

**CONSULTATION PAPER**

**Proposed Introduction of Offences of Voyeurism,  
Intimate Prying,  
Non-consensual Photography of Intimate Parts, and  
Related Offences**

**July 2020**

## INTRODUCTION

This consultation paper invites the public's views on the proposed introduction of new offences of voyeurism, intimate prying, non-consensual photography of intimate parts, and the distribution of related images.

## BACKGROUND

### Voyeurism and non-consensual photography of intimate parts

2. There is currently no specific offence against voyeurism or non-consensual photography of intimate parts (such as upskirt photography). Depending on the circumstances of each case, such acts have been prosecuted with the following charges –

- (a) “loitering” under section 160 of the Crimes Ordinance (Cap. 200) with a maximum penalty of imprisonment for two years;
- (b) “disorder in public places” under section 17B of the Public Order Ordinance (Cap. 245) with a maximum penalty of a fine at level 2 (or \$5,000 at the current level) and imprisonment for 12 months;
- (c) “outraging public decency” under common law with a maximum penalty of imprisonment for seven years; or
- (d) “access to computer with criminal or dishonest intent” under section 161 of the Crimes Ordinance with a maximum penalty of imprisonment for five years.

3. Between 2015 and 2018, out of 275 convicted cases under section 161 of the Crimes Ordinance, 73% of the convicted cases (i.e. around 200 cases) related to upskirt photography (including still and video recordings) using mobile phones in both public and private places, as well as the uploading of intimate images without consent. The Court of Final Appeal (“CFA”) held in its judgment laid down in April 2019<sup>1</sup> that section 161(1)(c) of the Crimes Ordinance<sup>2</sup> (obtaining access to a computer “with a view to dishonest gain for

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<sup>1</sup> *Secretary for Justice v Cheng Ka Yee & Others* [2019] HKCFA 9.

<sup>2</sup> Section 161 of the Crimes Ordinance reads as follows –  
(1) Any person who obtains access to a computer (a) with intent to commit an offence; (b) with a dishonest intent to deceive; (c) with a view to dishonest gain for himself or another; or (d) with a dishonest intent to cause loss to another, whether on the same occasion as he obtains such access or on any future occasion, commits an offence and is liable on conviction upon indictment to imprisonment for 5 years.

himself or another”) does not extend to the use of the offender’s own computer. In other words, section 161(1)(c) the Crimes Ordinance does not apply to the use of a person’s own computer only, while not involving access to another person’s computer. CFA’s judgment would equally apply to the construction of subsections (a) (“with intent to commit an offence”), (b) (“with a dishonest intent to deceive”) and (d) (“with a dishonest intent to cause loss to another”) of section 161(1) of the Crimes Ordinance.

4. In the light of the CFA judgment, it will no longer be appropriate for the prosecution to press charge under section 161 of the Crimes Ordinance against upskirt photography and the distribution of intimate images without consent, if the act involved only the use of the suspect’s own computer.

5. There are also limitations in the other offences set out in paragraphs 2(a) to (c) above. Generally speaking, those offences are applicable only to acts that occur in a public place or a place where what is done is capable of public view, and thus may not be applicable to acts that occur in a private place. Furthermore, both “loitering” and “disorder in public place” are summary offences with relatively low levels of penalty. This is not commensurate with the severity of surreptitious intimate photography, which often violates the victim’s right to privacy and sexual autonomy, and causes long-term distress, humiliation, harassment, and stress to the victim. There are strong sentiments in the community and a pressing need to address voyeurism and non-consensual photography of intimate parts with criminal sanctions.

## **Review of sexual offences**

6. The Law Reform Commission (“LRC”) appointed a Review of Sexual Offences Sub-committee in July 2006 to conduct an overall review of the substantive sexual offences in Hong Kong. On 30 April 2019, LRC published the *Report on Voyeurism and Non-consensual Upskirt-Photography* (“the Report”). This is part of LRC’s overall review of the law governing sexual offences and has been prepared expeditiously in the light of the strong sentiments received during the consultation process and the imminent need for the introduction of new offences. In the Report, LRC recommended the introduction of an offence of voyeurism<sup>3</sup>. It also recommended the introduction

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(2) For the purposes of subsection (1) *gain* (獲益) and *loss* (損失) are to be construed as extending not only to gain or loss in money or other property, but as extending to any such gain or loss whether temporary or permanent; and (a) *gain* (獲益) includes a gain by keeping what one has, as well as a gain by getting what one has not; and (b) *loss* (損失) includes a loss by not getting what one might get, as well as a loss by parting with what one has.

