

LEGISLATIVE CONSENT MEMORANDUM
PROTECTION FROM SEX-BASED HARASSMENT IN PUBLIC BILL

1. This legislative consent memorandum is laid under Standing Order (“SO”) 29.2.SO29 prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.
2. The Protection from Sex-based Harassment in Public Bill (“the Bill”) was introduced in the UK Parliament, the House of Commons, on 15 June 2022. House of Commons Committee Stage took place on 22 February. Report Stage took place 24 March. The Bill had its first reading in the House of Lords on 27 March 2023. All references to provisions in this legislative consent memorandum are as they appear in the Bill as agreed at Commons Report stage and published on 27 March. The Bill, both as introduced and as amended at Report Stage, can be found at <https://bills.parliament.uk/bills/3196>.

Policy Objectives

3. Sex-based harassment in public is a significant problem in society. It can negatively impact a person’s well-being and the fear of it can lead to adverse impacts on the well-being of a wider group of people. As women and girls are disproportionately the victims of this form of harassment, this can further entrench inequality between the sexes. Government action is necessary to reduce the prevalence and fear of this abuse, so that more perpetrators face justice, women and girls are and feel safer, and inequality between the sexes is reduced.
4. Sex-based harassment in public is a significant problem in England and Wales. In May 2022 the Office for National Statistics (ONS) published statistics relating to perceptions of safety and experiences of harassment, based on the Opinions and Lifestyle Survey conducted between 16 February and 13 March 2022. It found that:
 - One in two women and one in six men felt unsafe walking alone after dark in a quiet street near their home.
 - 45% of women and 18% of men felt unsafe walking alone after dark in a busy public place.
 - 82% of women and 42% of men felt unsafe walking alone after dark in a park or other open space.
 - One in two women aged between 16 and 34 years experienced one form of harassment in the previous 12 months, with 38% of women aged between 16 and 34 having experienced catcalls, whistles, unwanted

sexual comments, or jokes, and 25% having felt that they were being followed.

- 54% of people who reported feeling unsafe during the day, and 46% who reported feeling unsafe after dark, had altered their behaviour, as a result, in the previous month.
5. Sex-based harassment in public can, when it happens, lead to adverse emotional effects on the victims, including impacts on their mental health. It can cause people to feel unsafe, even if they do not actually experience harassment themselves. As the ONS data above shows, it can alter people's behaviour, causing them not to do things which they might otherwise do, which can lead not only to adverse impacts on their own lives but also adverse impacts on the people, organisations, and businesses with whom they might otherwise interact.
 6. There is a range of existing criminal offences, in particular those under the Public Order Act 1986, the Sexual Offences Act 2003 and the Protection from Harassment Act 1997, that can already be used to prosecute sex-based harassment in public behaviour. New guidance issued by the College of Policing in December 2021 made this clear to officers, setting out the criminal offences, civil protective orders and other protective measures which can be used. The aim was to increase officers' awareness of what can be done upon receiving a report.
 7. However, many people consider that a specific criminal offence targeted directly at Sex-based harassment in public should be created. A new offence would meet other policy aims, such as:
 - Simplifying and clarifying the law for the public.
 - Encouraging more victims to report.
 - Making coherent for police and prosecutors the legislation relating to this behaviour, with a view to increasing levels of prosecutions and convictions.
 - Increasing consistency in the application of the law and thus providing greater legal certainty.
 8. I wrote to the UK Minister for Safeguarding in August 2022 to state support for the creation of an offence for sex-based harassment in public as outlined in the UK's consultation. I stated:

'Your consultation sets out a number of possibilities for taking this work forward including creating a new offence. I am writing in support of this approach. It is essential that the level of harassment and abuse experienced by women and girls is understood and the harm caused properly recognised. Creating this legislation will ensure women and girls are afforded the right level of protection but will also signal to those who perpetrate such behaviour that it will not be tolerated.'

9. The Programme for Government makes clear commitments in relation to VAWDASV experienced in public:

‘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.*’
10. 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.
11. In the absence of any obvious legislative vehicle in the Senedd’s legislative programme to create such an offence, I have agreed that it is right for Wales to be included in this legislation, to ensure that people in Wales are not left in a position where they could be considered less safe from the risks of street and public sex-based harassment.
12. The main policy objectives are therefore to:
 - a) Reduce the prevalence of sex-based harassment in public in England and Wales.
 - b) Ensure that when sex-based harassment in public does happen, victims and bystanders are more likely to report it to the police and that the police are more likely to take action.
 - c) Increase people’s – especially women’s – feelings of safety.

