

# CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 2 - Criminal Law**

#### ***Section 43 – Voyeurism: additional forms of conduct***

223. **Section 43** amends the voyeurism offence in the Sexual Offences (Scotland) Act 2009 to include additional forms of conduct.
224. Subsection (2)(a) inserts two new subsections into the voyeurism offence at section 9 of that Act: subsections (4A) and (4B) which provide for additional forms of conduct constituting the offence of voyeurism.
225. New subsection (4A) provides that the voyeurism offence is committed where a person (A) operates equipment beneath another person (B)'s clothing, with the intention of enabling A or another person (C) to observe B's genitals or buttocks (whether exposed or covered with underwear) or the underwear covering B's genitals or buttocks in circumstances where the genitals, buttocks or underwear would not otherwise be visible, without B's consent and without any reasonable belief that B consents. The offence is committed where A acts for the purpose of causing B humiliation, alarm or distress, or for the purpose of obtaining sexual gratification (whether for A or C).
226. New subsection (4B) provides that the voyeurism offence is committed where a person (A) records an image beneath another person (B)'s clothing of B's genitals or buttocks (whether exposed or covered with underwear) or the underwear covering B's genitals or buttocks, without B's consent and without any reasonable belief that B consents, and in circumstances where B's genitals, buttocks or underwear would not otherwise be visible, with the intention that A or another person will look at the image. The offence is committed where A acts for the purpose of causing B humiliation, alarm or distress, or for the purpose of obtaining sexual gratification (whether for A or for a third person).
227. Subsections (2)(b), (c) and (3) make consequential changes to sections 9 and 10 of the 2009 Act as a result of the insertion of new subsections (4A) and (4B).
228. Subsection (4) makes equivalent changes to the offence of 'voyeurism towards a young child' at section 26 of the 2009 Act but there is no reference to consent as children under the age of 13 are deemed to lack the capacity to consent to sexual activity.
229. Subsection (5) makes equivalent changes to the offence of 'voyeurism towards an older child' at section 36 of the 2009 Act without reference to consent, as it is an offence for a person over the age of 16 to engage in voyeuristic conduct towards a child under 16, regardless of whether the child consents.