

FROM THE OFFICE OF THE JUSTICE MINISTER



Department of

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Paul Frew
Chair, Committee for Justice
Room 345, Parliament Buildings,
Ballymiscaw,
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Belfast,
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6 October 2026

Dear Paul,

DEEPPFAKES

I have enclosed a Summary of Responses and Next Steps Report on responses to the consultation I launched last year on proposals to criminalise the behaviours associated with nonconsensual sexually explicit deepfake images.

I had hoped to be able to send draft clauses along with the draft report, and whilst officials have been working at pace, these are not yet (but are very close to being) settled. The Next Steps section of the draft Report should give the Committee a relatively complete overview of what the finalised draft provision will look like.

Once the draft provisions are settled, they will be forwarded to the Attorney General for her view on competency which you will appreciate is particularly important given the nature of the consent-based offences which are to form part of the proposed legislative framework in this area. Officials have already been engaging with the Attorney General's Office on the issues over the summer.

As always, I am grateful for the Committee's continued support, constructive engagement, patience and flexibility in this important work area and its contribution to ensuring that a robust and comprehensive approach can be developed in this mandate to deal with the abhorrent behaviours involved.

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Yours sincerely



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CONSULTATION ON THE CRIMINALISATION OF NON-CONSENSUAL SEXUALLY EXPLICIT DEEPFAKE IMAGES

Draft Summary of Responses and Next Steps

SEPTEMBER 2026

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1. Introduction

1.1 This report provides a summary of responses to the Department's consultation on [Proposals To Criminalise Sexually Explicit Deepfake Images](#) which sought views on proposals to legislate to criminalise the offending behaviours associated with sexually explicit deepfake images.

1.2 49 responses to the consultation were received. A list of those who responded is provided at **Annex A**. The consultation opened on 21 July 2025 and officially closed on 6 October 2025. Following requests from interested parties for an extension, the closing date was extended to 13 October 2025.

1.3 The consultation paper was published on the Department's website with a link to the response form which was in the form of a questionnaire. Respondents were also given the option to email responses to CPU@justice-ni.gov.uk

2. Summary of consultation responses: scope and structure of the proposed offences

2.1 The consultation paper sought views on proposals to make it an offence to: **create; request the creation of; share; or threaten to share, a sexually explicit deepfake image**. In line with the existing legislative framework governing the up-skirting, down-blousing and cyber-flashing offences legislated for in the Justice (Sexual Offences & Trafficking Victims) Act (Northern Ireland) 2022 (the SOTV Act), **the offences proposed in the consultation required proof of motivation i.e. for the creation, requesting the creation and sharing offences – proof of intent to humiliate, alarm or distress or for the purposes of sexual gratification was required; for the threatening to share offence – proof of the intent to cause fear or distress was required**. The proposals were set out in a questionnaire which is provided at **Annex B**. Respondents were asked to tick boxes indicating 'Yes' or 'No' and to provide commentary where they disagreed with any of the proposals.

2.2 49 responses to the consultation were received. Two respondents opposed the introduction of any legislation governing deepfakes, one on the grounds that to criminalise deepfakes misapprehends the nature of the technology, the other on the grounds of a lack of police resources which could be better spent elsewhere. One response related solely to Data Protection issues. A further response raised issues relating to the impact of deepfakes on elections.

Responses supportive of the proposals

2.3 30 responses were supportive of the proposals. Of these, 25 used the questionnaire to provide their response and answered 'Yes' to Questions 1 to 13. (Question 14 related to the penalties proposed for those convicted of the offences. A summary of the responses to this question is provided at Section 3) No additional commentary was provided in 22 of these responses. One respondent, while supportive of the proposals, queried the need to provide for two separate offences for the two identified motivations.

2.4 Five respondents, rather than using the questionnaire to respond to the questions, provided commentary which indicated their support and which did not include any comments disagreeing with the proposals. Representative comments

from these respondents and from those who provided commentary additional to the questionnaire included:

'The creation and sharing of deepfake images and use of artificial intelligence to create images that resemble a person without their consent not only violates the dignity and autonomy of the individuals depicted, but also contributes to a wider culture of misogyny and sexual objectification....'