<sup>3</sup> According to LRC, voyeurism refers to an act of non-consensual observation or visual recording (for example, of a photograph, videotape, or digital image) of another person for a sexual purpose.

of a specific offence in respect of non-consensual upskirt-photography, while taking into account the following –

- (a) an offence committed for the purpose of obtaining sexual gratification should be introduced;
- (b) a separate offence irrespective of the purpose of the conduct should be introduced;
- (c) that the offence (b) above should be a statutory alternative to (a) and also a “stand-alone” offence; and
- (d) the offences in (a) and (b) should cover any place where the offence took place.

7. When formulating its recommendations, LRC had studied the offences of voyeurism and upskirt photography in a number of overseas jurisdictions. There are specific offences of voyeurism in Canada (which include an offence on the distribution of the voyeuristic images), England and Wales, New South Wales (covering only observation, where intimate visual recording is covered by separate offences), and New Zealand (which covers only visual recording but not observation). On non-consensual upskirt photography, there are similar offences in England and Wales, Scotland, and New Zealand.

## **PROPOSALS**

8. In drawing up the legislative proposals, the Government is conscious of the guiding principles laid down by the LRC sub-committee, namely –

- (a) clarity of the law;
- (b) respect for sexual autonomy;
- (c) the protective principle;
- (d) gender neutrality;
- (e) avoidance of distinctions based on sexual orientation; and
- (f) adherence to the human rights laws and practices guaranteed under the Basic Law.

9. Having regard to LRC's aforesaid review and consultation, and taking into account the pressing need to address the concerned acts with criminal sanctions, the Government accepts LRC's recommendations as set out in paragraph 6 above in full. In short, on the basis of LRC's recommendations, the Government proposes to introduce new criminal offences of –

- (a) voyeurism (i.e. observing or recording of intimate acts for the purpose of obtaining sexual gratification); and
- (b) non-consensual photography of intimate parts, both for the purpose of obtaining sexual gratification and irrespective of the purpose (the latter being a statutory alternative to the former).

10. In addition to taking on board LRC's recommendations, the Government also proposes to introduce new criminal offences on the following –

- (a) in relation to paragraph 9(a) above, a corresponding offence for intimate prying, i.e. observing or recording of intimate acts but irrespective of the purpose, as a statutory alternative to the offence of voyeurism;
- (b) distribution of photos or videos generated by acts in paragraph 9(a), 9(b) and 10(a) above; and
- (c) non-consensual distribution of other intimate photos or videos, where consent was previously given for the taking of such photos or videos.

Details of the proposals are set out in the ensuing paragraphs.

## **Proposals 1 and 2: Offences of Voyeurism and Intimate Prying**

11. The Government accepts LRC’s recommendations, and proposes to introduce an offence of voyeurism (i.e. observing or recording of intimate acts for the purpose of obtaining sexual gratification). However, the scope of the recommended voyeurism offence does not cover intimate prying (i.e. observing or recording of intimate acts irrespective of the purpose, which would include earning money, blackmailing or revenge, etc.) As such, we propose to introduce a corresponding offence of intimate prying, and we propose that it will be a statutory alternative to the offence of voyeurism, in addition to being a standalone offence (i.e. in the course of a prosecution of voyeurism, if the only element of offence that cannot be proved is the purpose of obtaining sexual gratification, then the accused may still be convicted of the alternative offence of intimate prying).

12. The above offences are proposed to be applicable to any person who, without the consent of the victim, with or without the aid of equipment, observes the victim doing an intimate act or records images (including stills and videos) of the intimate act, or operates equipment to enable the intimate act to be observed, or images (including stills and videos) of the intimate act to be recorded, to obtain sexual gratification (i.e. voyeurism) or irrespective of the purpose (i.e. intimate prying). It would also be an offence against a person who installs equipment, or constructs or adapts a structure or part of a structure with the purpose of enabling the person or another person to commit the offence of voyeurism or intimate prying. For the definition of “intimate act”, please refer to paragraph 22 below.

|         | <b>Proposal 1</b>  | <b>Proposal 2</b>   |
|---------|--|---|
| Offence | Voyeurism  | Intimate prying<br>(statutory alternative to Proposal 1, in addition to being a standalone offence) |
| Purpose | To obtain sexual gratification   | Irrespective of the purpose   |
| Act     | <ul style="list-style-type: none"><li>Any person who, without the consent of the victim, with or without the aid of equipment, observes the victim doing an intimate act or records images (including stills and videos) of the intimate act, or operates equipment to enable the intimate act to be observed or images of the intimate act to be recorded</li></ul> |   |

|                 | <b>Proposal 1</b>  | <b>Proposal 2</b>        |
|-----------------|--|--------------------------|
|                 | <ul style="list-style-type: none"><li>Any person who installs equipment, or constructs or adapts a structure or part of structure, with the purpose of enabling, without the consent of the victim, the person or another person to observe the victim doing an intimate act or record images (including stills and videos) of the intimate act, or operate the equipment for observation of the intimate act or recording of images (including stills and videos) of the victim doing an intimate act</li></ul> |                          |
| Maximum Penalty | Imprisonment for 5 years   | Imprisonment for 3 years |

**Consultation question 1**

Do you agree with the introduction of a specific offence of voyeurism (i.e. Proposal 1)?

