PARLIAMENTARY DEBATES

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Second Reading Committee

VOYEURISM (OFFENCES) (NO. 2) BILL

Monday 2 July 2018

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Friday 6 July 2018

The Committee consisted of the following Members:

Chair: Ms Karen Buck

† Caulfield, Maria *(Lewes)* (Con)
† Chalk, Alex *(Cheltenham)* (Con)
† Daby, Janet *(Lewisham East)* (Lab)
† Duffield, Rosie *(Canterbury)* (Lab)
† Frazer, Lucy *(Parliamentary Under-Secretary of State for Justice)*
† Hobhouse, Wera *(Bath)* (LD)
† Hollern, Kate *(Blackburn)* (Lab)
† Jones, Andrew *(Harrogate and Knaresborough)* (Con)
† Keegan, Gillian *(Chichester)* (Con)
† Knight, Julian *(Solihull)* (Con)
† Miller, Mrs Maria *(Basingstoke)* (Con)
† Milling, Amanda *(Cannock Chase)* (Con)
† Morden, Jessica *(Newport East)* (Lab)
† Qureshi, Yasmin *(Bolton South East)* (Lab)
† Robinson, Mary *(Cheadle)* (Con)
† Russell-Moyle, Lloyd *(Brighton, Kemptown)* (Lab/Co-op)
† Saville Roberts, Liz *(Dwyfor Meirionnydd)* (PC)
† Smith, Laura *(Crewe and Nantwich)* (Lab)
† Whately, Helen *(Faversham and Mid Kent)* (Con)

Gail Poulton, *Committee Clerk*

† attended the Committee

Second Reading Committee

Monday 2 July 2018

[Ms Karen Buck *in the Chair*]

Voyeurism (Offences) (No. 2) Bill

4.30 pm

The Chair: Before we begin, I shall spend a moment outlining the procedure for this Second Reading Committee, because it an uncommon type of Committee.

The Committee is charged with recommending to the House whether the Bill ought to be read a Second time. Debate in Committee replaces a debate on Second Reading in the House so, after the Committee has made its recommendation, the question on Second Reading in the House will be decided without further debate.

The Second Reading rules governing a debate in the House apply in Committee so that, in particular, Members may speak only once, other than by leave of the Committee or through interventions. I now call the Minister to move the motion.

4.31 pm

The Parliamentary Under-Secretary of State for Justice (Lucy Frazer): I beg to move,

That the Committee recommends that the Voyeurism (Offences) (No. 2) Bill ought to be read a Second time.

It is a pleasure to serve under your chairmanship, Ms Buck.

In my short time as an MP, one thing has struck me most: the ability of an individual MP who cares deeply about an issue to have an impact on people's lives for the better. I therefore start by acknowledging the work of the hon. Member for Bath in campaigning tirelessly to ensure that a Bill on upskirting, which is now the Bill this Committee is considering, becomes law. We are here because of her tenacity, and it is to her credit that such an inappropriate act will become illegal.

I also acknowledge the work of two incredible people, Gina Martin and her lawyer Ryan Whelan. As MPs, we have the levers and tools to make change, but for members of the public it is much more difficult, and I very much doubt that we would be discussing the Bill's Second Reading today without the work of Gina and Ryan. I thank them for all their hard work in highlighting the issue.

I also thank Members in all parts of the House for the progress that has been made. The Labour party, Plaid Cymru and the Scottish National party have all been very supportive of the Bill and have helped to ensure that it has progressed swiftly through the House. I am grateful for the constructive way in which the hon. Members for Bolton South East and for Dwyfor Meirionnydd have approached the legislation. The Bill has only been possible because of cross-party support. We all entered Parliament to bring about positive change, and I am proud to be leading on a Bill that will protect women and that proceeds with the support of all parties. This is Parliament at its finest.

I shall set out briefly, first, what upskirting is; secondly, what measures there are to deal with it and why there is a gap in the law; thirdly, how we are bridging that gap and ensuring that there are the tools to punish offenders appropriately; and, finally, other important areas relating to sex offences that have been raised in wider public debate.

First, what is upskirting? It is the practice of taking a photograph up a person's skirt or clothes without their consent. Unfortunately, people are undertaking such activity across the country, from the assistant headteacher who upskirted his own pupils at a convent school to the vice-president of a ticketing company who collected more than 50,000 upskirted images for his own sexual satisfaction. We have to acknowledge that upskirting is taking place—indeed, online guides instruct others how upskirting can be done quickly and easily—and people affected by upskirting have variously described their experiences as "scarring", "an invasion", and "embarrassing and humiliating". One woman, who was on the tube with her parents when she was upskirted, said that it made her feel like she wanted to "peel off her skin" and "scrub it clean".

Secondly, we are tackling upskirting because there is a gap in the law that needs to be filled and can be filled quite simply. At the moment people can be prosecuted for upskirting through two offences, and successful prosecutions have taken place. The first possible route is through the common law offence of outraging public decency. However, under review that approach was found to be problematic, because it does not capture all the circumstances in which upskirting can happen. Convictions under the common law offence of outraging public decency require an act such as upskirting to happen in public where there is a reasonable chance of at least two other people witnessing it. Conversely, the action can also be caught under the existing offence of voyeurism but, again, there are limitations, as that act is illegal only if it takes place somewhere where there is a reasonable expectation of privacy. In certain circumstances someone is in neither a public nor a private place, and it follows that therefore the action would not be caught by the law. Worryingly, those places might include schools or workplaces.

Thirdly, how will we ensure that the offence is dealt with appropriately? It will be done in a number of ways. The Bill makes it an offence for a person to operate equipment beneath someone's clothing to observe, allow someone else to observe, or record an image of their genitals or buttocks, whether exposed or covered by underwear. We are ensuring that people carrying out the offence with different motivations will be caught by the Bill. There are different reasons for upskirting, and we have ensured that the Bill will capture that behaviour whether the motive is to obtain sexual gratification or to cause humiliation, distress or alarm to the victim.

