

**SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM  
(MEMORANDUM NO.2)**

**ONLINE SAFETY BILL**

1. This legislative consent memorandum (“LCM”) is laid under Standing Order (“SO”) 29.2. SO29 prescribes that an LCM must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.
2. The Online Safety Bill (“the Bill”) was introduced in the UK Parliament, the House of Commons, on 17 March 2022.
3. The Deputy Minister for Climate Change laid the first LCM on 30 March, based on the Bill as introduced. The UK Parliament consideration of the Bill has since reached Report Stage in the House of Commons which commenced on 12 July. Further dates for Commons Report Stage are yet to be announced.
4. Unless otherwise stated clause references in this LCM correspond with the Bill as amended at Commons Committee Stage and published on 28 June, which can be found at: <https://bills.parliament.uk/bills/3137>.
5. I am laying this LCM in relation to clauses which were contained in the Bill as introduced, but were not however included in the first LCM. Further detail is set out in paragraphs 16-18 and paragraphs 19 -23 below.

**Policy Objective(s)**

6. The UK Government’s stated policy objective is to establish a new regulatory regime to address illegal and harmful content online, with the aim of preventing harm to individuals, making the UK the safest place in the world to be online.
7. Presently, most user-to-user and search services operating in the United Kingdom are not subject to any regulation concerning user safety. The Bill imposes legal requirements on:
  - a) 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”);
  - b) Providers of search engines which enable users to search multiple websites and databases (“search services”);
  - c) Providers of internet services on which pornographic content is published or displayed.

8. The Bill confers new powers on the Office of Communications (OFCOM) enabling them to act as the online safety regulator.

### **Summary of the Bill**

9. The Bill is sponsored by the Department for Digital, Culture, Media and Sport (DCMS).
10. The Online Safety Bill introduces a new regulatory regime that will impose legal requirements on providers of internet services which allow users to encounter content generated, uploaded or shared by other users and search engines which enable users to search multiple websites and databases. Providers of regulated services will be required to:
  - a) Assess their user base and the risks of harm to those users present on the service;
  - b) Take steps to mitigate and manage the risks of harm to individuals arising from illegal content and activity, and (for services likely to be accessed by children) content and activity that is harmful to children;
  - c) Put in place systems and processes which allow users and affected persons to report specified types of content and activity to the service provider;
  - d) Establish a transparent and easy to use complaints procedure which allows for complaints of specified types to be made;
  - e) Have regard to the importance of protecting users' legal rights to freedom of expression and protecting users from a breach of a legal right to privacy when implementing safety policies and procedures;
  - f) Put in place systems and processes designed to ensure that detected but unreported child sexual exploitation and abuse (CSEA) content is reported to the National Crime Agency (NCA).
11. Additional legal requirements will be placed upon user-to-user services that meet threshold conditions specified by the Secretary of State. These include setting out in clear terms of service how legal but harmful content to adults will be treated and assessing and publishing steps taken to protect users' legal rights to freedom of expression and users' privacy.
12. Search services which meet additional threshold conditions will be under a duty to produce annual transparency reports and to put in place proportionate systems and processes to prevent the risk of users encountering fraudulent adverts.
13. OFCOM will be responsible for enforcing the legal requirements imposed on service providers. The Bill requires OFCOM to produce codes of practice for service providers, setting out the recommended steps that providers can take in order to comply with the legal requirements. New powers conferred on OFCOM include the power to give enforcement notifications and to impose financial penalties.

14. The Bill also requires providers of internet services which make pornographic material available by way of the service (as opposed to enabling users to generate or share such content) to ensure that children are not normally able to encounter that pornographic content.
15. Within the Bill, existing communications offences in the Malicious Communications Act 1988 and sections 127(1) and 127(2)(a)-(b) of the Communications Act 2003 are replaced with three new communications offences: a harmful communications offence, a false communications offence and a threatening communications offence.