'While this abuse affects individuals of both genders, the data clearly shows that women are disproportionately impacted. In this context, and particularly given the renewed and rightful focus on ending violence against women and girls, we agree that it is imperative that the Assembly takes decisive action to address this issue.'

'Having no online presence at all is becoming increasingly rare and, abusive behaviours in the online space must be treated as seriously as ones that happen in 'real life' if we are truly to deliver justice to victims and survivors of domestic abuse.'

'Content created using generative AI has been described as a "new frontier of violence against women"¹ and has become a new reality of how abuse is perpetrated, just as modes of perpetration have previously shifted with changes in public behaviours and technology².

'My own investigation into synthetic disability fetish economies has demonstrated that these technologies are being actively used to create sexualised content depicting disabled people without their consent, particularly disabled women and girls. These abuses are often platformed, monetised, and algorithmically recommended - an industrial-scale violation that falls entirely outside traditional understandings of image-based sexual abuse.'

Responses which identified gaps in provision

2.5 15 respondents, while also welcoming the intention to criminalise the behaviours associated with sexually explicit deepfake images considered that the scope of the proposed offences relating to creation and sharing to the images left significant gaps in protections. We want to highlight one response in particular which

¹ Comments by Baroness Owen, [Non-Consensual Sexually Explicit Images and Videos \(Offences\) Bill \[HL\]](#)

² [The 'new voyeurism': criminalizing the creation of 'deepfake porn' - McGLYNN - 2025 - Journal of Law and Society - Wiley Online Library](#)

raised these concerns – the response from Professor McGlynn³. We have highlighted this response because seven other responses either replicated the concerns she raises or referenced her work and expertise in this area. Others who identified gaps in provision are: the Northern Ireland Human Rights Commission, the Office of the Victims of Crime Commissioner, CARE, the Law Society, and Victim Support NI.

2.6 The predominant view was that the requirement to prove specific motivations (i.e. to humiliate, alarm or distress or for sexual gratification) creates unnecessary barriers to prosecution and *‘leaves victims of criminally culpable behaviour without adequate protections’*. It was considered that limiting the scope to two motivations was overly restrictive and could become *‘an excessive barrier to bringing prosecutions and convictions.’*

2.7 Three motivations particularly highlighted as not covered by the Department’s proposals were as follows:

Financial gain

Responses advised that there is a deepfake financial eco-system that has facilitated and supported the exponential growth of this form of abuse and that the consultation’s focus on the motivations of the intention to humiliate, alarm or distress or for sexual gratification failed to understand that many create, solicit or share the images for financial gain.

‘As a joke’

The consultation paper discussed that defendants charged under the proposed offences might use the defence that it was done ‘as a joke’, as a ‘prank’. Concerns about such a defence were raised during the passage of the then SOTV Bill, in the context of consideration of the ‘upskirting’ offence. It was argued by the Department that such a defence is self-defeating – if it is done as a joke then the motivation of humiliation, alarm or distress is met.

³ Professor McGlynn is a member of the Council of Europe’s Expert Committee on Tech-Facilitated Violence against Women and Girls. She has also published numerous articles on intimate image abuse which have gained international recognition.

Respondents were unconvinced by this contention. The response from Professor McGlynn pointed to the proliferation of nudification apps, which millions access worldwide, and their normalisation across mainstream social media where they are advertised and accessed as entertainment 'including on TikTok, Instagram, LinkedIn and more'. To demonstrate this normalisation, reference was made to a [case](#) in San Francisco brought against 16 nudify apps, of which one of the providers is based in the UK, and in which evidence was presented that in the first six months of 2024, those 16 apps had been accessed 200,000 million times.

One App in particular was referenced to highlight the potential difficulties in the ability to counter the 'as a joke' defence. This app, available on a mainstream App store in October 2025, had 'prank' in its title and called itself a 'simulator joke app'. It is queried in responses how a prosecution could successfully prove an intent to humiliate, alarm or distress where a defendant accesses a nudification app advertised as humorous, creates a non-consensual nude thinking this is funny, as intended by the app, and has no intention that the victim should ever find out.