Mrs Maria Miller (Basingstoke) (Con): The Minister is outlining the importance of the offence in great detail, and has talked about reasons why an individual might engage in upskirting. Another reason why someone might take upskirting photographs is financial gain, but the Bill does not capture that and there is concern in Scotland about whether that is an omission from the Bill. Will the Minister comment on that?

Lucy Frazer: That is an important point, which some people have raised: should photographers who use such photographs for financial gain be caught by the offence in the Bill? It is possible that they, too, will be caught, because the Bill specifies two purposes for which an offence can be committed and only one is needed to satisfy the requirements of the Bill. Someone taking the action in question in the knowledge that it might cause distress, and with that intention in addition to financial gain, would be caught by the offence. It is also possible that photographers who sold photographs on to newspapers could be caught under the offence of outraging public decency, if the offence happened in a public place. They might be caught by section 4A of the Public Order Act 1986.

The Government want to ensure that we protect the public from future actions by those who commit the most serious sexual offences. Those who commit a sufficiently serious act for sexual gratification will be placed on the sex offenders register. That is right because it gives the police a tool for the management of sex offenders in the community, making it possible to put restrictions on their movements if they may pose a continued risk to others.

Importantly, those who engage in upskirting, but not for sexual gratification, and who are not the most serious sex offenders and do not need to be monitored by the police as posing a sexual risk to others, will not face the consequences of being on the register. Being on the sex offenders register has serious implications for a person's life, so the Bill will not prejudice young people who undertake the act in question but not for sexual motives. We need to protect victims, but we should not stigmatise young offenders unnecessarily. We are ensuring that the punishment fits the severity of the crime. As with other sex offences, the punishment may include up to two years' imprisonment, and there will be anonymity for victims.

We are bringing in the Bill with speed, to fill a gap in the law that needs to be rectified. However, I want to say a few words about other types of sexual wrongdoing, which have been raised in the House and among the public in the past few weeks. Undoubtedly, to keep the law up to date with the prevalence of such issues, and with technology, we should continue to keep other areas of the law under review. I am very sympathetic to many points raised about that by hon. Members on both sides of the House. Many fair points have been made, but often there are no universally accepted solutions, or the relevant issues are complex and not self-contained.

The Government continue to be alive to the fact that new technology may facilitate the carrying out of degrading acts, but we are determined to get the Bill on the statute book as quickly as possible.

We have identified a gap that needs to be filled, and I know colleagues on both sides of the House want to work together in that endeavour. I and other Ministers in my Department will be very happy to sit down with any Member of the House to discuss any similar matter, but I will urge the House to pass this Bill.

It is just 17 days since the private Member's Bill in the name of the hon. Member for Bath failed to progress through the House. I commend the cross-party support and liaison that has allowed this Bill to be brought forward. I am grateful to the hon. Lady for her endeavour and commitment to get it on the statute book as soon as possible, and I commend the Bill to the Committee.

4.41 pm

Yasmin Qureshi (Bolton South East) (Lab): It is a pleasure to serve under your chairmanship, Ms Buck.

I begin by congratulating the campaigners, in particular Gina Martin, who has shone a spotlight on this important issue, and the hon. Member for Bath, who has supported those campaigners and worked so diligently on this issue. I welcome the Government's decision to finally agree to introduce this legislation, but the delay in getting here has been wholly unnecessary and frankly scandalous. It has been almost a year since the shadow Justice Secretary first raised it with the Minister and demanded new legislation. It has taken the Government's being forcibly shamed into acting after the outrageous actions of a Tory Member of Parliament, who acted to derail a much needed and universally supported change in the law.

Let us be clear: upskirting is a depraved violation of privacy. Failure to change the law to reflect that represents complicity with those committing these appalling crimes. It is shocking that in England and Wales there is no specific criminal offence to cover this offence and that instead it must be prosecuted under the more general offences of outraging public decency or voyeurism, especially when we know that it can be difficult to satisfy the requirements of those more general offences, which in some cases means that prosecutions simply cannot be brought.

For example, the law as it stands means that the focus of the offence is on protecting the public from potential exposure to lewd, obscene or disgusting acts, rather than protecting the individual victim. Some people have been prosecuted for upskirting on the basis of outraging public decency. That is absurd, as it should not matter how public it is. The law should focus on the individual victims and the crime committed against them. It is their body that is being taken advantage of without their consent, and their privacy that is being violated.

A number of cases highlight the many failings of the current laws. In 2007 Simon Hamilton, a barrister, was convicted after secretly filming up the skirts of women in supermarkets. He was able to appeal on the basis that, as none of the victims had been aware of the filming and no one else had seen it, public decency could not have been outraged. There was also the case of Guy Knight, a former chartered accountant, who took photographs up women's skirts on trains over a period of five months while commuting to work. He was caught after suspicious passengers reported him to the police. More than 200 illicit images were found on his phone and laptop, and 10 of the women in the pictures were traced by the police. None of them were aware that they had been photographed. Last year, Guy Knight was fined £500 and ordered to pay £500 costs. The detective constable in the case, Bob Cager, said that he was

"extremely disappointed. We thought he would have received a heavier sentence."

It is no wonder that it can be extremely distressing for women who have become aware of such pictures being taken of them. Indeed, the sense of violation can be the same as with other forms of sexual assault. As a former prosecutor and barrister, the fact that this is not a criminal offence in all circumstances baffles me as much as it horrifies me. I understand that upskirting is a crime of the modern era, but in Scotland upskirting has been an offence since 2009. There is simply no excuse for delay on this issue.

Alex Chalk (Cheltenham) (Con): It is a matter of great regret that the hon. Lady is taking such a partisan approach. In 2009 a Labour Government were in power in the United Kingdom, and they did absolutely nothing. Will she take this opportunity to come together with Members across the House and celebrate that swift movement has been made to right some wrongs?

