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Dear Kathy,

Legislative provision for deepfake offences

I write further regarding the Minister's proposals to table relevant clauses, by way of an amendment to the Justice Bill at Consideration Stage, to provide for Northern Ireland specific offences to deal with sexually explicit deepfake images. This follows agreement in principle from members of the Committee, for which the Minister remains grateful.

As intended, a consultation paper on the proposals has been drafted and, to ensure that Members are kept informed of relevant developments, a copy of the draft is attached to enable their consideration of the proposals ahead of the oral briefing by officials on their scope, scheduled for 26 June.

The main proposals are to criminalise the following behaviours:

- intentionally creating a sexually explicit deepfake image of an adult, without consent, or a reasonable belief in consent, with the intention of causing humiliation, alarm or distress to the person depicted in the image;

- intentionally creating a sexually explicit deepfake image of an adult, without consent, or a reasonable belief in consent, for the purposes of sexual gratification;
- intentionally requesting the creation of 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;
- intentionally requesting the creation of a sexually explicit deepfake image, without consent, or a reasonable belief in consent, for the purposes of sexual gratification;
- intentionally sharing a sexually explicit deepfake image of an adult, without consent, or a reasonable belief in consent, with the intention of causing humiliation, alarm or distress to the person depicted in the image;
- intentionally sharing a sexually explicit deepfake image of an adult, without consent, or a reasonable belief in consent, for the purposes of sexual gratification;
- threatening to share a sexually explicit deepfake image of an adult with the intent to cause fear or distress to the person depicted in the image.

Further detail on the proposed structure of the offences is provided in sections 4 and 5 of the attached draft.

It is hoped that consideration of the draft paper and the oral briefing by officials on 26 June will provide sufficient opportunity for Committee members to raise any concerns which may need to be addressed and reflected in the consultation paper ahead of its launch, which, subject to the approval of the Minister, is planned for early July 2025. Members will be provided with a copy of the finalised paper ahead of its publication.



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A Consultation on Proposals to Criminalise Sexually Explicit Deepfake Images

1. Introduction

1.1 On 29 April 2025, the Minister of Justice announced her intention to introduce an amendment, at Consideration Stage, to the Justice Bill, to provide for Northern Ireland-specific offences related to sexually explicit deepfake images, structured to ensure that all aspects of the offending behaviour can be captured.

1.2 This paper seeks views on proposals to criminalise the increasingly prevalent and despicable behaviours of creating and sharing sexually explicit deepfake images, where somebody's image is inserted into sexually explicit content without their consent. These include videos where one person's face is placed on the body of a porn actor without consent, real images digitally altered so that the body is stripped of all clothing, or images generated by AI (Artificial Intelligence) that resemble the victim depicted in sexually explicit scenarios¹. These images represent another form of sexual abuse, mainly against women and girls

1.3 The term "deepfake" was coined by the Reddit user u/deepfakes, who created the Reddit forum r/Deepfakes on 2 November 2017. The forum was dedicated to "faceswapping" female celebrities into pornographic videos. The forum was removed from Reddit on 7 February 2018, but the creation of deepfakes has since exploded².

1.4 Leading campaign group My Image, My Choice estimates that there are now over 276,000 videos of this nature circulating on the most popular deepfake sites, with over 4.2 billion total views. These images, which almost exclusively target women, are becoming increasingly common – deepfake pornography makes up 98% of all deepfake videos online; 99% of the individuals targeted in deepfake pornography are women³. The most popular website dedicated to sexualised deepfakes, usually created and shared without consent, receives around 17 million hits a month.

1.5 The growing availability of, and advances in, AI technology have made it easier, and more lucrative, to make non-consensual sexually explicit material. A review of two of the largest websites that host sexually explicit deepfake videos found that they were easily accessible through Google and Bing and that creators on the websites also used the online chat platform Discord to advertise videos for sale and the creation of custom videos. Creators now also offer to make videos of anyone.⁴

1.6 There has also been an exponential rise⁵ in "nudifying" apps, which essentially alter a clothed image of someone so it appears realistically nude. Most of these apps only work on female bodies. The simplicity of creating realistic deepfakes is no longer limited to experts.⁶ There is increasing evidence world-wide of schoolchildren creating sexually explicit deepfake images of their classmates. Last

¹ [Home - #MyImageMyChoice](#)

