

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 introduced in the House of Commons on 15 June 2022.

- These Explanatory Notes have been provided by the Home Office with the consent of Rt Hon. Greg Clark, the member 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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Overview of 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 \(legislation.gov.uk\)](https://legislation.gov.uk)

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

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

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

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

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.

7. The consultation closed on 1 September 2022. The Government's response to the consultation will be published shortly at the following link:
<https://www.gov.uk/government/consultations/creating-an-offence-of-public-sexual-harassment>
8. 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

9. 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.
10. 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.
11. 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 he used, or the writing, sign or other visible representation he displayed, would be heard or seen by a person outside that or any other dwelling; and
 - that the defendant's conduct was reasonable.
12. 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

13. Clause 2 of the Bill sets out the territorial extent. The Bill will extend to England and Wales, and will apply to England only.
14. Matters relating to criminal justice are devolved in Scotland and Northern Ireland.

Commentary on provisions of Bill

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

15. 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 9-12, above) in England, 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.
16. 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.
17. 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.
18. 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 Extent, commencement and short title

19. Subsection 1 of Clause 2 states that the Act extends to England and Wales.
20. Subsections 2-4 of Clause 2 provide that Clause 1 comes 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 2 comes into force on the day on which the Act is passed.
21. Subsection 5 of Clause 2 sets out the short title of the Act.

Financial implications of the Bill

22. The published impact assessment⁶ for the Bill 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 5,380 to 97,900 crimes prevented, with a central estimate of 22,450, 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 reduction in offending, a clearer framework for the police and criminal justice system around dealing with public sexual harassment, and increased victim satisfaction.

Parliamentary approval for financial costs or for charges imposed

23. The Bill will not need a money or ways and means resolution.

Compatibility with the European Convention on Human Rights

24. 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.

Annex A - Territorial extent and application in the United Kingdom

1. The provisions of this Bill extend to England and Wales, and apply to England only.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion sought?
Clause 1	Yes	No	No	No	N/A	N/A	N/A	N/A

⁶ [Impact Assessment, public sexual harassment consultation \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

Clause 2	Yes	No	No	No	N/A	N/A	N/A	N/A
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