

Report on the Legislative Consent Memorandum on the Protection from Sex-based Harassment in Public Bill

June 2023

1. Background

1. This report considers the Welsh Government's Legislative Consent Memorandum (the LCM) on the Protection from Sex-based Harassment in Public Bill (the Bill).
2. The long title of the Bill states that its purpose is to:

“Make provision about causing intentional harassment, alarm or distress to a person in public where the behaviour is done because of that person’s sex; and for connected purposes.”
3. The LCM was laid before the Senedd on 17 April 2023 by the Minister for Social Justice, Jane Hutt MS (the Minister).
4. The Business Committee referred the LCM to the Equality and Social Justice Committee and the Legislation, Justice and Constitution Committee, with a reporting deadline of 18 May 2023. This deadline was subsequently extended to 8 June 2023.



2. The Legislative Consent Memorandum

5. Paragraphs 3 to 12 of the LCM summarise the Bill and its policy objectives. Paragraphs 18 to 22 of the LCM set out the Welsh Government’s assessment of the provisions in the Bill for which consent is required. Paragraphs 26 and 27 set out the reasons why provision is being made for Wales in the Bill.

6. Paragraph 28 of the LCM notes that the majority of costs associated with the Bill “are estimated to fall with the police for enforcement work”.

7. The final paragraph of the LCM sets out the Minister’s view that it is appropriate to deal with these provisions in the Bill for the reasons provided. The Minister states:

“I therefore recommend the Senedd provides consent to the inclusion of the relevant provisions in the Bill.”

3. Provisions in the Bill for which consent is sought

8. The LCM states that the Senedd’s consent is required for clauses 1, 3 and 4.²

9. Clause 1 (Intentional harassment, alarm or distress on account of sex) inserts a new section 4B into the Public Order Act 1986 (“the 1986 Act”). This adds to the existing offence in section 4A of the 1986 Act.

10. Clause 3 (consequential amendments) makes consequential amendments to the Football Spectators Act 1989, the Police Act 1997 and the Elections Act 2022 as a result of the new section 4B of the 1986 Act.

11. Clause 4 (Extent, commencement and short title) enables the Secretary of State to make regulations to commence clauses 1, 2 and 3. Consent is only being sought in relation to clause 4(3) and 4(4). In relation to this clause, the LCM states:

¹ Welsh Government, [Legislative Consent Memorandum, Protection from Sex-based Harassment in Public Bill](#), paragraph 29

² Welsh Government, [Legislative Consent Memorandum, Protection from Sex-based Harassment in Public Bill](#), paragraph 18

“Clauses 4(3) and (4) grant a power to the Secretary of State alone to make regulations to commence the Bill and enables different days to be appointed for different purposes. Clause 4 (except clauses 4(3) and (4)) is a non-operative clause and has no legal effect outside of confirming the extent and title, and as such, the Welsh Government considers a legislative consent memorandum is not required to be laid for the purpose of SO 29.

However, It is the Welsh Government’s view that consent is required for clauses 4(3) and (4) as it makes provision in relation to Wales within the legislative competence of the Senedd.”³

12. The LCM notes that the Home Office offered a Memorandum of Understanding (MoU) for the use of the commencement powers in clause 4 in relation to the commencement of clauses 1 and 3. It is noted that a timetable will be agreed for the Secretary of State to make regulations to commence the relevant provisions.⁴

13. The Minister subsequently confirmed that officials were working on the wording of the MoU “to ensure the Welsh Government is able to agree to a timetable for the Secretary of State to make regulations to commence the relevant provisions in the Bill.”⁵

14. The MoU was agreed on 1 June 2023.⁶

4. Reasons for making these provisions in the Bill

15. The LCM highlights commitments made in the Welsh Government’s Programme for Government in relation to violence against women, domestic

³ Welsh Government, [Legislative Consent Memorandum, Protection from Sex-based Harassment in Public Bill](#), paragraphs 21-22

⁴ Welsh Government, [Legislative Consent Memorandum, Protection from Sex-based Harassment in Public Bill](#), paragraph 24

⁵ [Letter from the Minister for Social Justice to the Legislation, Justice and Constitution Committee](#), 9 May 2023

⁶ [Memorandum of Understanding between the Welsh Ministers and the Secretary of State for the Home Department](#), 1 June 2023

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abuse and sexual violence (VAWDASV) experienced in public. It notes the specific commitment to:

“Strengthen the Violence against Women, Domestic Abuse and Sexual Violence Strategy to include a focus on violence against women in the street and workplace as well as the home.”⁷

16. The LCM states:

“An offence applicable in Wales will align with the stated aspiration: ‘to make Wales the safest place in Europe to be a woman’. If the option of extending the offence created by the Bill to Wales is not explored, people in Wales would be left less protected and worse off until Welsh legislation in this area could be introduced.”⁸

17. The LCM provides further detail on the reasons for making provisions for Wales in the Bill:

“The Bill’s provisions are sensible and important: they address the safety of people subject to sex-based harassment in public, which predominately affects women and girls. Therefore, it is considered sensible and equitable to take an England and Wales approach towards this issue.

The Welsh Government recognises the benefit in taking this UK Bill forward so the provisions will apply at the same time across the UK. There is no comparable Senedd Bill planned in the short or medium term and, if the Bill proceeded without Wales or on different timescales, there is a risk of a regulatory gap between the Bill coming into force in the rest of the UK and a comparable Senedd Bill coming into force. Therefore, I consider utilising the UK Bill to provide a pragmatic and efficient opportunity to ensure equal protection from sex-based harassment in public in Wales.”⁹

⁷ Welsh Government, [Legislative Consent Memorandum, Protection from Sex-based Harassment in Public Bill](#), paragraph 9

⁸ Welsh Government, [Legislative Consent Memorandum, Protection from Sex-based Harassment in Public Bill](#), paragraph 10

⁹ Welsh Government, [Legislative Consent Memorandum, Protection from Sex-based Harassment in Public Bill](#), paragraphs 26-27

5. Committee consideration and conclusion

18. We considered the LCM at our meeting on 15 May 2023.¹⁰

19. We note the provisions for which consent is being sought. Further, we note the Welsh Government's reasons for making these provisions in the Bill, in particular that including Wales in the legislation provides a pragmatic and efficient opportunity to ensure equal protection from sex-based harassment in public in Wales.

20. We have a continuing interest in this area and share the Welsh Government's concerns that sexual harassment in public places is all too common. As highlighted through our inquiry work ([Gender-based violence: the needs of migrant women](#); [Gender-based violence: a public health approach](#); and our engagement and scrutiny of the Welsh Government's VAWDASV national advisers), holding the Welsh Government to account on its commitments to prevent gender-based violence is a top priority for us.

21. One Member expressed concern about the principle of legislation which will apply in Wales being enacted via a UK Government Bill rather than a Welsh Government Bill. A majority of the Committee has no objection to the agreement of the Motion.

¹⁰ [Equality and Social Justice Committee, 15 May 2023](#)