² Law Commission: Intimate Image Abuse. A Consultation Paper 26 February 2021

³ [2023 State Of Deepfakes: Realities, Threats, And Impact](#)

⁴ [The deepfake AI porn industry is operating in plain sight](#)

⁵ ['Nudify' apps that use AI to undress women in photos soar in popularity | Fortune](#)

⁶ [Full article: Generative AI and deepfakes: a human rights approach to tackling harmful content](#)

year, in Spain, 15 schoolchildren were sentenced to a year’s probation for creating and spreading [AI-generated images of their female peers](#). They were also ordered to attend classes on gender and equality awareness, and on the “responsible use of technology”.⁷ It is a growing issue of concern in the United States⁸ and in the UK⁹. A report published last year estimates that 13% of teenagers in Great Britain have had an experience with ‘nudified’ deepfakes.¹⁰

1.7 The impact of sexually explicit deepfake images on its victims can be devastating and can ruin lives. Victims report feeling embarrassed, violated and unsafe, suffering from anxiety, Post Traumatic Stress Disorder and suicidal ideation because of their experiences.

Scope of the consultation

1.8 There is currently no legislation in Northern Ireland which criminalises these activities where the images relate to adults.

1.9 There are already protections in place for children. Under [section 3](#) of the Protection of Children (Northern Ireland) Order 1978 it is an offence to take, make, distribute or show an indecent photograph, or pseudo-photograph of a child under 18. Consequently, this consultation is limited to the consideration of the introduction of offences to criminalise the creation and non-consensual sharing of sexually explicit deepfake images of an adult or requesting the creation of such images.

⁷ [Spain sentences 15 schoolchildren over AI-generated naked images | Spain | The Guardian](#)

⁸ [CDT Report – In Deep Trouble: Surfacing Tech-Powered Sexual Harassment in K-12 Schools](#)

⁹ [UK school pupils ‘using AI to create indecent imagery of other children’ | Global development | The Guardian](#)

¹⁰ [Experiences of nude deepfakes research | Internet Matters](#)

2. Legislation in other jurisdictions

England and Wales

2.1 The Data (Use and Access) Act Bill (the Bill), which has just recently received Royal Assent, contains proposals to amend the Sexual Offences Act 2003 (the 2003 Act) to provide for offences of creating, or requesting the creation of, deepfake imagery. It provides for two summary offences related to the creation of deepfake imagery:

- an offence of the intentional creation of a purported intimate image of another person (an adult) without that person's consent or a reasonable belief in their consent
- an offence of intentionally requesting the creation of a purported intimate image of another person (an adult) without that person's consent or a reasonable belief in their consent. It will be an offence regardless of whether the image is created.

Summary offences are offences which can only be tried in the magistrates' court.

2.2 Under the provisions, 'purported intimate image' of a person means an image which—

- (a) appears to be, or to include, a photograph or film of the person (but is not, or is not only, a photograph or film of the person),
- (b) appears to be of an adult, and
- (c) appears to show the person in an intimate state.

2.3 These are strict liability offences. The only defence available for a person charged with these offences is to prove that he/she had a reasonable excuse for making the request or creating the image.

2.4 In strict liability offences, the prosecution does not need to prove the defendant had any intention (*mens rea*) to commit a crime. The mere act (*actus reus*) of committing the offence is sufficient for a conviction. This means that even if the defendant had no intention to break the law or was unaware that they were doing so, they can still be found guilty.

2.5 [Sections 66B to 66D](#) of the 2003 Act already provide for offences of sharing or threatening to share an intimate photograph or film. These existing provisions will apply to the new offences of creation, or requesting the creation of, a purported intimate image of the Bill. There are four offences related to sharing, or threatening to share, intimate images under sections 66B to 66D.

1. A summary offence of intentionally sharing an intimate photograph or film without consent or a reasonable belief in consent. The penalty available for the offence is the maximum available in the magistrates' court, currently six months, or a fine, or both.

2. A hybrid offence of intentionally sharing an intimate photograph or film without consent, with intent to cause alarm, distress or humiliation.
3. A hybrid offence of intentionally sharing an intimate image without consent or a reasonable belief in consent, for the purpose of obtaining sexual gratification.
4. A hybrid offence of threatening to share an intimate image with the intention to cause fear in the person who is the subject to the threat, or someone who knows that person, that the threat will be carried out or is reckless as to whether that person, or someone who knows them will fear that the threat will be carried out.