Yasmin Qureshi: I will come on to our working together collectively. As the Minister is aware, we do not object or seek to amend any part of the Bill. However, for the last eight years we have had a Conservative Government, and more specifically the Minister mentioned this problem last year. In any event, as I said, it baffles me that this is not a criminal offence. Of course, we will support it becoming one, but we cannot pretend it has not been ignored for so many years. That would not do justice to the victims, witnesses and other people affected.

Women have increasingly been speaking up, with one of the first being Gina Martin, who founded the campaign. Less than a year ago, she was at a festival in London with her sister when she was horrified to notice that the man behind her had taken a photo up her skirt. Shocked and distressed, she sought help from the police, but the law was not sufficient to ensure that they could help her. That is why a change in the law is required. Indeed, Dame Vera Baird, QC, from the Association of Police and Crime Commissioners, said that the current legislation

"is far from clear as there is no specific offence".

We must remember that many women right across the UK are being affected. It can happen to women on public transport, in a park, at a concert or even just on a walk along a busy street, without the victim even realising that a photo has been taken.

In an article in *The Guardian*, Emine Saner tells the story of Lucy Parkinson, then 21 years old, who was shopping in Ealing, west London, when she heard an altercation behind her between two men. She said:

"I was crossing the road, and got stuck with a pack of other people at a traffic island…I was wearing a long-sleeved blouse and a white knee-length skirt."

One man ran off and the other told her he had

"chased him away because he had seen him 'upskirting' me…I hadn't even noticed it happening…and that's the most unsettling part—in a city, you just don't notice physical proximity to strangers. It could have happened a dozen other times too, for all I know."

She continued:

"I felt unsettled, targeted, and helpless; there was nothing that could be done about what had happened, and nothing I could do to prevent it from happening again."

It is impossible to judge how many women may have been victims of upskirting, although a quick internet search will bring up hundreds of sites and thousands of images. There may be millions more pictures on phones and laptops, taken on the streets, on escalators in shopping centres, on trains, at bus stops and in supermarkets, nightclubs and other places, that may or may not have been shared.

The Minister is aware, as Members will be, that there are endless web forums where amateur upskirters can exchange tips on how to get the best pictures. One was posted by a man who had made a "cam-bag"—a holdall with a specially made pocket with a hole for a digital video camera lens. The post says:

"Never forget to shoot their faces before or after to know which girls the ass belongs to...After the first…asses, they look very similar and you lose most of the fun. After upskirting them, either step back and wait for them to turn or step by them and shoot directly sidewise."

Another poster on the forum said that he operates

"mostly at theme parks and tourist hotspots, or really anywhere that draws a large crowd of spectators and cameras".

He finds

"an attractive young lady, preferably a teen for my tastes, and then I evaluate the situation."

He would sit down next to a young woman and surreptitiously film her while pretending to fumble for new camera batteries in his bag.

On another site, one man posted:

"I've been upskirting chicks, mostly at clubs, for almost two years. The club I go to is a great spot, real crowded, strobe lights going, loud music, so no one notices me sitting near the edge of the dance floor and if a woman in a skirt ends up by me I stick the cam under and snap."

Those stories makes one aware of how shocking and vile this behaviour is, and I am pleased that—eventually—it is to be outlawed. Again, we must thank the campaigners and hon. Members who have been pushing for that.

In conclusion, the scope for people taking upskirt photographs has clearly increased with the development of mobile phone technology. A gap in the law has allowed this to happen, and I am proud that for some time we have backed the campaign to bring this to legislation. I have a couple of technical questions, however. First, the legislation for this offence as it stands effectively has two limbs. One is that the act is done for sexual gratification. The other is that it could lead to harassment or distress. We are told that if someone is convicted under the sexual gratification limb, that can lead to their being put on the sexual offences register.

I have some practical questions. Would the prosecutors have to charge these things as two separate offences, counts, indictments or charges, or is it up to the justices in the magistrates court and the jury in the Crown court to decide which limb to convict the defendant on? Can the prosecutors draft it as one count with two parts? If a perpetrator is convicted on the first limb, but evidence shows that what has happened falls under the second, will the prosecutor be able automatically to amend the indictment and put a new charge in, or will they have to seek permission from the justices to do that?

Those are legal and technical questions, but they are important, because when a case comes before a prosecutor, they need to know whether to charge with one offence, depending on the circumstances of the case, or to charge with both and let the jury, in the Crown court, or the justices, in the magistrates court, know. Perhaps we can have some clarity on that.

4.52 pm

Wera Hobhouse (Bath) (LD): It is a pleasure to serve under your chairmanship, Ms Buck. I thank everyone for being here today. It is testament to the importance of the issue that we have all ensured that this, my original Bill, has been introduced by the Government and brought through the House to Second Reading so quickly.

Over the past couple of weeks, I have met many members of the Committee to ensure not only that we

can change the law as quickly as possible, but that this Bill is as good as it can be. As a Committee, when we go forward with examining the Bill, we must ensure that throughout the process the victims of the crime remain at the forefront of our considerations. I have met with victims over the past few months, such as Gina Martin, who started the campaign last summer. Their bravery has ensured that this crime will stop happening and their campaign has been an inspiration to us all. Without their selflessness and hard work none of us would be here today. For that reason, it is important that we pass the Bill as quickly and effectively as possible.

By ensuring that upskirting becomes a sexual offence, we are sending a clear message that it will not be tolerated. It is a vile practice that has no place in society. If I am honest, I do not know why the law in England and Wales was not changed earlier. This Bill, however, does more than just make upskirting a specific sexual offence. The national debate the campaign has provoked will hopefully lead society to talk more widely about consent. This vile act can happen to anyone, but if we look at the victims, it is clear that it is predominantly an issue of how we, as a society, view women and their autonomy over their own bodies.