Community contribution

Community contribution was a further issue raised by Professor McGlynn and reflected in other responses, one of which referenced particular research on analysis of pornographic deepfakes. The term appears to relate to online communities or WhatsApp groups which share images or tips on creation, but without an intention that those depicted in them will become aware of the images – '*a normalised, group-validated form of abuse*'. This was also raised as an issue in a further response which referenced the scenario of a WhatsApp 'friends' group' creating or sharing images as 'banter' but querying in this context of whether a blanket policy of criminalisation was appropriate.

2.8 Other potential motivations identified as not caught by the proposals were: 'because they can'; misogyny, power and control, coercion, extortion; psychological abuse, social status; where artistic expression could be used as justification for the behaviour and; political suppression of women. On this latter motivation, particular reference was made to the use of non-consensual sexually explicit deepfake images against women in the public eye and its potential to have '*a silencing effect with victims self censoring and feeling discouraged from engaging in public debate and*

online activity, due to fear that these images will be created and shared.’ Responses highlighted that two female Members of the Northern Ireland Legislative Assembly had been targeted and that a [Channel 4 investigation](#) in July 2024 had found that more than 30 British female politicians had been targeted by a deepfake porn website.

2.9 A minority of these responses suggested, as a remedy, that the legislation should be expanded to include reference to particular motivations, such as for financial gain, or to coerce or control. However, the majority favoured the introduction of summary only base offences of intentionally creating or requesting the creation of, or sharing a sexually explicit deepfake image without consent, or a reasonable belief in consent, regardless of motive. Respondents who favoured this approach included: Professor McGlynn and the Northern Ireland Human Rights Commission.

Comments in support of this approach included:

‘Consent focuses on the core wrong which is non-consensual sexual activity..’

‘...would send the messaging that creating and commissioning deepfake intimate images is not acceptable without consent’

‘To limit these offences...to establish intention/motivation ...will lessen these proposed laws deterrent function. The act of creating this abuse, and requesting the creation of this abuse, in and of itself is the harm, regardless of perpetrator motivations or intent.’

‘The inclusion of motive to demarcate the scope to the offences is not helpful and will cause the offence to find only very limited application.’

‘Sometimes the creation or sharing of these images lacks a specific motivation. Yet, the effects on the victim can be devastating, no matter the motive’

‘The harms and wrongs are not dependent on the defendant’s motive, meaning that an offence grounded in motive will excuse some defendants but not others, despite the fact that the harms and wrongs they committed are the same.’

2.10 Not all responses stated whether these base offences should be additional to the offences proposed in the consultation or stand-alone offences, though one response was very clear that there should only be consent-based offences, stating that victims deserve protection based on the absence of consent, *‘not an impossible*

burden to prove motive', and that the 'victim's consent, not the perpetrator's motive, should define criminality.'

2.11 The majority of those who considered this issue were content that the consent-based offences of creating, requesting the creation of, or sharing the images should be additional to the offences proposed in the consultation, commenting that the motivation-based offences proposed in the consultation would allow for differing levels of sentencing and an ability to distinguish between levels of seriousness.

2.12 One response welcomed that the offences did not require proof of harm as such proof at the reporting stages could negatively affect victims by re-victimising them and could be an evidential obstacle to prosecutions.

Recklessness

2.13 The consultation paper proposed the inclusion of recklessness in the offences to guard against over criminalisation, particularly of the young and vulnerable who may not have thought through the consequences of their actions. The paper did not specify how this might be structured but, by way of illustration, set out how it is used in the ['up-skirting'](#), ['down-blousing'](#) and ['cyber-flashing'](#) offences in the SOTV Act 2022.

2.14 In the up-skirting and down-blousing offences, recklessness requires proof that the perpetrator was aware of the risk (risk of a result, that result being harm) and that, in the circumstances as known to the perpetrator, it was unreasonable to take the risk.

