

PROTECTION FROM SEX-BASED HARASSMENT IN PUBLIC BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Protection from Sex-based Harassment in Public Bill as brought from the House of Commons on 27 March 2023 (HL Bill 125).

- These Explanatory Notes have been prepared by the Home Office with the consent of Lord Wolfson of Tredegar, the Peer in charge of the Bill, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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These Explanatory Notes relate to the Protection from Sex-based Harassment in Public Bill as brought from the House of Commons on 27 March 2023 (HL Bill 125)

Overview of the Bill

- 1 Section 4A of the Public Order Act 1986¹ 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.
- 2 This Bill provides that if a person commits an offence under section 4A of the Public Order Act 1986 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, whose maximum sentence is, on summary conviction, 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.

Policy background

- 3 The Government's Tackling Violence Against Women and Girls Strategy², published in July 2021, stated that the Government was looking carefully at where there may be gaps in existing law concerning sexual harassment in public places ('public sexual harassment') and how a specific offence for public sexual harassment could address those. It noted that this was a complex area, and that it was important to take the time to ensure that any potential legislation is proportionate and reasonably defined.
- 4 In its report on hate crime legislation³, published on 7 December 2021, the Law Commission recommended that the Government undertake a review of the need for a specific offence of public sexual harassment, and what form any such offence should take. It noted that it is worth considering whether a bespoke public sexual harassment offence could represent a better targeted response to public sexual harassment than hate crime legislation.
- 5 On 22 March 2022, during Lords consideration of Commons amendments to the then Police, Crime, Sentencing and Courts Bill, the Home Office Minister Baroness Williams of Trafford informed Peers that by the summer recess the Government would launch a consultation on whether there should be a specific offence of public sexual harassment.⁴
- 6 On 21 July 2022, the Government launched a targeted consultation⁵ on:
 - whether a specific offence of public sexual harassment should be created;
 - if so, what form it should take; and
 - what, if any, non-legislative measures additional to those described in the consultation document the Government should take to tackle public sexual harassment.

¹ [Public Order Act 1986 \(legislation.gov.uk\)](#)

² [Tackling violence against women and girls strategy - GOV.UK \(www.gov.uk\)](#)

³ [Hate-crime-report-accessible.pdf](#) (pages 207-208)

⁴ [Police, Crime, Sentencing and Courts Bill - Hansard - UK Parliament](#) (column 791, 22 March 2022)

⁵ [Creating an offence of public sexual harassment - GOV.UK \(www.gov.uk\)](#)

- 7 The consultation stated that in the view of Ministers public sexual harassment behaviour is covered by existing criminal offences. It suggested two possible options (with draft clauses) for what such an offence might look like, both involving aggravated sentencing for behaviour committed under section 4A of the Public Order Act 1986 if carried out because of the victim's sex. One of the two options included an illustrative list of some of the types of behaviour which might be covered.
- 8 The consultation closed on 1 September 2022, and received responses from 25 of the targeted recipients, as well as 285 other responses.
- 9 On 8 September the Government published its response to the consultation.⁶ The response confirmed that the Government considered that an offence of public sexual harassment should be introduced, and that its preferred option was the one which did not include an illustrative list of types of behaviour. The response stated that the Government's reasons for preferring that option were because such lists of behaviour types can become prescriptive, can rapidly become out of date as new types of behaviour emerge, and, although they are illustrative only, in practice can have the effect of ruling out other types of behaviour from being considered. This Bill, which would introduce an offence modelled on the relevant option within the consultation, was published on the same day.
- 10 The aim behind an offence is to prevent sexual harassment in public places and to ensure effective enforcement when it does happen, an issue of growing public concern. Public sexual harassment can affect all people, but it disproportionately affects women. It is envisaged that a new offence would cover behaviour such as:
 - a. following a person (for example, deliberately walking closely behind someone as they walk home at night);
 - b. making an obscene or aggressive comment towards a person;
 - c. making an obscene or offensive gesture towards a person;
 - d. obstructing a person making a journey; and
 - e. driving or riding a vehicle slowly near to a person making a journey.

