

Research Briefing

22 March 2023

By Sally Lipscombe

Protection from Sex-based Harassment in Public Bill 2022-23



Summary

- 1 Background
- 2 Government action
- 3 Calls for a new criminal offence
- 4 The Bill

Image Credits

Photo by Çağlar Canbay on Unsplash / image cropped

Disclaimer

The Commons Library does not intend the information in our research publications and briefings to address the specific circumstances of any particular individual. We have published it to support the work of MPs. You should not rely upon it as legal or professional advice, or as a substitute for it. We do not accept any liability whatsoever for any errors, omissions or misstatements contained herein. You should consult a suitably qualified professional if you require specific advice or information. Read our briefing [‘Legal help: where to go and how to pay’](#) for further information about sources of legal advice and help. This information is provided subject to the conditions of the Open Parliament Licence.

Sources and subscriptions for MPs and staff

We try to use sources in our research that everyone can access, but sometimes only information that exists behind a paywall or via a subscription is available. We provide access to many online subscriptions to MPs and parliamentary staff, please contact hoclibraryonline@parliament.uk or visit commonslibrary.parliament.uk/resources for more information.

Feedback

Every effort is made to ensure that the information contained in these publicly available briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated to reflect subsequent changes.

If you have any comments on our briefings please email papers@parliament.uk. Please note that authors are not always able to engage in discussions with members of the public who express opinions about the content of our research, although we will carefully consider and correct any factual errors.

You can read our feedback and complaints policy and our editorial policy at commonslibrary.parliament.uk. If you have general questions about the work of the House of Commons email hcenquiries@parliament.uk.

Contents

1	Background	8
1.1	The nature of public sex-based harassment	8
1.2	Prevalence of sex-based harassment	9
1.3	The impact of sex-based harassment	11
2	Government action	13
2.1	The ‘call for evidence’	13
2.2	The Tackling violence against women and girls strategy	13
3	Calls for a new criminal offence	17
3.1	The existing criminal law	17
3.2	The Law Commission’s hate crime review	18
3.3	Calls to change the law	19
3.4	The Government’s consultation	22
4	The Bill	25
4.1	The Bill’s provisions	25
4.2	Second reading	27
4.3	Committee stage	28

Summary

On 15 June 2022, Greg Clark (Conservative) presented the [Protection from Sex-based Harassment in Public Bill 2022-23](#) to Parliament. The Bill has [Government support](#). The Home Office has published [Explanatory Notes](#) (PDF) to accompany the Bill.

The Bill's [second reading](#) took place on 9 December 2022. [Committee stage](#) took place in a single sitting on 22 February 2023. Commons report stage and third reading are scheduled for 24 March 2023.

This briefing relates to the law in England and Wales.

The nature and prevalence of public sex-based harassment

Public sex-based harassment is generally understood to involve unwelcome and unwanted behaviour directed at a person in a public space, such as on the street, on public transport, in a gym, or at a hospitality venue, because of that person's sex.

Examples of such behaviour include intrusive or persistent staring or questioning, following someone, sexual or obscene comments, propositions or gestures, flashing or exposing intimate body parts, non-consensual physical contact, and technology-enabled sexual behaviour.

In March 2021 research published by the [APPG on UN Women](#) found that 71% of women of all ages in the UK had experienced some form of sexual harassment in a public space. That number rose to 86% among 18-24-year-olds.

In [a 2018 report on sexual harassment of women and girls](#), the Women and Equalities Committee noted that public sex-based harassment "reduces women and girls' freedom to enjoy public life, and can negatively affect feelings of safety, bodily autonomy and mental health".

The Government's position

In July 2021, the Government published its [Tackling violence against women and girls strategy](#). The strategy said there were several existing criminal offences that public sex-based harassment could fall under, including

offences under the Protection from Harassment Act 1997, the Public Order Act 1986 and the Sexual Offences Act 2003.

However, the strategy said the Government was committed to ensuring “not only that the laws are there, but that they work in practice”. The Government would therefore be “looking carefully at where there may be gaps in existing law and how a specific offence for public sexual harassment could address those”.

The strategy also set out several non-legislative actions to deal with public sex-based harassment, including a [national communications campaign](#) and plans for revised [police guidance](#) and [prosecution guidance](#) on using existing offences.

Calls for change

Parliamentarians and women’s rights groups have remained concerned that the existing law is insufficient to deal with public sexual harassment. There have been (unsuccessful) attempts to introduce a specific offence by seeking to amend Government bills, and there have been calls for the Government to legislate.

Plan International UK, a children’s charity with a particular focus on girls’ rights is running [the Crime Not Compliment campaign](#), which calls for the Government to make public sexual harassment a crime. A [petition supporting the campaign](#) has received over 65,000 signatures to date.

The campaign group [Our Streets Now](#), started by two sisters after a conversation about experiencing the world as young women, is running a similar campaign. Their [petition on the change.org website](#) has received over 463,000 signatures to date.

In a joint briefing [Plan International UK and Our Streets Now argue the existing criminal law is “fragmented, incomplete and disjointed”](#) (PDF) and that “many acts of abuse and sexually harmful behaviour fall through the legal cracks”.

The Government’s consultation

On 21 July 2022, the Government launched [a targeted consultation on the options for creating a new offence of public sexual harassment](#).

The Government’s view is that “behaviour amounting to public sexual harassment is already covered by existing criminal offences (subject to the individual circumstances of the case)”. It was not therefore proposing to create a wholly new offence.

The consultation instead set out two possible models that would build on the existing offence in [section 4A of the Public Order Act 1986](#). This offence covers the intentional use of threatening, abusive or insulting words or behaviour, or disorderly behaviour, to cause a person harassment, alarm or distress. The two proposed models were:

- Option 1: create a new offence where a person commits an offence under section 4A of the 1986 Act, and does so because of the complainant’s sex or presumed sex.
- Option 2: the same as option 1, but with the addition of an illustrative (not exhaustive) list of types of threatening, abusive, insulting or disorderly behaviours that could be covered by the offence.

Each model would provide for a higher maximum sentence if those offences were committed on the basis of the complainant’s sex.

The consultation closed on 1 September 2022.

The Government published the [consultation outcome](#) on 8 December 2022. The Government said it had concluded that an offence of public sexual harassment should be introduced, and that it would be pursuing Option 1 despite most respondents preferring Option 2. The Government considered that including a list of behaviours was not “the right course to take” as such behaviours could become prescriptive, could rapidly become out of date, and could have the effect of ruling out other types of behaviour from being considered.

The Bill

The Bill would introduce a new offence causing intentional harassment, alarm or distress to a person in public where the behaviour is done because of that person’s sex. It would do this by implementing Option 1 from the Government’s consultation on the issue.