Since I have been campaigning to make upskirting a specific offence, I have heard from various groups and individuals who had similar, awful experiences of a sexual nature, albeit not upskirting, which have also not been followed by prosecutions and where there seems to be a gap in the law. The fight to protect women from violent practices does not end here. As the original proposer of the Bill, I recognise that this is not a silver bullet. I will not ignore the plight of other women now that this Bill is passing through Parliament. We must use this opportunity to raise the inconsistency of the law, as it stands, against sexual offences. Currently, for example, revenge pornography is not considered a sexual offence, but, like upskirting, it is done without consent and is humiliating and incredibly distressing to victims. I urge the Government to undertake a review of other sexual offences.

Throughout my work on the Bill, I have been incredibly grateful for support from the Government and colleagues across the House. It has been rewarding to work together so effectively on it, and I hope that we shall continue to do so to make sure that the law protects women and girls in the UK. Of course, I support giving the Bill a Second Reading.

4.55 pm

Mrs Miller: After being in the House for 13 years I thought that the time for firsts was over, but this is the first time I have ever been on a Second Reading Committee, and it is great to be here, Ms Buck, and to serve under your chairmanship.

The Bill should most definitely be read a Second time. I pay tribute to the hon. Member for Bath for her tenacity in securing support from the Government for the Bill, and to the Minister for listening, which is sometimes a difficult thing to do. I have listened to what she has said today about the importance she places on clarity in the law. It is sometimes too easy to be convinced by officials that the law is sufficient and that change is not needed. However, I pay tribute to the Minister, who did not accept that. With the support of the Prime Minister, who also was not so easily convinced, we are here to debate a long overdue new law.

I want to pause to reflect on the Minister's response to my earlier intervention, when I raised the possibility of upskirting being done for a profit motive. She specified many existing laws that would cover it—and that might be great for someone who is, like her, an eminent QC, who understands it, but I urge her to think about the problems that the police and victims face when the law is not as clear as it needs to be.

Today we are debating public sexual harassment, non-consensual sexual behaviour and, in particular, issues to do with image-based sexual abuse. We must be clear about it: the law is wanting in that area. The hon. Member for Bath talked about the need to address inconsistencies, and the importance of fighting to the end the vile practices that are apparent. I agree that upskirting is important, but there is a need for the law to deal with far more practices.

We debated the issue of revenge pornography in the House in 2014, and it was unclear whether it was against the law. The then Minister, now the Under-Secretary of State for Northern Ireland, my hon. Friend the Member for North West Cambridgeshire (Mr Vara), recited a long list of different legal provisions that could catch revenge pornography; but for victims the reality was that that was all for naught. The police did not understand it; the courts did not seem to understand how those laws worked; and hundreds if not thousands of victims had to endure revenge pornography—the posting of intimate abuses online—without any redress. I am pleased that we are dealing with the present issue, and that the Government have dealt with revenge pornography, by legislating.

I am afraid, however, that we shall be back here again shortly to debate the fact that the law does not cover other ways in which people can be abused online. One issue is deepfake technology. Readily available software packages can be used to swap other faces for those of the actors in pornographic films. At the moment it is being done with the faces of other well-known actors, but what is to stop it happening with the faces of well-known politicians, or a person's ex, or someone they know, or someone they saw in the street and happened to take a picture of? Today we are dealing with upskirting, but the Government need to take a long, hard look at image-based abuse, because more problems are coming down the line.

When I campaigned to make revenge pornography a crime, I was told by the Crown Prosecution Service—I remember it well—that there was not sufficient need and that only a handful of cases came across its desk. Others said that the victims were to blame for the photos being taken in the first place. Fortunately, the Government knew better and acted, and more than 500 crimes a year are now successfully prosecuted, although hundreds more could be, as I will discuss later.

Although we are congratulating ourselves on this legislation today, we need to ensure that we undertake a much broader review of sexual image-based abuse, and that we do it quickly. That will ensure that we future-proof the law, that we clearly set out to people who seek to undertake such appalling acts that they are against the law, and that we give the victims involved the redress that they deserve in the criminal system.

[Mrs Miller]

Secondly, in this broad debate, I ask the Minister to consider, in parallel with her consideration of this law, the changing nature of the offences that are captured by non-consensual sexual behaviour and how they are dealt with in law. There are some grave inconsistencies that appear to show disinterest in the victims or that demonstrate, at most, a lack of understanding of perpetrators' motives when it comes to undertaking such sexual image-based abuse. For instance, flashing in a mac is a sex offence and is notifiable if the intent is to cause harm or distress, yet creating deepfake porn, where someone posts on a website a picture that has the face of an individual appearing to take part in pornography, is simple harassment. It is difficult to understand how the law can come to that conclusion, when we take into the account the impact on a victim of seeing a flasher versus the impact on a victim who has had their image put into a pornographic scene or video.

Where sexual privacy is violated, it is difficult to see why it is not categorised as a sex offence. Those issues, whether upskirting, revenge pornography or deepfake porn, are not just privacy harms; they are non-consensual sexual activity that is often very public, and they are not being sufficiently captured in law. I hope that the Minister will confirm that she will consider what has been said on the issue when she reviews the victims strategy in the coming months.

The sort of sexual harassment that the Bill highlights is important for society to think about more generally. I am delighted that, alongside the progress of the Bill, the Government are progressing another important element, which is education. If there is to be a real change in attitudes towards women and a world where upskirting is no more likely to take place than smoking on a train, it will be because we have changed people's attitudes towards that behaviour. Of course, the impact of upskirting is even more devastating than that of smoking. I hope that in her response, the Minister may be able to tell us how she is working on, or how the Government will take forward, sex and relationship education, which is being made mandatory for all school-age children. That is an important achievement of this Government after 17 years of prevarication under successive Governments. That implementation could also further the cause of ensuring that people understand why upskirting is wrong, as well as it being wrong in the law.