Legal background

- 11 Subsection 1 of 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 are to cause another person harassment, alarm or distress.
- 12 Subsection 2 of section 4A provides that this offence may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the writing, sign or other visible representation is displayed, by a person inside a dwelling and the person who is harassed, alarmed or distressed is also inside that or another dwelling.

⁶ <https://www.gov.uk/government/consultations/creating-an-offence-of-public-sexual-harassment/outcome/the-governments-response-to-the-targeted-consultation-on-whether-there-should-be-a-criminal-offence-of-public-sexual-harassment>

- 13 Subsection 3 of section 4A provides two defences to this offence:
- that the defendant was inside a dwelling and had no reason to believe that the words or behaviour they used, or the writing, sign or other visible representation they displayed, would be heard or seen by a person outside that or any other dwelling; and
 - that the defendant's conduct was reasonable.
- 14 Subsection 4 of section 4A states that a person guilty of the offence under that section is liable on summary conviction (i.e. in a magistrates' court) to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both.

Territorial extent and application

- 15 Clause 4 of the Bill sets out the territorial extent. With one exception, discussed in paragraph 16, the Bill will extend and apply to England and Wales. Although the subject matter of Clauses 1 and 3 of the Bill is a devolved matter in Wales, on 17 April 2023 the Welsh Government laid a legislative consent memorandum⁷ before the Senedd Cymru, which seeks consent for the UK Parliament to legislate on matters devolved in Wales in this instance.
- 16 The exception is that subsection 2 of Clause 4 provides that an amendment made by Clause 3 has the same extent as the provision it amends. In practice this relates to subsection 2 of Clause 3, which makes consequential amendments to Schedule 8B to the Police Act 1997, which extends to Scotland and is devolved there. The Scottish Government has confirmed that it is content for the UK Parliament to legislate for Scotland in this instance. This does not require a legislative consent motion to be agreed by the Scottish Parliament, because, as a provision making incidental or consequential changes to Scots law on non-reserved matters, it falls within Category II of Devolution Guidance Note 10⁸, and therefore does not require the consent of the Scottish Parliament. Otherwise, matters relating to criminal justice are devolved in Scotland and Northern Ireland.
- 17 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

⁷ <https://senedd.wales/media/f14ba2sm/lcm-ld15784-e.pdf>

⁸ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/60985/post-devolution-primary-scotland.pdf

Commentary on provisions of Bill

Clause 1: Intentional harassment, alarm or distress on account of sex

- 18 Clause 1 inserts a new section 4B into the Public Order Act 1986, entitled 'Intentional harassment, alarm or distress on account of sex'. Subsections 1 and 2 of new section 4B set out that a person commits an offence if they commit an offence under section 4A of the Public Order Act 1986 (whose provisions are set out in paragraphs 11-14), and carried out the conduct in question because of the sex of the person (or what they presumed the sex of that person to be, even if that presumption is in fact wrong) to whom they intended to cause harassment, alarm or distress.
- 19 Subsection 3 of new section 4B confirms that it does not matter whether the conduct in subsection 1 was carried out for the purposes of sexual gratification, and that it also does not matter whether that conduct was carried out for reasons additional to the sex of the person to whom it was intended to cause harassment, alarm or distress.
- 20 Subsection 4 of new section 4B provides that a person who commits the offence in subsection 1 of that section is liable:
 - a. on summary conviction (i.e. in the magistrates' court), to imprisonment for a term not exceeding the general limit in a magistrates' court, to a fine or to both; or
 - b. on conviction on indictment (i.e. in the Crown Court), to imprisonment for a term not exceeding two years, to a fine, or to both.
- 21 Subsection 5 of new section 4B states that if a person is tried on indictment (i.e. in the Crown Court) for the offence in subsection 1, and is acquitted of that offence, the jury may still find the person guilty of the offence in section 4A of the Public Order Act 1986.

