



## Protection from Sex-based Harassment in Public Bill

### HL Bill 125 of 2022–23

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The [Protection from Sex-based Harassment in Public Bill](#) is a private member's bill which is due to receive its second reading in the House of Lords on 16 June 2023. The bill has completed its passage through the House of Commons, where it was sponsored by Greg Clark (Conservative MP for Tunbridge Wells). It is being sponsored in the Lords by Lord Wolfson of Tredegar (Conservative).

The bill would make provision for a new offence of 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 inserting a new section into the Public Order Act 1986. Those convicted of this offence would face increased penalties when compared with the current offences regarding intentionally causing harassment, alarm or distress.

The government supports the bill and the Home Office prepared the bill's explanatory notes. The bill has cross-party support.

Statistics show that both men and women experience sex-based public harassment, such as receiving unwanted sexual comments from a stranger, being followed, or being insulted or shouted at by a stranger in public. The figure is higher for women, and particularly for women aged 16 to 34 years old; half of women in this age range reported being harassed in the last 12 months.

Concern about public sexual harassment is not new. The House of Commons Women and Equalities Committee published a report on the subject in 2018. There have also been calls by charities and parliamentarians to create a specific offence of public sexual harassment. In December 2021, the Law Commission published a report on the potential for reforming hate crime laws and making misogyny a hate crime. It concluded that the hate crime model was not appropriate but called on the government to carry out a review of the need for a specific offence of public sexual harassment. The government subsequently ran a consultation on the issue, publishing a response in December 2022. It concluded that the best means of creating a specific offence of public sexual harassment would be through amending the Public Order Act 1986.

The bill was amended during committee stage in the Commons by Greg Clarke, to ensure that the new offence was listed in three other acts. For example, it would ensure that those convicted of the new offence would face the same sanctions under the Football Spectators Act 1989 as they would for a conviction for the current offence of intentionally causing harassment, alarm or distress. Mr Clarke also successfully put forward a new clause at report stage to require the secretary of state to provide the police with guidance about the new offence, and in particular the defences that could be used against it.

The legislation mainly applies to England and Wales. However, certain changes to the other acts, such as the Police Act 1997, will also cover Scotland.

## I. Background to the bill

Public sexual harassment is generally understood to involve unwelcome and unwanted behaviour directed at a person in a public space because of the person's sex. The government has provided some examples of this behaviour, such as individuals being verbally abused in the street, being followed, receiving obscene gestures, or being touched by a stranger.<sup>1</sup>

In May 2022, the Office for National Statistics published data on perceptions of safety and experiences of harassment. It showed that in the previous 12 months, 27% of women and 16% of men had experienced at least one form of harassment.<sup>2</sup> Although both men and women reported experiencing public sexual harassment, the figure was significantly higher for women and varied by age group. One in two women aged 16 to 34 years old reported experiencing at least one form of harassment in the previous 12 months.

The types of harassment faced by men and women differed, with women more likely to experience catcalls, whistles and unwanted sexual comments from a stranger or feel that they were being followed. The most common form of harassment for men in the 16–34 age group was being insulted or shouted at by a stranger in public. The data also showed that women felt less safe than men in all settings after dark.

Concerns have been raised about public sexual harassment for some time. In May 2020, Plan International UK published research showing that one in five girls aged 14 to 21 years old had experienced public sexual harassment.<sup>3</sup> The House of Commons Women and Equalities Committee published a report into the sexual harassment of women and girls in public places in October 2018. It concluded that sexual harassment “pervades the lives of women and girls” and was “a routine and sometimes relentless experience” for them.<sup>4</sup> It described the damage caused by this harassment as “far-reaching” and argued that it “keeps women and girls unequal”.