**Consultation question 2**

Do you agree with the introduction of a separate offence of intimate prying (i.e. Proposal 2), as a statutory alternative to the proposed offence of voyeurism, in addition to being a standalone offence?

**Consultation question 3**

Do you agree with the proposed scope of acts for Proposals 1 (i.e. voyeurism) and 2 (i.e. intimate prying)?

### **Proposals 3 and 4: Offences of Non-consensual Photography of Intimate Parts**

13. The Government accepts LRC’s recommendation, and proposes to introduce an offence of non-consensual photography of intimate parts for sexual gratification, as well as a separate offence of non-consensual photography of intimate parts irrespective of the purpose. The latter will be a statutory alternative to the former, in addition to being a standalone offence, similar to Proposals 1 and 2. These two proposed offences will cover acts commonly understood as “upskirt photography”.

14. The offence of non-consensual photography of intimate parts is proposed to be applicable to any person who, without the consent of the victim, operates equipment beneath the clothing of the victim to enable the person or another person to observe the victim’s intimate parts or record images (including stills and videos) of the victim’s intimate parts or to have access to such recorded images, in circumstances where the intimate parts would not otherwise be visible. It does not matter whether the offending act took place in a public or private place.

15. LRC’s recommendation on non-consensual photography of intimate parts does not cover “down-blousing”. Considering that there are much stronger calls for criminalising “upskirt photography”, and that the definition of “down-blousing” is not as clear and may indeed cover a very wide range of scenarios (e.g. the taking of selfies), we take the view that the proposed offences against non-consensual photography of intimate parts should not cover “down-blousing”.

|         | <b>Proposal 3</b>  | <b>Proposal 4</b>  |
|---------|--|--|
| Offence | Non-consensual photography of intimate parts for sexual gratification  | Non-consensual photography of intimate parts irrespective of the purpose<br>(statutory alternative to Proposal 3, in addition to being a standalone offence) |
| Purpose | To obtain sexual gratification   | Irrespective of the purpose  |
| Act     | <ul style="list-style-type: none"><li>Any person who, without the consent of the victim, operates equipment beneath the clothing of the victim to enable the person or another person to observe the victim’s intimate parts or record images (including stills and videos) of the victim’s intimate parts or to have access to such recorded images</li></ul> |  |



|                 | <b>Proposal 3</b>   | <b>Proposal 4</b>        |
|-----------------|---|--------------------------|
|                 | <ul style="list-style-type: none"><li>• In circumstances where the intimate parts would not otherwise be visible</li><li>• Applicable in both public or private place</li></ul> |                          |
| Maximum Penalty | Imprisonment for 5 years  | Imprisonment for 3 years |

**Consultation question 4**

Do you agree with the introduction of the offence of non-consensual photography of intimate parts for sexual gratification (i.e. Proposal 3)?

**Consultation question 5**

Do you agree with the introduction of a separate offence of non-consensual photography of intimate parts irrespective of the purpose, as a statutory alternative to the proposed offence of non-consensual photography of intimate parts for sexual gratification, in addition to being a standalone offence (i.e. Proposal 4)?

**Consultation question 6**

Do you agree with the proposed scope of acts for Proposals 3 and 4 (i.e. non-consensual photography of intimate parts)?

**Consultation question 7**

Do you agree that Proposals 3 and 4 (i.e. non-consensual photography of intimate parts) should not cover “down-blousing”?

## **Proposals 5 and 6: Offences of Distribution of Surreptitious Intimate Images and Non-consensual Distribution of Intimate Images**

16. At present, there is no specific legislation dealing with the act of publishing, circulating, selling, or in any other way distributing the photos or videos generated by acts of the proposed offences in paragraphs 11 to 15 above. The Control of Obscene and Indecent Articles Ordinance (Cap. 390) only regulates the publication of obscene and/or indecent articles<sup>4</sup>, and as such, may not be applicable to, for instance, the transmission of upskirt images among several individuals privately using mobile phones. While there is no available information on the extent of the circulation or distribution of such images on the Internet or other means, the Police do from time to time receive reports from victims complaining that their nude images, whether taken with or without consent, were distributed on the Internet by a former partner in an intimate relationship.