As I have said, I support the Bill wholeheartedly, but it is clear that amendments could make it even stronger. I thank Professor Clare McGlynn, who has been extremely helpful in advising a number of MPs on how we might be able to strengthen the law in Committee, particularly by closing some of the gaps that are emerging in the Scottish law, under which upskirting is already a crime. That crime is set out as in the Bill before us, yet the Scots are finding that concerns are emerging, because the protection afforded by the way the Bill is currently drafted can be seen as somewhat patchy.

The first issue, which I raised in my intervention, is about those who may seek financial gain from taking upskirt photographs or those who do it simply for a "laugh". I put that in inverted commas, because this cannot in any way be seen as a laughing matter, even though some will see the images in that way. They do not see themselves as causing immense stress or distress to the victim, and they do not seek sexual gratification from the images. Surely we should make the law incredibly clear and not leave it to our police forces and our courts to try to decipher what Parliament was trying to put in place.

A second issue on which I will seek amendments in Committee also came up in Scotland when a very similar law was passed. It should also be unlawful for images to be distributed, so we should outlaw the distribution of upskirt images clearly and succinctly in the Bill. The Scots had to pass an additional amendment to the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 to ensure that that was addressed, and it is not the same as the amendment that we passed in this country in respect of revenge pornography; it is much broader.

The third objective is to ensure that all upskirting against under-18s is a notifiable sex offence. I do not think that we should leave the Bill as it is at the moment, whereby it is notifiable, when the victim is under 18, only in certain circumstances.

I am very pleased to say that the idea of the amendments that I have described has already gained quite considerable support.

Wera Hobhouse: I have been considering the proposed amendments and the Minister's explanation about not making this an offence that immediately warrants someone going on the sex offenders register. We are talking about the victim being under 18, but what about when the perpetrator is under 18? The right hon. Member for Basingstoke does not make that clear in her proposed amendments. In discussions with the Minister, I have agreed that having a large number of young people on the sex offenders register might not be a desirable outcome from the Bill.

Mrs Miller: I am not sure that the Bill addresses that issue. I am not a lawyer and certainly not an eminent QC, so the Minister may want to stop me if I am wrong, but I think that those sorts of issues are dealt with in the usual ways by the CPS, which decides whether to bring prosecutions. Like the hon. Lady, my understanding is that the CPS already takes the view that people should not be criminalised if that is not sensible. The issue is not addressed in this Bill—I am sure the Minister will correct me if I am wrong.

The amendments that I have talked about would strengthen the Bill so that all upskirting was a criminal offence. There would be no lack of clarity and no need to invoke other legislation. The Minister would get the clarity that she was setting out the need for—the Prime Minister has also set that out in the discussions on this law in recent weeks. We would ensure that the distribution of these images was against the law. At the moment that may not be the case, because not all distribution would fall under the revenge pornography laws or similar provisions. We would ensure that in all cases in which victims were under the age of 18, upskirting would be a notifiable sex offence, which would simply bring things in line with other parts of the Sexual Offences Act 2003.

I am pleased to say that Members from across the House support those amendments, including the hon. Member for Birmingham, Yardley (Jess Phillips), my hon. Friend the Member for Totnes (Dr Wollaston) and my right hon. Friends the Members for Meriden (Dame

Caroline Spelman) and for Loughborough (Nicky Morgan). There is also my fellow Committee member, the hon. Member for Dwyfor Meirionnydd, who has indicated that she is prepared to support amendments to make sure that we have the clarity in our law that Scotland is discovering it does not have. The Bill very much replicates what has gone on north of the border.

In conclusion, I say again that I welcome the Bill. It underlines the need for a more comprehensive look at how we tackle these sorts of offences, perhaps in the same way as the New South Wales Government have done with their Crimes Amendment (Intimate Images) Act 2017, which criminalises all intentional taking and distributing of a private sexual image without consent. That is a catch-all for the many things that we struggle with at the moment, and it will hopefully be a catch-all for things that are yet to come. Education and cultural change is a huge part of this and needs to go hand in hand with changes in the law. I hope that the Minister will today give Members reassurance that, while we are taking forward this important Bill, those other issues are being taken into account as well.

5.11 pm

Liz Saville Roberts (Dwyfor Meirionnydd) (PC): It is a pleasure to serve under your chairmanship, Ms Buck. I congratulate the campaigners, and also the hon. Member for Bath on her original Bill. I also thank the Government for introducing this Bill.

Back in 2016 I brought forward a ten-minute rule Bill that included measures such as those in the Bill, although it was unfortunately not possible to bring it through to a parliamentary conclusion. That ten-minute rule Bill drew attention to the complexity of the statutes that currently apply to sexual harassment, hate crime and digital technology, which inevitably results in inaction or inconsistency in the approach of the police and the courts. The Bill is a welcome step forward, but there is a need for a complete overhaul and review of sexual offences. I support the Bill moving forward on Second Reading.

A review of all non-consensual taking and sharing of private intimate sexual images, including threats and altered images, such as revenge porn and deepfake pornography, as well as further legislation to future-proof and modernise the law, would protect more victims in an age when the present legislation simply fails to reflect the prevalence of such offences, their impact on victims and the nature of technology and how it is moving ahead. The primary test for legislation is for it to be effective, so I will work with others to amend the Bill. I encourage colleagues who believe doing so might be beneficial to do the same. I believe that it can be strengthened if we consider motivation factors, notification requirements and the distribution of images.

First, the Bill would currently make upskirting an offence only when conducted for the purposes of sexual gratification or to humiliate, which requires further definition. As has been mentioned, the Bill does not criminalise upskirting for financial gain or where the motivation is to take images and to share them among a group of friends as a means of "group bonding". Instead of focusing on the motivation of the perpetrator, the Bill focuses on whether the victim's consent was received, regardless of the motivation. We know how much of an impact these offences have on victims.