The government published its ‘Tackling violence against women and girls strategy’ in July 2021. The strategy emphasised non-legislative actions the government was taking to tackle public sexual harassment. It argued that several offences already existed which could be used for this purpose. However, the government did commit to look “carefully at where there may be gaps in existing law and how a specific offence for public sexual harassment could address those”.<sup>5</sup>

Several groups and parliamentarians have called for change. There have also been unsuccessful attempts to introduce a specific offence of public sexual harassment, for example through amendments proposed during the Police, Crime and Sentencing Act 2022 to make misogyny a hate crime.<sup>6</sup>

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<sup>1</sup> Home Office, ‘[Consultation outcome: Public sexual harassment consultation](#)’, 8 December 2022.

<sup>2</sup> Office for National Statistics, ‘[Perceptions of personal safety and experiences of harassment, Great Britain: 16 February to 13 March 2022](#)’, 25 May 2022.

<sup>3</sup> Plan International UK, ‘[The state of girls’ rights in the UK](#)’, May 2020, p 4.

<sup>4</sup> House of Commons Women and Equalities Committee, ‘[Sexual harassment of women and girls in public places](#)’, 23 October 2018, HC 701 of session 2017–19, p 3.

<sup>5</sup> Home Office, ‘[Tackling violence against women and girls strategy](#)’, 21 July 2021, p 71.

<sup>6</sup> More detailed background information about public sexual harassment can be found in the House of Commons Library briefing, ‘[Protection from Sex-based Harassment in Public Bill 2022–23](#)’, 22 March 2023.

In December 2021, the Law Commission published a report about the potential reform of hate crime legislation. It concluded that “the particular model of hate crime laws is unlikely to prove an effective response to misogynistic offending”, arguing that it “may prove more harmful than helpful” to victims of violence against women and girls.<sup>7</sup> The commission recommended a government review of the need for a specific offence to tackle public sexual harassment.

On 21 July 2022, the government ran a targeted consultation on the options for creating a new offence of public sexual harassment.<sup>8</sup> It argued that offences already existed to cover behaviour constituting public sexual harassment, and proposed building on the existing offence in the Public Order Act 1986 rather than creating a wholly new offence.

The consultation set out two possible models for achieving this; both of which would attract a higher maximum sentence if offences were committed on the basis of the victim’s sex:

- Option 1 was to amend the Public Order Act 1986 to include section 4B. Section 4B would create a new offence where a person commits an offence under 4A of the 1986 act and does so because of the victim’s sex or presumed sex.
- Option 2 was the same as option 1, but also included a non-exhaustive list of the types of behaviour which might be covered by the offence. This included making an obscene or aggressive comment or gesture towards a person or following a person.

The government published a response to the consultation on 8 December 2020.<sup>9</sup> It stated:

We note the significant majority of respondents in favour of an offence, and the strong support given to some of the possible reasons in favour of one, such as the deterrent effect of a new law and its ability to raise awareness, and its ability to provide clarity to the law and encourage reporting. We also note the other arguments put forward, such as its ability to help drive cultural change.<sup>10</sup>

The majority of respondents to the consultation preferred option 2 as a model for the new offence. However, the government concluded that option 1 would be the most appropriate. It argued that the list of behaviours in option 2 risked becoming prescriptive, could rapidly go out of date, and might have the effect of ruling out other types of behaviour from being considered.

In June 2022, Greg Clarke (Conservative MP for Tunbridge Wells) announced the topic of his private member’s bill, having been successful in the ballot the previous month. His Protection from Sex-based Harassment in Public Bill would introduce a new offence 4B into the Public Order Act 1986, as proposed in the government’s consultation response.

<sup>7</sup> Law Commission, ‘[Hate crime laws: Final report](#)’, 7 December 2021, p 11.

<sup>8</sup> Home Office, ‘[Public sexual harassment consultation](#)’, updated 8 December 2022.

<sup>9</sup> Home Office, ‘[The government’s response to the targeted consultation on whether there should be a criminal offence of public sexual harassment](#)’, updated 8 December 2022.

<sup>10</sup> As above.