17. In a case<sup>5</sup> concerning upskirt photography, the Court of Appeal noted that “the indecent photos taken by the defendant could be kept permanently, exchanged, circulated, sold as commodities, or even used to threaten the victim, and that therefore the victim could be subjected to harassment over a long period of time. Such conduct is an affront to the dignity of the female victim.” The act of distributing such images is a serious violation of the victim’s right to privacy and sexual autonomy, and should be subject to criminal sanctions.

18. Whilst LRC did not address this issue and make any recommendation on the criminalisation of such acts in the Report, we propose to introduce a specific offence to prohibit the distribution of surreptitious sexual images for the protection of victims. The proposed offence will be applicable to any person who distributes images (including stills and videos) that they know to have been obtained from voyeurism, intimate prying or non-consensual photography of intimate parts (for sexual gratification or irrespective of the purpose). There are similar offences in overseas jurisdictions (e.g. Canada, New Zealand and Singapore), as follows –

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<sup>4</sup> Under the Control of Obscene and Indecent Articles Ordinance –  
(a) a person “publishes” an article if he, whether or not for gain, distributes, circulates, sells, hires, gives or lends the article to the public or a section of the public;  
(b) a thing is obscene if by reason of obscenity it is not suitable to be published to any person; and  
(c) a thing is indecent if by reason of indecency it is not suitable to be published to a juvenile.

<sup>5</sup> *Secretary for Justice v Chong Yao Long Kevin* [2013] 1 HKLRD 794.

## Canada

Section 162(4) of the Criminal Code:

*Every one commits an offence who, knowing that a recording was obtained by the commission of an offence under subsection (1) [Voyeurism], prints, copies, publishes, distributes, circulates, sells, advertises or makes available the recording, or has the recording in his or her possession for the purpose of printing, copying, publishing, distributing, circulating, selling or advertising it or making it available.*

## New Zealand

Section 216J of the Crimes Act 1961:

*Everyone is liable to imprisonment ... who, knowing that a visual recording is an intimate visual recording, or being reckless as to whether a visual recording is an intimate visual recording, (a) publishes in New Zealand the intimate visual recording; (b) imports into New Zealand the intimate visual recording; (c) exports from New Zealand the intimate visual recording; (d) sells the intimate visual recording.*

## Singapore

Section 377BC of the Penal Code:

*Any person (A) shall be guilty of an offence who (a) intentionally or knowingly distributes an image or recording of another person (B) without B's consent to the distribution; or intentionally or knowingly has in his possession an image or recording of another person (B) for the purpose of distribution without B's consent to the distribution; (b) knowing or having reason to believe that the image or recording was obtained through the commission of an offence under section 377BB [Voyeurism]; and (c) knows or has reason to believe that B does not consent to the distribution.*

19. We also propose to introduce a specific offence to prohibit the non-consensual distribution of images of intimate acts, in cases where consent might have been given or was given for the taking of such intimate images (including stills and videos), but not for the subsequent distribution (e.g. revenge porn). There are similar offences in overseas jurisdictions. In some jurisdictions (e.g. Canada and New South Wales), the offence is constituted if the distributor knows

the victim did not give any consent for the distribution, or is reckless as to whether the victim gave such consent –

### Canada

Section 162.1 of the Criminal Code:

*Everyone who knowingly publishes, distributes, transmits, sells, makes available or advertises an intimate image of a person knowing that the person depicted in the image did not give their consent to that conduct, or being reckless as to whether or not that person gave their consent to that conduct, is guilty of an indictable offence ... or of an offence punishable on summary conviction.*

### New South Wales, Australia

Section 91Q of the Crimes Act 1900 No. 40:

*A person who intentionally distributes an intimate image of another person (a) without the consent of the person, and (b) knowing the person did not consent to the distribution or being reckless as to whether the person consented to the distribution, is guilty of an offence.*

20. In some other jurisdictions (e.g. England and Wales and Singapore), the offence is constituted if the distributor intends to cause the victim distress, or knows or has reason to believe that the distribution will or is likely to cause the victim humiliation, alarm or distress –

### England and Wales

Section 33 of the Criminal Justice and Courts Act 2015:

*It is an offence for a person to disclose a private sexual photograph or film if the disclosure is made (a) without the consent of an individual who appears in the photograph or film, and (b) with the intention of causing that individual distress.”*

Singapore

Section 377BE(1) of the Penal Code:

*Any person (A) shall be guilty of an offence who (a) intentionally or knowingly distributes an intimate image or recording of another person (B); (b) without B's consent to the distribution; and (c) knows or has reason to believe that the distribution will or is likely to cause B humiliation, alarm or distress.*

21. Reference will be drawn to overseas jurisdictions including the above when defining the precise scope of the proposed offence.