2.15 The recklessness provision in the cyberflashing offence differs from that in the up-skirting and down-blousing offences. It applies only where the purpose in sending the image is for sexual gratification. The offender sends the image for their own sexual gratification and is reckless as to whether, but not necessarily intending that, the victim will suffer alarm, distress or humiliation.

2.16 The majority of respondents (32) agreed to the inclusion of recklessness. One respondent, though supportive, commented:

'It is important that this element is included and that the accompanying education piece communicates to offenders or potential offenders that when they are reckless

rather than deliberate about the harm that they cause they still bear responsibility for that harm.understands the desire not to over-criminalise young boys but for every one of those boys a victim, overwhelmingly a girl or a woman, is created. In reality there is not a problem of boys being over criminalised with regard to up skirting etc, but there is a problem of girls and women being over victimised. These are, as we have said, heavily gendered crimes and it is important that the Department understands this.'

2.17 Of those who were not supportive, one respondent considered that the word 'recklessness' is not clear enough when it comes to children and young people and commented:

'We would also urge the government to launch an awareness-raising campaign in schools that focuses on preventing these types of crimes. Otherwise, there is a strong risk, as the British author Laura Bates has highlighted, that sharing deepfake pornography would become the 'next sexual violence epidemic facing schools.' It is crucial that children and young people are taught about the serious consequences that can occur in an age-appropriate and sensitive way.'

2.18 Another respondent queried whether recklessness will be the salve to over-criminalisation that it is expected to be, commenting that *'when an offender goes out of their way to surreptitiously create a sexually explicit deepfake, irrespective of motive, it will be very difficult for them to argue that they were unaware of the risk and in cross-examination this will come out very quickly'*

2.19 The response from Professor McGlynn, which as stated previously was replicated in other responses, considered that recklessness does not sufficiently address the challenge of rebutting claims from defendants that their motives were either for financial gain, artistic expression or as a joke and further commented:

'While over-criminalisation in general is a legitimate concern, it should be noted that when it comes to the harms experienced disproportionately by women, there is an under-criminalisation.'

3. Summary of consultation responses: proposed penalties

3.1 The consultation proposed the following penalties for the offences:

- for summary conviction, imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both;
- for conviction on indictment, imprisonment for a term not exceeding two years.

3.2 11 responses were opposed to the proposed penalties.

3.3 One respondent did not support imprisonment, commenting that

'...some sort of community service/education related to the type of offence is more likely to get a better result than locking people up. I don't believe that imprisonment improves the likelihood of changing the mindset of those committing this type of offence. Education is better.'

3.4 10 respondents considered that the penalties were too low. Three respondents commented that the summary penalty was not sufficient to reflect the seriousness and distressing nature of the behaviour and its impact on victims, with two recommending a summary period of up to 12 months' imprisonment should be made available in the magistrates' courts.

3.5 Another considered that a minimum of 12 months and a maximum of two years should be available on summary conviction and a minimum of two years and a maximum of four years for conviction on indictment. In this context, the respondent pointed to the images being made on an industrial scale and shared on multiple platforms and the money that can be made by the creators.

3.6 A recurrent theme in responses was that the sentences proposed did not accurately reflect the long-lasting harm caused to victims, were lenient for such a destructive offence and represented an insufficient deterrent. Two responses pointed to provision in Australia where maximum sentences with aggravating factors can reach up to seven years imprisonment, with one of these responses also referencing provision in Ireland where a maximum of seven years imprisonment is also available for conviction on indictment.

3.7 One respondent considered that the penalties should not be limited as proposed and that the level of sentencing should depend on the number of people

involved, the vulnerability of the victim, their public persona and the damage done to their career, reputation and prospects.

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4. Summary of Consultation Responses: Definition of sexually explicit deepfake images for the purposes of the proposed offences.

4.1 The consultation paper set out the definitions for intimate or sexual images used in Northern Ireland and other UK jurisdictions and in Ireland but did not offer any definition for what type of images would be brought within scope of the proposed offences. Instead, respondents were asked to provide details of any aspects of sexually explicit deepfake images they thought should be captured within any definition.

4.2 31 respondents responded to this question either directly or through referencing or endorsing Professor McGlynn's response.

