of intentionally encouraging or assisting serious self-harm****Method**

65. The Online Safety Act introduced a new offence of encouraging or assisting serious self-harm by means of verbal or electronic communications, publications or correspondence. The Criminal Justice Bill will partially repeal the Online Safety Act offence and replace it (in England and Wales only) with a broader one to cover encouraging or assisting serious self-harm by means of communication and in any other way including, for example, direct assistance through the provision of bladed articles with which to self-harm. Therefore, this IA presents the full list of impacts of encouraging or assisting serious self-harm by means of all forms of communication.
66. However, this IA assumes that the encouraging or assisting serious self-harm by means of verbal or electronic communication will be the most prevalent way the offence could be committed, such that the difference between the impact of the offences under the Online Safety Act and the Criminal Justice Bill are negligible.
67. There is currently no reliable measure of the prevalence of encouraging or assisting self-harm and consequently significant uncertainty of the number of additional prosecutions that will arise under this new offence. Therefore, a range is presented. The existing offence of 'intentionally doing an act of capable of encouraging or assisting the suicide or attempted suicide of another' under section 2 of the Suicide Act 1961, has been used as the best available proxy for this new offence.
68. This offence had an annual average of 1 prosecution between 2017-2022. Thus the 'low' scenario assumes 1 additional prosecution per year for the new offence. The 'high' scenario presents an additional annual prosecution volume of 10 to reflect the likely higher prevalence of this new offence to its proxy of encouraging or assisting suicide. Therefore, the estimate for the additional prosecutions under this new offence is between 1-10 per year.

**Costs of Measure 1B:**Monetised costs*Police*

69. The encouraging or assisting suicide or attempted suicide offence had an annual average of 46 police recorded cases between 2017-2022, thus forming the 'low' scenario of additional police recorded cases of the new offence. To estimate the 'high' scenario, the proportion of cases of the proxy offence that were recorded by the police and went on to be proceeded against was applied to the estimated 10 additional prosecutions, to provide an estimate of 460 police recorded cases.
70. The additional 46-460 police recorded cases per annum will result in an increased caseload for the police. The average police cost for a 'Violence without injury' offence, estimated to be £1,500<sup>7</sup>, has

<sup>7</sup> The Home Office Report: *The economic and social costs of crime* give the average police cost for a 'violence without injury' offence as £1,010 (2022/23 prices) for all recorded and unrecorded crime. To derive the cost for recorded crime only, a multiplier of 1.5 is used, this means cost per additional investigation will be £1,500.

been used as the best available estimate for the cost of an encouraging or assisting self-harm case. This is because 'Violence without injury' offences include offences which are similar in behaviour to this new offence such as malicious communication and stalking and harassment.

71. Multiplying the estimated additional police recorded cases by this unit cost gives an estimated annual cost of £0.1-0.7m, for the low and high scenarios respectively.

#### *HMCTS*

72. The additional 1-10 prosecutions per year will result in an increase in caseload for HMCTS, it is estimated that 80% of cases will be heard in the Crown Court and the remaining 20% in the magistrates' courts. This proportional split only applies to the 'high' scenario, as it is assumed that the single case in the 'low' scenario will be heard in the Crown Court only. On this basis, there is estimated to be an additional 1-8 cases in the Crown Court, at a cost of £4-30k, and an additional 0-2 cases in the magistrates' courts, at a cost of £0-2k.

73. The total additional cost, per year, to HMCTS is therefore estimated to be between £4-31k.

#### *LAA*

74. The additional 1-10 prosecutions will also result in a higher caseload for the LAA. It is assumed that 75% of defendants are eligible for Legal Aid in the Crown Court and 50% are eligible in the magistrates' courts. There is, therefore, estimated to be an additional 1-6 cases in the Crown Court, at a cost of £11-88k, and an additional 0-1 cases in the magistrates' court, at a cost of £0-1k.

75. The total additional cost, per year, to the LAA is estimated to be between £11-89k.

#### *HMPPS*

76. The additional prosecutions will also result in additional convictions and convicted offenders will receive custodial sentences, this will result in an additional cost for HMPPS.

77. The conviction rate and the proportion of convicted offenders sentenced to immediate custody are both assumed to be 100%, and the Average Custodial Sentence Length (ACSL) for the offence is assumed to be 15 months. for the offence is assumed to be 15 months.

78. On this basis, it is estimated that the additional 1-10 prosecutions will result in between 15-150 months of additional prison time per year, meaning that 2-13 additional prison places will be required.

79. The published cost of a prison place per year uplifted to 23/24 prices is £51,011, applying 20% OB this figure rises to £61,213. Therefore, the additional 15-150 months of prison time is estimated to result in an average resource cost of £0.1-0.8m per year.