Clause 1 of the Bill would add a new section 4B to the Public Order Act 1986. Under new section 4B, a person would be guilty of an offence if:

- they commit an offence under [section 4A of the 1986 Act](#) (intentional harassment, alarm or distress); and
- they carried out the conduct referred to in section 4A(1) because of the sex (or presumed sex) of the person to whom they intended to cause harassment, alarm or distress.

It would be irrelevant whether the defendant was also motivated by additional factors other than sex/presumed sex, and whether they carried out the conduct for the purposes of sexual gratification.

The section 4B offence would be triable either way, meaning it could be prosecuted in either the magistrates' court or the Crown court. The maximum penalty in the Crown court would be a two year prison sentence and/or a fine.

The Bill received extensive cross-party support at second reading, although there was some debate on the challenges that could be involved in proving intent.

At committee stage, the following amendments and new clauses were agreed without division:

- an amendment to extend the new section 4B offence to Wales (as introduced it had only applied to England)
- a new clause and related amendments to make consequential changes to other legislation on football banning orders, the disclosure of criminal records in Scotland, and disqualification from elected office

The Committee also considered an amendment and new clause tabled by Stella Creasy, relating to the requirement for intent. She did not press either to a division after the Minister said she would look at the issue further, but indicated that she expected to return to the issue at report stage.

1 Background

1.1 The nature of public sex-based harassment

Public sex-based harassment is generally understood to involve unwelcome and unwanted behaviour directed at a person in a public space, such as on the street, on public transport, in a gym, or at a hospitality venue, because of that person's sex.¹

Examples of such behaviour could include:

- intrusive or persistent staring or questioning
- following someone
- sexual or obscene comments, propositions or gestures
- flashing or exposing intimate body parts
- non-consensual physical contact
- technology-enabled sexual behaviour, such as 'cyber-flashing' (sending unwanted explicit images to someone's phone), 'up-skirting' (taking a picture underneath someone's clothing with the intention of viewing their buttocks or genitals), or viewing pornography in public

The APPG for UN Women has noted the "challenge" of defining sexual harassment, citing differences between official and commonly used definitions and using examples from the Equality Act 2010 and Transport for London:

... Although the consensus is one of "unwanted behaviour", the specific acts included vary. From "unwanted conduct of a sexual nature which has the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment" (Equality Act 2010, 2010) to "anything that makes you feel uncomfortable" (Transport for London). Most definitions necessarily refer

¹ Such behaviour can also be perpetrated in online public spaces, although this paper is concerned primarily with 'in person' harassment and does not include any detailed discussion of online harassment

to the subjective experience of the individual concerned, e.g., was the individual made to feel unsafe, humiliated, or intimidated.²

1.2 Prevalence of sex-based harassment

Anyone is capable of experiencing or perpetrating sex-based harassment. However, in 2018 the Women and Equalities Committee concluded it was “overwhelmingly experienced by women and girls” and that “in the UK, as elsewhere in the world, men and boys are overwhelmingly the perpetrators of sexual harassment in public places”.³

The Committee said the Government had “left it to others to collect data on sexual harassment in public places”, and that even where data did exist on specific criminal offences (such as indecent exposure) it was “not brought together”:

This means that there is no central measurement of the problem upon which to develop policy, and no way of knowing whether the incidence of sexual harassment is increasing or decreasing, or whether women and girls of particular backgrounds are particularly targeted.⁴

In March 2021, the [APPG on UN Women](#) published the results of a YouGov survey commissioned by [UN Women UK](#) on women’s experiences of sexual harassment in public spaces. The report noted that sexual harassment was “widely under-reported”, which was part of the reason why surveys and studies were “necessary to understand the scale of the problem”.⁵

The headline findings from the survey sample of 1,089 women were as follows:

1. 71% of women of all ages in the UK have experienced some form of sexual harassment in a public space. This number rises to 86% among 18-24-year-olds and only 3% of 18-24 year-olds reported having not experienced any of the types of harassment listed.
2. The two main reasons women of all ages cited for not reporting incidents are: “I didn’t think the incident was serious enough to report” (55%) and “I didn’t think reporting it would help” (45%)

² APPG for UN Women, [Prevalence and reporting of sexual harassment in UK public spaces](#) (PDF), March 2021, p9. For the definitions cited in this extract see [section 26 of the Equality Act 2010](#) (note the 2010 Act only applies in specific situations, such as the workplace, and does not regulate general behaviour in public: see [Library Briefing 9448 A short introduction to equality law](#) for an overview) and the Transport for London website, [Report sexual harassment](#) [accessed 7 December 2022]

³ Women and Equalities Committee, [Sexual harassment of women and girls in public places](#) (PDF), HC 701, 23 October 2018, paras 14-17 and 24-29

⁴ As above, para 62

⁵ APPG for UN Women, [Prevalence and reporting of sexual harassment in UK public spaces](#) (PDF), March 2021, p17

3. 44% of women agreed that having more confidence that reporting the incident would prevent it from happening again would encourage them to report.⁶

Claire Barnett, executive director of UN Women UK, described the issue as “a human rights crisis”.⁷

Research by [Plan International UK](#), a children’s charity with a particular focus on girls’ rights, included a survey of 1,515 girls and young women aged 12-21 and their experiences of sexual harassment. The survey looked at the types of public space in which they had experienced sexual harassment:

- 81% have experienced it outside in a public area
- 46% have experienced it in school, college or on university grounds
- 37% have experienced it on public transport
- 33% have experienced it inside a public building or facility (such as a leisure centre, shop, museum or other type of public building)
- 3% have experienced it in another public space⁸

The survey also asked the girls and young women what types of behaviour they had experienced in their lifetime:

- 50% have been leered or stared at
- 45% have been wolf-whistled
- 39% have received comments, insults or questions of a sexual nature
- 31% have been followed
- 30% have had sexual gestures aimed towards them
- 26% have experienced physical contact such as unwanted touching, groping, stroking, kissing or grabbing of any part of their body
- 17% have been propositioned or received unwanted sexual proposals
- 15% have experienced cyberflashing or airdropping i.e. receiving unwanted sexual images to their phone via Bluetooth or AirDrop

⁶ APPG for UN Women, [Prevalence and reporting of sexual harassment in UK public spaces](#) (PDF), March 2021, p6

⁷ Guardian, [“Four-fifths of young women in the UK have been sexually harassed, survey finds”](#), 10 March 2021

⁸ Plan International UK, [What works for ending public sexual harassment](#) (PDF), September 2021, p7

- 13% have been filmed or photographed by a stranger without their permission, including ‘upskirting’ (a photograph or film taken underneath a skirt)
- 11% have experienced sexual exposure such as being flashed at or witnessing sex acts
- 8% have had someone purposely view pornography in front of them⁹

1.3 The impact of sex-based harassment

Women’s rights organisations have argued that sex-based harassment should be considered part of a “continuum” of violent behaviour against women and girls, rather than as part of “a ‘hierarchical model’ where different types of sexual violence are ordered from most to least harmful”.¹⁰