Secondly, the Bill subjects the offender to notification requirements only if they committed the crime for sexual gratification and when certain age and sentencing requirements are met. That disregards the fact that taking an intimate photo of someone without his or her consent is, by nature, a sexual crime, so all offenders, whatever their motivation, should be subject to notification requirements if they meet the sentencing threshold. There might well be cause to look at the prosecution specifics, if necessary, to protect against the undue criminalisation of minors—that provision is present in other sexual offences legislation, if I understand correctly.

Finally, there is an absence of a specific provision covering the distribution of images, which means that the Bill fails to reflect the ubiquity of social media and the gravity of victims' suffering. There could be a situation in which taking an image for the purposes of sexual gratification would be illegal under the Bill, but sharing it with exactly the same motive would not be a criminal offence in itself. The Bill should therefore include an additional offence of non-consensual sharing of intimate images.

I reiterate that I am pleased that the Bill will improves the law by making upskirting an offence, but I would beg that, at the same time as reflecting the urgency of what we are all trying to do, we ensure that the law is robust and effective and will stand the test of time.

5.15 pm

Alex Chalk: It is a great pleasure to serve under your chairmanship, Ms Buck.

I will say a small number of things. First, I express credit where credit is due—it has already been done, but it bears repetition—to the hon. Member for Bath, to Gina Martin for her campaign and to the Minister, who has acted with great speed and decisiveness. To move so quickly is, if not unprecedented, certainly rare, and it is greatly to be welcomed.

I regret that the tone taken by the official Opposition spokesperson was so partisan, because the idea that the Labour party has been banging on about this since 2010 is simply untrue. Convention precludes me from going into any detail, but the first time the shadow Justice Secretary mentioned it was on 5 September 2017 following the campaign by Gina Martin, who should have the credit for the campaign. The first time the hon. Member for Bolton South East mentioned it was on 18 June 2018. I am afraid it is simply untrue to suggest that this has been a long-standing Labour campaign. The truth is that the blue touchpaper was lit by the campaigner Gina Martin, that the hon. Member for Bath moved quickly thereafter and that the Government then took up the cudgels.

The Bill strikes exactly the right balance. It is important to ensure that this pernicious conduct is properly outlawed, but also that the penalties are proportionate. Making it an either-way offence is a proportionate and appropriate step. A maximum of two years' imprisonment is also proportionate and appropriate, although we in this House must when we talk about a two-year maximum, or 24 months, that if someone pleads guilty the maximum sentence is effectively 16 months and the maximum amount of time they could spend in custody is eight months. We must recognise that, but none the less it seems to me that it is in keeping with sentences for other

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offences, not least harassment under the Protection from Harassment Act 1997 and parts of the Sexual Offences Act 2003.

On the more difficult issue of notification, which I anticipate the Government will have grappled with, the balance has again been correctly struck. An offender will qualify for the notification requirements only if the offence was committed for sexual gratification and the relevant condition was met. Where it is an adult offender, the relevant condition is that the victim is under 18, which makes perfect sense—even if it is a one-off case of an adult who, for sexual gratification, upskirts a 16-year-old, it seems to me that notification should follow—or that the offender has been

"sentenced to a term of imprisonment"

and meets various other qualifying elements. Again, that makes the point that it must be a serious incident before it triggers the notification requirements. That is a difficult balance to strike, but I am entirely confident that the Minister has struck the correct one.

Mrs Miller: I note that my hon. Friend is another eminently qualified barrister and I am not—I have never studied the law—but is he not a little bit more concerned about the impact on the victim, rather than always looking at the motivations of the perpetrator? Surely the impact on the victim will be the same regardless of whether this has taken place for sexual gratification or not.

Alex Chalk: My right hon. Friend is absolutely right; the victim must be at the heart of this. Lest we forget, that is the whole reason for having this Bill. However, my view is that the court can take into account the impact on the victim in deciding what sentence is imposed. The Bill will ensure the notification requirements are engaged only for offences where the impact on the victim has been so great as to warrant a significant sentence.

Where I do agree with my right hon. Friend is on the potential to criminalise an individual's motivation. I can well imagine circumstances where an individual goes to a festival, takes a whole load of photographs and says, "Look, I think this is disgusting stuff, but there's a market for it. I'm going to put it online and sell it online. Frankly, whether other people get gratification from it, I don't know. I certainly don't want to humiliate or distress these individuals; I'm in it for the money."

Suppose evidence to that effect emerged, such as an email that that individual had sent to the people who were going to upload those photographs to the internet. It would be rather odd if, in court, he was able to invoke by way of a defence the fact that his motivation had nothing to do with sexual gratification, because the email showed that he was not interested in that stuff, and that he had no interest in humiliating, alarming or distressing victims. If he were able to show that he was purely in it for the money, that would be a rather curious argument.

Lloyd Russell-Moyle (Brighton, Kemptown) (Lab/Co-op): The hon. Gentleman is making a strong argument, but would not the very fact of someone uploading such photographs to the internet or putting them in the public domain inevitably cause harm and distress, and would not anyone applying common sense understand that such an act causes harm and distress and therefore fulfils the requirements in the Bill? If it does not, I am genuinely interested to hear more, but I do not understand how it does not.

Alex Chalk: The hon. Gentleman raises an important point. Inevitably, it would turn on the evidence. Supposing such an act were prosecuted, the prosecutor would no doubt say, "We've got this email, which shows that this person's intention was purely to be paid £100 for these images that he got at the festival, but he must have known in passing them on that their value was in the fact that they would lead to distress or gratification, even if that was not his primary purpose but a residual purpose." Therefore, the prosecution should say, "Members of the jury, forget about that email. It's irrelevant. Use your common sense."

I suspect that, in the overwhelming majority of cases, the jury would exercise their common sense and justice would be done. My concern, however, is about whether that is really an argument we want to be having in front of a jury. If there were the potential to close that argument off, a number of judges and even jurors may welcome such clarity in the law.