A hybrid offence is an offence which can be tried in the magistrates' court or in the Crown Court, depending on the seriousness of the case. More serious cases are tried in the Crown Court. The Crown Prosecution Service will give consideration and direct upon the most appropriate level of court in individual cases.

2.6 The penalties for the offences at 2, 3, and 4 above are:

- on summary conviction, the maximum available in the magistrates' court, currently six months, or a fine, or both;
- on conviction on indictment, a maximum of two years imprisonment;

2.7 Where sharing for the purposes of sexual gratification is proven, the offender will be made subject to sex offender notification requirements (more commonly known as 'the sex offenders register') and will be eligible for a civil prevention order, as may be required, which are used to help manage an individual's risk of sexual harm.

2.8 Protection for child victims of sexually explicit deepfake imagery is already provided in the Protection of Children Act 1978 under [section 1](#) of the Protection of Children Act 1978 it is an offence to take, make, distribute or show an indecent photograph, or pseudo-photograph of a child under 18. A person convicted summarily is liable to imprisonment for a term not exceeding six months; or to a fine, or to both. Conviction on indictment carries a penalty of imprisonment for a term of not more than ten years, or to a fine or to both.

Scotland

2.9 In Scotland, the publication, distribution or sharing of sexually explicit deepfake images or videos without consent may currently be prosecuted under section 2 of the [Abusive Behaviour and Sexual Harm \(Scotland\) Act 2016](#) (*Disclosing, or threatening to disclose, an intimate photograph or film*). Under this legislation it is an offence where a person discloses or threatens to disclose a photograph or film which shows another person in an intimate situation, with the

intention to cause fear, alarm or distress, or is reckless as to whether fear, alarm or distress is caused.

2.10 An 'intimate situation' is defined as:

- the person is engaging or participating in, or present during, an act which a reasonable person would consider to be a sexual act, and
 - is not of a kind ordinarily done in public, or
 - the person's genitals, buttocks or breasts are exposed or covered only with underwear.

2.11 'Film' means a moving image in any form, whether or not the image has been altered in any way, that was originally captured by making a recording, on any medium, from which a moving image may be produced and includes a copy of the image.

2.12 'Photograph' means a still image in any form, whether or not the image has been altered in any way, that was originally captured by photography, and includes a copy of the image.

Penalties

2.13 The penalties are:

- on summary conviction a maximum sentence of 12 months imprisonment or a fine (or both);
- on conviction on indictment, a maximum sentence of five years imprisonment or a fine (or both).

2.14 There are currently no offences relating to creating, or requesting the creation of, a sexually explicit deepfake image of an adult.

Ireland

2.15 The [Harassment, Harmful Communications and Related Offences Act 2020](#) provides for two offences which criminalise the non-consensual distribution of intimate images.

Offence 1 - It is an offence where a person, without consent, distributes or publishes, or threatens to distribute or publish, an intimate image of another person with the intent to cause harm to another person or is reckless as to whether or not harm has been caused.

For the purposes of the offence, harm is caused where the acts of distribution or publication of the intimate image, or threats to do so, intentionally or recklessly seriously interfere with the other person's peace and privacy or cause alarm or distress to the other person and, are such that a reasonable person would realise that the acts would do so.

On summary conviction, a maximum penalty of up to 12 months imprisonment or a fine, or both, is available.

On conviction on indictment, a maximum penalty of up to seven years imprisonment or a fine, or both, is available.

Offence 2 – It is an offence to record, distribute or publish an intimate image without consent where these acts seriously interfere with the other person's peace and privacy or cause alarm or distress to the other person. This means that it is an offence even if there is no specific intent to cause harm.

On summary conviction, a maximum penalty of up to six months imprisonment or a fine, or both, is available.

On conviction on indictment, a maximum penalty of up to two years imprisonment or a fine, or both is available.

2.16 For the purposes of the offences, 'intimate image', means any visual representation (including any accompanying sound or document) made by any means, of what is, or purports to be, the person's genitals, buttocks, or anal region, or the underwear covering these areas, or in the case of a female, her breasts, or the underwear covering them, or in which the person is nude, or in which the person is engaged in sexual activity.