4.3 Recurring themes in responses were that any definition should be capable of keeping pace with rapidly evolving AI technology and its different uses; should not refer to any specific way of creating the images; should include still or moving images and; should include depictions of sexual activity, any form of nudity and persons in an intimate state.

4.4 Four respondents recommended or referenced the definition in [section 66D\(5\)](#) of the Sexual Offences Act 2003 which defines a photograph or film of a person in an intimate state for the purposes of bringing certain images within scope of the offences in England and Wales of creating or requesting the creation of a 'purported intimate image of an adult' ([sections 66E](#) and [66F](#) refer) and the sharing or threatening to share an intimate image ([section 66B](#)). Section 66D(5) provides that:

a photograph or film shows, or appears to show, another person in an intimate state if it shows or appears to show—

(a) the person participating or engaging in an act which a reasonable person would consider to be a sexual act,

(b) the person doing a thing which a reasonable person would consider to be sexual,

(c) all or part of the person's exposed genitals, buttocks or breasts,

(d) the person in an act of urination or defecation, or

(e) the person carrying out an act of personal care associated with the person's urination, defecation or genital or anal discharge.

One of these respondents recommended the exclusion of the definitions of 'exposed' and 'obscured' provided in 66D(6) and (7). Another of the respondents cautioned against the use of the reasonable person test as to what would be considered to be sexual, *'given the complex nature of what is being judged'*.

4.5 Three respondents considered that the term 'deepfake' should not be used, with one respondent highlighting that the term referred to a specific fake image made using sophisticated AI and expressing concern that its use could leave a potential loophole where images which were not AI generated might be excluded, and suggested, instead, the use of the term 'fake imagery'. One response proposed that the term 'sexual digital forgeries' should be used. Another response suggested that the word could be replaced by the term 'pseudo' to mirror the vocabulary in the offences relating to child imagery, which it was suggested should cover any further developments in technology involving AI and other synthetic media. ([Section 3](#) of the Protection of Children (Northern Ireland) Order 1978 criminalises the taking, making, distribution, possession or publication of indecent or pseudo photographs of children).

4.6 A further respondent proposed that images that depict a real person's face or likeness (on its own) in any suggestive context or act, regardless of whether full nudity or explicit sex acts are shown, should be included, commenting that *'even when the content is partially clothed or implied, rather than graphic, the intent and impact can still be extremely violating'*.

4.7 Five respondents considered that audio deepfakes should be brought within scope. Relevant comments included:

'Pornographic content is not always visual, and AI-generated sex tapes using someone's voice (e.g. in "moan" compilations or audio porn) are emerging as a serious harm vector.'

'In theory the technology that underpins visual deepfakes can also be used to create audio deepfakes, otherwise known as voice cloning or voice synthesis. With this

technology people can be made to say things which are sexually explicit, incriminating or otherwise likely to cause distress.'

4.8 Two respondents considered that deepfake images of deceased persons should be brought within scope with one response concerned that such images could be sent to bereaved family members with the intention of causing distress.

4.9 The inclusion of stylised, cartoon, or animated content where a real person is explicitly named, tagged, or visually evoked was recommended by one respondent who further considered that the legal framing should not require the image to be hyper-realistic.

5. Departmental Response and Next Steps

5.1 The Department wishes to thank all respondents to the consultation for their invaluable input.

5.2 The majority of respondents supported the Department's proposals for the introduction of hybrid offences to criminalise the creation of, requesting the creation of, sharing, and threatening to share non-consensual sexually explicit deepfake images. The proposals were that, with the exception of threatening to share these images, the offences should require proof of either an intention to humiliate, alarm or distress the victim, or for the purposes of sexual gratification.

5.3 A minority of respondents contended that the Department's proposals left significant gaps in provision. These respondents were consistent in their views of the need for the inclusion of consent-based offences i.e. that it should be an offence to intentionally create, request the creation of, or share an image without consent but without a requirement to prove intent.