I congratulate the Government and the individuals involved, including the hon. Member for Bath, on their timely, robust and proportionate approach.

5.22 pm

Helen Whately (Faversham and Mid Kent) (Con): It is a pleasure to serve under your chairmanship, Ms Buck, and to follow my hon. Friend the Member for Cheltenham, who effectively brought to life how things may play out in the courtroom.

I intend to speak briefly in support of the Bill. I remember being groped on the underground aged 18. It was over in a moment, but the memory of the experience lives on. I remember feeling violated and exploited. I remember the anger, the shock and the feeling of powerlessness as the man who did it just melted away into the crowds in the station. I remember the feeling of absolute helplessness, but I think about how much worse it would have been had it happened now and involved a camera, and had there been footage that could have been shared, disseminated and sold on the extraordinary scale we have heard about.

Like other Members, I praise the hon. Member for Bath for her work and Gina Martin for her campaign, which has brought so much attention to this issue. I also praise the Minister, who has clearly listened and taken swift action.

I welcome the thoughtfulness in the Minister's approach. She seeks a balance between effective action and clear penalties and not being too heavy-handed, particularly with young perpetrators of this offence. However, we still need to send a strong message to young people. We must bear in mind, for instance, the level of sexual harassment in schools, which I hear about particularly from sixth-formers. We have a generation who are growing up with phone cameras and, I am afraid to say, easy access to pornography online, and who face extraordinary sexual peer pressure on social media. Those things combine to create a toxic environment for young people.

In short, I welcome the Bill, both for its practical effect and for the message it sends about what is okay and what is not okay in our society.

5.24 pm

Yasmin Qureshi: With the leave of the Committee, I wish to speak again. I thank right hon. and hon. Members who have spoken today, especially the right hon. Member for Basingstoke, who went into the detail of some issues that perhaps need to be looked at generically. So many offences can occur in so many different ways as a result of modern technology. As has been suggested, perhaps there should be a proper review of such offences.

The Opposition support the Bill completely, and will not propose any amendments. Others may table amendments, but that is a matter for individual Members of Parliament. Again, I thank all Members who spoke today. They raised some important issues, which we hope Ministers will look at as the Bill makes its way through Parliament. Hopefully the Minister will also be able to deal with some of the practical legal questions I raised earlier.

5.26 pm

Lucy Frazer: With the leave of the Committee, I will answer a number of points that have been raised. First, the hon. Member for Bolton South East rightly mentioned some appropriate examples where there is a gap in the law. She mentioned that Scotland had acted more quickly. We must all remember that Scotland has different laws from us. The offence of outraging public decency, which has been available to some victims and under which some people have been successfully prosecuted here, is much narrower in Scotland so the gap was therefore significantly wider when they legislated.

The hon. Lady also suggested that there had been some delay in acting on our part. I am grateful for the intervention made by my hon. Friend the Member for Cheltenham, but I also draw the hon. Lady's attention to the fact that the previous Lord Chancellor wrote to the Home Office and the Attorney General when these issues were raised. As a result, the Home Office has been working with the College of Policing to develop police guidance on existing powers, including those under the outraging public decency offence, to tackle some cases of upskirting. The Attorney General has also spoken with the Director of Public Prosecutions and the Crown Prosecution Service, making it clear that all cases involving upskirting need to be considered carefully.

The hon. Lady also asked about the two limbs. Charging decisions are matters for the CPS, which is very used to looking at the evidence to see what charge is most appropriate in the circumstances of the offence; the CPS will do the same here.

We had excellent speeches from my hon. Friend the Member for Cheltenham, who brought his experience of criminal law to identify the right balance on the decision about the sex offenders register, and from my hon. Friend the Member for Faversham and Mid Kent, who bravely described her experience when she was much younger.

Wera Hobhouse: We want the Act to be a deterrent, so that these vile practices are eradicated from our society. For that to happen, we just need some successful prosecutions. I think the debate is about how we can ensure that prosecutions are as tight and successful as possible. Then it will act as a deterrent and hopefully very few people will even go that way.

Lucy Frazer: The hon. Lady makes an important point. In fact, her campaign and that of Gina Martin have done a significant amount to ensure that this offence, and now its potential illegality, has been brought to the attention of individuals and that they know about it. Often it is the fear of prosecution rather than prosecution itself that protects potential victims of crime.

Before I turn to the wider issues raised in the debate, I will touch on some points that have been made by various Members about the remit and ambit of the Bill. We have thought very hard about how the Bill should be put together, what the motivation should be, and when people should go on the sex offenders register. Some Members thought that motive should disappear, because it is the act and the victims we should focus on, not the perpetrator. It has been suggested to me that we should not need to prove motive, but reasonable justification. The concern with that is that a general principle of our law, particularly our criminal law, is that someone is innocent until proven guilty. To suggest that the prosecution should not have to prove motive, only reasonable justification, would reverse the burden of proof, putting it on the defendant, who is meant to be innocent until proved by the prosecution to be guilty.

In our system of law, the prosecution has to prove every element of the offence, and we say that should remain the case for this offence, too. The offence is criminal and serious, and the punishment we are proposing is serious. It is two years, with the requirement that in some circumstances people will go on the sex offenders register. We think it is appropriate in these circumstances that, as with other offences under criminal law, motivation is identified and proved.

Some Members suggested we should take a wider role in relation to the sex offenders register. We are concerned that we should strike the right balance between protecting victims and, where there are young offenders, protecting offenders. We need to strike a balance in terms of stigmatising them and putting them on the sex offenders register. They might need to be identified to the police as potential criminals for future sexual offences. We should not just expand the sex offenders register. Ultimately, if there were too many people on it, that would make it meaningless.

