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**Panel on Security**

**Background brief prepared by the Legislative Council Secretariat  
for the meeting on 15 January 2021**

**Proposed introduction of offences on voyeurism and non-consensual sexual  
photography of intimate parts**

**Purpose**

This paper provides background information and summarizes discussions by the Panel on Security ("the Panel") on the Administration's proposed introduction of offences on voyeurism and non-consensual sexual photography of intimate parts.

**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. According to the Administration, out of 275 convicted cases under section 161 of the Crimes Ordinance between 2015 and 2018, 73% of the convicted 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 that section 161(1)(c) of the Crimes Ordinance (obtaining access to a computer "with a view to dishonest gain for himself or another") does not extend to the use of the offender's own computer. In other words, section 161(1)(c) of 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. 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.

4. According to the Administration, 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, which is not commensurate with the severity of surreptitious intimate photography. 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

5. In April 2019, The Law Reform Commission ("LRC") published the Report on Voyeurism and Non-consensual Upskirt-Photography ("the Report") and recommended the introduction of an offence of voyeurism. It also recommended the introduction 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 in (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.

### **Deliberations of the Panel**

6. The Panel discussed the Administration's proposed introduction of offences on voyeurism and non-consensual sexual photography of intimate parts ("the proposed offences") at the meeting on 7 July 2020, and the deliberations are summarized below.

#### Guiding principle of gender neutrality laid down by the Law Reform Commission

7. Members noted that one of the guiding principle laid down by the LRC sub-committee was gender neutrality. The law on sexual offences should, as far as possible, not to make distinctions based on gender. A gender neutral definition would also better cater for the needs of gender minorities. For the purpose of the proposed offences, it was proposed that, among others, the definition of "intimate parts" should include breasts and chest, irrespective of gender, instead of including breasts of female only in the definition. Some members considered that the descriptions under the proposed offences were not clear enough. For instance, as one of the descriptions of an "intimate act" was "the person's genitals, buttocks, or breasts are exposed or covered only with underwear", it would not be easy to grasp the meaning of "covered only with underwear", in particular in males. These members cautioned that the legislative proposals should be drafted clearly to avoid members of the public breaching the laws inadvertently.

8. According to the Administration, under the same circumstantial factors in compliance with the elements of the proposed offences, the offences would be constituted irrespective of the gender of the victims. While the proposed offences were preliminary having regard to LRC's recommendations, it was stressed that the Government attached great importance to the guiding principles laid down by LRC, including the issue of gender neutrality.

#### Offences covered under the legislative proposals

9. Members were concerned about the differentiation between the proposed offences of voyeurism and intimate prying. The Administration explained that the offence of voyeurism included observing or recording of intimate acts for the purpose of obtaining sexual gratification. However, in the course of a

prosecution of voyeurism, if the only element of offence that could not be proved was the purpose of obtaining sexual gratification, the accused might then be convicted of the alternative offence of intimate prying. Such differentiation would assist the court in judging the severity of different cases.

10. Some members expressed concern about whether the photography of intimate parts of celebrities in public places by journalists and publishing them with blurry images would commit the proposed offence of voyeurism or intimate prying. The Administration explained that photography of celebrities might commit the offence of voyeurism or intimate prying, provided that the acts were within the coverage of these offences. Even though the victim was in a public place, it might also constitute the offence, if the place would reasonably be expected to provide privacy. Members' attention were drawn to the proposed offence of non-consensual photography of intimate parts which were proposed to be applicable to any person who, without the consent of the victim, operated equipment beneath the clothing of the victim to enable the person or another person to observe the victim's intimate parts or record images 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.

11. As regards the distribution of intimate images, the Administration advised that statutory defences had been provided for similar offences in overseas jurisdictions. The Administration also considered that suitable defences should be made available for the proposed offences. Subject to the views from the public and further study, similar statutory defences or reasonable excuses covering acts of law enforcement, journalistic work, etc., would be provided for the proposed offences.

12. Expressing concern that the proposed offences would not cover "down-blousing", some members pointed out that "down-blousing" might intend to observe or record images of victim's intimate parts (i.e. the breast of a woman) and cause victim's distress to a greater extent. These members called on the Administration to reconsider the coverage of the proposed offences. The Administration stressed that the legislative proposals sought to protect victims. The elements of offence depended mainly on a person's *mens reas* and relevant acts. That said, the Administration would take into consideration the views from Members, relevant stakeholders and members of the public in finalizing the legislative proposals.

#### Latest development

13. After consulting the Panel in July 2020, the Administration conducted a three-month public consultation exercise on the proposed introduction of offences of voyeurism, non-consensual photography of intimate parts, and related offences. The Administration will brief the Panel on the views

collected in the public consultation exercise and its analysis, as well as the proposed way forward. Members may wish to note that the Crimes (Amendment) Bill which seeks to introduce new criminal offences of voyeurism, intimate prying, non-consensual photography of intimate parts, and the distribution of related images is included in the Government's 2020-2021 Legislative Programme.

Council Business Division 2  
Legislative Council Secretariat  
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**Relevant papers on  
Proposed introduction of offences on voyeurism and non-consensual sexual  
photography of intimate parts**

<b>Committee</b>	<b>Date of meeting</b>	<b>Paper</b>
Legislative Council	8.5.2019	<a href="#">Official Record of Proceedings (Question 20)</a>
Panel on Security	7.7.2020 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	7.7.2020	<a href="#">CB(2)1334/19-20(01)</a>

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