5.4 Without the inclusion of consent-based offences, these responses considered that not all aspects of the behaviours associated with non-consensual deepfake imagery would be captured. Responses highlighted in particular: financial gain; where the image is created 'as a joke'; coercion; power and control; extortion; social status; where artistic expression could be used as justification for the behaviour and; political suppression of women

5.5 The Department considers that some of the concerns raised about potential gaps in protection would be caught under the intent to humiliate, alarm or distress or under alternative existing provision. For example, the Domestic Abuse & Civil Proceedings Act (NI) 2021 criminalises a person who engages in a course of abusive behaviour against partners, ex-partners and family members. However, the Department considers that the concerns raised about other potential gaps, particularly relating to financial gain and the 'joke' defences, while made by the minority of respondents, have substantial merit and that its current proposals are more limited in addressing these aspects of related behaviour.

5.6 As highlighted in the consultation paper, the issue of the joke defence, and the Department's contention that it was self-defeating and would be caught under the

intent to humiliate, alarm or distress, was raised and accepted during the passage of the then SOTV Bill. However, with responses highlighting the marketing of nudification apps on mainstream social media as jokes or pranks, it is evident that the landscape has changed since the introduction of the SOTV Act and that there is potential that those using the 'joke' defence could escape sanction. It is also clear from responses that the existing deepfake financial eco system means some creators benefit substantially from the behaviour.

5.7 To address these gaps, some respondents considered that including additional motivations in legislation would provide a solution. However, the Department considers that creating or listing specific motivations in legislation risks that some are omitted, with the consequence that perpetrators escape being held accountable. Artificial Intelligence (AI) and its use and application continue to advance and change. As this crisis evolves, so too may perpetrator motivations and behaviours.

Offences

5.8 In seeking views on legislative proposals through public consultation, the Minister sought to ensure that all aspects of the despicable behaviours associated with non-consensual sexually explicit deepfake behaviours are criminalised. Following careful analysis of the concerns raised by respondents, particularly the concerns raised about potential gaps in protections, the Minister has concluded that offences which are based on lack of consent only are necessary to ensure that the potential for gaps in protection are minimised. She intends that these consent-based offences will apply to the creation, requesting the creation of, and sharing the images and that they are additional to the offences which require proof of motivation. The proposals for the offences are:

- two summary only offences of intentionally creating, or requesting the creation of, a fake intimate image of an adult without consent or a reasonable belief in consent;
- two hybrid offence of intentionally creating, or requesting the creation of, a fake intimate image of an adult, without consent, with the intention of causing humiliation, alarm or distress to the person depicted in the image;

- two hybrid offences of intentionally creating, or requesting the creation of, a fake intimate image of an adult without consent or a reasonable belief in consent for the purposes of sexual gratification
- a summary only offence of intentionally sharing a fake intimate image of an adult without consent or a reasonable belief in consent;
- a hybrid offence of intentionally sharing a fake intimate image of an adult without consent with the intention of causing humiliation alarm or distress to the person depicted in the image;
- a hybrid offence of intentionally sharing a fake intimate image of an adult without consent or a reasonable belief in consent for the purposes of sexual gratification;
- a hybrid offence of threatening to share a fake intimate image of an adult with a recklessness element.

Terminology

5.9 The term 'sexually explicit deepfake image' was used in the consultation to refer to the images, as this is the most commonly used and recognisable term. However, it is not the term the Department intended to use in legislation as it does not adequately encompass all types of images that are, or could be in the future, encountered in this space: a view reflected in responses to the consultation. The Department has concluded that the term 'fake intimate image' is a simple, clear and accurate description of the mischief that the offences are aimed at. While a number of respondents recommended the use of 'sexual digital forgeries', the Department considers that this implies a copy of something that exists. The images the proposed offences are designed to capture are created and bear no necessary connection with images that exist or actions or behaviours that have taken place.

5.10 The consent-based offences will be summary only. A reasonable excuse defence will be available for defendants accused under these offences i.e. that the person had a reasonable excuse for creating, requesting the creation of, or sharing the fake intimate image. The Department considers that this will ensure compliance with Article 10 ECHR (Freedom of expression) and its inclusion will avoid the creation of a 'strict liability' offence. (A similar defence is available in the summary only offences available in England and Wales ([sections 66E](#) and [66F](#) of the Sexual

Offences Act 2003) which criminalise the creation and requesting the creation of a purported intimate image.)