Alex Chalk: On the point about considering proportionality, is it not important to remember that if those on the sex offenders register fail to comply with its conditions, they can be guilty of an imprisonable offence? To go on the register is a serious matter.

Lucy Frazer: My hon. Friend makes an important point. Going on the sex offenders register is a serious matter both with what it requires and if it is breached.

I want to touch on a number of points that my right hon. Friend the Member for Basingstoke made. She has done so much individually and through her Committee to champion a large number of issues and protect and help the lives of individuals, particularly women. Together with others, she has raised a number of issues that I

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would like to deal with. I reiterate that the Government continue to be alive to how new technologies are facilitating the degrading treatment of women and children on the internet, but we also need to be alive to the fact that some of the questions posed are difficult and not straightforward.

A question was asked about whether revenge porn should be a sexual offence, which would have two consequences: anonymity for the victim, and the perpetrator's going on the sex offenders register. When the offence was first introduced, there was not universal support for it being a sexual offence. In informal consultations, victims did not universally ask for it to be a sexual offence. They often said that they just wanted images taken down. The Ministry of Justice took the views of more than 100 members of the public, many of whom had been victims of or knew victims of revenge porn. Very few suggested that they want it to be a sexual offence.

There are also unintended consequences and risks that would need to be considered. If we made such things a sexual offence, it would require notification. That gives rise to the point we are making about people being put on the sex offenders register when their intent was not sexual gratification, given all the consequences that come from being on the sex offenders register.

If we do not make these things a sexual offence, but instead just give anonymity to victims, we would be creating an inconsistency in the law. We would be extending automatic reporting restrictions—that is, putting people on the sex offenders register and giving people anonymity —to offences that are not sexual. How does that play out for other crimes where the same argument could be made that anonymity would be helpful for victims coming forward? For example, in cases of domestic violence, blackmail, or reckless transmission of HIV, more people might come forward if there was anonymity.

So, if we just say, "We're creating an offence. We won't make it a sex offence, because of the issue with the sex offenders register, but we will give you automatic anonymity", the issue arises of whether we are making a special case of this offence, and whether the case should be the same for other offences that are also not sexual offences? Also, there can be reporting restrictions in any criminal case at the moment, even if someone does not have automatic anonymity.

The question of deepfake was raised. This is a real—

Mrs Miller: Before the Minister moves on, I just want to be really clear about something. Victims of upskirting will have anonymity, but she did not draw on the actions of the Government to give anonymity to victims of forced marriage or FGM. Why was it acceptable in those cases but not in the case of revenge pornography, for instance?

Lucy Frazer: My right hon. Friend makes an important point. The offence being considered today is a sex offence; it is an amendment to the voyeurism Act and is therefore a sex offence. She highlighted the FGM provision on anonymity. However, the point I am making is that we can create exceptions to a rule, but we must acknowledge that they are exceptions, and once we create one exception, or two, the general rule starts to break down and we have to ask ourselves more, and difficult, and complicated questions.

My point is that this is not a straightforward discrete decision. The Bill is discrete; it addresses a gap in the law that needs to be filled. Many other Members are raising interesting points, but those points are complicated —they are complex—and they have implications for other offences and other laws.

Alex Chalk: I am sure that it was just a slip of the tongue, but does my hon. and learned Friend agree that this Bill is in fact amending the Sexual Offences Act 2003, rather than the voyeurism Act, hence the point she was making about this offence being a sexual offence?

Lucy Frazer: I am always grateful for my learned junior's assistance.

I will now move on to deepfake. Many Members have mentioned deepfake, which is a distressing act that can cause a victim to feel humiliated and can have significant consequences. Cases have been prosecuted in relation to deepfake. There is a case of a City worker who superimposed his colleague's face on to porn websites and then told the woman's boss in order to discredit her. He was convicted of harassment. Although there is not a specific offence in relation to deepfake, it is possible, if there is continued misconduct, for someone to be convicted under the law as it stands on harassment.

Other Members have mentioned the issue of sharing photographs and there are already—

Mrs Miller: My hon. and learned Friend says that an individual was convicted of harassment for superimposing a face on a pornographic image. I am not sure that she should be dissatisfied—I think she should be outraged and we should be doing something about it. This is not a problem in the future; it is a problem here and now. Should we not be acting?

The Chair: Before the Minister replies, I remind everyone that that is not the central topic of today's debate, so, important though it might be, we should not devote too much time to remarks on that subject.

Lucy Frazer: Thank you, Ms Buck; I am very grateful. That is a key point that I want to reiterate: the Bill is about upskirting, where there is a clear gap in the law, and although there might be other serious issues whereby people feel victimised and humiliated, which we the Government take extremely seriously, there might be other offences—perhaps not specifically named appropriate offences for which one might be able to prosecute, but there are offences that exist—for which people can be prosecuted.

I was going to go on to the sharing of photographs, where there is some legislation, but given your point, Ms Buck, I will not go into that. I was also going to mention a few things, which my right hon. Friend the Member for Basingstoke quite rightly mentioned, about the importance of what we are doing in the non-legislative space. She was right to point out that DCMS is introducing compulsory religious education in primary schools, and sex and relationship education in secondary schools. The Government have provided £3 million for the Disrespect

NoBody teenager relationship abuse campaign, which tries to educate teenagers about different types of abusive behaviour. As you have rightly mentioned, Ms Buck, this is not the time to go into the other issues.

The Government are supporting this Bill—I know it has cross-party support—because we want to fill a gap in the law. We are alive to how technology facilitates degrading acts, but we are determined here and now to get this Bill on to the statute book as quickly as possible. This has been an interesting and thought-provoking debate and I am grateful to everyone who has contributed. I think the consensus is that action should be taken to close this small but important gap in the law, so I commend the Bill to the Committee.

Question put and agreed to.

Resolved,

That the Committee recommends that the Voyeurism (Offences) (No. 2) Bill ought to be read a Second time.

5.41 pm

Committee rose.