## 2. What would the bill do?

The bill contains four clauses. It builds upon section 4A of the Public Order Act, which makes it an offence to use threatening, abusive or insulting words or behaviour if the intention and the effect of the behaviour is to cause another person harassment, alarm or distress. The current punishment for someone convicted of this offence is imprisonment for up to six months, a fine, or both.

The explanatory notes explain how the bill extends this by introducing a new offence:

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.<sup>11</sup>

The new offence would carry a greater punishment than the current section 4A of the Public Order Act 1986.

### 2.1 Provisions in the bill

#### Clause 1

Clause 1 would insert a new section 4B into the Public Order Act 1986.

Currently, section 4A of the Public Order Act 1986 makes it an offence to intentionally cause harassment, alarm or distress. It must be proven that:

- the accused has used threatening, abusive, or insulting words or behaviour or disorderly behaviour, or displayed any writing, sign or other visible representation which is threatening, abusive or insulting
- the person intended to cause another person harassment, alarm or distress by doing so
- they have caused that other person harassment, alarm or distress<sup>12</sup>

Most of the offences charged under this section are those which take place in public, but it can also apply to acts in a private place. However, no offence is committed where the behaviour takes place inside a dwelling and the person affected is also inside that or another dwelling.

Current section 4A stipulates the two types of defence to this offence:

- that the defendant was inside a dwelling and had no reason to believe that the words or behaviour the defendant used, or the writing, sign or other visible representation the defendant displayed, would be heard or seen by a person outside that or any other dwelling
- that the defendant's conduct was reasonable

<sup>11</sup> [Explanatory notes](#), p 2.

<sup>12</sup> Home Office, '[Protection from Sex-Based Harassment in Public Bill: European Convention on Human Rights memorandum](#)', 6 December 2022, p 2.

Section 4A also includes details of the sentencing options for someone convicted of this offence.

The new section 4B would create a new offence where a person commits an offence under section 4A of the Public Order Act 1986 and carries out that conduct because of the sex (or presumed sex) of the person to whom they intended to cause harassment, alarm or distress. It also provides for more severe sentencing options for those found guilty of the new offence, with liability as follows:

- on summary conviction (for example, 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
- on conviction on indictment (for example, in the crown court), to imprisonment for a term not exceeding two years, to a fine, or to both.

Subsection 5 of new section 4B states that if a person is tried on indictment 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

Clause 2 would require the secretary of state to issue guidance to the police. The clause was added at report stage in the House of Commons following concerns expressed by some members at committee. These are outlined in section 2.2.2 of this briefing. Subsection 1 specifies who the guidance should be issued to and includes chief officers of police, the chief constable of the British Transport Police, and the chief constable of the Civil Nuclear Constabulary.

Subsection 2 specifies that the guidance must include details about the reasonable conduct defence in section 4A(3)(b) of the Public Order Act 1986. The explanatory notes explain:

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.<sup>13</sup>

Subsection 3 would allow the secretary of state to revise the guidance and subsection 4 requires the secretary of state to arrange for the guidance to be published. Subsection 5 requires those specified in subsection 1 to have regard to the guidance.

## Clause 3

Clause 3 makes consequential amendments to the schedules of three acts to ensure that the new offence in 4B is correctly cross-referenced. It would ensure that other sanctions available where someone commits an offence under section 4A of the Public Order Act 1986 would also apply to the new section 4B offence.

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<sup>13</sup> [Explanatory notes](#), p 5.

The three acts in question are:

- schedule 1 of the Football Spectators Act 1989
- schedule 8B of the Police Act 1997
- schedule 9 of the Elections Act 2022

Schedule 1 of the Football Spectators Act 1989 lists offences where a conviction would usually cause someone to be issued with a football banning order (FBO). An FBO prevents a person from attending football matches in the UK and may place other conditions upon them. The new section 4B offence would be included in this list of offences.