Definition

5.11 The definition of a 'fake intimate image' will be included in the legislative proposals and will bring within scope of the offences an image that appears to be a photograph or film of an adult and appears to show the person in an intimate state. 'Intimate state' will also be defined in the legislative proposals along similar lines to [section 66D\(5\)](#) of the 2003 Act, as referenced in some responses to the consultation (paragraph 4.4 refers).

Penalties

5.12 The penalty proposed for the summary only consent-based offences is imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum.

5.13 A number of respondents considered that the penalties available for the hybrid offences proposed in the consultation were too low. These proposed penalties of up to two years imprisonment on conviction on indictment align with penalties currently available for similar behaviours within the Sexual Offences (Northern Ireland) Order 2008. To maintain this alignment, the Department is not proposing any change to the proposed penalties.

Recklessness

5.12 In the consultation, the Department had proposed the inclusion of a reckless element in the offences to guard against the over-criminalisation of the young and vulnerable who have not thought through the consequences of their actions. No proposals on how this might be formulated were included.

5.13 The Department considers that the inclusion of consent-based offences in the proposals precludes the inclusion of a recklessness element. However, in this context, it is important to note that, as previously referenced, the Protection of Children (Northern Ireland) Order 1978 already criminalises the taking, making, possession, sharing or distribution of indecent photographs or pseudo-photographs of under 18s. This means that school children who make sexually explicit deepfake

images of their peers, and there is evidence that these behaviours are increasing, are already committing an offence. The proposed consent-based provisions would only apply where an under 18 year old created a sexually explicit deepfake image of an adult.

5.14 In its response to the consultation, the Youth Justice Agency (YJA) advised of ways in which criminalisation could be mitigated by referencing the work it currently does in partnership with PSNI through a Sexting Referral Scheme. This enables children involved in a first offence of sharing indecent images of themselves or others (usually electronically) to receive an educative/diversionary disposal. The response further advises that children who commit sharing type sexual offences are unaware that they are breaking the law and of the consequences of their actions. It suggested that this existing scheme might be extended to include the new offences. The scheme is a way of dealing with the harm and diverting young people away from further offending. The YJA also, where resources permit, do some work in schools educating young people on consent and on sharing images and the consequences of doing so. The response also suggested that children involved in deepfake imagery should be referred via Safeguarding procedures and reviewed in line with child protection.

5.15 The Department's implementation plan for any provision legislated for by the Assembly will include a promotional campaign and liaison with: the YJA, the Department of Education and the Education Authority to ensure the provision of awareness raising of the existing and new offences and the potential consequences for those who create, share or threaten to share the images. It is the Department's intention that there would be particular emphasis on the consent- based offences to alert young people to the risks involved with any of these behaviours. There was a view in responses that consent-based offences, with focus on the core wrong of non-consensual sexual activity, is a more appropriate basis for educational initiatives, as they provide a clear message to young people that these behaviours are against the law.

5.16 It is also worth noting that, in relation to the prosecution of young people, the PPSNI Guidelines state that, where appropriate, the PPS will consider whether a

young person can be dealt with by way of diversionary disposal which should be considered in all but the most serious indictable offences involving a young person. They further state that a young person's youth will often be an important public interest factor in favour of diversion as it negates the need for young people to come into contact with the formal criminal justice system and is believed to be a positive response to youth crime which reflects the UNCRC and other international children's rights standards.

Conclusion

5.17 The revised approach meets the Minister's commitment to provide a comprehensive legislative framework to deal with the behaviours associated with fake intimate images. The proposed inclusion of consent-based offences as additional to the offences which require proof of motivations would ensure that all behaviours associated with the creation, requesting the creation of, or sharing the images would be captured. It also removes concerns regarding potential hurdles to prosecution where motivation may be in doubt and ensures that the framework would be 'future proofed' should developments in AI lead to changes in perpetrator motivations.