Australia

2.17 The Criminal Code, as amended by the Criminal Code Amendment (Deepfake Sexual Material) Act 2024 (the Act), criminalises the transmission of adult sexual material without consent. It provides that a person commits an offence if a person (the first person) uses a carriage service to transmit material of another person; and the other person is, or appears to be, 18 years of age or older; and the material depicts, or appears to depict:

- the other person engaging in a sexual pose or sexual activity (whether or not in the presence of other persons); or
- a sexual organ or the anal region of the other person; or
- if the other person is female—the other person's breasts; and
- the first person:
 - knows that the other person does not consent to the transmission of the material; or
 - is reckless as to whether the other person consents to the transmission of the material.

2.18 Being reckless in relation to consent includes not giving any thought to whether or not the person is consenting. This ensures that an offender is not able to avoid criminal liability by never turning their mind to whether consent exists, and therefore not meeting the knowledge or reckless fault elements required.

2.19 The creation or alteration of sexual material transmitted without consent is also criminalised. This aggravated offence applies to alleged offenders who transmit 'new' sexually-explicit material, that they themselves have created or altered—which then may be repeatedly re-transmitted online. A maximum penalty of seven years imprisonment is available.

New Zealand

2.20 On 12 May 2025, the Deepfake Digital Harm and Exploitation Bill was introduced in the New Zealand Parliament. The Bill aims to amend the Crimes Act 1961 and the Harmful Digital Communications Act 2015 by including digitally altered or synthesised images within the definition of an intimate visual recording. The Bill specifies that intimate visual recordings encompass visual content that has been created, synthesised, or altered to depict a person in a state of undress or engaging in intimate activities.

The penalty for these offences will be up to three years imprisonment.

South Korea

2.21 In September 2024, the South Korean National Assembly amended existing law that already criminalises the creation and distribution of deepfake pornography to make it illegal to view or possess deepfakes that are deemed to be sexually exploitative. The revised legislation states that anyone who is caught possessing, purchasing, storing, or viewing illicit deepfakes can be sentenced to up to three years imprisonment or a fine.

2.22 The National Assembly also passed additional legislation which stipulates that anyone who uses deepfake content to threaten or blackmail minors can be sentenced to a minimum of three years for blackmail and a minimum of five years for forcing minors to act against their will.¹¹

US

2.23 The Federal Take It Down Act 2025 became law in May 2025. The Act makes it illegal to share online nonconsensual, explicit images, real or computer-generated, and also requires tech platforms to remove such images within 48 hours of being notified about them. Previously, [federal law prohibited](#) creating or sharing realistic, AI-generated explicit images of children. But laws protecting adult victims varied by state and didn't exist nationwide.¹²

2.24 The Take It Down Act is the first federal law to include criminal penalties for creating and posting AI-generated deepfakes, as well as for threatening to post intimate images without consent. Both the creators of such images, and those who "intentionally threaten" to create them, will face up to two years in jail if the offence involves an adult.

¹¹ [Korea passes bill making viewing non-consensual sexual deepfakes illegal](#)

¹² [Take It Down Act: Victims of explicit deepfakes can now take legal action against people who create it | CNN Business](#)

3. Existing Legislative Framework in Northern Ireland

3.1 The legislation governing sexual image abuse offences in Northern Ireland is the Sexual Offences (Northern Ireland) Order 2008 (the 2008 Order). In consideration of legislative proposals for a new offence it is important to take into account existing relevant offences within this legislative framework.

3.2 The [Justice \(Sexual Offences and Trafficking Victims\) Act \(Northern Ireland\) 2022](#) amended the 2008 Order to introduce the following offences to deal with image based sexual abuse, behaviours which, with advances in technology, are becoming increasingly prevalent: upskirting, downblousing and cyberflashing.

Up-skirting

3.3 [Article 71A](#) (*Voyeurism: additional offences (genitals and buttocks)*) criminalises up-skirting, providing for two offences of operating equipment or recording images beneath a person's clothing, to observe or record an image of that person's genitals or buttocks, whether exposed or covered with underwear, where they wouldn't ordinarily be visible.

3.4 The offences are made out where either of the following two conditions are met:

Condition 1

The perpetrator, without the victim's consent or a reasonable belief in consent, operates equipment or records an image to enable the observation of the image *for the purpose of*

- his/her own sexual gratification or the sexual gratification of another person, or
- to humiliate, alarm or distress the victim.