The Women and Equalities Committee noted the wider impacts of public sexual harassment beyond the immediate experience, saying it keeps “women and girls unequal”:

Sexual harassment has significant and widespread impacts, both on individuals as well as on society. Sexual harassment in public reduces women and girls’ freedom to enjoy public life, and can negatively affect feelings of safety, bodily autonomy and mental health. Being sexually harassed can be a degrading, humiliating, and harmful experience in itself, but the effects are damaging more widely. It helps to keep women and girls unequal by perpetuating a culture in which they are sexualised; it is the backdrop to a society in which sexual violence can be normalised or excused.¹¹

In evidence to the Committee, academic Dr Fiona Vera-Gray highlighted the “safety work” that many women undertake in response to the possibility of harassment from men, including restricting their movement and choice of clothing:

My own research has shown that women conduct a range of strategising and planning in response to the possibility and actuality of men’s intrusion that can be understood as an attempt to find the right amount of panic. The success of this “safety work” is difficult to measure, as success is the absence of a predicted outcome. This means that many women and girls are regularly restricting their movements and expressions in public spaces without experiencing themselves as capable agents. The impact of this is that women’s freedom is frequently limited in order to increase their safety, with women and

⁹ As above, p11

¹⁰ As above, p10. See also Rape Crisis England and Wales, [Written submission to the Women and Equalities Committee Sexual harassment of women and girls in public places inquiry](#), SPP0088, 2 May 2018

¹¹ Women and Equalities Committee, [Sexual harassment of women and girls in public places](#) (PDF), HC 701, 23 October 2018, para 18

girls for example deciding not to wear particular forms of clothing or take particular routes home in order to feel safer.¹²

She noted studies and policy responses that only ask women about their feelings of safety or experiences of harassment missed the impact of this ‘safety work’. She said such questions fail to capture “the extent of the work women and girls do in response to the possibility of sexual harassment in public”.¹³ The Committee said ‘safety work’ had come up “repeatedly” in the evidence it had received from women.¹⁴

In its 2021 survey of girls and young women and their experiences of sexual harassment, Plan International UK found that three in five girls (62%) aged 12 to 21 “have avoided doing something due to experiencing or feeling worried about sexual harassment”.¹⁵

Examples of the activities girls and young women had avoided were going to parts of their local area, exercising in public, going to hospitality venues, going out to meet friends or family, going to school/college/university, taking up a hobby, or going to work.

¹² Dr Fiona Vera-Gray, , [Written submission to the Women and Equalities Committee Sexual harassment of women and girls in public places inquiry](#), SPP0076, 21 March 2018

¹³ As above

¹⁴ Women and Equalities Committee, [Sexual harassment of women and girls in public places](#) (PDF), HC 701, 23 October 2018, para 20

¹⁵ Plan International UK, [What works for ending public sexual harassment](#) (PDF), September 2021, p15

2 Government action

2.1 The ‘call for evidence’

In December 2020 the Government launched a 10-week consultation seeking views to inform a new Violence Against Women and Girls Strategy. The ‘call for evidence’ comprised two strands: direct engagement with the public via an online survey, and gathering strategic information through submissions and focus groups from academics and experts in violence against women and girls.¹⁶ The consultation closed as planned on 19 February 2021.

However, the abduction and murder of Sarah Everard in March 2021 prompted renewed public debate about the safety of women, with many women sharing their own experiences of harassment, abuse and violence. In response, the Government announced it would reopen the consultation for a further two weeks.¹⁷ The Home Office said it had received “an unprecedented 160,000 further responses” over these two weeks, taking the total number of responses to over 180,000.¹⁸

2.2 The Tackling violence against women and girls strategy

Following the consultation, the Government launched its [Tackling violence against women and girls strategy](#) on 21 July 2021.¹⁹ The Strategy set out three ambitions:

1. To increase support for victims and survivors, ensuring they have access to quality support.
2. To increase the number of perpetrators brought to justice, including an increase in the number of crimes reported to the police and increased victim engagement with the police and wider public service response.

¹⁶ Home Office, [Nationwide call for views on tackling violence against women and girls](#), 10 December 2020

¹⁷ Home Office, [Violence Against Women and Girls \(VAWG\) Call for Evidence](#), last updated 21 July 2021. See also Politics Home, [Priti Patel Insists “Government Is Listening” As She Reopens Consultation On Violence Against Women](#), 12 March 2021

¹⁸ Home Office, [Tackling violence against women and girls strategy launched](#), 21 July 2021

¹⁹ Home Office, [Tackling violence against women and girls strategy](#), 21 July 2021

3. To reduce the prevalence of violence against women and girls.

The Home Office published a progress update on the Strategy in March 2022.²⁰

Street harassment

The Strategy noted that the responses to the Call for Evidence “acknowledged that sexual harassment in public places is all too common”, and said it was “not acceptable that women and girls do not feel safe on our streets as a result of this behaviour”.²¹

The Strategy said there were a number of existing criminal offences that could capture such behaviour, depending on the circumstances, including offences under the Protection from Harassment Act 1997, the Public Order Act 1986 and the Sexual Offences Act 2003.²² However, it was important to ensure “not only that the laws are there, but that they work in practice”:

For example, we know from the Call for Evidence that women and girls may not report some forms of public sexual harassment because they do not think that it is criminal behaviour, nor that it will be taken seriously by the police. Our priority must be to ensure that victims know they can report these crimes, and have confidence in the process for doing so.²³

The Strategy set out a number of non-legislative actions to tackle public sexual harassment:

- a national communications campaign aimed at challenging this behaviour and ensuring victims know how and where to report it. [The campaign, ‘Enough’](#), was launched in March 2022.²⁴
- ensuring police and prosecutors are confident in knowing how to respond to public sexual harassment, including publishing new guidance from the College of Policing and the Crown Prosecution Service²⁵
- deepening understanding of who commits public sexual harassment (and why) and how this behaviour may escalate

The Strategy also said the Government would be “looking carefully at where there may be gaps in existing law and how a specific offence for public sexual harassment could address those”.²⁶ The Strategy noted this was a complex

²⁰ Home Office, [Tackling violence against women and girls strategy: progress update](#), 1 March 2022

²¹ Home Office, [Tackling violence against women and girls strategy](#) (PDF), 21 July 2021, p70

²² See section 3.1 of this paper for further details of existing offences

²³ Home Office, [Tackling violence against women and girls strategy](#) (PDF), 21 July 2021, p71

²⁴ Home Office, [Home Secretary says ‘Enough’ to violence against women and girls](#), 1 March 2022

²⁵ See page 15 of this paper for further details

²⁶ Home Office, [Tackling violence against women and girls strategy](#) (PDF), 21 July 2021, p71

area and that it would take “time to ensure that any potential legislation is proportionate and reasonably defined”.²⁷

In a Commons debate on the Strategy, a number of MPs challenged the Government on the Strategy’s coverage of street harassment.²⁸ Shadow safeguarding minister Jess Phillips said:

