

**THE NASUWT SUBMISSION TO THE COMMITTEE FOR JUSTICE
CALL FOR VIEWS ON THE JUSTICE (SEXUAL OFFENCES AND TRAFFICKING
VICTIMS BILL)
24 SEPTEMBER 2021**

The NASUWT is the largest teachers' union in Northern Ireland.

If you require further information about this submission, please contact:

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1. The NASUWT welcomes the opportunity to provide our views to the submit evidence to the Committee for Justice on the Justice (Sexual Offences and Trafficking Victims) Bill.
2. The NASUWT is the largest teachers' union in Northern Ireland.

GENERAL COMMENTS

3. This submission addresses the provision to create a new offence of up-skirting and down blousing alongside a number of other sex offence adjustments to ensure the law operates as intended in these areas.
4. The NASUWT have been campaigning for a change in the law in this area since NASUWT members in Enniskillen Royal Grammar school were subject to upskirting by a student while at work. The student was convicted for committing an act of a lewd, obscene and disgusting nature and outraging public decency.
5. The current law does not protect all women and girls, in fact in the Enniskillen incident the conviction rested on proving that other pupils present were members of the public capable of being outraged. The other pupils were treated as the victims not the teachers. If others had not been present a conviction would not have been possible.
6. In relation to up-skirting and down blousing the law needs to ensure that everyone is entitled to a reasonable expectation of privacy over their own bodies. This must include schools but should cover all circumstances where taking of these images is non-consensual.
7. The NASUWT would welcome the opportunity to speak directly to the committee but also believe that the committee should listen directly to the views of the victims of the Enniskillen 'up skirting' case. The union would be happy to arrange this discussion.

SPECIFIC COMMENTS

8. The NASUWT believe that the provision put forward the Department is well meaning but flawed. The provision brought forward is identical to that in England and Wales, i.e. a person commits the offence of voyeurism if, without consent, they operate equipment, or record an image beneath an individual's clothing with the intention of enabling themselves or a third party to observe that

individual's genitals or buttocks in circumstances where they would not otherwise be visible, and where the person acted for the purposes of obtaining sexual gratification or humiliating, alarming or distressing the individual.

9. While this approach would be straightforward to implement and would ensure consistency across the jurisdictions of the UK, it would still be the case that 'up skirting' without consent would not be a crime in itself but dependent on proving that the individual carrying out the act was acting for the purposes of obtaining sexual gratification or humiliating, alarming or distressing the individual.
10. In the first six years of similar legislation being introduced in Scotland, 142 people were charged with upskirting offences in Scotland, but only 19 were convicted: a rate of 13%. Francesca Soliman, Assembly Research Matters (2019)¹ concludes that the difficulty of proving the nature of an offender's intentions beyond reasonable doubt may be contributing to cases never reaching court.
11. In other jurisdictions, for example Victoria, Australia² the prosecution must prove that the act of recording or distributing is intentional, and that the person either knew that, or was reckless as to whether, the victim did not consent to the recording or distributing. Similar legislation is due to be enacted in other Australian States. The NASUWT would support this legal test for the offences of 'up skirting' or 'down blousing' rather than the proposed provision.
12. The union would also draw the committee's attention to the Irish law Reform Commissions Report (2016) on Harmful Communications and Digital Safety³ which recommends that a separate offence should be introduced to target the non-consensual taking and distribution of intimate images without intent to cause alarm, distress or harm.
13. In most criminal prosecution motive does not need to be established to uphold a conviction, but motive and state of mind will be considered at sentencing. There may be arguments by those opposed to this change to the Bill that there may be exceptional circumstances where a conviction wouldn't be appropriate. That can be dealt with by a clause in the Bill for exceptional circumstances.

PROPOSED AMENDMENTS

14. The NASUWT propose that the Bill is amended to remove the clause that requires evidence that the person acted for the purposes of obtaining sexual gratification or humiliating, alarming or distressing the individual and replaces it with a form of words that conviction rests on intent to record/distribute and whether consent was given for the image/video to be taken.
15. The suggested amendment would change the bill to read as in Appendix A.