80. However, due to current capacity constraints, additional prison places will need to be constructed at a cost of £290,000 per place to accommodate the additional prison demand. Therefore, the 2-13 additional prison places are estimated to result in a one-off transitional cost of £0.6-3.7m.

81. The Net Present Value (NPV) of Measure B across 10 years is estimated to be between **-£2.0m and -£17.4m**. The NPV is negative as there are no monetised benefits.

#### Non-monetised Costs

##### *Police*

82. There may also be some familiarisation costs for the police for the new offence. These impacts have not been monetised but are assumed to be minimal.

##### *CPS*

83. There will be costs to the CPS associated with the additional cases being prosecuted under this offence, however, it has not been possible to monetise these due to lack of information on CPS unit costs.

#### **Benefits of Measure B:**

Monetised benefits

84. It has not been possible to identify any monetised benefits associated with this option.

Non-monetised benefits

*Victims*

85. This option will strengthen the criminal law so that it is adequately equipped to protect people from deliberate encouragement to cause themselves serious harm thereby potentially reducing the number of victims of self-harm and associated issues.

**Summary**

86. The monetised impacts of Options 0 and 1 are summarised in Table 3 below.

**Table 3: Summary of monetised costs of Option 0 and 1**

| <b>Policy Option</b> | <b>Description</b>  | <b>10-year NPV (£m)</b>        |
|----------------------|---|--------------------------------|
| <b>Option 0:</b>     | Do nothing  | N/A                            |
| <b>Option 1:</b>     | <b>Measure A:</b> Legislate to make the behaviour subject to criminal offences. Create a range of new offences to capture a person who intentionally takes an intimate image of a person without that person’s consent and further offences with additional intent elements. Create additional new offence to capture a person who installs or adapts equipment to enable themselves or others to commit any of these “taking” offences | Low: -£66.8m<br>High: -£103.2m |
|                      | <b>Measure B:</b> Create a broader offence of intentionally encouraging or assisting serious self-harm  | Low: -£2.0m<br>High: -£17.4m   |

**F. Risks and Assumptions**

*Assumptions*

87. The key assumptions behind the cost benefit analysis presented in this IA are described below.

Where applicable, sensitivity analysis is also presented. The main assumptions are as follows:

- Legislation will come into effect in 2024. Any delay to the implementation of the policy will delay the impacts by an equal amount of time.
- The unit cost for ‘Violence without injury’ of £1,010, and a multiplier of 1.5 to get from unrecorded and recorded crime to recorded crime only, has been used to estimate the cost to Police.
- The average annual cost of a prison place is £51,011 (23/24), applying 20% OB this figure rises to £61,213. This cost is based on overall resource expenditure and includes staffing and estate cost.
- The construction cost of an additional prison place is £290,000. This is an indicative cost based on the publicly announced funding of £2.5bn for 10k prison places, uplifted from 19/20 prices to 23/24 prices.
- 50% of cases in magistrates’ court and 75% of cases in the Crown Court will be eligible for Legal Aid.
- Offenders will serve half their sentence in prison.

**Measure A:**



88. The following assumptions relate specifically to Measure 1A:

- The LC's Impact Assessment on Intimate Image Abuse has been used to underpin the analysis for this option. 40% of the impacts that the LC had estimated for their proposed base offence of intentionally taking and sharing intimate images without consent and the impacts of a widening the scope to include voyeurism offences are assumed to be the impacts of the 'taking' of intimate images offences being proposed under this option.
- The ACSL is between 4-6 months for the base offence and between 6-24 months for the voyeurism offence.

### **Measure B:**

89. The following assumptions relate specifically to Measure B:

- Due to a lack of evidence of the prevalence of the new offence, the existing offence of 'intentionally doing an act of capable of encouraging or assisting the suicide or attempted suicide of another' under section 2 of the Suicide Act 1961, has been used as the best available proxy for a lower bound estimate. It is likely that the prevalence of this new offence will be higher compared to its proxy, hence a range of impacts have been presented.
- The ACSL is assumed to be 15 months.

## **G. Wider Impacts**

### **Equalities**

90. An Equalities Impact Assessment has been carried out in addition to this IA. Please see this for further detail.

### **Better Regulation**

91. These proposals are not considered to be qualifying regulatory provisions and are out of scope of the Small Business Enterprise and Employment Act 2015.

### **Environmental Impact Assessment**

92. We expect there to be no environmental impacts from the options within this IA. The policies meet the environmental principles in accordance with the Environment Act 2021.

### **International Trade**

93. There are no international trade implications from the options considered in this IA.

## **H. Monitoring and Evaluation**

94. We have no plans to formally evaluate these provisions, but we keep this area of the criminal law under review. This includes engagement with stakeholders including the Police and Crown Prosecution Services.