Where is the much-needed public sexual harassment law? The Government have said that they think offences exist already. Well, tell that to the two thirds of young women who tell us they are suffering this abuse every day. We need root-and-branch reforms not only across the criminal justice sector, but in health, in housing, in social security and online. We need to make sure that women and girls, wherever they are and whatever they are doing, are safe.²⁹

She said that Labour had published a green paper on violence against women and girls in which it committed to the creation of new offences for street harassment.³⁰

Other preventive actions

Other actions from the Strategy relevant to public sex-based harassment include the following:

- The creation of a £5 million Safety of Women at Night Fund focused on the prevention of violence against women and girls in public spaces at night.³¹ Successful bids included projects relating to drink spiking, police call handling, taxi marshals and train safety.³²
- Awarding funding to Police and Crime Commissioners and local authorities under Round 3 of the Safer Streets Fund. The Fund had been created with the objective of tackling acquisitive crime such as car theft and burglary but Round 3 focused on violence against women and girls.³³ Round 4 of the Safer Streets Fund also covered violence against women and girls.³⁴
- The piloting of a tool, [StreetSafe](#), for the public to anonymously report areas where they have felt unsafe. The data is used to inform local decision-making.³⁵ As of July 2022 around 19,000 reports had been made.³⁶

²⁷ As above

²⁸ [HC Deb 21 July 2021 c1083](#)

²⁹ As above, [c1086](#)

³⁰ As above. See also Labour, [Ending violence against women and girls: green paper](#) (PDF), 2021, p8

³¹ Home Office, [Safety of Women at Night Fund application process](#), 21 July 2021

³² Home Office, [Millions awarded for new projects to keep women safe](#), 10 November 2021

³³ Home Office, [Police and local authorities given extra £23.5 million for safer streets](#), 3 October 2021

³⁴ Home Office, [Safer Streets Fund continues to make streets safer](#), 25 July 2022

³⁵ Police.uk, [Privacy notice: StreetSafe](#) [accessed 7 December 2022]

³⁶ Home Office, [Creating an offence of public sexual harassment](#), 21 July 2022

- The Department for Education supporting teachers to deliver the [Relationships, Sex and Health education curriculum](#), which covers sexual harassment as part of its “respectful relationships” topic.³⁷

³⁷ Library Briefing 6103 [Relationships and sex education in schools \(England\)](#) provides further details

3 Calls for a new criminal offence

3.1 The existing criminal law

Offences

There is currently no specific offence of public sex-based harassment. Depending on the circumstances, a range of existing criminal offences might be available to prosecute such conduct. Examples include:

Behaviour involving words or behaviour

- **public order offences** involving the use of threatening, abusive or insulting words or behaviour (or the display of equivalent writing, signs or other visible representations) in a range of circumstances involving fear of violence or the causing of harassment, alarm or distress ([Public Order Act 1986, s4, s4A and s5](#))
- **harassment or stalking**, if the perpetrator targets the same individual on two or more occasions ([Protection from Harassment Act 1997, s2, s2A, s4 and s4A](#))
- **exposure**, which involves a person intentionally exposing their genitals with the intention that someone will see them and be caused alarm or distress ([Sexual Offences Act 2003, s66](#))
- **outraging public decency**, which involves doing in public any act of a lewd, obscene, or disgusting nature that outrages public decency (a common law offence that should generally only be used if no statutory offence applies)

Behaviour involving unwanted physical or sexual contact

- **sexual assault**, which involves the intentional and non-consensual sexual touching of another person ([Sexual Offences Act 2003, s3](#))
- **common assault or battery**, which involves intentionally or recklessly causing another person to suffer or apprehend immediate unlawful violence such as pushing, slapping or spitting ([Criminal Justice Act 1988, s39](#))

Behaviour involving technology

- so-called ‘**upskirting**’ and ‘**breastfeeding voyeurism**’ ([Sexual Offences Act 2003, s67A](#))

Police and prosecution guidance

One of the actions in the Government’s [Tackling violence against women and girls strategy](#) was for the College of Policing and Crown Prosecution Service (CPS) to publish new guidance on applying existing offences to cases of public sexual harassment, to ensure police and prosecutors were “confident” in their response to the issue.³⁸

The College of Policing and CPS have each since published such guidance:

- College of Policing, [Violence Against Women and Girls Toolkit: Street harassment](#), 15 December 2021
- CPS, [Public Order Offences incorporating the Charging Standard: Charges relating to public sexual intimidation, abuse or harassment](#), last updated August 2022

The College of Policing states that the aim of its toolkit “is to point responders to existing laws that might be appropriate to address certain behaviours that might otherwise be thought not to be an offence”.³⁹

The CPS acknowledged the findings of the APPG on UN Women’s March 2021 report regarding low levels of reporting for public sexual harassment, with Siobhan Blake (CPS national lead for Rape and Serious Sexual Offences) describing it as “concerning that so few incidents of sexual harassment in public are reported”.⁴⁰ The CPS said its guidance was “a move to encourage more victims to come forward – and to make sure prosecutions are carried out consistently”.⁴¹

3.2

The Law Commission’s hate crime review

In 2020 the Law Commission launched a review of hate crime laws in England and Wales. The current law provides for a range of aggravated offences, an enhanced sentencing regime, and offences of ‘stirring up hatred’. One of the issues the review looked at was whether the list of personal characteristics currently covered by hate crime legislation – race, religion, sexual orientation, disability and transgender identity – should be extended to cover other characteristics. In its consultation paper the Law Commission provisionally proposed adding “sex or gender” to this list.⁴²

³⁸ Home Office, [Tackling violence against women and girls strategy](#) (PDF), 21 July 2021, p71

³⁹ College of Policing, [Introduction to the violence against women and girls toolkit](#), 15 December 2021

⁴⁰ CPS, [CPS sets out the law on street-based sexual harassment](#), 8 August 2022. For the APPG’s findings on reporting rates see APPG for UN Women, [Prevalence and reporting of sexual harassment in UK public spaces](#) (PDF), March 2021, pp17-21

⁴¹ As above

⁴² Law Commission, [Hate crime laws: a consultation paper](#) (PDF), Consultation Paper 250, 23 September 2020, chapter 12

However, in its final report the Law Commission ultimately concluded that hate crime legislation on aggravated offences and enhanced sentencing should not be extended to “sex or gender” on the grounds that this would be “ineffective at protecting women and girls and in some cases, counterproductive”.⁴³

The Law Commission instead limited its recommendations to the following:

- Extending the offence of stirring up hatred to cover stirring up hatred on the grounds of sex or gender. This would help to tackle the growing threat of extremist misogynist “incel” ideology, and its potential to lead to serious criminal offending.
- A government review of the need for a specific offence to tackle public sexual harassment, which would likely be more effective than adding sex or gender to hate crime laws.⁴⁴

The Law Commission noted that there was “obvious concern about the effectiveness of the current law” in relation to public sexual harassment.⁴⁵

3.3

Calls to change the law

Parliamentarians and women’s rights groups have remained concerned that the existing law is insufficient to deal with public sexual harassment. There have been (unsuccessful) attempts to introduce a specific offence by seeking to amend Government bills, and there have been ongoing calls for the Government to legislate.