5.18 The retention of motivation-based offences maintains the ability to send those cases involving defendants with more malign intent to the Crown Court. Where sexual gratification is proven, offenders who pose a risk of sexual harm can be identified and can be made subject to sex offender notification requirements and civil prevention orders assisting more effective risk management for this element of the behaviour.

5.19 The revised approach sends a clear, unambiguous message that no aspect of behaviours associated with sexually explicit deepfake imagery will be tolerated and that the more malign behaviours can be adequately dealt with by the courts.

LIST OF THOSE WHO RESPONDED TO CONSULTATION

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[illegible]

THREE MEMBERS OF THE PUBLIC – who wish to remain anonymous

DRAFT

The Department is seeking your views on the following questions

Questions 1 to 6 relate to Chapter 4 of the consultation: Proposals to make it an offence to create, or request the creation of, a sexually explicit deepfake image

Q.1 Do you agree with the proposal to legislate to criminalise the creation, or requesting the creation, of a sexually explicit deepfake image, without the consent of the person depicted in the image, or a reasonable belief in their consent, with the intention of causing humiliation, alarm or distress to the person depicted in the image?

- ☐ Yes
☐ No

Q.2 Do you agree with the proposal to legislate to criminalise the creation, or requesting the creation of, a sexually explicit deepfake image, without the consent of the person to be depicted in the image, or a reasonable belief in their consent, for the purposes of sexual gratification?

- ☐ Yes
☐ No

Q.3 Do you agree with the proposal that the creation, and requesting the creation, of sexually explicit deepfake images should be hybrid offences?

- ☐ Yes
☐ No

Q.4 Do you agree with the inclusion of motivations in the offences, bearing in mind that where the offence is proved to have been committed for the purposes of sexual gratification, the offender will be subject to risk management measures such as the sex offender notification requirements?

- ☐ Yes
☐ No

Q.5 Do you agree with the proposal to include the element of recklessness in the offences?

- ☐ Yes
☐ No

Q.6 Do you agree with the penalties proposed for the offences which are:

- on summary conviction, imprisonment for a term not exceeding six months-or a fine not exceeding the statutory maximum, or both;
- on conviction on indictment, imprisonment for a term not exceeding two years.

- ☐ Yes
☐ No

If you have answered 'No' to any of the questions above, please provide some details below on the reasons why you do not support the proposal/s.

Questions 7 to 14 relate to Chapter 5 of the consultation: proposals to make it an offence to share, or threaten to share, a sexually explicit deepfake image

Q.7 Do you agree with the proposal to legislate to criminalise intentionally sharing a sexually explicit deepfake image without consent, or a reasonable belief in consent, with the intention of causing humiliation, alarm or distress to the person depicted in the image?

☐ Yes

☐ No

Q.8 Do you agree with the proposal to legislate to criminalise intentionally sharing a sexually explicit deepfake image without consent, or a reasonable belief in consent, for the purposes of sexual gratification?

☐ Yes

☐ No

Q.9 Do you agree with the inclusion of motivations in these offences, bearing in mind that where the offence is proved to have been committed for the purposes of sexual gratification, the offender will be subject to risk management measures such as the sex offender notification requirements?

☐ Yes

☐ No

Q.10 Do you agree with the proposal to legislate to criminalise threatening to share a sexually explicit deepfake image?

☐ Yes

☐ No

Q.11 Do you agree with the proposal to include the intention to cause fear or distress in this offence?

☐ Yes

☐ No

Q.12 Do you agree with the proposal to include a recklessness element in the offences?

☐ Yes

☐ No

Q.13 Do you agree with the proposal that these should be hybrid offences?

☐ Yes

☐ No

Q.14 Do you agree with the penalties proposed for the offences which are:

- on summary conviction, imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both;
- on conviction on indictment, imprisonment for a term not exceeding two years.

☐ Yes

☐ No

If you have answered 'No' to any of the questions above, please provide some details on the reasons why you do not support the proposal/s.

Question 15 relates to Chapter 7 of the Consultation: Definition of sexually explicit deepfake images for the purposes of the proposed offences

Q.15 Please provide details of any aspects of sexually explicit deepfake images that you think should be captured within the definition.