Schedule 8B of the Police Act 1997 lists the criminal offences for which spent convictions will be disclosed on a criminal record certificate in Scotland. Exceptions apply where it will not be disclosed, including where the person was a minor when convicted and at least seven-and-a-half years has elapsed. The new section 4B offence would be included in this list.

Schedule 9 of the Elections Act 2022 has not yet been commenced. However, it would list the offences for which a conviction would usually lead to the offender being disqualified from being nominated for, standing for, or holding elected office for five years. The new section 4B offence would be added to this list.

## Clause 4

Clause 4 details the extent of the bill, its commencement and short title.

The bill would extend to England and Wales, subject to subsection 2. Subsection 4(2) provides that amendments made by clause 3, which relate to consequential amendments to three other acts, would have the same extent as the provision amended. As detailed in the explanatory notes, this relates to consequential amendments to schedule 8B to the Police Act 1997, which extends to Scotland and is devolved there. As outlined in the explanatory notes, “the Scottish government has confirmed that it is content for the UK Parliament to legislate for Scotland in this instance” and a legislative consent motion is not required.<sup>14</sup>

Clause 4 provides that clauses 1 to 3 come into force on “such a day as the secretary of state may by regulations made by statutory instrument appoint”. Clause 4 would come into force at royal assent.

## 2.2 Commons stages

### 2.2.1 Second reading

Introducing the bill’s second reading on 9 December 2022, Greg Clarke queried “why should a woman feel less confident on our streets than a man? The streets are theirs equally”.<sup>15</sup> Mr Clarke said that his “simple” bill would mean that where an act of intentional harassment, alarm or distress is

<sup>14</sup> [Explanatory notes](#), p 4.

<sup>15</sup> [HC Hansard, 9 December 2022, col 621](#).

carried out in a public place because of the relevant person’s sex, it would be considered an offence of sex-based sexual harassment and could be punished at a higher rate. However, he stressed the bill would not criminalise “clumsy words”. He also said the new offence would not require the motivation of sexual gratification and would equally apply to men who were harassed.

Stella Creasey (Labour MP for Walthamstow) congratulated Mr Clarke on introducing the bill. Ms Creasey welcomed the proposed uplift to the offence of harassment and said she hoped the bill “will be the start of something much bigger”. She argued the bill could be “further improved” by introducing a concept of foreseeable harassment incidents, which, she said, would remove the defence of someone claiming they did not realise a woman would be offended by their actions.<sup>16</sup>

Speaking for the government, Home Office minister Sarah Dines also pointed to non-legislative interventions which the government was taking, such as funding for safer streets and for the safety of women at night.<sup>17</sup> Miss Dines said that legislation had a key role to play alongside these measures and confirmed the government’s “strong support for this excellent bill”.<sup>18</sup>

Chair of the Women and Equalities Committee Caroline Nokes also welcomed the bill, and the cross-party support which accompanied it.<sup>19</sup>

### 2.2.2 Committee stage

The bill was considered in public bill committee on 22 February 2023. Greg Clarke reiterated that the purpose of his “short and simple” bill was to create a specific offence of public sexual harassment with a higher sentencing tariff.<sup>20</sup>

Mr Clarke proposed several amendments, which he said were designed to improve the way the legislation would work. Amendment 1 extended the application of the new offence to include Wales, something he said was supported with “alacrity” by officials in the Welsh government.<sup>21</sup>

His new clause 2 sought to amend three other acts which cross-reference the section 4A offence contained in the Public Order Act 1986, namely the Football Spectators Act 1989; the Police Act 1997; and the Elections Act 2022. As explained by Mr Clarke:

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.<sup>22</sup>

<sup>16</sup> [HC Hansard, 9 December 2022, col 628.](#)

<sup>17</sup> More information on the safer streets fund and the safety of women at night fund can be found at Home Office, ‘[Safer streets fund is building confidence in the police](#)’, 11 January 2023; and ‘[Millions awarded for new projects to keep women safe](#)’, 10 November 2021.