Attempts to amend Government Bills

During the passage through Parliament of the Police, Crime, Sentencing and Courts Act 2022, there were several attempts in the Commons and Lords to amend it by adding a new offence of sex-based harassment.⁴⁶ Speaking in support of such amendments at Commons committee stage, shadow justice minister Alex Cunningham argued that sexual harassment “also acts as a precursor to other acts of violence and discrimination against women and girls”.⁴⁷ He queried why a person could be fined for dropping litter, but not for harassing a woman or girl in public. Lord Russell of Liverpool (Crossbench) spoke to a similar amendment in the Lords, saying a new offence would

⁴³ Law Commission website, [Hate Crime](#) [accessed 7 December 2022]. See chapter 5 of Law Commission, [Hate crime laws: Final report](#) (PDF), December 2021 for detailed analysis.

⁴⁴ As above. See paragraphs 5.386-5.397 of the Law Commission’s [final report](#) for specific analysis of public sexual harassment.

⁴⁵ Law Commission, [Hate crime laws: Final report](#) (PDF), December 2021, para 5.396

⁴⁶ See pages 39-40 and 107-109 of [Library Briefing Paper 9273 Police, Crime, Sentencing and Courts Bill: Progress of the Bill](#) for full details

⁴⁷ [HC Deb 22 June 2021 \[Police, Crime, Sentencing and Courts Bill \(Seventeenth sitting\)\] c650](#)

“allow the police and courts to take stronger action against gateway offences”.⁴⁸

The Government resisted the amendments at all stages of the Bill on the grounds that it was actively considering the issue itself. In response to Lord Russell’s amendment Baroness Williams of Trafford, then a Home Office minister, announced that before the 2022 summer recess the Government would be launching a consultation on whether to create a new offence of public sexual harassment.⁴⁹

The issue was revisited during the Commons stages of the Public Order Bill 2021-22. At committee stage Alex Cunningham again spoke to a new clause that would have created an aggravated form of the existing harassment offence under [section 5 of the Public Order Act 1986](#) if the offence had been motivated by hostility toward the sex or gender of the victim and/or if the offence was of a sexual nature.⁵⁰ Again, the Government resisted the new clause on the basis that it had committed to a consultation on public sexual harassment and it did not want to pre-empt the consultation’s findings.

At report stage Stella Creasey (Labour) tabled two new clauses that sought to create aggravated versions of the existing offences under sections 4A and 5 of the Public Order Act 1986 where those offences were committed because of the victim’s sex.⁵¹ She said

...there is a really important issue for all of us not to focus purely on sexual behaviour, but to recognise what is driving these crimes: it is power, entitlement and privilege that some men have—it is mainly men who do this—to target women for crimes.⁵²

Caroline Nokes (Conservative, Chair of the Women and Equalities Committee) and Caroline Lucas (Green) also spoke in support of the new clauses. Stella Creasey said there was a need to act “promptly” and Caroline Nokes said “we are making very slow progress”.⁵³ Both said they looked forward to Greg Clark’s Bill coming up.

For the Government, Jeremy Quin said the Government was “working at pace” to analyse responses to its consultation on public sexual harassment and to “determine the best way forward”.⁵⁴

Other calls to legislate

Plan International UK is running a campaign called [Crime Not Compliment](#), which calls for the Government to make public sexual harassment a crime. A

⁴⁸ [HL Deb 22 March 2022 c793](#)

⁴⁹ [HL Deb 22 March 2022 c791](#). See section 3.4 of this paper for details of the consultation.

⁵⁰ See pages 38-40 of [Library Briefing Paper 9620 Public Order Bill: Progress of the Bill](#) for full details

⁵¹ [HC Deb 18 October 2022 cc553-554](#) (New Clauses 13 and 14)

⁵² As above, [c564](#)

⁵³ As above, [c564](#) and [c565](#)

⁵⁴ As above, [c605](#)

petition supporting the campaign has received over 65,000 signatures to date.⁵⁵

The campaign group [Our Streets Now](#), started by two sisters seeking to end public sexual harassment, is running a similar campaign. Their petition on the change.org website has received over 463,000 signatures to date.⁵⁶

In a joint briefing, Plan International UK and Our Streets Now argue that the existing criminal law is “fragmented, incomplete and disjointed” and that “many acts of abuse and sexually harmful behaviour fall through the legal cracks”.⁵⁷ The briefing ‘tests’ a number of scenarios (based on testimony gathered from girls and young women) against existing offences and concludes that several behaviours are either not covered at all or are covered by laws that are “not fit for purpose”.

Examples of behaviour the briefing argues aren’t currently covered include leering or persistent staring, following or cornering, sexual propositioning or explicit comments, intrusive persistent questioning, and stroking, rubbing or pressing against non-genital parts of someone’s body.⁵⁸ This conclusion differs from the guidance on existing offences issued by the College of Policing and the CPS, which consider that such behaviours would already be covered.⁵⁹

Plan International UK and Our Streets Now have worked with two barristers, Dexter Dias KC and Dr Charlotte Proudman, to produce a draft bill that would make public sexual harassment a crime. The full text of the draft bill has not been published, but the following overview is available:

Plan International UK and Our Streets Now have worked with two leading human rights lawyers who developed a tailor-made bill, learning from best practice around the world and applying it to the UK’s unique context. This bill includes the crucial elements of public space, the ‘sexual’ element and the mental element, which includes intent to harass and ‘recklessness’ (disregarding the effect of the harassment). It covers all forms of public sexual harassment and proposes a proportionate penalty of a fine or up to one year’s imprisonment, in line with legislation in other countries. This bill would clarify the law for the police, prosecutors, the judiciary and members of the public – including those who experience it.⁶⁰

⁵⁵ Plan International UK, [Girls are sick of being harassed, followed and touched – it’s time for public sexual harassment to be a crime. Agree? Add your name to help make it happen.](#) [accessed 7 December 2022]

⁵⁶ Change.org, [Make Public Sexual Harassment a Criminal Offence in the UK](#) [accessed 7 December 2022]

⁵⁷ Plan International UK/Our Streets Now, [Ending Public Sexual Harassment: Legal Briefing](#) (PDF), April 2021

⁵⁸ As above, p3

⁵⁹ See p15 of this briefing

⁶⁰ Plan International UK, [What works for ending public sexual harassment](#) (PDF), September 2021, p32. See also an interview with Dexter Dias KC and Charlotte Proudman in the Plan International UK blogpost [Think the law protects girls from public sexual harassment? Think again](#), 13 July 2021

3.4

The Government's consultation

The consultation's proposals

On 21 July 2022 the Government launched a targeted consultation on the options for creating a new offence of public sexual harassment.⁶¹

The Government set out its view that “behaviour amounting to public sexual harassment is already covered by existing criminal offences (subject to the individual circumstances of the case)”. It acknowledged that others took a different view, but said that given its own position it was not proposing creating a wholly new offence.

