

Jane Hutt AS/MS
Gweinidog Cyfiawnder Cymdeithasol a'r Prif Chwip
Minister for Social Justice and Chief Whip



Llywodraeth Cymru
Welsh Government

Huw Irranca-Davies MS
Chair
Legislation, Justice and Constitution Committee
Welsh Parliament
Cardiff Bay
CF99 1SN

09 June 2023

Thank you for the Committee's consideration of the Legislative Consent Memorandum on the Protection from Sex-based Harassment in Public Bill and for your report published 8 June.

I appreciate your feedback and the chance to respond regarding this important area of our work, to end violence against women and girls, and gender-based harassment in all public spaces.

Please find attached the Welsh Government's written response to the Committee's Recommendations.

Yours sincerely,

A handwritten signature in black ink that reads "Jane Hutt". The signature is written in a cursive style with a long horizontal line above the first name.

Jane Hutt AS/MS
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Minister for Social Justice and Chief Whip

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Written Response by the Welsh Government to the report of the Legislation, Justice and Constitution Committee entitled 'The Welsh Government's Legislative Consent Memorandum on the Protection from Sex-based Harassment in Public Bill'

Thank you for the Legislation, Justice and Constitution Committee's report on the Welsh Government's Legislative Consent Memorandum on the Protection from Sex-based Harassment in Public Bill (the "Bill").

I welcome the conclusion reached by the majority of the Committee that clauses 1, 3 and 4(3) and (4) of the Bill require the consent of the Senedd. This is consistent with the position set out in the Legislative Consent Memorandum.

I note the view of the Committee that the whole of clause 4 including subclauses (1), (2), (5) and (6) of the Bill require the Senedd's consent. The Welsh Government's position is that these provisions do not require consent as they have no substantive legal effect.

I have set out my response to the Report's recommendation below.

Recommendation 1

The Committee recommends that: The Minister should clarify why the Welsh Government has not brought forward its own Bill to create a new offence about the intentional harassment, alarm or distress to a person in public where the behaviour is done because of that person's sex and, in doing so, should explain if the Welsh Government has any concerns about the Senedd's legislative competence to pass its own legislation on this matter.

Response: Accept

My officials explored the option of the Welsh Government bringing forward its own Bill very seriously, but it became clear that this would not have been a timely option in this case. I was also informed that bringing forward our own legislation through the Senedd, with an aim of a similar commencement date to the UK Bill, would have had detrimental impacts on the delivery of other Bills, which I considered unacceptable.

Our principles provide that there are circumstances in which it may be sensible and advantageous to seek provision for Wales, which would be within the Senedd's legislative competence, within UK Parliamentary Bills, with the consent of the Senedd. This is a single-issue Bill, in line with our Programme for Government and our Violence against Women, Domestic Abuse and Sexual Violence Strategy 2022-26, and therefore our recommendation to consent to this Bill is entirely consistent with those principles, in order to ensure that a serious issue is addressed in as timely a fashion as possible.

I do not have concerns regarding the Senedd's legislative competence to pass its own legislation on this matter. As stated, it has simply been a case of timing and

resources available to match the fast progress of the UK Private Members Bill in this case.

Financial Implications: None

Recommendation 2

The Committee recommends that: The Minister should confirm if the Welsh Government sought a power on the face of the Bill for the Welsh Ministers to commence clauses 1 and 3 of the Bill as they apply in Wales before agreeing to enter into a Memorandum of Understanding with the UK Government. If the Minister did not seek such a power, she should explain the reason for not doing so.

Response: Accept

I can confirm that I wrote to the UK Minister for Safeguarding Sarah Dines on three occasions, alongside discussions between our officials, to strongly advocate for a power on the face of the Bill for Welsh Ministers to commence the relevant provisions in Wales. I received two replies to these letters, from UK Minister for Safeguarding Sarah Dines, which refused this request.

Financial Implications: None

Recommendation 3

The Committee recommends that: The Minister should confirm if any discussions have taken place and/or what is the Welsh Government's understanding of what is meant by "reasonable time" which appears in the terms of the Memorandum of Understanding.

Response: Accept

The Welsh Government's understanding of what is meant by "reasonable time" is case specific depending on individual circumstances. This is a common legal concept and we do not consider this term will give rise to any issues.

Financial Implications: None

Recommendation 4

The Committee recommends that: Should the Welsh Ministers propose an alternative commencement date to the one proposed by the Secretary of State, the Minister should confirm whether, when and how a formal dispute resolution process will be engaged should Welsh Government and UK Government officials be unable to agree a suitable commencement date.

Response: Accept

The Memorandum of Understanding, agreed and signed between the Secretary of State for the Home Department and the Welsh Ministers states that, if Welsh Ministers propose an alternative commencement date and the Secretary of State does not agree with it, the Participants will arrange a meeting between officials to discuss and seek to agree a suitable commencement date.

Financial Implications: None

Recommendation 5

The Committee recommends that: The Minister should explain what action the Welsh Government would take should the Secretary of State decide not to propose a commencement date for clauses 1 and 3 of the Bill.

Response: Accept

If the Bill is not commenced for any reason, I will explore further options to legislate for a similar offence in Wales.

As sexual harassment in public is one of the priorities of our Programme for Government and Violence against Women, Domestic Abuse and Sexual Violence Strategy 2022-26, we are also continuing our wider work in this area through the blueprint delivery model which includes a specific workstream on sexual harassment in all public spaces.

Financial Implications: The costs of creating a new Wales offence would be explored as part of the normal consideration of any new legislation.

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