|                 | <b>Proposal 5</b>   | <b>Proposal 6</b>   |
|-----------------|---|---|
| Offence         | Distribution of surreptitious intimate images   | Non-consensual distribution of intimate images  |
| Act             | <ul style="list-style-type: none"> <li>• Any person who distributes images (including stills and videos) that the person knows to have been obtained from voyeurism, intimate prying or non-consensual photography of intimate parts (for sexual gratification or irrespective of the purpose) (i.e. proposed offences in Proposals 1 to 4)</li> <li>• Regardless of whether the person created, generated, obtained, or was provided with the images in question</li> <li>• Covers distribution through whatever means</li> <li>• The victim does not consent to the distribution</li> </ul> | <ul style="list-style-type: none"> <li>• Any person who distributes images (including stills and videos) showing the victim doing an intimate act</li> <li>• Regardless of whether the person created, generated, obtained, or was provided with the image in question</li> <li>• It does not matter whether the image was taken with the victim's consent in the first place</li> <li>• Covers distribution through whatever means</li> <li>• The victim does not consent to the distribution</li> </ul> |
| Maximum Penalty | Imprisonment for 5 years  | Imprisonment for 5 years  |

**Consultation question 8**

Do you agree with the introduction of the offence against the distribution of surreptitious intimate images (i.e. Proposal 5)?

**Consultation question 9**

Do you agree with the proposed scope of act for Proposal 5 (i.e. distribution of surreptitious intimate images)?

**Consultation question 10**

Do you agree with the introduction of the offence against the non-consensual distribution of intimate images, in cases where consent might have been given or was given for the taking of such intimate images (including stills and videos), but not for the subsequent distribution (i.e. Proposal 6)?

**Consultation question 11**

Do you agree with the proposed scope of act for Proposal 6 (i.e. non-consensual distribution of intimate images)?

**Consultation question 12**

Do you think that for Proposal 6, the offence should be constituted if the distributor knows the victim did not give any consent for the distribution, or is reckless as to whether the victim gave such consent?

**Consultation question 13**

Do you think that for Proposal 6, the offence should be constituted if the distributor intends to cause the victim distress, or knows or has reason to believe that the distribution will or is likely to cause the victim's humiliation, alarm or distress?

## **Intimate Acts and Intimate Parts**

22. For the purpose of the proposed offences above, a person is doing an “intimate act” if the person is in a place which would reasonably be expected to provide privacy, and –

- (a) the person’s genitals, buttocks, or breasts<sup>6</sup> are exposed or covered only with underwear;
- (b) the person is using the toilet; or
- (c) the person is doing a sexual act that is not a kind ordinarily done in public.

23. For the purpose of the proposed offences, a person’s “intimate parts” mean the person’s genitals, buttocks, or breasts, whether exposed or covered only with underwear.

24. Regarding the term of “breasts”, we note that some overseas jurisdictions have specified “female breasts” in the corresponding legislation (e.g. Canada and New Zealand), while other jurisdictions like England and Wales did not specify a gender in its definition relating to breasts, but the case law there has interpreted the term as meaning female breasts only. One of LRC’s guiding principles mentioned in paragraph 8 above is gender neutrality. The law on sexual offences should, as far as possible, not to make distinctions based on gender. We therefore propose that the definitions of “intimate acts” and “intimate parts” should cover breasts and chest irrespective of gender. A gender neutral definition would also better cater for the needs of gender minorities.

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<sup>6</sup> See Consultation Question 16 on the meaning of “breasts”.

**Consultation question 14**

Do you agree that “intimate acts” should mean acts, in a place which would reasonably be expected to provide privacy, by a person when the person’s intimate parts are exposed or covered only with underwear, or the person is using the toilet, or the person is doing a sexual act not ordinarily done in public?

**Consultation question 15**

Do you agree that “intimate parts” should be taken to mean a person’s genitals, buttocks, or breasts, whether exposed or covered only with underwear?

**Consultation question 16**

Do you agree that for the purpose of the proposed offences, the definition of “intimate parts” should include breasts and chest, irrespective of gender, or should the definition include breasts of female only?



## **Proposal 7: Defence(s)**

25. We propose that suitable defence(s) should be made available for the offence of intimate prying (i.e. Proposal 2), non-consensual photography of intimate parts irrespective of the purpose (i.e. Proposal 4), as well as the offences related to the distribution of intimate images (i.e. Proposals 5 and 6). The defence could cover acts done with lawful authority or reasonable excuse (e.g. law enforcement, journalistic work, etc.)