The consultation instead set out two possible models that would build on the existing offence in [section 4A of the Public Order Act 1986](#), which covers the intentional use of threatening, abusive or insulting words or behaviour, or disorderly behaviour, to cause a person harassment, alarm or distress. Each model would provide for a higher maximum sentence if those offences were committed on the basis of the complainant's sex.

The two models were:

- **Option 1:** create a new offence where a person commits an offence under section 4A of the 1986 Act, and does so because of the complainant's sex or presumed sex.
- **Option 2:** the same as option 1, but with the addition of an illustrative (not exhaustive) list of types of threatening, abusive, insulting or disorderly behaviours that could be covered by the offence. The Government said such a list was “not legally essential” but might help clarify the purpose of the offence. The model list included:
 - following a person
 - making an obscene or aggressive comment towards a person
 - making an obscene or offensive gesture towards a person
 - obstructing a person making a journey
 - driving or riding a vehicle slowly near to a person making a journey

The proposed maximum sentence for either option would be two years in prison and/or a fine.⁶²

The consultation noted the following additional aspects of the drafting:

⁶¹ Home Office, [Public sexual harassment consultation](#) [accessed 7 December 2022]

⁶² The existing section 4A offence carries a maximum sentence of six months and/or a fine

- the defendant does not have to be motivated by the desire for sexual gratification, although he or she might be. It is sufficient that the behaviour is done because of the other person's sex;
- the defendant might have additional motivations, not related to the victim's sex; and
- it is the sex which the defendant presumes the other person to have which is important, even if in fact they are wrong.⁶³

The consultation noted that although it referred to public sexual harassment experienced by women and girls, men and boys can also be victims. It made clear that the draft offences it was consulting on were not sex-specific and could be used to protect both women and men.

The consultation stated that the Government had not made a decision on whether there should be such a new offence, and that legislating was not necessarily "the right policy course". It noted that using existing offences (and ensuring police confidence in doing so) coupled with non-legislative measures might be a better way to tackle the issue. The consultation therefore sought views on the following questions:

- The principle of whether there should be a new law specifically covering public sexual harassment;
- If there were to be such a new law, whether one of the two options we set out would be the correct model for it; and
- Whether there are additional non-legislative actions which the Government should take (either in addition to or instead of a new offence).⁶⁴

The consultation closed on 1 September 2022.

The Government's response

The Government published the consultation outcome on 8 December 2022.⁶⁵ Consultation responses had been received from 25 of the organisations to which the targeted consultation was sent, as well as 285 other responses.⁶⁶

13 of the 25 invited respondents thought there should be a specific criminal offence of public sexual harassment, as did the majority of other respondents. Of the remaining invited respondents, eight did not think there should be a specific offence, two did not know, and two did not answer the question.

⁶³ Home Office, [Public sexual harassment consultation](#), 21 July 2022

⁶⁴ As above

⁶⁵ Home Office, [The government's response to the targeted consultation on whether there should be a criminal offence of public sexual harassment](#), 8 December 2022

⁶⁶ The Government had sent the consultation to recipients in charities, the children's and schools sectors, organisations related to the world of work, policing, the legal sector, local government, night-time economy organisations, transport organisations and specialist academia.

Of the invited respondents who considered both Option 1 and Option 2 to be viable options for legislation, the majority considered Option 2 would be more effective because it would include an illustrative list of behaviours.⁶⁷

The Government said that views from the three invited respondents who preferred Option 1 varied:

For example, one respondent considered that option 2 may only be applied rigidly and lacks flexibility to cover every eventuality and the changing nature of behaviours. Some of the other respondents echoed those points, also noting that option 1 may be less complex to apply in practice.⁶⁸

Nine of the invited respondents thought there were better ways to construct a new public sexual harassment offence than Options 1 or 2.⁶⁹ The consultation response said particular concerns related to the distinction between ‘sexual’ harassment and ‘sex-based’ harassment and issues about intent:

Two of the points made by a number of respondents were that:

- Sexual harassment (i.e. harassment which is sexual in nature) rather than sex-based harassment (i.e. harassment which is done because the victim is a woman or a man) should be criminalised, as that is the behaviour which is the issue, and not all sexual harassment behaviour is done because of the person’s sex. It was stated that this need not involve a sexual gratification motive; the Sexual Offences Act 2003 has a nature- rather than motivation-based definition of what is ‘sexual’.
- Options 1 and 2 depend on the ability to prove that the perpetrator’s intention was to harass, alarm or distress the victim. It was stated that such an intention may be hard to prove, as the perpetrator may say that they intended to compliment the victim rather than to harass them. It was stated that dependence upon intention may result in complex legal debates about motives and causation, whereas it is the behaviour itself which matters.⁷⁰

The Government said it had concluded that an offence of public sexual harassment should be introduced, and that it would be pursuing Option 1 despite most respondents preferring Option 2:

Having considered all the issues, we do not think that a list of behaviours, which is where Option 2 differs to Option 1, is the right course to take. Such behaviours can become prescriptive, can rapidly become out of date as new behaviours emerge, and, although such lists are illustrative only, in practice they can have the effect of ruling out other types of behaviour from being considered.⁷¹

⁶⁷ Three invited respondents thought Option 1 would be more effective, nine thought Option 2 would be more effective, and six did not think either option would be effective

⁶⁸ Home Office, [The government’s response to the targeted consultation on whether there should be a criminal offence of public sexual harassment](#), 8 December 2022, response to Q8

⁶⁹ Five thought there was not a better way, five did not know, and six did not answer this question

⁷⁰ Home Office, [The government’s response to the targeted consultation on whether there should be a criminal offence of public sexual harassment](#), 8 December 2022, response to Q9

⁷¹ As above, Government Position

4 The Bill

On 15 June 2022, Greg Clark (Conservative) presented the [Protection from Sex-based Harassment in Public Bill 2022-23](#) to Parliament. The Bill has Government support.⁷² The Home Office has published [Explanatory Notes](#) (PDF) to accompany the Bill.

1 The Private Members' Bill ballot

At the start of each parliamentary year, all backbench MPs are invited to enter a ballot for the chance to be selected to introduce a Private Member's Bill on a subject of their choice in that session. The first 20 MPs who are drawn can each bring in a Bill of their choosing. The higher the MP is drawn in the ballot, the more likely they are to get time to debate their Bill.

The ballot for the 2022-23 parliamentary session took place on 19 May 2022 – 460 MPs entered the ballot, and Greg Clark came seventh.⁷³ This allowed him to introduce a Bill with a guarantee that it would be debated.