Condition 2

The perpetrator, without the victim's consent, or a reasonable belief in consent, operates equipment or records an image to enable the observation of the image, and

- the perpetrator is reckless as to whether the victim is humiliated, alarmed or distressed, and
- the victim is humiliated, alarmed or distressed.

In condition 2, the recklessness element of the offence is not related to a particular purpose, as is required in Condition 1.

Down-Blousing

3.5 [Article 71\(B\)](#) (*Voyeurism: additional offences (breasts)*) criminalises down-blousing, providing for two offences of 'operating equipment' and 'recording' an image beneath or above a person's clothing to observe or record that person's breasts,

whether exposed or covered with underwear, where they would not ordinarily be visible. The offences are made out where either of the two conditions set out above at paragraph 3.4 are met.

Sending etc an unwanted sexual image

3.6 This offence is more commonly known as 'cyber-flashing' which typically involves offenders sending an unsolicited sexual image to another person via social media (e.g. Snapchat) or dating apps, or via data sharing services such as Bluetooth and Airdrop.

3.7 Under [Article 72A](#) of the 2008 Order, a person (A) commits an offence if they intentionally send or give a sexual image to another person (B), without the consent of B and where they reasonably know B had not consented; with the intention that B will look at the image and be humiliated, alarmed or distressed by it or; for the purpose of obtaining sexual gratification and are reckless as to whether B is humiliated, alarmed or distressed.

3.8 The offences are made out when the following elements are present:

- where the perpetrator intentionally sends or gives a sexual image to another person, and
- without that person's consent or without a reasonable belief in that person's consent, and
- either of the following two conditions are met:

Condition 1

- The perpetrator intends that the victim will look at the image and that doing so will cause humiliation, alarm or distress.

Condition 2

- The perpetrator's purpose is to obtain sexual gratification, and
- he or she is reckless as to whether the victim is humiliated, alarmed or distressed.

The recipient of the image does not have to have looked at the image for the offence to be made out.

3.9 For the purposes of the offence, a sexual image means a photograph or film of any person engaging in sexual activity or of any person's genitals. It is not the intention that a drawing or an animated film will be caught by the provisions. References to a photograph or film include an image made by computer graphics, or in any other way, which appears to be a photograph or film or; a copy of a photograph, a film or an image. Data stored by any means which is capable of conversion into a photograph or film is also included.

3.10 The offence covers all possible means of ‘sending or giving’ and ensures that, with advances in technology, should the means of sending an unwanted sexual image change over the years, the provision is also future proofed. The provision states:

(7) References to sending or giving such a photograph or film to another person include, in particular—

- (a) sending it to another person by any means, electronically or otherwise,
- (b) showing it to another person, and
- (c) placing it for a particular person to find.

Recklessness

3.11 The inclusion of recklessness in the offences is to help minimise the risk of over-criminalisation, particularly of the young and vulnerable who have not fully thought through the consequences of their actions.

3.12 The general definition of recklessness as applied to law is:

“A person acts recklessly with respect to – (i) a circumstance when he is aware of a risk that it exists or will exist; (ii) a result when he is aware of a risk that it will occur; and it is, in the circumstances known to him, unreasonable to take the risk.”

3.13 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.

3.14 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.

3.15 To illustrate how this might work in practice, provided below is an extract from the Law Commission Report on [intimate image abuse](#).

‘Recklessness requires proof of an awareness of the risk of a result coupled with the risk being unreasonable to take. Importantly, this would cover... cases where a stranger on public transport sends a relevant image; few adults would be unaware of the risk of harmful consequences when sending genital images to strangers, and it would seem highly unlikely that a defendant could run successfully an argument that it was nonetheless reasonable to take such a risk. It would likely also avoid criminalising those instances where someone sent a message uncertain of whether there was consent but where they genuinely believed that no harm would result (such as a loving relationship) or

where, through lack of maturity, they were entirely unaware of such a risk (such as, perhaps, with youths).'

Age of Criminal Responsibility

3.16 The minimum age of criminal responsibility is the lowest age at which a person can be arrested and charged with committing a crime. In Northern Ireland, this is currently set at 10 years of age.

Penalties

3.17 The penalties for offences committed under Articles 71A, 71B and 72A 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.