Clause 2: Guidance

- 22 Subsection 1 of Clause 2 states that the Secretary of State must issue guidance to chief officers of police (i.e. the Commissioner of the Metropolitan Police, the Commissioner of the City of London Police, and the Chief Constables of the 41 other territorial police forces in England and Wales), the chief constable of the British Transport Police Force, the chief constable of the Ministry of Defence Police, and the chief constable of the Civil Nuclear Constabulary, about the new offence introduced by Clause 1 of the Bill.
- 23 Subsection 2 of Clause 2 states that that guidance must in particular include guidance about the defence available to defendants in subsection 3b of section 4A of the Public Order Act 1986, of proving that their conduct was reasonable. As the new offence in section 4B of the Public Order Act 1986, which Clause 1 would introduce, requires an offence to have been committed under section 4A of that Act, the defences provided for in section 4A will also be available to defendants prosecuted under section 4B.
- 24 Subsection 3 of Clause 2 states that the Secretary of State may revise the guidance which has been issued.
- 25 Subsection 4 of Clause 2 states that the Secretary of State must arrange for the guidance to be published.
- 26 Subsection 5 of Clause 2 states that the chief officers of police and the chief constables to whom the guidance is issued must have regard to it.

Clause 3: Consequential amendments

- 27 Clause 3 makes consequential amendments to the schedules to three Acts, as a result of the provisions of the Bill. Each of those schedules contains a list of criminal offences to which the provisions of the Act in question apply. The three lists each include section 4A of the Public Order Act 1986. The effect of each of the three subsections of Clause 3 is to add section 4B of the Public Order Act 1986, which Clause 1 would introduce, to the lists. Somebody who carries out behaviour which could lead to their being convicted under section 4B once it is enacted could currently be convicted under section 4A, and hence could be covered by the three lists if the relevant criteria within the Act in question are met. Once the new section 4B offence is enacted such a person might instead be convicted under that section, meaning that they could not be covered by the three lists. The effect of the amendments made by Clause 3 is therefore to maintain the existing coverage of the three Acts.
- 28 Subsection 1 of Clause 2 would therefore insert the new section 4B offence into Schedule 1 of the Football Spectators Act 1989. Schedule 1 lists the criminal offences for which a conviction will usually cause a person to be issued with a football banning order (FBO). An FBO prevents the person from attending football matches within the United Kingdom, may also place conditions on them on days on which football matches take place – such as not going to a particular city centre or within a certain distance of a stadium – and can require them to report to a police station in connection with football matches overseas.
- 29 Subsection 2 of Clause 2 would insert the new section 4B offence into Schedule 8B of the Police Act 1997. Schedule 8B lists the criminal offences for which spent convictions will be disclosed on a criminal record certificate in Scotland, unless the sentence was an admonition or absolute discharge, or the person was a minor when convicted and at least seven and a half years have elapsed, or the person was an adult when convicted and at least 15 years have elapsed.
- 30 Subsection 3 of Clause 2 would insert the new section 4B offence into Schedule 9 of the Elections Act 2022. Schedule 9 – which has not yet been commenced – lists the offences for which a conviction (if the offending behaviour was aggravated by hostility to candidates for or holders of elected office, or to others involved in the electoral process, such as campaigners) will usually result in the offender being issued with an order disqualifying them from being nominated for, standing for or holding elected office for five years.

Clause 4: Extent, commencement and short title

- 31 Subsection 1 of Clause 4 states that the Act extends to England and Wales, subject to subsection 2.
- 32 Subsection 2 of Clause 4 provides that an amendment made by Clause 3 has the same extent as the provision that it amends. In practice, as set out in paragraph 16, that relates to subsection 2 of Clause 3 extending to Scotland.
- 33 Subsections 3-5 of Clause 4 provide that Clauses 1-3 come into force on such day as the Secretary of State may by regulations made by statutory instrument appoint, and that different days may be so appointed for different purposes. It provides that Clause 4 comes into force on the day on which the Act is passed.
- 34 Subsection 6 of Clause 4 sets out the short title of the Act.