26. It is observed that statutory defences have been provided for similar offences in overseas jurisdictions. In some jurisdictions (e.g. Canada), a more generic defence of “public good” is provided –

### Canada

Section 162(6) of the Criminal Code:

*No person shall be convicted of an offence under this section [Voyeurism] if the acts that are alleged to constitute the offence serve the public good and do not extend beyond what serves the public good.*

*(A similar defence is available under section 162.1(3) for the offence of publication, etc. of an intimate image without consent.)*

27. In some other jurisdictions (e.g. Western Australia), more specific defences are provided, such as if the distribution of the intimate image was for a genuine scientific, educational or medical purpose; was reasonably necessary for the purpose of legal proceedings; or was for media activity purposes, which did not intend to cause harm to the depicted person and was reasonably believed it to be in the public interest, etc. –

### Western Australia, Australia

Section 221BD(3) of Criminal Code:

*It is a defence to a charge under subsection (2) [Distribution of intimate image] to prove that –*

*(a) the distribution of the image was for a genuine scientific, educational or medical purpose; or*

*(b) the distribution of the image was reasonably necessary for the purpose of legal proceedings; or*

*(c) the person who distributed the image (i) distributed the image for media activity purposes; and (ii) did not intend the distribution to cause harm*

- to the depicted person; and (iii) reasonably believed the distribution to be in the public interest; or*
- (d) a reasonable person would consider the distribution of the image to be acceptable, having regard to each of the following (to the extent relevant) (i) the nature and content of the image; (ii) the circumstances in which the image was distributed; (iii) the age, mental capacity, vulnerability or other relevant circumstances of the depicted person; (iv) the degree to which the accused's actions affect the privacy of the depicted person; (v) the relationship between the accused and the depicted person; (vi) any other relevant matters.*

28. If considered appropriate, similar statutory defences or reasonable excuses could be set out for our proposed offences, subject to the views from the public.

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| <b>Proposal 7</b> |
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| A defence of lawful authority or reasonable excuse be provided for the proposed offences under Proposals 2, 4, 5 and 6. |
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| <b>Consultation question 17</b> |
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| Do you agree that a defence of lawful authority or reasonable excuse should be provided for the proposed offences under Proposals 2, 4, 5 and 6? |
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| <b>Consultation question 18</b> |
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| Do you think that a defence of lawful authority or reasonable excuse should also be provided for the proposed offences under Proposals 1 and 3? |
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| <b>Consultation question 19</b> |
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| If suitable defence(s) are made available covering acts done with lawful authority or reasonable excuse, what should be included as reasonable excuses? |
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## **Proposal 8: Sexual Conviction Record Check Scheme**

29. If the proposed offences of voyeurism, intimate prying, non-consensual photography of intimate parts, and the distribution of related images as described in paragraphs 11 to 21 above are to be introduced, we propose that all of these offences should be included in the Specified List of Sexual Offences under the Sexual Conviction Record Check (“SCRC”) Scheme<sup>7</sup>. While the proposed offences under Proposals 2, 4, 5 and 6 do not require the proof that the offences were committed for the purpose of obtaining sexual gratification, we consider it justifiable for the inclusion of the offences under the SCRC Scheme for the sake of protecting vulnerable persons.

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| <b>Proposal 8</b>  |
| Proposed offences under Proposals 1 to 6 as described in paragraphs 11 to 21 above be included in the Specified List of Sexual Offences under the Sexual Conviction Record Check Scheme. |

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| <b>Consultation question 20</b>   |
| Do you agree that the proposed offences under Proposals 1 to 6 should be included in the Specified List of Sexual Offences under the Sexual Conviction Record Check Scheme? |

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<sup>7</sup> The SCRC Scheme is an administrative scheme introduced in 2011 to enable employers of persons undertaking child-related work and work relating to mentally incapacitated persons to check whether eligible applicants have any criminal conviction records against a specified list of sexual offences.

## OFFER YOUR VIEWS

30. Members of the public are invited to offer their views on the legislative proposals as set out in this document. Please send your views to the Security Bureau by mail, facsimile or email on or before 7 October 2020 –

Address: Security Bureau  
- Consultation on the Proposed Introduction of Offences of Voyeurism, Intimate Prying, Non-consensual Photography of Intimate Parts, and Related Offences  
Central Government Offices  
10/F, East Wing  
2 Tim Mei Avenue  
Tamar, Hong Kong

Fax: 2501 4281

Email: [consultation@sb.gov.hk](mailto:consultation@sb.gov.hk)

31. For ease of responding to this consultation exercise and to facilitate subsequent analysis, members of the public may download a response form to submit their views.

32. It is optional for members of the public to supply their personal data when providing views on this consultation paper. The submissions and personal data collected may be transferred to the relevant Government bureaux and departments for purposes directly related to this consultation exercise. The Government bureaux and departments receiving the data may only use the data for such purposes.