Public Protection Sentences

3.18 Where a perpetrator is convicted on indictment of any of the above offences and where the court considers that he/she poses a risk of serious sexual harm from the commission of further specified offences (i.e. offences specified in [Part 2 of Schedule 2](#) to the Criminal Justice (Northern Ireland) Order 2008, the court must impose an extended custodial sentence, as provided for in [Article 14](#) of that Order. Under an extended custodial sentence, the court sets a custodial period and an extended licence period. The prisoner will be considered for release, by the Parole Commissioners, at the halfway point of the custodial term imposed by the court. If not considered suitable for release at that point, the prisoner can, where considered necessary for the protection of the public, be kept in custody for the remainder of the custodial period. On release, the offender will be on licence for an extended period of up to eight years.

Sex Offender Notification Requirements

3.19 A perpetrator convicted of any of the above offences, *but only where sexual gratification is proven*, will be subject to notification requirements.

3.20 Failure to comply with notification requirements, without reasonable excuse, is a criminal offence punishable on summary conviction by a period of imprisonment of up to six months or a fine not exceeding the statutory maximum, or both. Conviction on indictment carries a term of imprisonment not exceeding five years.

3.21 Sex offender notification requirements (commonly referred to as 'the sex offenders register') are provided at [Part 2](#) of the Sexual Offences Act 2003 (the 2003 Act) and are an automatic requirement for offenders who receive a conviction or a caution for a sexual offence specified in [Schedule 3](#) or [Schedule 5](#) to the 2003 Act. They form an essential part of risk management and provide an invaluable tool to

public protection authorities in helping to manage the risk of re-offending. They are managed consistently and on a cross-UK wide basis and enable risk management authorities, such as the police, to know the whereabouts of relevant offenders and to respond as quickly as possible with any relevant intervention required.

3.22 A registered sex offender (RSO) is required to provide the police with specified information including: name, address, date of birth, national insurance number, any foreign travel planned, residence in a household with a child under the age of 18, when they intend to be absent from their home address for a period of more than three days, their bank account and credit card details, and information about their passports or other identity documents. This must be done annually and whenever their details change. Those of no fixed abode must notify weekly.

3.23 RSOs in Northern Ireland are eligible for management under the multi-agency public protection arrangements (PPANI) and can be made the subject of a civil prevention order such as a Sexual Offences Prevention Order (SOPO) which is another valuable tool used to manage the risk of sexual harm a relevant offender presents in the community.

3.24 Provision for the SOPO is included at [section 104](#) of the UK-wide Sexual Offences Act 2003. It is designed to protect the public from the risk of serious sexual harm by placing tailored conditions or prohibitions on an offender's behaviour. The order also includes the requirement to notify (which would apply where an offender is no longer subject to the requirements as automatically required with respect their offence). Relevant offences which qualify for a SOPO application are contained within Schedule 3 (and 5) to the 2003 Act.

3.25 As the offences detailed above are listed at Schedule 3, anyone convicted for one of these would qualify for a SOPO, where sexual gratification is proven. A court can make a SOPO, either on application by the Chief Constable, or on conviction.

3.26 Breach of a SOPO, or an interim SOPO, without reasonable excuse, is a criminal offence punishable on summary conviction by a period of imprisonment up to six months or a fine not exceeding the statutory maximum, or both. Conviction on indictment carries a term of imprisonment not exceeding five years.

3.27 Two further civil prevention orders are available: a Foreign Travel Order or a Risk of Sexual Harm Order. These are provided for at [section 114](#) and [section 123](#) of the 2003 Act, respectively.

4. Proposals to make it an offence to create, or request the creation of, a sexually explicit deepfake image

4.1 The Department is proposing to legislate to criminalise four offending behaviours related to creating a sexually explicit deepfake image as follows:

1. Intentionally *creating* a sexually explicit deepfake image of an adult, without consent, or a reasonable belief in consent, with the intention of causing humiliation, alarm or distress to the person depicted in the image.
2. Intentionally *creating* a sexually explicit deepfake image of an adult, without consent, or a reasonable belief in consent, for the purposes of sexual gratification.
3. Intentionally *requesting the creation* of 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.
4. Intentionally *requesting the creation* of a sexually explicit deepfake image, without consent, or a reasonable belief in consent, for the purposes of sexual gratification.