The Bill's second reading took place on 9 December 2022.⁷⁴ Committee stage took place in a single sitting on 22 February 2023.⁷⁵ Commons report stage and third reading are scheduled for 24 March 2023.

4.1 The Bill's provisions

The Bill would introduce a new offence causing intentional harassment, alarm or distress to a person in public where the behaviour is done because of that person's sex. It would do this by implementing Option 1 from the Government's consultation on the issue.

Writing in the Times of Tunbridge Wells ahead of second reading, Greg Clark said he had been prompted to act after a local sixth form student had shared her experience of being sexually harassed on her walk from school. He said the new offence would be aimed at those who deliberately targeted people in order to do harm:

⁷² Gov.uk, [Government supports a new public sexual harassment offence](#), 9 December 2022

⁷³ Parliament.uk, [Private Members' Bill ballot: 19 May 2022](#) [accessed 21 March 2023]

⁷⁴ [HC Deb 9 December 2022 c621](#)

⁷⁵ [PBC Deb 22 February 2023 c1](#)

Sometimes boys and men, and indeed girls and women, can say or do the wrong thing without meaning to make another person feel threatened or alarmed.

Such behaviour is not within the scope of this Bill. Neither is behaviour that would be considered reasonable by normal society. It is aimed at those who deliberately target people in order to do harm.⁷⁶

Clause 1 of the Bill would add a new section 4B to the Public Order Act 1986. Under new section 4B, a person would be guilty of an offence if:

- they commit an offence under [section 4A of the 1986 Act](#) (intentional harassment, alarm or distress);⁷⁷ and
- they carried out the conduct referred to in section 4A(1) because of the sex (or presumed sex) of the person to whom they intended to cause harassment, alarm or distress.

It would be irrelevant whether the defendant was also motivated by additional factors other than sex/presumed sex, and whether they carried out the conduct for the purposes of sexual gratification.

Clause 1 itself does specify the types of conduct it would cover. However, the Explanatory Notes state that it is envisaged the 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 journey⁷⁸

The section 4B offence would be triable either way, meaning it could be prosecuted in either the magistrates' court or the Crown court:

- the maximum penalty in the magistrates' court would be imprisonment for a term not exceeding the general limit in a magistrates' court⁷⁹ and/or a fine

⁷⁶ Times of Tunbridge Wells, "[For far too long women have endured the reality of being harassed in public](#)", 30 November 2022

⁷⁷ As introduced, clause 1 would have only applied to section 4A offences committed in England. At committee stage this was expanded to also cover Wales: see section 4.3 of this briefing for further details

⁷⁸ [Explanatory Notes to the Protection from Sex-based Harassment in Public Bill](#) (PDF), para 8

⁷⁹ Up to and including 29 March 2023 the general limit is 12 months for an either way offence: see [Sentencing Act 2020, s224](#). From 30 March 2023 the general limit in s224 will be reduced to 6

- the maximum penalty in the Crown court would be imprisonment for a term not exceeding two years and/or a fine

Clause 2 provides that the Bill would extend to England and Wales only.

4.2 Second reading

The Bill's second reading took place on 9 December 2022.⁸⁰ It received extensive cross-party support.

Opening the debate, Greg Clark said the Bill “is not meant to – nor will it – criminalise thoughtless or clumsy words” but instead “targets people who deliberately target other people to do them harm”.⁸¹ He said the Bill's real purpose was to “help to change the culture of society so that it becomes even more obviously unacceptable to abuse, humiliate and intimidate women and girls in public”.⁸² He went on:

It will make it clear that the crime is serious and it will provide sanction against those who deliberately set out to frighten women and girls on our streets. It is a tightly drawn but, as I hope the House will agree, valuable step in protecting the more than half of our population who, for too long, have had to change their ways of living their lives when the abusers should change theirs.⁸³

Stella Creasy (Labour) welcomed the Bill and said it was “about our freedom as women to lead the same lives as men in where we go and what we do”.⁸⁴ However, she noted the challenges that could be involved in proving intent, and called for the Bill to cover ‘foreseeable’ harassment incidents as well as intentional ones:

What does “foreseeable” mean? It means that there would not be a defence of someone not realising that a woman would be offended when they were trying to grope her private parts, because most men do know that and it is about time we held men to account for the fact that they should know better. The concept of foreseeable harassment means that we would remove that defence of, “I did not realise that a woman would be offended if I did that.”⁸⁵

Jackie Doyle-Price (Conservative) raised similar concerns about the need for intent:

months: see the [Sentencing Act 2020 \(Magistrates' Court Sentencing Powers\) \(Amendment\) Regulations 2023](#).

⁸⁰ [HC Deb 9 December 2022 c621](#)

⁸¹ As above, cc622-623

⁸² As above, c623

⁸³ As above, c623

⁸⁴ As above, c624

⁸⁵ As above, c628

Somebody may feel that they could argue, “Well, it wasn’t a problem. I didn’t intend to cause any offence. We were just having a bit of fun.” That cannot be acceptable; there can be no question of allowing any kind of loophole.⁸⁶

Shadow justice minister Alex Cunningham said the Opposition supported the Bill, but criticised the Government for having missed “golden opportunities” to legislate at an earlier stage.⁸⁷

Safeguarding minister Sarah Dines confirmed the Government’s support for the Bill. She said it had a key part to play alongside non-legislative measures such as funding for crime prevention measures, new guidance for police and prosecutors, and the Government’s ‘[Enough](#)’ campaign. She noted that the Bill was “deliberately not prescriptive about exactly what types of behaviour are covered” and said that the Government did “not want to create a tick-box approach that limits the behaviours that could be prosecuted”.⁸⁸

On the requirement for intent, she said the new offence would target “actions clearly intended to intimidate”. She noted that issues of intention and intimidation would be “looked at very closely” but that her view was “there needs to be intent”.⁸⁹ She acknowledged “that there are always concerns that a person could claim that they had an intention other than harassing the other person”.⁹⁰

The Bill was given a second reading without division.

4.3 Committee stage

Committee stage took place in a single sitting on 22 February 2023.⁹¹

The Committee agreed an amendment to extend the new section 4B offence to Wales. It also agreed a new clause and related amendments to make consequential changes to other legislation on football banning orders, the disclosure of criminal records in Scotland, and disqualification from elected office.

The Committee also considered an amendment and new clause tabled by Stella Creasy, relating to the requirement for intent. She did not press either to a division after the Minister said she would look at the issue further, but indicated that she expected to return to the issue at report stage.