REFERENCES

1. F Soliman, *Keeping up with technology: Upskirting and the law in Northern Ireland*, 2019. Available at <https://www.assemblyresearchmatters.org/2019/05/01/keeping-up-with-technology-upskirting-and-the-law-in-northern-ireland/>
2. Summary Offences Amendment (Upskirting) Act 2007 (No. 49 of 2007) - Sect 3. Available at http://classic.austlii.edu.au/au/legis/vic/num_act/soaa200749o2007449/s3.html
3. Law Reform Commission (2016), *Report on Harmful Communications and Digital Safety*. Available at <https://www.lawreform.ie/news/report-on-harmful-communications-and-digital-safety.683.html> **Appendix A – NASUWT proposed changes**

Voyeurism: additional offences

1.—(1) The Sexual Offences (Northern Ireland) Order 2008 is amended in accordance with subsections (2) and (3).

(2) After Article 71 (voyeurism) insert—

“Voyeurism: additional offences (genitals and buttocks)

71A.—(1) A person (A) commits an offence if—

(a) A **intentionally** operates equipment beneath the clothing of another person (B),

(b) A does so with the intention of enabling A or another person (C), **for a purpose mentioned in paragraph (3)**, to observe—

(i) B’s genitals or buttocks (whether exposed or covered with underwear), or

(ii) the underwear covering B’s genitals or buttocks, in circumstances where the genitals, buttocks or underwear would not otherwise be visible, and

(c) A does so

(i) without B’s consent, and

(ii) without reasonably believing that B consents.

(2) A person (A) commits an offence if—

(a) A **intentionally** records an image beneath the clothing of another person (B),

(b) the image is of—

(i) B’s genitals or buttocks (whether exposed or covered with underwear), or

(ii) the underwear covering B’s genitals or buttocks, in circumstances where the genitals, buttocks or underwear would not otherwise be visible, **and**

~~(c) A does so with the intention that A or another person (C) will look at the image for a purpose mentioned in paragraph (3), and~~

~~(cd) A does so—~~

~~(i) without B's consent, and~~

~~(ii) without reasonably believing that B consents.~~

~~(3) The purposes referred to in paragraphs (1) and (2) are— (a) obtaining sexual gratification (whether for A or C); (b) humiliating, alarming or distressing B.~~

~~(34) A person guilty of an offence under this Article is liable—~~

~~(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;~~

~~(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years.~~

Voyeurism: additional offences (breasts)

71B.—(1) A person (A) commits an offence if—

(a) A intentionally operates equipment beneath or above the clothing of another person (B),

(b) A does so with the intention of enabling A or another person (C), ~~for a purpose mentioned in paragraph (3),~~ to observe—

~~(i) B's breasts (whether exposed or covered with underwear), or~~

~~(ii) the underwear covering B's breasts, in circumstances where the breasts or underwear would not otherwise be visible, and~~

~~(c) A does so—~~

~~(i) without B's consent, and~~

~~(ii) without reasonably believing that B consents.~~

(2) A person (A) commits an offence if—

(a) A intentionally records an image beneath or above the clothing of another person (B),

(b) the image is of—

(i) B's breasts (whether exposed or covered with underwear), or

(ii) the underwear covering B's breasts, in circumstances where the breasts or underwear would not otherwise be visible, **and**

~~(c) A does so with the intention that A or another person (C) will look at the image for a purpose mentioned in paragraph (3), and~~

~~(cd) A does so—~~

(i) without B's consent, and

(ii) without reasonably believing that B consents.

(3) ~~The purposes referred to in paragraphs (1) and (2) are— (a) obtaining sexual gratification (whether for A or C);~~

~~(b) humiliating, alarming or distressing B.~~

(34) A person guilty of an offence under this Article is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years.”