Commencement

- 35 Clause 4(5) provides for Clause 4 to come into force on Royal Assent. The remaining provisions will be brought into force by commencement regulations made by the Secretary of State (Clause 4(3) and (4)).

Financial implications of the Bill

- 36 The published impact assessment for the consultation whose substance mirrored⁹ this Bill as introduced states that the total estimated costs lie within a range of £37.6 to £685.0 million (present value), with a central estimate of £157.0 million over ten years. All such costs are assumed to be borne by the public sector, with the majority of the costs estimated to fall to the police, between £30.6 to £632.8 million (present value), with a central estimate of £139.3 million (present value) over ten years. There are no monetised benefits of this intervention. A breakeven analysis has been provided to indicate how many crimes would need to be prevented to offset the monetised costs of the policy options. This analysis indicates that there would need to be between 5,000 to 98,000 crimes prevented, with a central estimate of 22,000, to offset the monetised costs of the intervention. There are expected to be a range of non-monetised benefits following intervention including a greater awareness of public sexual harassment, a potential reduction in offending, a clearer framework for the police and criminal justice system around dealing with public sexual harassment, and increased victim satisfaction.
- 37 A final version of the impact assessment will in due course be published, in part to account for the production of guidance for the police, as provided for in Clause 2. This analysis poses additional costs on the police as a result of the need for certain officers to read the guidance. As this provision was added to the Bill at House of Commons Report Stage, it was not included in the original impact assessment.

Parliamentary approval for financial costs or for charges imposed

- 38 The Bill did not need a money or ways and means resolution.

Compatibility with the European Convention on Human Rights

- 39 Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the provisions of the bill with the Convention rights (as defined in section 1 of the Act). However, it is not necessary for ministers to sign a statement under section 19 Human Rights Act 1998 in respect of compatibility with the ECHR if the bill is a private member's bill.

⁹ [Impact Assessment, public sexual harassment consultation \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

Related documents

40 The following documents are relevant to the Bill and can be read at the stated locations:

- Targeted consultation on creating an offence of public sexual harassment (including impact assessment and government response), Home Office, 8 December 2022: <https://www.gov.uk/government/consultations/creating-an-offence-of-public-sexual-harassment>
- Human rights memorandum, Home Office, 6 December 2022: https://publications.parliament.uk/pa/bills/cbill/58-03/0020/ECHR_Memorandum_Protection_6-12-22.pdf
- Delegated powers memorandum, Home Office, 29 March 2023: <https://bills.parliament.uk/publications/50624/documents/3241>
- Legislative consent memorandum laid before the Senedd Cymru, Welsh Government, 17 April 2023: <https://senedd.wales/media/f14ba2sm/lcm-ld15784-e.pdf>

Annex A – Territorial extent and application in the United Kingdom

41 The provisions of this Bill extend and apply to England and Wales.

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clause 1	Yes	Yes	Yes	No	N/A	No	N/A
Clause 2	Yes	Yes	N/A	No	N/A	No	N/A
Clause 3	Yes	Yes	Yes	In part	N/A	No	N/A
Clause 4	Yes	Yes	Yes	In part	N/A	No	N/A

Subject matter and legislative competence of devolved legislatures

42 In the opinion of His Majesty’s Government, the subject matter of Clauses 1 and 3 of the Bill is within the devolved legislative competence of the Senedd Cymru because it does not relate to reserved matters under Schedule 7A of the Government of Wales Act 2006. The subject matter of those clauses is within the devolved legislative competence of the Scottish Parliament and the Northern Ireland Assembly. However, we do not intend for these clauses to apply to Scotland or Northern Ireland. The exception is that subsection (2) of Clause 2 applies to Scotland; however, as that provision makes incidental or consequential changes to Scots law on non-reserved matters, a legislative consent motion is not required.

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