This thereby helps to ensure that:

- a) People – especially women – feel more confident being in public places (especially at night), with associated positive impacts for their own well-being, and knock-on positive impacts for the economy (for example, more business for the night-time economy) and public services (for example, reduced pressures on mental health services).
- b) More perpetrators are brought to justice.
- c) Inequalities between the sexes in society are reduced.

Summary of the Bill

13. The Bill is a Private Members’ Bill, introduced by Greg Clark MP, and is sponsored by the Home Office.
14. Section 4A of the Public Order Act 1986 makes it an offence to use threatening, abusive or insulting words or behaviour, or disorderly behaviour, or to display any writing, sign or other visible representation which is threatening, abusive or insulting, if both the intention and the effect of the behaviour or the display is to cause another person harassment, alarm or distress. A person convicted under

this offence is liable to imprisonment for up to six months, a fine not exceeding level 5 on the standard scale, or both.

15. The Bill inserts a new section into the Public Order Act 1986, section 4B, to provide that if a person commits an offence under section 4A of that Act and carried out the conduct in question because of the sex of the person to whom they intended to cause harassment, alarm or distress, then that person is guilty of an offence. This new offence carries a maximum sentence on summary conviction of imprisonment for a term not exceeding the general limit in a magistrates' court, a fine or both, or, on conviction on indictment, imprisonment for up to two years, a fine or both.
16. As a result of the amendment agreed to on 22 February during the Committee Stage of the Bill, the offence, and thus clauses 1, 3 and 4, apply to England and Wales.
17. Clause 2 relating to Guidance was added as an amendment at Report stage 24 March and relates to guidance issued by the Secretary of State to reserved authorities. Welsh Government consider this clause to be outside the legislative competence of the Senedd and thus, in accordance with SO 29, a legislative consent memorandum is not to be laid in relation to it.

Provisions in respect of which consent is required

18. The Senedd's consent is required for [clauses 1, 3 and 4](#). The Bill as introduced only applied to England and therefore a legislative consent memorandum was not required. Subsequently, an amendment was agreed (amongst other government amendments) to bring Wales within the scope of the Bill, thereby necessitating a legislative consent memorandum. The Bill makes relevant provision as it applies to Wales and makes provision for areas that are within the Senedd's competence, including mental and physical well-being.
19. Clause 1 provides for the new offence of 'Intentional harassment, alarm or distress on account of sex' to be inserted into the Public Order Act 1986.
20. Clause 3 makes consequential amendments to other pieces of legislation as a result of the creation of the offence in Clause 1.
21. Clause 4 confirms the extent, commencement and short title. Clauses 4(3) and (4) grants 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.

22. 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.

Commencement powers

23. The Bill, as amended, extends to England and Wales, and Clause 4 enables the Secretary of State to make regulations to commence Clauses 1, 2 and 3.
24. The Home Office has offered a Memorandum of Understanding for the use of the commencement powers in Clause 4 (only insofar as it relates to the commencement of clauses 1 and 3), whereby the UK Government and the Devolved Governments agree to a timetable for the Secretary of State to make regulations to commence the relevant provisions in the Bill. In this context, while this is a devolved area, the Welsh Government is content for the Bill to make provision for Wales and for the Secretary of State to retain the commencement powers.
25. A copy of the Memorandum of Understanding with the UK Government on the use of the commencement powers within clause 4 of the Bill will be made available to the Legislation, Justice and Constitution Committee.

Reasons for making these provisions for Wales in the Protection from Sex-based Harassment in Public Bill

26. 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.
27. 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.

Financial implications

28. The UK Government have prepared an Impact Assessment for the Bill which covers the implications of the creation of a new offence. The majority of costs are estimated to fall with the police for enforcement work:
<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/att>

[achment_data/file/1092671/Sexual_Harassment_Consultation_IA_FINAL_CLEAN_signed_presentational_amends.pdf](#)

Conclusion

29. In my view it is appropriate to deal with these provisions in this UK Bill for the reasons outlined above. I therefore recommend the Senedd provides consent to the inclusion of the relevant provisions in the Bill.

JANE HUTT MS
MINISTER FOR SOCIAL JUSTICE
17th APRIL 2023