4.2 It is proposed that these behaviours will be dealt as hybrid offences. As previously stated, a hybrid offence is an offence which can be tried in the magistrates' court or in the Crown Court. The decision on where the case is tried is made by the Public Prosecution Service (PPS) based on the seriousness of the offence. More serious cases are sent to the Crown Court.

4.3 [The 'new voyeurism': criminalizing the creation of 'deepfake porn'](#), a recent paper by Professor McGlynn, Law School, Durham University, considers the harms caused by the creation of these images, even when the victim is unaware that such an image has been created. She sets her consideration in the context of offences against voyeurism arguing that, as with conventional voyeurism, the creation of a sexually explicit deepfake image is *'inherently and intrinsically wrong, no matter the reason behind its creation or the consequences experienced. It is a non-consensual act of a sexual nature, infringing an individual's fundamental rights to privacy, dignity and sexual autonomy'*.

4.4 The Department therefore considers that a hybrid offence should be made available in line with the Northern Ireland voyeurism offences referenced previously. Such an approach provides the ability to reflect the varying levels of seriousness of the creation offence and allows for the prolific offender, who may be found with numerous images on a device and whose propensity for this behaviour demonstrates a significant risk of sexual harm, to be dealt with appropriately by the courts. For example, the man who was convicted of plotting to rape and kidnap Holly Willoughby was found to have had 200 deepfake pornographic images and videos of

her at his home. There is a risk that this technology will increasingly be seen in real-life cases of stalking and sexual abuse¹³.

Motivations

4.5 To ensure that these offences are an appropriate fit within the legislative framework and to ensure the effective management of those who pose a risk of sexual harm, the motivation of causing humiliation, alarm or distress and the sexual gratification motivation are included in the offences. Where the sexual gratification motivation is proven, the offender can be made subject to notification requirements. It is considered important to distinguish this type of offending behaviour from the that relevant to causing humiliation, alarm or distress to enable the effective management of risk from further sexual offending.

4.6 During the passage of the then Justice (Sexual Offences and Trafficking Victims) Bill through the Assembly in the last political mandate, concerns were raised that the inclusion of motivations in an offence makes a successful conviction more difficult to achieve. Particular concerns were raised in relation to proving the sexual gratification motivation. However, when giving evidence to the Committee for Justice on the provisions in the Bill, the PPS made clear that it is well used to proving motivations to the court.

4.7 Concerns were also raised that a defendant could use a defence that 'it was done as a joke, a prank'. Such a defence is self-defeating – if it is done as a joke then the motivation of humiliation, alarm or distress is met.

Recklessness

4.8 The Department is also proposing the inclusion of a recklessness element in the offences as referenced in paragraphs 3.11 to 3.15. This will guard against over-criminalisation, particularly of the young and vulnerable who may not have thought through the consequences of their actions.

Penalties

4.9 The proposal is that the following penalties should apply as these are considered in keeping with penalties currently available for similar behaviours within the 2008 Order:

- 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.

Sex Offender Risk Management

4.10 Where the offence is proven to have been committed for the purposes of sexual gratification, the offender can be brought within scope of the sex offender

¹³ <https://www.bbc.co.uk/sounds/play/m002d8wf?partner=uk.co.bbc&origin=share-mobile>

notification requirements, the public protection sentences as well as related civil prevention orders as referenced above.

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The Department is seeking views on the following questions:

Q.1 Do you agree with the proposal to legislate to criminalise 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 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?

- Yes
- No

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

5. Proposals to make it an offence to share, or threaten to share, a sexually explicit deepfake image

5.1 The Department is proposing to legislate to criminalise three offending behaviours related to sharing, or threatening to share, a sexually explicit deepfake image as follows:

1. Intentionally sharing a sexually explicit deepfake image of an adult, without consent, or a reasonable belief in consent, with the intention of causing humiliation, alarm or distress to the person depicted in the image.
2. Intentionally sharing a sexually explicit deepfake image of an adult, without consent, or a reasonable belief in consent, for the purposes of sexual gratification.
3. Threatening to share a sexually explicit deepfake image of an adult with the intent to cause fear or distress to person depicted in the image.

It is proposed that these offences will be dealt with as hybrid offences. As previously stated, a hybrid offence is an offence which can be tried in the magistrates' court or in the Crown Court. The decision on where the case is tried is made by the PPS based on the seriousness of the offence. The more serious cases are sent to the Crown Court.

