

# **Memorandum of Understanding**

**Between**

**The Welsh Ministers**

**And**

**The Secretary of State for the Home Department**

**1 June 2023**

## Memorandum of Understanding

The participants in this Memorandum of Understanding (“MoU”) are:

**(1) The Welsh Ministers;** and

**(2) The Secretary of State for the Home Department.**

(together “the Participants”)

### 1. Background

The Protection from Sex-based Harassment in Public Bill (“the Bill”) was introduced in the UK Parliament, on 15 June 2022.

The Bill makes provision in the following areas:

- a) Clause 1 provides for the new offence of ‘Intentional harassment, alarm or distress on account of sex’ to be inserted into the Public Order Act 1986.
- b) Clause 2 provides that the Secretary of State must issue and publish guidance to police about the offence, and in particular include guidance about the reasonable conduct defence in section 4A(3)(b)<sup>1</sup> of the Public Order Act 1986.
- c) Clause 3 makes consequential amendments to the Football Spectators Act 1989, the Police Act 1997, and the Elections Act 2022 as a result of the creation of the offence in Clause 1.
- d) Clause 4 confirms the extent, commencement and short title of the Bill.

The Bill, as amended, extends to England and Wales (the consequential amendments in clause 3 have the same extent as the provisions amended). Clauses 1, 3 and 4 (the latter in so far as it relates to the commencement of clauses 1 and 3) make provision within the legislative competence of the Senedd.

On 17 April 2023, the Welsh Government laid a legislative consent memorandum recommending that the Senedd provides its consent to the relevant provisions in the Bill.

Clause 4(3) of the Bill grants the Secretary of State the power to make a statutory instrument appointing the commencement date of clauses 1, 2 and 3 of the Bill. Clause 4(4) allows for different dates to be appointed for different purposes.

This MoU sets out the process for the Participants to agree the commencement date for clauses 1 and 3 (“the Relevant Provisions”) of the Bill.

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<sup>1</sup> Section 4A(3) It is a defence for the accused to prove— (b)that his conduct was reasonable.

## 2. Operation of the MoU

The Secretary of State agrees to:

- Write to the Welsh Ministers and propose a commencement date (the same date to cover commencement in both Wales and England) for the Relevant Provisions before exercising the power under the Bill to make a statutory instrument appointing a commencement date for the Relevant Provisions.
- Provide the Welsh Ministers a reasonable time to respond to the proposed commencement date before making any statutory instrument appointing a commencement date for the Relevant Provisions.

The Welsh Ministers agree to:

- Respond within a reasonable time and either agree to the proposed commencement date or propose an alternative commencement date for the Relevant Provisions.

The Participants agree that:

- This MoU is not legally binding on the Participants.
- This MoU will come into effect upon the date when both Participants have signed the MoU and will remain effective until the Relevant Provisions come into force.
- If the 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.

In witness thereof, this MoU has been prepared in both English and Welsh and once completed the Participants must each retain a copy.

**[For the Welsh Ministers]**



**Signed:**

**Name: Jane Hutt MS**

**Date: 01/06/2023**

**Minister for Social Justice and Chief Whip**

**[For the Secretary of State for the Home Department]**

**Signed:**



**Name: Sarah Dines MP**

**Date: 01/06/2023**

**Minister for Safeguarding**