33. The names and views of individuals and organisations who/which put forth submissions in response to this consultation paper (“senders”) may be published for public viewing. We may, either in public or private discussions, or in any subsequent report, cite comments submitted in response to this consultation paper.

34. To safeguard senders’ personal data privacy, we will remove senders’ relevant data, such as contact details, identification numbers, and signatures, where provided, when publishing their submissions.

35. We will respect the wish of senders to remain anonymous and/or keep the views confidential in part or in whole. If the senders request anonymity in the submissions, their names will be removed when publishing their views. If the senders request confidentiality, their submissions will not be published.

36. If the senders do not request anonymity or confidentiality in the submissions, it will be assumed that the senders can be named and the views can be published in their entirety.

37. Any sender providing personal data to the Security Bureau in the submission will have rights of access and correction with respect to such personal data. Requests for data access and correction of personal data should be made in writing to the same correspondence address as set out in paragraph 30 above.

**Security Bureau**  
**July 2020**

## Consultation Paper

### Proposed Introduction of Offences of Voyeurism, Intimate Prying, Non-consensual Photography of Intimate Parts, and Related Offences

#### Response Form

#### Proposals 1 and 2 – New offences: *Voyeurism and Intimate Prying*

[Paragraphs 11 – 12 of consultation paper]

1. Do you agree with the introduction of a specific offence of voyeurism (i.e. Proposal 1)?

- (a) Yes .....
- (b) No .....

Remarks:

[Click here to enter](#)

2. Do you agree with the introduction of a separate offence of intimate prying (i.e. Proposal 2), as a statutory alternative to the proposed offence of voyeurism, in addition to being a standalone offence?

- (a) Yes .....
- (b) No .....

Remarks:

[Click here to enter](#)

3. Do you agree with the proposed scope of acts for Proposals 1 (i.e.

voyeurism) and 2 (i.e. intimate prying)?

- (a) Yes .....
- (b) No, too wide .....
- (c) No, too narrow .....

**Remarks:**  
Click here to enter

**Proposals 3 and 4 – New offences: *Non-consensual Photography of Intimate Parts***

[Paragraphs 13 – 15 of consultation paper]

**4.** Do you agree with the introduction of the offence of non-consensual photography of intimate parts for sexual gratification (i.e. Proposal 3)?

- (a) Yes .....
- (b) No .....

Remarks:  
[Click here to enter](#)

**5.** Do you agree with the introduction of a separate offence of non-consensual photography of intimate parts irrespective of the purpose, as a statutory alternative to the proposed offence of non-consensual photography of intimate parts for sexual gratification, in addition to being a standalone offence (i.e. Proposal 4)?

- (a) Yes .....
- (b) No .....

Remarks:  
[Click here to enter](#)

**6.** Do you agree with the proposed scope of acts for Proposals 3 and 4 (i.e. non-consensual photography of intimate parts)?

- (a) Yes .....
- (b) No, too wide .....
- (c) No, too narrow .....

Remarks:  
[Click here to enter](#)



7. Do you agree that Proposals 3 and 4 (i.e. non-consensual photography of intimate parts) should not cover “down-blousing”?

- (a) Yes .....
- (b) No .....

|  |
|--|
| <p><b>Remarks:</b><br/>Click here to enter</p> |
|--|

**Proposals 5 and 6 – New offences: *Distribution of Surreptitious Intimate Images and Non-consensual Distribution of Intimate Images***

[Paragraphs 16 – 21 of consultation paper]

**8.** Do you agree with the introduction of the offence against the distribution of surreptitious intimate images (i.e. Proposal 5)?

- (a) Yes .....
- (b) No .....

Remarks:  
[Click here to enter](#)

**9.** Do you agree with the proposed scope of act for Proposal 5 (i.e. distribution of surreptitious intimate images)?

- (a) Yes .....
- (b) No, too wide .....
- (c) No, ..... too   
narrow .....

Remarks:  
[Click here to enter](#)

**10.** Do you agree with the introduction of the offence against the non-consensual distribution of intimate images, in cases where consent might have been given or was given for the taking of such intimate images (including stills and videos), but not for the subsequent distribution (i.e. Proposal 6)?

- (a) Yes .....
- (b) No .....

Remarks:  
[Click here to enter](#)

**11.** Do you agree with the proposed scope of act for Proposal 6 (i.e. non-consensual distribution of intimate images)?

- (a) Yes .....
- (b) No, too wide .....
- (c) No, too narrow .....

Remarks:  
[Click here to enter](#)

**12.** Do you think that for Proposal 6, the offence should be constituted if the distributor knows the victim did not give any consent for the distribution, or is reckless as to whether the victim gave such consent?

- (a) Yes .....
- (b) No .....

