

Online Safety Bill Legislative Consent Memorandum

June 2022

The Culture, Communications, Welsh Language, Sport and International Relations Committee considered the Welsh Government's Legislative Consent Memorandum on the Online Safety Bill at their meeting on 8 June 2022.

1. Introduction

1. The Deputy Minister for Climate Change laid a **Legislative Consent Memorandum** ("the LCM") on 30 March 2022 under Standing Order 29.2.
2. The Business Committee referred the LCM to this Committee and to the Legislation, Justice and Constitution Committee to consider, with a reporting deadline of 21 July 2022.

2. Our approach

3. The Committee considered the LCM on the Bill at their meeting on 8 June 2022. Given the nature of the provisions for which consent is sought, the Committee did not seek evidence in relation to the LCM.



3. The UK Online Safety Bill and the Legislative Consent Memorandum

4. The UK Government's Online Safety Bill ("the Bill") was introduced in the House of Commons on 17 March 2022, and is sponsored by the Department for Digital, Culture, Media and Sport.

5. The long title of the Bill, as introduced, states that it is a Bill to:

"Make provision for and in connection with the regulation by OFCOM of certain internet services; for and in connection with communications offences; and for connected purposes."

6. Briefly, the Bill introduces a new regulatory regime in relation to:

- providers of internet services which allow users to encounter content generated, uploaded or shared by other users, i.e. user-generated content ("user-to-user services");
- providers of search engines which enable users to search multiple websites and databases ("search services"); and
- providers of internet services on which provider pornographic content is published or displayed.

7. Under that regulatory regime, certain providers of user-to-user services and search services with links to the UK must assess risk of harm and take steps to mitigate and manage risks, including putting in place systems, processes and a transparent and easy to use complaints procedure.

4. Provisions for which consent is sought

8. The provisions of the Bill that require Senedd consent are set out in clause 175(5) of, and paragraph 1 and Part 2 of Schedule 1 to, the Bill. Those provisions are summarised below.

- Clause 175(5) (Powers to amend Part 2 of Schedule 1)
- Paragraph 10 and Part 2 of Schedule 1 (Services provided by persons providing education or childcare)

9. Amongst other things, the Bill places obligations on providers of regulated user-to-user services and regulated search services. A user-to-user service, or a search service, is not regulated if it is exempt. Exemptions are set out in Schedule 1 to the Bill.

10. A user-to-user service or a search service that is exempt does not need to comply with the obligations under the Bill.

11. Paragraph 10 of Schedule 1 to the Bill details the exemption that applies in relation to education and childcare. A service is exempt if the service is provided for the purposes of education or childcare and the provider of the service is:

- the person¹ with legal responsibility for education or childcare of a description listed in Part 2; or
- a person who is employed or engaged to provide education or childcare of a description listed in Part 2, and who is subject to safeguarding duties² which relate to the provision of that education or childcare.

12. For these purposes, the person with legal responsibility for education or childcare of a particular description is the person with legal responsibility for its day-to-day provision (for example, the person with legal responsibility for a particular school). This does not cover a person who has a general duty to ensure that education or childcare of that description is provided.

13. Part 2 of Schedule 1 to the Bill contains a list of the descriptions of education and childcare³ that are exempt. Part 2 of Schedule 1 to the Bill includes parts relating to Wales (paragraphs 31 to 37).

14. The justification provided by the UK Government for taking this approach is that the listed providers of education and childcare will already be subject to safeguarding duties, which require them to protect children online. The exemption seeks to avoid those providers from

¹ Where the responsible person is a body, this includes a member of that body.

² "Safeguarding duties" means duties or requirements related to the safeguarding of children arising under enactments other than the Bill, under guidance or requirements (however referred to) produced under enactments other than the Bill, or as a result of contractual arrangements made by the responsible person.

³ In respect of Wales, these are: child minders; day care; schools; pupil referral units; elsewhere that exceptional provision of education is provided under section 19A of the Education Act 1996; further education institutions; and post-16 education or training facilities funded by the Welsh Ministers (but not those provided by institutions in the higher education sector or providers providing education or training to their own employees).

being subject to oversight by both OFCOM and the relevant oversight bodies for education and childcare (in Wales, Estyn and the Care Inspectorate Wales).

15. Clause 175(5) confers a power on the Welsh Ministers to make regulations to amend the list of Welsh education and childcare providers set out in Part 2 of Schedule 1 to the Bill.

16. Regulations under clause 175(5) can be made only where certain criteria are met, which include:

- amending the description of an education or childcare provider because there has been an amendment or repeal of legislation which affects the way a description has been framed in Part 2 of Schedule 1 to the Bill;
- adding a new description of an education or childcare provider because enactments, statutory guidance or requirements that apply to that description of education and childcare mean that it would be appropriate for the description to be added to Part 2 of Schedule 1 to the Bill; or
- removing a description of an education or childcare provider because the risk of harm to individuals using that education or childcare service warrants removal from the list.

17. The UK Government state that the regulation making power is considered necessary to allow the legislation to be updated to address changes in the education system.

18. Clause 179 of the Bill sets out the parliamentary procedure for regulations made under the Bill. Regulations made by the Welsh Ministers under clause 175(5) are subject to the draft affirmative procedure⁴.

19. The Deputy Minister for Climate Change is supportive of the proposed provisions. Paragraph 22 of the LCM states that:

"In taking this approach the provisions will make practical and important changes to online safety regulation across the UK whilst ensuring that the

⁴ The affirmative procedure provides that the Welsh Ministers cannot exercise their power to make subordinate legislation unless the Senedd has passed a resolution approving a draft of the subordinate legislation. The subordinate legislation is therefore laid before the Senedd in draft form, and cannot have effect unless the draft is approved by the Senedd. This procedure is often reserved for more significant subordinate legislation (such as subordinate legislation that amends primary legislation).

proposed regulation in the Bill does not lead to additional, unnecessary and disproportionate regulation of education and childcare providers in Wales."

5. Reasons for making provisions for Wales in the Bill

20. The reasons given by Welsh Government for making provisions for Wales in the Bill are set out in paragraphs 18 to 20 of the LCM. Those paragraphs include the following:

"The Online Safety Bill imposes duties on internet service providers in relation to online safety and confers powers and imposes duties on OFCOM. The provisions in the Bill relate to the reserved matter of "internet services".

The provisions inserted by Clause 175(5) of the Bill will ensure that education and childcare providers in Wales are exempted from the Bill to avoid and therefore not be subject to additional regulation by OFCOM further to that currently imposed by statutory and/or contractual safeguarding requirements. Currently safeguarding requirements related to online safety and protecting children from harm already form part of inspection and regulation under Estyn and Care Inspectorate Wales.

The safety and wellbeing of people is a shared responsibility and a duty that falls to both UK Government and the Welsh Government. We acknowledge that a UK-wide Bill is the most effective and proportionate legislative vehicle to deliver consistent regulation of internet providers that will protect the people of Wales."

6. Committee consideration

21. The Committee considered the LCM at their meeting on 8 June 2022.

22. Members noted the comments from the Deputy Minister for Climate Change that the proposed regulation in the Bill 'will make practical and important changes to online safety regulation across the UK' whilst ensuring that there is not 'unnecessary and disproportionate regulation of education and childcare providers in Wales'.

23. The Committee were satisfied with the use of the draft affirmative procedure, as it provides control to the Senedd when the Welsh Ministers lay regulations.

24. Members of the Committee have no objection to the LCM and the request for consent to the relevant provisions in the UK Online Safety Bill.