### **Update on position since the publication of the first Legislative Consent Memorandum**

16. The Deputy Minister for Climate Change laid an LCM on 30 March, based on the Bill as introduced into the UK Parliament on 17 March.
17. The LCM confirmed that the Deputy Minister was content to lay an LCM in respect of Clause 175(5) (now clause 178(5)), of, as well as paragraph 10 and Part 2 of Schedule 1 to, the Bill in so far as these provisions relate to Wales.
18. UK Government officials have since informed my officials that following further discussions, it is now considered that some provisions within Part 10 of the Bill – Communications Offences, which were contained in the Bill at introduction, may require an LCM.
19. Following our own subsequent analysis of the implications of these provisions for Wales, I consider this LCM is required to be laid before the Senedd, for the reasons set out in paragraphs 21 to 29 below.

### **Additional provisions in the Bill for which consent is required**

20. The Senedd's consent is required for the following provision included within the Bill:

*Clauses 151–154 and 156 – Communications Offences (Clauses 150-152 and 155 in the Bill as introduced)*

21. Clauses 151–153 create criminal offences for sending harmful, false or threatening communications. These offences apply where; a person sends, transmits or publishes a communication (including an oral communication) by electronic means, or sends a letter or a thing of any other description, and the relevant conditions for each offence relating to intent and knowledge are met.
22. Clause 151 creates a criminal offence for the sending of harmful communications. Any person who, intending to cause at least serious

distress and without reasonable excuse, sends (or causes to be sent) a message that presents a real and substantial risk of causing at least serious distress to those likely to encounter it, is guilty of the offence.

23. Clause 152 creates a criminal offence for the sending of false communications. A person who, without reasonable excuse, sends a message conveying information the person knows to be false, and in sending the message intends to cause psychological or physical harm that is more than trivial to those likely to encounter the message, is guilty of an offence.
24. Clause 153 creates a criminal offence for the sending of threatening communications. A person who sends a message conveying a threat of serious injury, rape, assault by penetration, or serious financial loss, intending that those who encounter the message will fear the threat will be carried out (or is reckless as to that fact), is guilty of an offence.
25. The offences are not limited to the internet or online environment – they also cover letters (clause 154(3)). A person who commits an offence under clauses 151 to 153 is liable on summary conviction to imprisonment for a term not exceeding the maximum summary term for either-way offences or a fine (or both); or on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both).
26. The harmful communications offence and the false communications offence cannot be committed by certain bodies (as defined in the relevant subsections), or in connection with the showing to members of the public of a film that was made for cinema.
27. Clause 154 contains interpretation provision and subsection (2)(b) clarifies that for the purposes of the above offences, a person sends or causes to send a message if the person sends/causes to be sent a letter or a thing of any other description.
28. Clause 156 relates to the liability of corporate officers.
29. Whilst internet services, postal services, and telecommunications are reserved, where these offences apply to other forms of communication, the Senedd has competence to legislate. Therefore, consent is required for clauses 151 – 154 and 156.

### **UK Government view on the need for consent**

30. The UK Government's view is that these provisions engage the legislative consent motion process.

## **Reasons for making these provisions for Wales in the Online Safety Bill**

31. The provisions within the Bill, which impose duties on internet service providers in relation to online safety and confer powers and impose duties on OFCOM, relate to the reserved matter of “internet services”.
32. The safety and wellbeing of people is a shared responsibility and a duty that falls to both the 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.
33. I welcome the UK Government’s intention of the Online Safety Bill to make the UK the safest place in the world to be online while also ensuring that people can enjoy their right to freedom of expression. I am pleased that the Bill recognises the need for enhanced protection for children and young people from harmful content online. I firmly believe that safeguarding is a shared responsibility and welcome the duties placed upon online providers to take action to remove harmful content and strengthen protection against activities that threaten the safety of children and young people.
34. As this a complex Bill, there are likely to be amendments tabled as it continues its passage through Parliament. My officials will continue to work closely with the UK Government in monitoring any proposed amendments.

## **Financial implications**

35. There are no financial implications for Wales in relation to the UK Government’s Online Safety Bill.

## **Conclusion**

36. It is my view that it is appropriate to lay an LCM in respect of clauses 151–154 and 156 – Communications Offences for the reasons provided in paragraphs 31 to 34 above. Therefore, I recommend the Senedd supports the proposals and gives its consent.

**Vaughan Gething MS**  
**Minister for Economy**  
**28 September 2022**