⁸⁶ As above, c642

⁸⁷ As above, c635

⁸⁸ As above, c631

⁸⁹ As above, c631

⁹⁰ As above, c632

⁹¹ [PBC Deb 22 February 2023 c1](#)

Extending the new offence to Wales

Greg Clark moved an amendment to clause 1 to extend the application of the new section 4B offence to Wales.⁹² Clause 1 as introduced only provided for the new section 4B offence to apply in England. Speaking to the amendment, Greg Clark said:

The subject matter of the Bill—the Public Order Act 1986—is devolved to Wales, but the House can legislate to extend it to Wales if the Welsh Government wish and the Senedd passes a legislative consent motion to that effect. I am pleased to say that the Welsh Government wish to apply the Bill to Wales, and they will table a legislative consent motion in the Senedd in time for it to pass before Report.⁹³

He noted that the section 4A offence in the 1986 Act does not extend to Scotland or Northern Ireland, so it would “not be practical to expand the new offence to those countries, given that the Act on which it is based does not apply there”.⁹⁴

The amendment was agreed without division.

The Welsh Government has not yet tabled a legislative consent motion. In early March Mick Antoniw MS, Counsel General and Minister for the Constitution, said this was because discussions with the UK Government were ongoing and that a legislative consent motion would be laid “as soon as we have a settled position”.⁹⁵

Consequential amendments to other legislation

Greg Clark moved new clause 2 and related amendments⁹⁶ to add cross-references to the new section 4B offence to the following existing legislation:

- [Schedule 1](#) to the [Football Spectators Act 1989](#), which lists the “relevant offences” in respect of which a court can impose a football banning order on conviction
- [Schedule 8B](#) to the [Police Act 1997](#), which lists the offences for which a person’s conviction, even if spent, will be disclosed on a criminal record certificate issued in Scotland
- [Schedule 9](#) to the [Elections Act 2022](#) (not yet in force), which lists the offences in respect of which a conviction can disqualify a person from holding elected office

⁹² [Amendment 1](#) (PDF)

⁹³ [PBC Deb 22 February 2023 c4](#)

⁹⁴ As above, c5

⁹⁵ [LJC\(6\)-09-23 - Paper 12 - Letter from the Counsel General and Minister for the Constitution to the Llywydd](#) (PDF), 7 March 2023. See also the Senedd Cymru website, [Legislative Consent: Protection from Sex-based Harassment in Public Bill](#) [accessed 22 March 2023]

⁹⁶ [New clause 2 and amendments 2, 3 and 4](#) (PDF)

Speaking to the new clause and amendments, Greg Clark noted that the existing section 4A offence is listed in all the above provisions. He went on:

Without the new clause, if in future someone were convicted under the new section 4B offence of sex-based harassment, they would no longer be covered by the sanctions that those other Acts contain for convictions under section 4A of the Public Order Act. Those relate to football banning orders, the disclosure of criminal records in Scotland and disqualification from elected office, which follow currently from conviction under section 4A of the Act. Amendments 2, 3 and 4 are consequential on new clause 2, providing, for example, for commencement regulations to be the same for new clause 2 as for clause 1.⁹⁷

On the proposed change to Schedule 8B to the Police Act 1997, safeguarding minister Sarah Dines noted that this legislation is devolved in Scotland “but with the agreement of the Scottish Government we seek to make the amendment here”.⁹⁸ She went on:

...it is right that when a consequential change arises from a UK Bill, we should make the necessary amendment ourselves wherever possible, in the interests of not unduly troubling our colleagues in Holyrood with the effects of our legislative changes.⁹⁹

The new clause and amendments were agreed without division.

Intent

The Committee also considered a new clause and amendment tabled by Stella Creasy, which related to intent and ‘reasonable’ behaviour.¹⁰⁰

The amendment and new clause both sought to provide that a person charged with the new 4B offence would not be able to argue that their conduct was “reasonable because of the relevant person’s sex (or presumed sex)”.

Stella Creasy said that these changes would “introduce the concept of “ought to know” that is contained in other pieces of harassment legislation”.¹⁰¹ She noted the difference between public order offences under the 1986 Act, which require intent, and offences under the Protection from Harassment Act 1997, which include the concept of reasonable behaviour:

Public order offences are based on the concept of intent—did someone intend to harass somebody? They therefore give the person who is accused of it a defence that says, “Well, I thought my behaviour was reasonable.” The concept of reasonable behaviour is contained in other pieces of harassment legislation, but in that legislation it is also defined by whether someone ought

⁹⁷ [PBC Deb 22 February 2023 c5](#)

⁹⁸ As above, c12

⁹⁹ As above, c12

¹⁰⁰ [Amendment 5 and new clause 3](#) (PDF). Caroline Nokes (Conservative) had tabled new clause 1, which covered similar issues, but this was not selected for debate as it was deemed out of scope.

¹⁰¹ [PBC Deb 22 February 2023 c7](#)

to know it was reasonable. The Protection from Harassment Act 1997 refers to conduct that

“occurs in circumstances where it would appear to a reasonable person that it would amount to harassment of that person.”

In contrast, public order offences simply allow the perpetrator to define whether they thought their behaviour was reasonable.¹⁰²

She called on the Minister to recognise that including a concept of ‘reasonable behaviour’ in the Bill “will help to create consistency in how we define harassment in law”.¹⁰³

For the Government, Sarah Dines said the issues raised by the amendment and new clause would be “given proper consideration”. However, she considered that the amendment and new clause as drafted would not achieve their purpose for technical reasons, as intent would still be a separate requirement of the new section 4B offence that would need to be satisfied:

... a statutory defence comes into play only if the criteria for the actual offence have otherwise been met. In this case, for a prosecution to succeed, it must prove that the defendant intended to cause harassment, alarm or distress. If it cannot prove that, the prosecution will fail, and the defendant’s need to argue a specific statutory defence will not arise. This is a technical point, but if the prosecution can prove that, it seems hard to envisage a situation in which the court accepted that the defendant intended to cause harassment and was also persuaded that the defendant’s conduct was reasonable, regardless of the victim’s sex.¹⁰⁴

Sarah Dines acknowledged that her response would “raise the question why we are restricting the new offence to cases in which the defendant’s intention to cause harassment, alarm or distress must be proven”.¹⁰⁵ However, she considered that a requirement for intent “can usefully differentiate behaviour where the criminal justice path is the right one from behaviour where societal interventions are more appropriate”.¹⁰⁶

Stella Creasy did not press the amendment or new clause to a division. However, she reiterated her view that the issue “needs resolution” and that she was withdrawing “on the basis that something will come back on Report”.¹⁰⁷

¹⁰² As above, c6

¹⁰³ As above, c7

¹⁰⁴ As above, c13

¹⁰⁵ As above, c14

¹⁰⁶ As above, c16

¹⁰⁷ As above, c22

The House of Commons Library is a research and information service based in the UK Parliament. Our impartial analysis, statistical research and resources help MPs and their staff scrutinise legislation, develop policy, and support constituents.

Our published material is available to everyone on commonslibrary.parliament.uk.

Get our latest research delivered straight to your inbox. Subscribe at commonslibrary.parliament.uk/subscribe or scan the code below:



 commonslibrary.parliament.uk

 [@commonslibrary](https://twitter.com/commonslibrary)