Remarks:  
[Click here to enter](#)

**13.** Do you think that for Proposal 6, the offence should be constituted if the distributor intends to cause the victim distress, or knows or has reason to believe that the distribution will or is likely to cause the victim’s humiliation, alarm or distress?

- (a) Yes .....
- (b) No .....

Remarks:  
[Click here to enter](#)

## Intimate Acts and Intimate Parts

[Paragraphs 22 – 24 of consultation paper]

**14.** Do you agree that “intimate acts” should mean acts, in a place which would reasonably be expected to provide privacy, by a person when the person’s intimate parts are exposed or covered only with underwear, or the person is using the toilet, or the person is doing a sexual act not ordinarily done in public?

- (a) Yes .....
- (b) No, should include fewer elements (*please specify below*).....
- (c) No, should include additional elements (*please specify below*).....

Remarks:

[Click here to enter](#)

**15.** Do you agree that “intimate parts” should be taken to mean a person’s genitals, buttocks, or breasts, whether exposed or covered only with underwear?

- (a) Yes .....
- (b) No, should include fewer elements (*please specify below*).....
- (c) No, should include additional elements (*please specify below*).....

Remarks:

[Click here to enter](#)

**16.** Do you agree that for the purpose of the proposed offences, the definition of “intimate parts” should include breasts and chest, irrespective of gender, or should the definition include breasts of female only?

- (a) Should include breasts and chest, irrespective of gender.....
- (b) Should include breasts of female only.....

Remarks:

[Click here to enter](#)

**Proposal 7: Defence(s)**

[Paragraphs 25 – 28 of consultation paper]

**17.** Do you agree that a defence of lawful authority or reasonable excuse should be provided for the proposed offences under Proposals 2, 4, 5 and 6?

- (a) Yes .....
- (b) No .....

Remarks:  
[Click here to enter](#)

**18.** Do you think that a defence of lawful authority or reasonable excuse should also be provided for the proposed offences under Proposals 1 and 3?

- (a) Yes .....
- (b) No .....

Remarks:  
[Click here to enter](#)

**19.** If suitable defence(s) are made available covering acts done with lawful authority or reasonable excuse, what should be included as reasonable excuses?

Remarks:  
[Click here to enter](#)

**Proposal 8: Sexual Conviction Record Check Scheme**

[Paragraph 29 of consultation paper]

**20.** Do you agree that the proposed offences under Proposals 1 to 6 should be included in the Specified List of Sexual Offences under the Sexual Conviction Record Check Scheme?

- (a) Yes .....
- (b) No .....
- Only some of the proposed offences – *please indicate (can pick more than one) –*
- (i) Voyeurism.....
- (ii) Intimate prying.....
- (iii) Non-consensual photography of intimate parts for sexual gratification.....
- (iv) Non-consensual photography of intimate parts irrespective of the purpose.....
- (v) Distribution of surreptitious intimate images.....
- (vi) Non-consensual distribution of intimate images.....

|  |
|--|
| <p><b>Remarks:</b><br/>Click here to enter</p> |
|--|

## FURTHER VIEWS

Further to the responses above, additional views and comments (e.g. punishments of the proposed offences) can be set out below.

Click here to enter

Name/Name of Organization: Click here to enter

Telephone No. (Optional): Click here to enter

Email Address (Optional): Click here to enter

Date: Click here to enter

## **WHEN AND HOW TO RESPOND**

Please send your views to the Security Bureau by mail, facsimile or email on or before 7 October 2020 –

Address: Security Bureau  
- Consultation on the Proposed Introduction of Offences of Voyeurism, Intimate Prying, Non-consensual Photography of Intimate Parts, and Related Offences  
Central Government Offices  
10/F, East Wing  
2 Tim Mei Avenue  
Tamar, Hong Kong

Fax: 2501 4281

Email: [consultation@sb.gov.hk](mailto:consultation@sb.gov.hk)

It is optional for members of the public to supply their personal data when providing views on this consultation paper. The submissions and personal data collected may be transferred to the relevant Government bureaux and departments for purposes directly related to this consultation exercise. The Government bureaux and departments receiving the data may only use the data for such purposes.

The names and views of individuals and organisations who/which put forth submissions in response to this consultation paper (“senders”) may be published for public viewing. We may, either in public or private discussions, or in any subsequent report, cite comments submitted in response to this consultation paper.

To safeguard senders’ personal data privacy, we will remove senders’ relevant data, such as contact details, identification numbers, and signatures, where provided, when publishing their submissions.

We will respect the wish of senders to remain anonymous and/or keep the views confidential in part or in whole. If the senders request anonymity in the submissions, their names will be removed when publishing their



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**Security Bureau**  
**July 2020**