Motivations

5.2 To ensure that these offences are an appropriate fit within the legislative framework and to ensure the effective management of those who pose a risk of sexual harm, the motivation of causing humiliation, alarm or distress and the sexual gratification motivation are proposed for inclusion in the sharing offences. Where the sexual gratification motivation is proven, the offender will be made subject to risk management measures such as the sex offender notification requirements. The intent to cause fear or distress is proposed for inclusion in the 'threats to share' offence.

Recklessness

5.3 The Department is also proposing the inclusion of a recklessness element in the offences as referenced in paragraphs 3.11 to 3.15. This will guard against over-criminalisation, particularly of the young and vulnerable who may not have thought through the consequences of their actions.

Penalties

5.4 The proposal is that the following penalties should apply, as these are considered in keeping with penalties currently available for similar behaviours within the 2008 Order:

- 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.

The Department is seeking views on the following questions:

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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 image of an adult?

- 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?

- Yes
- No

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

6. Definition of sexually explicit deepfake images for the purposes of the proposed offences

6.1 Other jurisdictions in the UK and Ireland have provided varying terms to define sexually explicit deepfake images.

England and Wales

6.2 The UK Government uses the term ‘purported intimate image’ in its creation offences. This sits appropriately within its existing legislative framework as contained in the [sections 66A-66D](#) of the Sexual Offences Act 2003, which provide for offences of sharing or threatening to share an intimate image or film. Section 66D further defines intimate photograph or film as where the photograph or film shows, or appears to show:

- the person participating or engaging in an act which a reasonable person would consider to be a sexual act,
- the person doing a thing which a reasonable person would consider to be sexual,
- all or part of the person’s exposed genitals, buttocks or breasts,
- the person in an act of urination or defecation, or
- the person carrying out an act of personal care associated with the person’s urination, defecation or genital or anal discharge.

Scotland

6.3 Scotland does not criminalise the creation, or requesting the creation of, deepfake images. However, the sharing of these images will be captured under existing legislation which makes it an offence to disclose or threaten to disclose a photograph or film which shows another person in an ‘intimate situation’. This term is further defined to provide that the person is in an intimate situation if:

- the person is engaging or participating in, or present during, an act which –
 - a reasonable person would consider to be a sexual act, and
 - is not of a kind ordinarily done in public, or
- the person’s genitals, buttocks or breasts are exposed or covered only with underwear.

6.4 ‘Film’ means a moving image in any form, whether or not the image has been altered in any way, that was originally captured by making a recording, on any medium, from which a moving image may be produced, and includes a copy of the image,

‘Photograph’ means a still image in any form, whether or not the image has been altered in any way, that was originally captured by photography and includes a copy of the image.

Ireland

6.5 In Ireland, for the purposes of the offences in the [Harassment, Harmful Communications and Related Offences Act 2020](#) which criminalise the recording, distribution or publishing of an ‘intimate image’, this term means any visual

representation (including any accompanying sound or document) made by any means:

- of what is, or purports to be, the person's genitals, buttocks, or anal region, or the underwear covering these areas, or in the case of a female, her breasts,
- of the underwear covering them,
- in which the person is nude, or
- in which the person is engaged in sexual activity.

6.6 Wider jurisdictions have used various definitions designed to fit appropriately within their existing legislative frameworks.

Northern Ireland

6.7 In Northern Ireland, 'sexual image' is defined for the purposes of the cyberflashing offence only (paragraphs 3.6 to 3.10 refer). This definition provides that a sexual image means:

- a photograph or film of—
- any person engaging in a sexual activity, or
- any person's genitals.

6.8 'Photograph' includes the negative as well as the positive version. 'Film' means a moving image.

References to a photograph or film also include:

- an image, whether made by computer graphics or in any other way, which appears to be a photograph or film,
- a copy of a photograph, film or image, and
- data stored by any means which is capable of conversion into a photograph, film or image.

Definitions relating to sexually explicit deepfake images

6.9 For the purposes of the offences proposed in this paper, it is important that any definition in law captures all potential aspects of sexually explicit deepfake images. It is also important that any definition keeps pace with advancements in technology. For these reasons, the Department is not proposing a definition at this stage.

6.10 The Department would, however, welcome views on the definition that should be applied to sexually explicit deepfake images to ensure that all images of this type are captured by the proposed offences.