<sup>18</sup> [HC Hansard, 9 December 2022, col 632.](#)

<sup>19</sup> [HC Hansard, 9 December 2022, col 635.](#)

<sup>20</sup> House of Commons Public Bill Committee, ‘[Protection from Sex-based Harassment in Public Bill](#)’, 22 February 2023, session 2022–23, 1st sitting, col 4.

<sup>21</sup> As above, col 5.

<sup>22</sup> As above, col 5.

He also tabled some consequential amendments.

For Labour, Stella Creasey tabled probing amendments regarding the concept of intent. Ms Creasey noted that, as drafted, the public order offences were based on intent as defined by the perpetrator.<sup>23</sup> She argued this could lead to a person accused of the offence claiming, as part of their defence, that they thought their behaviour was reasonable. However, she did not press her amendments to a vote.

Home Office minister Sarah Dines voiced her support for Mr Clarke's amendments. Responding to the amendments tabled by Stella Creasey, Miss Dines said that on "a technical basis" the government did not support the amendments as they did not feel they would achieve their purpose. Instead, she said that the government was "thinking very seriously" about the points raised.<sup>24</sup>

Mr Clarke's amendments were passed without division.

### 2.2.3 Report and third reading

Report stage of the bill took place on 24 March 2023.

The bill's sponsor, Greg Clarke, introduced a new clause requiring the secretary of state to issue guidance to the police about the new offence. The guidance should also include details on the application of the reasonable conduct defence in section 4A of the Public Order Act 1986. Explaining the new clause, Mr Clarke noted:

During our debate in committee, some members were understandably concerned that the perpetrator of an act of deliberate harassment of a person on the grounds of their sex could escape the consequences of their actions by asserting that they thought their behaviour was reasonable [...] Having clear guidance on this point would ensure that the matter is crystal clear to the police and all the authorities. The proposed requirement for statutory guidance therefore provides that clarity, but it is not limited to that; the guidance can include other matters, should that prove desirable in future.<sup>25</sup>

The amendment was welcomed by Stella Creasey, who noted that she tabled amendments in committee which prefigured the new clause. Ms Creasey said this was an example of "the best of Parliament" and hoped it would mean that offenders were not able to evade prosecution.<sup>26</sup>

Chris Philp, the minister for crime, policing and fire, indicated the government's support for the amendments and the new clause was agreed without division.<sup>27</sup>

A number of amendments were also proposed by Sir Christopher Chope, although none were called. Sir Christopher argued that he wanted to emphasise that the bill applied to both men and women equally, and that men could also be the victims of sexual harassment.

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<sup>23</sup> House of Commons Public Bill Committee, '[Protection from Sex-based Harassment in Public Bill](#)', 22 February 2023, session 2022–23, 1st sitting, cols 6–7.

<sup>24</sup> As above, col 13.

<sup>25</sup> [HC Hansard, 24 March 2023, col 542.](#)

<sup>26</sup> [HC Hansard, 24 March 2023, col 546.](#)

<sup>27</sup> [HC Hansard, 24 March 2023, col 556.](#)



Summarising the position of Labour, Shadow Secretary of State for Women and Equalities Anneliese Dodds said the bill was “a welcome step in the right direction” for dealing with public sexual harassment.<sup>28</sup>

Speaking at third reading, Greg Clarke reiterated that “our streets belong to women just as much as they belong to men” and said that the passage of the bill would “be an historic day”.<sup>29</sup> The bill passed its third reading unopposed.<sup>30</sup>

### 3. Read more

- House of Commons Library, [‘Protection from Sex-based Harassment in Public Bill 2022–23’](#), 22 March 2023

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<sup>28</sup> [HC Hansard, 24 March 2023, col 552.](#)

<sup>29</sup> [HC Hansard, 24 March 2023, col 557.](#)

<sup>30</sup> [HC Hansard, 24 March 2023, col 564.](#)

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